

to sue W.B., thereon. Maule, J., in the course of the judgment which he delivered for the Court, said:—

“If a bill given by the defendant himself on account of the debt operate as a conditional payment, and so be of the same force as an absolute payment by the defendant, if the condition by which it is to be defeated has not arisen, there seems no reason why a bill given by a stranger for and on account of the debt should operate as a conditional payment by the stranger; and, if it have that operation, the plea in the present case will have the same effect as if it had alleged that the money was paid by W.B., for and on account of the debt. But, if a stranger give money in payment, absolute or conditional, of the debt of another, and the causes of action in respect of it, it must be a payment on behalf of that other against whom alone the causes of action exist, and, if adopted by him, will operate as payment by himself.” In the result, it was held that the bill had been adopted by the defendant. This reasoning was adopted by Parke, B., in two cases. In *Kemp v. Balls* (1855),²¹ he held that a payment to the creditor by a stranger must be for and on account of the debt, and that such payment must be subsequently ratified by the debtor; and, again, in *Simpson v. Eggington*, (1855),²² the same learned Judge remarked: “It (that is, the payment) is not sufficient to discharge a debtor unless it is made by the third person, as agent, for and on account of the debtor and with his prior authority or subsequent ratification.”^{22a}

A good illustration of this doctrine is afforded by *James v. Isaacs* (1852),²³ In assumpsit for work and labour, the defendants pleaded that the money accrued due to the plaintiff under an agreement for the building of a church; that the plaintiff having suspended the work, another agreement was entered into between him and A, under which the plaintiff, in consideration

(21) 10 Ex. Rep. 607.

(22) 10 Ex. Rep. 845.

(22a) Compare the judgment of Kelly, C.B., in *Walter v. James*, 1871, L.R. 6 Ex. 124, and that of Buller, J., in *Williams v. Bartholomew*, 1798, 1 Bos. & P. 326.

(23) 12 C.B. 791.