TEETZEL, J. JUNE 5TH, 1911.

ROSS v. FLANAGAN.

Statute of Limitations—Part Payment—Part of Claim Statute-Barred—Inferred Promise.

Appeal by the plaintiffs from the judgment of the Local Master at Cornwall, to whom the action was referred for trial.

The action was to recover the amount of an open account, and the Master found that the bar of the Statute of Limitations was fatal to all the plaintiffs' claim prior to July, 1906, except $3.76.

R. A. Pringle, K.C., for the plaintiffs.

C. H. Cline, for the defendants.

TEETZEL, J.:—The plaintiffs had for many years prior to 1906, sold quantities of lumber and other building supplies to the late John Bergin (whose executors the defendants are), and in July or August of that year, they rendered a detailed statement of their claim, and $100 was paid by Bergin on account; but whether the payment was before or after the statement was rendered, the learned Master finds that it is not possible to satisfactorily determine, and I agree in this view.

At whatever date the $100 was paid, I think the evidence establishes, as the learned Master has found, that at the time, the plaintiffs' claim consisted of over $500, which was clearly barred by the Statute of Limitations, and $103.76 which was not barred. The Master also found that the plaintiffs have failed to prove that the $100 was paid on account of the statute-barred debt.

There is certainly nothing in the evidence to shew that Bergin expressly made the payment on account of the statute-barred debt, and I can find nothing disclosed in the evidence to warrant a finding that such an intention should be implied.

Mr Pringle contended that the evidence shewed that when the $100 was paid all the items which were not barred had been previously settled between the parties. I am unable to find any satisfactory evidence to support such a conclusion.

The plaintiffs were most unsystematic in their methods of keeping and rendering accounts, and if in the result they have been defeated in a just claim by reason of the statute, this misfortune is chargeable to their own carelessness.

The position being that the plaintiffs' claim at the time of