ley *supra;* and a payment in the vendor's own over-due notes is good, as cash, Foley v. Mason *supra.* But where the plaintiff being indebted to the defendant in the sum of 4*l.*, it was verbally agreed that the plaintiff should sell the defendant by sample goods above the value of 10*l.*, and the 4*l.* should go in part payment, and the purchaser returned the goods as inferior to the sample, it was held that a credit of 4*l.* on the invoice and account was neither earnest nor part payment, Walker v. Nussey, 16 M. & W. 302.[147] It was observed by Parke B., that had there been a bargain to sell the goods at a certain price, and subsequently an agreement that the sum due from the plaintiff was to be wiped off from the amount of that price, or that the goods delivered should be taken in satisfaction of the debt due from the plaintiff, either might have been equivalent to part payment, as an agreement to set off one item against another is equivalent to payment of money. But as the stipulation respecting the plaintiff's debt was merely a portion of the contemporaneous contract, it was not a giving something to *the plaintiff by way of earnest or in part **560** payment, then or subsequently. And Alderson B. added, that where one of the terms of an oral bargain is for the seller to take something in part payment, that term cannot alone be equivalent to actual part payment; in this case, the part payment, or whatever else the bargain may amount to, is part of that bargain itself, and cannot be wrested into proof of an actual payment, &c. But generally any deposit made while the contract is executory will take the case out of the Statute, Elliott v. Pybus, 10 Bing. 512.

Note or memorandum of sale.—The note or memorandum of the bargain,[148] which need not be the contract itself, Balturs v. Sellers, 5 H. & J. 117, must be in writing and signed by the party to be charged, but there is a distinction between "bargain" in this and "agreement" in the 4th section, and the former need not express any consideration, Egerton v. Matthews, 6 East, 307; and it is sufficient if signed by the party to be charged, *ibid.* and Allen v. Bennett, 3 Taunt. 169. But the memorandum must contain in addition the name of the other party so as to show a contract;[149] as to which the case generally cited is Champion v. Plummer, 1 N. R. 252; and so strict is this rule, that, in Vandenbergh v. Spooner, 1 L. R. Exch. 316, a document signed by the purchaser in this form, "A. agrees to buy the whole of the lots of marble purchased by B. now lying at the Lyne Cobb, at 1*s.* per foot," was held not to contain the essentials of the contract, for the seller's name, *as seller,* was not mentioned in it, but occurred only as part of the description of the goods; however, in another case, Newell v. Radford, 3 L. R. C. P. 52, where it did not appear from the entry on the plaintiff's book which was buyer and which was seller, parol evidence was decided to be properly admissible to show the trade of each party, and thus create an inference which was the buyer, and Willes J. observed that

---

[147] Norton v. Davison, (1899) 1 Q. B. 401.

[148] See on this subject notes to section 4 *supra.* Long v. Millar, L. R. 4 C. P. D. 450; Coombs v. Wilkes, (1891) 3 Ch. 77; Taylor v. Smith, (1893) 2 Q. B. 65.

[149] McElroy v. Seery, 61 Md. 389.