by mortgage of the freehold to the vendor. In March, 1896, the plaintiff agreed to sell his leasehold and freehold interests together with his stock in trade to the defendants. In order to facilitate the transaction the defendants lent the plaintiff £1,000 to pay off the mortgage on the freehold. The same solicitors acted both for the plaintiff and defendants, and in the final adjustment of accounts to ascertain the balance payable to the plaintiff the £1,000 thus lent was omitted to be debited to the plaintiff; and on March 31, 1896, the balance, according to this erroneous account, amounting to £9,000, was paid to the plaintiff. On the day following the plaintiff deposited the £9,000 with the defendant at interest, and from time to time drew out portions, until in January, 1909, there being only a balance of £1,000 remaining, the plaintiff gave notice of his intention to withdraw it. Just before the receipt of that notice the defendants instituted inquiries to find out what amount the house purchased from the plaintiff had cost them, and the mistake as to the £1,000 was then discovered; they, therefore, refused to pay the $1,000, and this action was brought to recover it, and the defendants set up the payment by mistake by way of set-off and counterclaim, to which the plaintiff pleaded the Statute of Limitations. The defendants contended that the cause of action for the recovery of the money paid by mistake did not arise until the mistake was discovered and notice given to the plaintiff; but Hamilton, J., who tried the action, came to the conclusion that the defendant's cause of action arose when the money was paid, and that from that time the statute began to run, and that consequently the defendant's claim was barred, and the plaintiff was entitled to judgment for the amount claimed: see R.S.O. c. 146, s. 5, which is taken from Imp. St. 9 Geo. IV. c. 14, s. 4. Having regard to the result in this case it may well be doubted whether this section is in furtherance of justice. There might be some reason in allowing the statute to be pleaded as to any sum claimed by a defendant by way of set-off over and above the plaintiff's demand; but the same reason obviously does not apply to so much of the set-off as equals the plaintiff's claim.