The deposition was sealed up by the judge, but directed to the clerk of the court, and he, supposing it to be a letter respecting his official business, opened it out of court. The court below rejected the deposition; which being stated in a bill of exceptions, the defendant, Beale, brought his writ of error.

The question respecting the informality of opening the deposition out of court, was not argued in this court, there being another objection to it, which the counsel deemed more important, viz., that the deponent was the maker of the note upon which the suit was brought against the defendant, Beale, as indorser; the purport of the deposition being to show that Beale had not due notice of the non-payment of the note by the deponent.

Law and *Jones*, for the plaintiff in error: *Morsell*, for the defendants in error.

February 23d, 1814. Story, J., delivered the opinion of the court, as follows:—The single point in this case is, whether the circuit court of the district of Columbia, erred in rejecting the deposition of Tunis Craven?

Independent of all other grounds, the court are of opinion, that the fact of the deposition's not having been opened in court, is a fatal objection. The statute of 24th September 1789, ch. 20, § 30, is express on this head. The judgment of the circuit court must be affirmed.

Judgment affirmed.

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*72] *Clementson *v.* Williams. (*a*)

Statute of limitations.

An acknowledgment of the original justice of a claim, is not sufficient to take the case out of the statute of limitations; the acknowledgment must go to the fact, that it is still due.[1]

The statute of limitations is entitled to the same respect as other statutes, and ought not to be explained away.[2]

Quære? Whether an acknowledgment by one partner, after dissolution of the partnership, is sufficient to take a case out of the statute of limitations?[3]

Error to the Circuit Court for the district of Columbia, sitting at Alexandria. The facts of the case are thus stated by the Chief Justice, in delivering the opinion of the court: The plaintiff instituted a suit against James Williams and John Clarke, merchants and partners trading under the firm of John Clarke & Co. The writ was executed on Williams only, who pleaded *non assumpsit* and the act of limitations, on which pleas, issues were

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(*a*) February 14th, 1814. Absent, Washington, J.

[1] To take a case out of the statute, there must be an express unqualified acknowledgment of a subsisting debt. Bell *v.* Morrison, 1 Pet. 351; Moore *v.* Bank of Columbia, 6 Id. 86; Read *v.* Wilkinson, 2 W. C. C. 514; Kampshall *v.* Goodman, 6 McLean 189; Jenkins *v.* Boyle, 2 Cr. C. C. 120; Cross *v.* United States, 4 Ct. Claims 271; McClelland *v.* West, 59 Penn. St. 487; Purdy *v.* Austin, 3 Wend. 187.

[2] McCluny *v.* Silliman, 3 Pet. 270; United States *v.* Wilder, 13 Wall. 254.

[3] It is now well settled, that an acknowledgment and promise to pay, made by one of several partners, after a dissolution, will not revive a debt against the firm, which is bound by the statute of limitations. Bell *v.* Morrison, 1 Pet. 351; Van Keuren *v.* Parmelee, 2 N. Y. 523; Reppert *v.* Colvin, 48 Penn. St. 248. But a partial payment by a *liquidating* partner will have such effect. Homer *v.* Irvine, 3 W. & S 345; Kauffman *v.* Fisher, 3 Grant (Pa.) 302.

joined. The jury found that the defendant did not assume; and judgment was rendered in his favor.

At the trial, the plaintiff gave evidence tending to prove the partnership, and also to prove dealings of Clarke & Co. with the plaintiff. He then offered a witness who proved, that he presented, in December preceding the trial, to John Clarke, a certain account against the said John Clarke & Co., in favor of the plaintiff; and that said Clarke stated, that the said account was due, and that he supposed it had been paid by the defenndant, but had not paid it himself, and did not know of its being ever paid. And the witness to whom the said Clarke made the said acknowledgment produced in court the identical account so presented to said Clarke, and acknowledged by him as aforesaid, which account was in the words and figures following, to wit, "an account," &c. And the plaintiff's counsel offered the contents of said account and the acknowledgment of said Clarke in evidence, under the issue joined upon the plea of the statute of limitations, but the court decided, that the said evidence so offered by the plaintiff of the contents of the said account and of the acknowledgment of the same by the said Clarke, was not admissible evidence in this cause, and refused to admit the same." To this opinion, the plaintiff excepted, and from the judgment of the circuit court, he appealed to this court.

