married woman, shall have power, at his will and pleasure, by last will and testament in writing, to devise all the estate, right, title and interest, in possession, reversion or remainder, which he hath, or, at the time of his death, shall have, of, in or to lands," &c. The circumstance, therefore, that the land in question was acquired after the execution of the will, presents no difficulty in this case, if it appears that it was the intention of the testator to devise it to his son; because if it passes at all under the will, it may readily be admitted, that the devisee took it subject to the payment of the testator's debts; the parts of the will above recited being *strong to impose such a charge. [*70

But although a testator may, under the above law, dispose by will of after-puchased lands, it is nevertheless necessary that his intention to make such a disposition should clearly appear upon the face of the will. The rule in England, as well as in Virginia, at the time this law was passed, was, that a will, as to land, speaks at the date of it, and as to personal estate, at the time of the testator's death. The law created no new or different rule of construction, but merely gave a power to the testator to devise lands which he might possess, or be entitled to, at the time of his death, if it should be his pleasure to do so. The presumption is, that the testator means to confine his bequests to land to which he is then entitled; and this presumption can only be overruled by words clearly showing a contrary intention.

In this will, there are no expressions which indicate an intention to devise, or in any manner to charge, lands which the testator might afterwards acquire. It does not appear, that the testator contemplated, at the time he made his will, the purchase of any land, and the words, "estate" and "property," to be found in it, may be fully satisfied, by applying them to the personal property of which he was possessed. It is, therefore, the opinion of the court, that there is no error in the decree of the circuit court, and that the same ought to be affirmed, with costs.

Judgment affirmed.

Beale *v.* Thompson and Morris. (*a*)

Deposition de bene esse.

It is a fatal objection to a deposition taken under the judiciary act of 1789 § 30, that it was opened out of court.

Error to the Circuit Court for the district of Columbia.

On the trial in the court below, the defendant, Beale, offered in evidence, the deposition of Tunis Craven, taken before the judge of the district court of the United States for the district of New Hampshire, under the 30th section of the judiciary act of September 24th, 1789 (1 U. S. Stat. 88), which, after prescribing the mode of taking *depositions, directs that "the depositions so taken shall be retained by such magistrate, until he deliver the same, with his own hand, into the court for which they are taken; or shall, together with a certificate of the reasons aforesaid of their being taken, and of the notice, if any, given to the adverse party, be, by him, the said magistrate, sealed up and directed to such court, and remain under his seal, until opened in court." [*71

(*a*) February 18th, 1814. Absent, Washington and Johnson, Justices.

The deposition was sealed up by the judge, but directed to the clerk of the court, and he, supposing it to be a letter respecting his official business, opened it out of court. The court below rejected the deposition; which being stated in a bill of exceptions, the defendant, Beale, brought his writ of error.

The question respecting the informality of opening the deposition out of court, was not argued in this court, there being another objection to it, which the counsel deemed more important, viz., that the deponent was the maker of the note upon which the suit was brought against the defendant, Beale, as indorser; the purport of the deposition being to show that Beale had not due notice of the non-payment of the note by the deponent.

Law and *Jones*, for the plaintiff in error: *Morsell*, for the defendants in error.

February 23d, 1814. Story, J., delivered the opinion of the court, as follows:—The single point in this case is, whether the circuit court of the district of Columbia, erred in rejecting the deposition of Tunis Craven?

Independent of all other grounds, the court are of opinion, that the fact of the deposition's not having been opened in court, is a fatal objection. The statute of 24th September 1789, ch. 20, § 30, is express on this head. The judgment of the circuit court must be affirmed.

Judgment affirmed.

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*72] *Clementson *v.* Williams. (*a*)

Statute of limitations.

An acknowledgment of the original justice of a claim, is not sufficient to take the case out of the statute of limitations; the acknowledgment must go to the fact, that it is still due.[1]

The statute of limitations is entitled to the same respect as other statutes, and ought not to be explained away.[2]

Quære? Whether an acknowledgment by one partner, after dissolution of the partnership, is sufficient to take a case out of the statute of limitations?[3]

Error to the Circuit Court for the district of Columbia, sitting at Alexandria. The facts of the case are thus stated by the Chief Justice, in delivering the opinion of the court: The plaintiff instituted a suit against James Williams and John Clarke, merchants and partners trading under the firm of John Clarke & Co. The writ was executed on Williams only, who pleaded *non assumpsit* and the act of limitations, on which pleas, issues were

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(*a*) February 14th, 1814. Absent, Washington, J.

[1] To take a case out of the statute, there must be an express unqualified acknowledgment of a subsisting debt. Bell *v.* Morrison, 1 Pet. 351; Moore *v.* Bank of Columbia, 6 Id. 86; Read *v.* Wilkinson, 2 W. C. C. 514; Kampshall *v.* Goodman, 6 McLean 189; Jenkins *v.* Boyle, 2 Cr. C. C. 120; Cross *v.* United States, 4 Ct. Claims 271; McClelland *v.* West, 59 Penn. St. 487; Purdy *v.* Austin, 3 Wend. 187.

[2] McCluny *v.* Silliman, 3 Pet. 270; United States *v.* Wilder, 13 Wall. 254.

[3] It is now well settled, that an acknowledgment and promise to pay, made by one of several partners, after a dissolution, will not revive a debt against the firm, which is bound by the statute of limitations. Bell *v.* Morrison, 1 Pet. 351; Van Keuren *v.* Parmelee, 2 N. Y. 523; Reppert *v.* Colvin, 48 Penn. St. 248. But a partial payment by a *liquidating* partner will have such effect. Homer *v.* Irvine, 3 W. & S 345; Kauffman *v.* Fisher, 3 Grant (Pa.) 302.