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CONTRACTS NOT TO BE PERFORMED WITHIN  
ONE YEAR.

Although the Statute of Frauds came into operation so long ago as the year 1677, the true construction of its provisions is still being tested from time to time by the courts. Section 4 provides, *inter alia*, that no action shall be brought upon any agreement that is not to be performed within one year from the making thereof unless the agreement, upon which such action shall be brought, or some memorandum or note thereof, shall be in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorized.

The first reported case on this section appears to be *Peter v. Compton*, Skin. 353, which laid down the principle that the statute only applied to agreements which were in their terms incapable of performance within the year, or, in other words, the effect of the decision appeared to be that the statute only applied to contracts which could not, as distinguished from might not, be performed within the space of one year. Similarly, although an agreement contains a provision which may determine it within the year, yet, if its general terms are such that it is incapable of performance within the year, no action can be brought in respect of it unless it is in writing: *Birch v. Earl of Liverpool*, 9 B. & C. 392.

On the other hand, money payable under a contract which would ordinarily be within the statute may be recoverable on some other ground. In *Knowlman v. Bluett*, 29 L. T. Rep. 462; L. Rep. 9 Ex. 307, the defendant, who was the father of seven illegitimate children of the plaintiff, agreed with her verbally to pay £300 a year so long as she maintained and educated the children. After making the payments for several years, the defendant discontinued his payments, and, on the plaintiff bringing an action for two and a half years' arrears, it was held that, the consideration being executed, she was entitled to recover as for money paid at the defendant's request at the rate fixed by the verbal agreement, although the agreement might be one