

I am of the opinion that the statute of limitations, relied upon by this defendant, interposes a flat bar to the plaintiff's right to recover against him. The transaction out of which the claim arises, took place in the year 1840, and the proof shows, I think, very clearly, that the complainants, or some of them, had notice thereof soon thereafter, and yet the bill was not filed until January, 1846.

Now, if this defendant, John C. White, could, in any view of the case, be looked upon as a trustee to make sale of this stock, and that the relation of trustee and cestui que trust did at one time exist between him and these complainants, upon which hypothesis alone, as it seems to me, the jurisdiction of this court could be maintained; still, this relation terminated as soon as the stock was sold, and the obligation to pay over the proceeds supervened. From that time it ceased to be a continuing subsisting trust, and then, whether the remedy was at law or in equity, the right of action accrued, and limitations began to run. *Green vs. Johnson and wife*, 3 G. & J., 389.

If, to be sure, the relation between these parties constituted a purely technical trust, of which a court of chancery had exclusive jurisdiction, limitations could not be successfully relied upon, because, in that case, there being no legal remedy, the statute could not be applied by analogy, and being in terms not applicable to courts of equity, could not be taken advantage of. But undoubtedly, as it appears to me, whatever may have been the character of the relation between them at one time, it terminated when the stock was sold, and the obligation to pay over the proceeds came into existence. *Angell on Lim.*, 349; *Kane vs. Bloodgood*, 7 Johns. Chan. Rep., 90.

Indeed, the complainants themselves allege and show a termination of the trust, when they charge, as they do in their bill, the defendant's indebtedness to them in a large sum of money, being, as they aver, the proceeds of the stock, and the payment of which by the defendant to them they also aver had been duly demanded.

The Chancellor does not think that the circumstance of this defendant being a non-resident, deprives him of the benefit of the