pleaded the Statute of Limitations, and upon that issue was joined. At the trial the plaintiff proved the following acknowledgment by the defendant within six years: 'I cannot pay the debt at present, but I will pay it as soon as I can.' Held, that this was not sufficient to entitle the plaintiff to a verdict, no proof being given of the defendant's ability to pay."

This case is commented upon in Darby and Bosanquet's work on the Statute of Limitations, ed. of 1899, p. 67, where, referring to it, it is said: "It was held, after fully going into all the cases, that proof of ability was required to turn the conditional promise into an absolute one; and there was, therefore, no sufficient acknowledgment to take the case out of the statute; for, upon a general acknowledgment, where nothing is said to prevent it, a general promise to pay may and ought to be implied; but where a party guards his acknowledgment and accompanies it with an express declaration to prevent any such implication, the rule expressum facit cessare tacitum must apply. Ever since the decision in Tanner v. Smart, it has been settled law that nothing can take a debt out of the statute unless it amounts to an express promise to pay or an unconditional acknowledgment of the debt from which such an express promise may be implied." And at p. 69: "Though the rule laid down in Tanner v. Smart is perfectly clear, it is often difficult, owing to the variety of expressions employed by different persons, to apply the rule to each particular case."

The letter of the 13th December, 1905, contains in its first sentence, I think, a clear admission of liability, and the last clause . . . namely, "I therefore hope you will be good enough to bear with me for a few days longer until the Judge gives the Quarterly matter a hearing," is clearly a request for a few days longer time for payment and an intimation that he was hoping and expecting that the decision of the Judge on the hearing of the Quarterly matter might assist him in that direction.

There are no words "accompanying the acknowledgment" contained in the letter such as in any manner qualify the presumption of an express promise which can properly be implied from such acknowledgment: Dickinson v. Hatfield, 5 C. & P. 46; Bird v. Gammon, 3 Bing. N.C. 883; Comforth v. Smithard, 5 H. & N. 13.

There will, therefore, be judgment for the plaintiffs for the amount of the four notes, namely, $1,000, together with appropriate interest and costs.