that the balance struck by the parties would fall under the statute, more than if it had been struck by arbiters. No 326.

2*do*, By the 4th and 5th *Annæ*, *cap.* 16, it is enacted, that the six years shall not run where the person against whom the claim lies is beyond seas. The reason is, that the legislature intended only to limit certain claims when there was a remedy within the kingdom, in case a debtor refused to do justice; and did not mean to forfeit the debt if the creditor did not follow his debtor in all his wanderings through foreign countries. Now this reason applies to Scotland as well as to parts beyond the sea. It is not doubtful that Scotland would have been comprehended under the exception, had it been thought of; and it is the province of a court of equity to supply the defect.

"The Lords, chiefly for the reason last given, repelled the objection or defence; and found, that the statute of limitation does not apply to this case."

Sel. Dec. No 85. *p.* 113.

1782. *March* 5. Thomas Tweedie and Others *against* Henry Gibson.

No 327.
Liberal interpretation of the act 1772, which introduced the sexennial prescription of bills.

Gibson, in April 1772, granted to Ewart, of whom Tweedie and others were executors, a bill for L. 102, payable ninety days after date. In June 1778, within six years from the term of payment, Tweedie and the other executors sued Gibson for the contents of this bill.

Pleaded for the defender; By act 1772, § 37. it is declared, 'That no bill of 'exchange, or inland bill, or promissory note, executed after the 15th May '1772, shall be of force, or effectual to produce any diligence or action, in that 'part of Great Britain called Scotland, unless said diligence shall be raised 'thereon within the space of six years from and after the terms at which the 'sums in said bills or notes became exigible.'

And with respect to bills or notes granted before the said 15th May 1772, it is by § 38 enacted, 'That these should not be of force, or effectual to produce 'any diligence or action, unless such diligence has been raised, or action has 'commenced thereon, before the expiration of six years from and after the said '15th day of May 1772.'

Thus it is evident, that this statute has made only one distinction respecting the period when the prescription commences, which is that between bills prior and those posterior to 15th May 1772; the period of commencement being in the former that date, and in the latter the term of payment. This distinction is laid down free from any ambiguity; nor is a court of law at liberty to depart from such a clear and distinct enactment. Now, as the bill in question was granted previously to 15th May 1772, and when the present action was instituted, six years after that date had already elapsed, it is clear, from the above

No. 327. cited section 38, that it was then precluded by the statutory limitation, notwithstanding the term of payment did not arrive till afterwards.

Answered; It follows immediately from the general nature of prescription, that its course cannot begin against a creditor till after the term of payment, because then only the obligation becomes exigible. It is likewise an undoubted rule, that every statute ought to be interpreted in consistency with itself, *tota lege perspecta*. Now, as the object of the statute in question, which is apparent from section 37, was to limit the endurance of the obligation created by bills to six years, but to no shorter a period; and as it is plain, that this limitation cannot take place before the debt becomes due, so section 38 is to be interpreted agreeably to section 37, and in such a manner as to permit six years to elapse after the term of payment of bills granted before May 1772, as well as of those posterior to that period.

Observed on the Bench; The present case, that of a bill granted before the period mentioned in the act, but not payable till afterwards, has not been provided for by the statute.

The Lords repelled the defence founded on the statute above mentioned.

Lord Ordinary, *Braxfield.* Act. *Maclaurin.* Alt. *Ilay Campbell.* Clerk, *Menzies.*
S. *Fol. Dic. v. 4. p. 103. Fac. Col. No 42. p. 69.*

1784. *February* 3. William Scott *against* Andrew Gray.

No 328.
A partial payment made, and marked on the back of a bill, after the running of the sexennial prescription, by the representative of the debtor, found to save from the prescription.

Andrew Gray granted a bill to Scott. After this bill had undergone the sexennial prescription of act 12th Geo. III. John Gray, the heir of Andrew, who had died in the interim, made a partial payment of its contents, expressing his having done so by a marking on the back of it in his own hand-writing. Scott having sued John in an action for the balance, it was

Pleaded for the defender; Had the marking in question been affixed after the lapse of the statutory period by the debtor himself, then perhaps it might have operated as a written acknowledgment of subsisting debt; but ought not to have that effect, when done by his representative, misled, through ignorance, by the appearance of an unretired bill.

Answered; The ignorance alleged by the defender is contrary to the presumption arising from the circumstances of the case above mentioned, and no proof of it has been given.

The cause was reported to the Court by the Lord Ordinary.

The Lords "found the partial payment of the debt in question subsequent to the running of the sexennial prescription, and other circumstances of this case, sufficient to bar the said prescription."