**Taylor*, for the plaintiff in error.—The only question is, whether the acknowledgment of one partner, after the dissolution of the partnership, takes the case out of the statute of limitations? We contend, that it does, and rely on the following cases: *Whitcomb* v. *Whiting*, 2 Doug. 651; *Jackson* v. *Fairbanks*, 2 H. Black. 340; and *Smith* v. *Ludlow*, 6 Johns. 267. [*73

F. S. Key, contrà.—Although the opinion of the court may be supported upon other grounds, yet it may also be supported upon the point raised, viz: that the acknowledgment of one partner, after dissolution of the copartnership, cannot be received to take the case out of the statute. It can only be evidence of a new promise, and one partner cannot, after dissolution bind the other. No acknowledgment of the debt, by one partner, after dissolution can be given in evidence, on the general issue, to fix the debt upon the other partner. The cases in Douglas and H. Blackstone are different. The joint concern was not dissolved. The authority in Johnson was only a *dictum*; the case was decided upon other evidence. Such evidence would be extremely dangerous. No man could be safe, if, after dissolution of the partnership, his partner could continue to bind him for ever. At all events, it is necessary that the plaintiff should first prove the original debt, by other evidence.

Jones, in reply.—If the opposite doctrine be correct, then, even if each of the partners should acknowledge the debt, the evidence would not support a joint action. The acknowledgment is not considered as a new promise, but simply as rebutting the presumption of payment arising from the length of time, and thereby taking the case out of the reason of the statute.

February 19th, 1814. MARSHALL, Ch. J., after stating the facts of the case, delivered the opinion of the court, as follows:—*It is contended by the plaintiff in error, that, after the dissolution of the partnership, [*74

the acknowledgment of one partner is evidence to revive the original cause of action against both, and that the acknowledgment made in this case by Clarke is sufficient for that purpose.

It has been frequently decided, that an acknowledgment of a debt barred by the statute of limitations, takes the case out of that statute, and revives the original cause of action. So far as decisions have gone on this point, principles may be considered as settled, and the court will not lightly unsettle them. But they have gone full as far as they ought to be carried, and this court is not inclined to extend them. The statute of limitations is entitled to the same respect with other statutes, and ought not to be explained away.

In this case, there is no promise, conditional or unconditional; but a simple acknowledgment. This acknowledgment goes to the original justice of the account; but this is not enough. The statute of limitations was not enacted to protect persons from claims, fictitious in their origin, but from ancient claims, whether well or ill founded, which may have been discharged, but the evidence of discharge may be lost. It is not, then, sufficient to take the case out of the act, that the claim should be proved or be acknowledged to have been originally just; the acknowledgment must go to the fact that it is still due. In the case at bar, the acknowledgment of John Clarke is, that he had not discharged the account presented to him, but he does not say, that it was not discharged. His partner may have paid it, without the knowledge of Clarke, and consequently, the declaration of Clarke that he had not himself paid it, and that he did not know whether his partner had paid it or not, is no proof that the debt remains due, and therefore, is not such an acknowledgment as will take the case out of the statute of limitations. There is no error, and the judgment is affirmed, with costs.

Judgment affirmed.

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*75] *Gracie *v.* Marine Insurance Company of Baltimore. (*a*)

Marine insurance.—Termination of risk.—Ransom.

A policy on goods, to be safely landed at Leghorn, is discharged, by landing them at the Lazaretto; that being the usage of the trade.[1]

Quære? Whether ransom can be recovered, where there is a warranty against particular average?

Error to the Circuit Court for the district of Maryland. The facts of the case, as stated by Marshall, Ch. J., in delivering the opinion of the court, were as follows:

This case arose on a policy of insurance, bearing date the 19th of June 1807, for $20,000, on the cargo of the ship Spartan, "at and from Baltimore to Leghorn," the risk to commence on the loading, and to continue "until the said goods shall be safely landed at Leghorn aforesaid." The policy contained, in the printed part, the usual stipulation that the assured, in case of loss, should labor, &c., for the preservation and recovery of the goods, to the expense of which the insurers would contribute according to the rate

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(*a*) February 18th, 1814. Absent, Washington, Justice.

[1] And see Rice *v.* Clendining, 3 Johns. Cas. 183.