

Case No. 3,656.

DAVIS v. VAN ZANDT.

[2 Cranch, C. C. 208.]¹

Circuit Court, District of Columbia.

June Term, 1820.

LIMITATIONS—NEW PROMISE.

A promise to pay “when able” will take the case out of the statute of limitations, without proof that the defendant has since been able to pay the debt.

At law. Assumpsit against the maker of a note. The defendant pleaded the statute of limitations. Upon the trial the plaintiff proved that within three years the defendant promised to pay when he should be able.

Mr. Wallach, for defendant contended that the plaintiff must prove that the defendant is or has been, since the promise, able to pay.

But THE COURT (nem. con.) said it was not necessary to prove that fact to take the note out of the statute of limitations. The action is brought on the note, and not on the new promise.

But see *Wetzel v. Bussard*, 11 Wheat. [24 U. S.] 309; *Bead v. Wilkinson* [Case No. 11,611]; *Lonsdale v. Brown* [Id. 8,492].

¹ [Reported by Hon. William Cranch, Chief Judge.]