

in during the same period by the customer, which more than covered the amount of the guarantee. But it is with the principle that we are now concerned, and I must say that the two judgments do not seem to me reconcilable.

I do not want to force the judgment in either case beyond its proper limits. I do not think, for instance, that it would be fair to interpret the recent judgment of the Court of Appeal as implying that no continuing guarantee can ever be effective for more than six years, by reason of its dating from the very first overdraft or advance, notwithstanding that overdraft or advance may have been covered many times over by payments in. It might be contended that was the result of Lord Justice Vaughan Williams' judgment, but it would be too unreasonable.

But the judgments do involve this, that the mere existence of a debt, an overdraft by, or advance to, the customer, constitutes an immediate right of action against the guarantor, independent of any balance being struck or the account closed, or any demand made on anybody; and that, subject to the question of subsequent payments in, this is the date you must look to in calculating the effect of the Statute of Limitations. That is directly opposed to the judgment in *Hartland v. Fukes*, which expressly laid down that the mere existence of a debt, unaccompanied by any claim by the bank, would not have the effect of making the statute run from that date, involving the further proposition that the mere existence of such debt does not, in such circumstances, give rise to a cause of action against either customer or guarantor, because if such cause of action did exist, the statute would infallibly begin to run.

Now the general law seems in favour of the later decision.

RIGHT TO DEMAND OF PAYMENT

The relation of the guarantor and the customer is that of surety and principal. And I find it laid down in law books as follows:—"A surety is not entitled to a demand for payment "upon the default of the debtor, or to notice of the default, "unless he *has expressly stipulated* for it; and in order to charge "a surety upon a contract of guarantee, it is not necessary to "make a demand upon the principal debtor, unless such