

Case No. 5,977.

HAMILTON v. CARNES.

[4 Cranch, C. O. 531.]<sup>1</sup>

Circuit Court, District of Columbia.

March Term, 1835.

STATUTE OF LIMITATIONS—WHAT CONSTITUTES PROMISE TO PAY TO TAKE CASE OUT OF STATUTE.

An offer by the defendant to the plaintiff's agent, after the commencement of the suit, to pay the debt in a manner and upon terms which he was not authorized to accept, is not a sufficient promise to take the case out of the statute of limitations.

[See *Ash v. Hayman*, Case No. 572.]

Assumpsit on two promissory notes. Plea, limitations. General replication and issue.

Mr. Nathan Smith, a witness for the plaintiff, upon the trial testified, that in a conversation with the witness, who was the agent of the plaintiff the defendant [P. A. Carnes] said that if he would withdraw this suit he would give the witness an order on his partner at New Orleans for the amount; but the witness was not authorized to dismiss the suit upon those terms.

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Mr. Morfit, for defendant, contended that this was not a sufficient promise to take the case out of the statute of limitations, and cited *Reed v. Wilkinson* [Case No. 11,011], and *Bell v. Morrison*, 1 Pet [26 U. S.] 351.

Mr. Fendall, contra, cited *Wetzel v. Bus sard*, 1 Wheat. [14 U. S.] 309.

THE COURT (THRUSTON, Circuit Judge, absent,) upon the authority of *Bell v. Morrison* [supra], and because the new promise was made after the commencement of this suit, were of opinion, and instructed the jury, that the defendant's promise so made, did not take the case out of the statute of limitations.

<sup>1</sup> [Reported by Hon. William Cranch, Chief Judge.]