

in the cause in which the answer was filed. Here the answer is evidence, and evidence only, and establishes nothing more than the existence and genuineness of the notes in question, and the willingness of the defendant, at that time, to give them up to Reynolds, and settle with him, upon receiving his share of his sister's estate.

But this answer, containing these admissions, and expressing a willingness thus to settle, was filed on the 26th of February, 1840, and from that time until the 24th of October, 1849, a period of upwards of nine years, nothing has been done. Considering the answer of Thomas Mackall as evidence, and amounting to an admission of the genuineness of the notes, and even an absolute promise to pay them, it could have no greater effect than to give a right to sue on the promise, and to offer the notes in evidence, as a sufficient inducement or consideration for it. It could not revive the remedy upon the sealed notes, when barred by the statute of limitations, as has been repeatedly adjudicated by the Court of Appeals, as shown by the authorities cited in the former opinion. The action upon the promise must be in *assumpsit*, and three years bars such an action; and consequently, as more than nine years have elapsed from the filing of the answer containing the promise (if it does contain one), to the filing of the claim in this case, the statute, in my opinion, is a bar.

Considerations of hardship have been pressed upon the Court, and to such considerations, when at liberty to listen to them, I by no means profess to be insensible. But I sit here not to make, but to administer the law, according to my best judgment, as I find it enacted by the Legislature, or settled by the Courts; and believing that this claim is obnoxious to the plea of limitations, which has been relied upon by one of the representatives of Thomas Mackall, and having no power to deny him a right which the law gives him, it is my duty to give him the benefit of his plea. The propriety of relying upon it is for him, and not for me, to decide.

It has been urged in the argument, that upon these transactions between Thomas Mackall and his sisters, Ann and Anne