

THIRD DIVISION COURT COUNTY OF ELGIN.

MEEHAN v. BERRY.

Division Courts—Amendment—Statute of Limitations.

Amendment allowed at the trial giving defendant leave to set up Statute of Limitations.

Consideration of the propriety of allowing an amendment to set up such defence.

[ST. THOMAS, May 21.—HUGHES, Co. J.]

Action to recover an account for goods alleged to have been sold in 1895. The dates given in the particulars of claim stated that the goods were sold in 1896. The suit was brought within six years of the latter date, but the books of the plaintiff shewed that the entries were all made in 1895 (over six years before the entry of the suit). The defendant had merely denied the account in his dispute note, and did not give notice of an intention to set up the Statute of Limitations as a defence.

Crothers, for the defendant, asked leave at the trial to plead the Statute of Limitations, in addition to the denial of liability, on the ground that the particulars furnished were misleading.

HUGHES, Co. J.—For obvious reasons it is the policy of the law, and has been so for over one hundred years, in order to put a stop to or prevent litigation upon stale claims for damages, and old demands for debt, beyond certain and reasonable periods of time—in fact, to presume that all such have been satisfied, paid and settled for: for instance, after the lapse of six years from the arising of a cause of action, in matters of debt, like the present claim of these plaintiffs. It is known that memories fail, documents become lost or mislaid, or worn out, or torn, or defaced, or destroyed; that witnesses die or forget facts, or they become scattered, or their minds become engaged or burdened, during intervening years, about other things, so that inaccuracy and forgetfulness become probable.

In this case the transactions sought to be brought in question occurred more than six years before the suit was commenced. The very purpose of the statute, concerning claims for debt, so long unsettled, from the time of incurring the alleged liability, without any acknowledgement of their existence, on the part of the alleged debtor, was to shut off the claim and to treat it as paid, and thereby bar the remedy. It was one of the main purposes to avoid and prevent what was presented on the trial of this case, i.e., contradiction in evidence. Two witnesses on either side contradicted each other under oath, whereby it is impossible to say which is correct or whom to believe.

The defendant did not set up or give notice of a defence under the statute, possibly not knowing the provision of the law in the regular proceedings of the court as a matter of practice. At the trial his counsel asked for leave to give the notice as an amendment of the nature of his defence.