

As the payment was made in accordance with the terms of the agreement, it was a payment made by the defendant; and, as it was made on account of a greater debt, it was a part payment which necessarily was an acknowledgment of the existence of the debt from which it was proper to import a promise to pay it; and so the statutory period began to run from the date of the payment, not from the time when the cause of action on the debt first arose; and, therefore, the claim was not barred.

Reference to *Waters v. Tompkins* (1835), 2 C.M. & R. 723.

The second question was, whether the provision in respect of interest, contained in the agreement, was applicable until payment or judgment.

It was said that the agreement as to interest did not apply post diem; but after what day? The case was not one of a debt payable at a fixed time, with interest in the meantime. The indefiniteness as to the rates of interest was caused by the fact that they really depended upon the rates which the plaintiffs had to pay for the money which they were obliged to borrow to carry the defendant's purchases.

The meaning of the agreement, and the intention of the parties, was, that the defendant should pay such rates from time to time so long as the plaintiffs were carrying the defendant's purchases: and in that manner interest was charged. After the account was closed, and the defendant had been converted into simply a debtor to the plaintiffs, interest was charged at 5 per cent. only. The defendant had no reasonable cause of complaint in this respect.

Lastly, it was urged that there was a binding oral agreement that the plaintiffs should charge no more for interest than one-half of one per cent. more than they had to pay. There was no evidence that more had been charged; and, if there had been any such evidence, the written agreement must prevail.

*Appeal dismissed with costs.*