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 Dennett v. Cutts.
 

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tinguished by his having taken acceptances from his client for the amount of that balance, before the papers came into his hands, such acceptances having been dishonored. In this case, the general principle is admitted by the counsel on either side, the only question being, whether the papers came into the hands of the attorney in the course of his professional business. *Montague on Lien* 59, 63.

This principle has also been recognized in New-York. In the case of *St. John vs. Dieffendorf*, 12 *Wend.* 261, the question was, whether an attorney had a lien upon his client's money, before it came into his hands, to satisfy a demand he had against his client for costs in other suits; and Savage, C. J., says: "It is true, that an attorney has a lien upon his client's papers, but he has no lien upon any thing belonging to his client, until it comes into his possession."

The same principle is applicable in the case of bankers. In the case of *Davis vs. Bowsher*, 5 *T. R.* 488, it is held that a banker has a general lien upon all securities in his hands, belonging to any particular person, for his general balance.

We are, therefore, of opinion that Mr. Cutts was entitled to retain the note, and that there must be

*Judgment for the defendant.*

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 BASSETT vs. SPOFFORD.

Charges upon a physician's bill, for "visits and medicines," are sufficiently specific, although the quality and quantity of the medicines are not designated; it not appearing that they varied from the usual mode adopted by physicians in making charges.

The book of accounts of a party, supported by his oath, is competent evidence to prove the payment of sums of money not exceeding \$6.67.

ASSUMPSIT, on an account annexed to the writ.

The plaintiff was a physician, and the account contained

11	167
169	604
11	167
74	253

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Bassett v. Spofford.

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various charges for "visits and medicine," to the family of the defendant; but the quantity and quality of the medicines were not specified. There was also a charge of \$5.00, for cash delivered to the defendant.

To prove the charges, the plaintiff offered in evidence his book of accounts, supported by his oath. To the admission of this evidence the defendant objected; but the objection was overruled, and the evidence admitted. The jury returned a verdict for the plaintiff, which the defendant moved to set aside, and for a new trial.

*Bartlett*, for the defendant. There is nothing in these charges by which the proper compensation can be ascertained. The quantity of the medicine should have been specified, and its quality, the distance which the physician travelled, and the time he was necessarily employed.

The charge for cash is easily made, and disproved with difficulty. Books of accounts are not evidence of the payment of money, unless where the accounts are mutual.

*Tuck*, for the plaintiff. The charges are as definite as charges for services of this character usually are. A recovery in this case would estop the plaintiff from recovering again upon this account. *McCoy vs. Lightner, 2 Watts 347, (34 Am. Jurist 433.)*

It has always been held, in Massachusetts, that books of account were competent evidence to prove the payment of sums not exceeding \$6.67, even where the accounts were not mutual. *Shillaber vs. Bingham, 3 Dane Abr. 321.*

GILCHRIST, J. It does not appear that the charges in this case are less specific than charges usually made by physicians for professional services of this character, or that the amount is larger than physicians usually receive for such services. The charge is, "To visit and medicine, 34." In this is included the compensation to the physician for the

exercise of his professional skill, and for the medicine he furnishes. Had this been shown to be different from the usage of medical men, it might be proper to enquire into the character of the disease, and the circumstances under which the services were performed; but the charge stands well enough, until something is shown to the contrary. There is nothing upon the face of the charges to create any suspicion of their correctness; and we cannot, without evidence, make any presumption against them. Or, if there had been a general charge for "visits and medicine" throughout the year, and a gross sum affixed thereto, for compensation to the physician and for medicines furnished, there might be some reason for enquiring into it. But here is a specific sum charged for each visit; and it was competent for the defendant to show that the services were not rendered, and that the charges were unreasonable, if such had been the facts.

It is held, in South Carolina, that charges in a physician's bill must be specific, and not general. *Hughes vs. Hampton*, 2 *Const. Rep.* 746; and that whether they are sufficiently specific must be decided by the court according to the prevailing usage in similar cases. *Schmidt vs. Quin*, 1 *Rep. Conn. Ct.* 418; 2 *Bailey* 449.

In an action for the price of blacksmith's work done, it having first been proved by the journeyman that he made the entries on a slate for two or three days, until it was filled, when it was transferred to the book; that he did not remember the items, but knew it amounted to three or four dollars, it was held that the book account, which was for three dollars and a half, should be received in evidence. *McCoy vs. Lightner*, 2 *Watts* 347.

We think this objection cannot be sustained.

It is further objected, that the book of accounts is not competent evidence to prove the payment of money to the defendant. But the practice in several of the New-England states is, to admit books of accounts as evidence of the pay-

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 Bassett v. Spofford.
 

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ment of sums not exceeding \$6·67. In *Shillaber vs. Bingham*, reported in 3 *Dane Abr.* 321, the defendant objected to a book of account as evidence to support so large a charge as seventy-eight bushels of salt, in one item, and one hundred thirty-two gallons of rum, in another; but the court held that as these were articles of merchandize as to which the court had made no distinction as to quantities, the evidence must be admitted; but as to money, there had been a distinction made, and forty shillings was the rule.

It is also said, in *Union Bank vs. Knapp*, 3 *Pick.* 109, that the sums to be proved in this manner have been limited to \$6·67; and the same rule is laid down in *Burns vs. Fay*, 14 *Pick.* 12, and is recognized in *Dunn vs. Whitney*, 1 *Fairf.* 9.

We are, therefore, of opinion that the evidence was properly admitted, and that there must be

*Judgment on the verdict.*

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### BETTON, Adm'r, vs. CUTTS, Adm'r.

Where there is an admission of the existence of a debt, otherwise barred by the statute of limitations, connected with a conditional promise of payment, no action can be sustained upon the demand, if the defendant sets up the statute as a bar, unless it is shown that the contingency has happened.

Where the defendant admitted the justice of the demand, and said he would pay if he ever received any thing on a certain claim, and his administrator after his decease received a dividend upon the claim—*Held*, that this was sufficient to take the case out of the statute.

Where the original promise is absolute, and the new promise is conditional, it is not necessary to declare specially upon the latter. It is sufficient to declare upon the original demand. The matter which takes the case out of the statute may be given in evidence, in answer to the defence.

A new promise, therefore, made after the decease of the creditor, and while there is no administrator upon his estate, may be given in evidence upon a declaration founded on the original demand, without any averment of the new promise, even if it is conditional.

**ASSUMPSIT.** The case came to the common pleas upon

11	170
69	185
69	644

11	170
71	387

11	170
74	274