

## NICHOLLS ET AL. V. WARFIELD.

{2 Cranch, C. C. 429.}<sup>1</sup>

Circuit Court, District of Columbia. Oct. Term, 1823.

LIMITATIONS OF ACTIONS—CONDITIONAL PROMISE.

The defendant's expressing a willingness to pay a debt barred by the action of limitations, if a certain account should be allowed as a set-off, is not such an acknowledgment as will take the case out of the statute.

{See *Ash v. Hayman*, Case No. 572.}

Assumpsit [by W. S. Nicholls and J. S. Nicholls] for goods sold and delivered.

The defendant [P. Warfield] pleaded the act of limitations. The plaintiffs' witness testified, that he called on the defendant with the plaintiffs' account for payment. The defendant said he did not like to pay money when money was due to him, and that he had an account against J. S. Nicholls, and would settle in that way, or words to that effect. The witness did not recollect the exact words, but is positive that the defendant made no objection to the account and expressed a willingness to pay it, if his account against J. S. Nicholls was allowed.

THE COURT (nem. con.) decided, In conformity with the case of *Wetzel v. Bussard*, 11 Wheat [24 U. S.] 309, and *Jenkins v. Boyle* [Case No. 7,262], in this court, at June term, 1816, and *Clementson v. Williams*, 8 Cranch [12 U. S.] 72, that there was not evidence of such a promise as would take the case out of the statute of limitations. [See Case No. 10,233.]

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

This volume of American Law was transcribed for use  
on the Internet

through a contribution from [Google](#). 