DIVISION X.

Sexennial Prescription.

1755. *March* 4.

TRUSTEES for the CREDITORS of THOMAS RENTON *against* ROBERT BAILIE, Merchant in Edinburgh.

No 326.
The English statute of limitation holds not where the debtor resided in Scotland.

SIR THOMAS RENTON, residing in London, having granted a factory to Mr James Bailie, writer to the signet, for levying the interest of bonded money due to him in Scotland, an account was fitted, London, 6th June 1733, and the docquet, regularly subscribed, acknowledges a balance of L. 108 : 16 : 10d. Sterling to be due to Sir Thomas. Of even date, Mr Baillie grants a promissory note to Sir Thomas, referring to the fitted account, and promising to pay to Sir Thomas or order, at his house in London, Martinmas then next, with interest from the date, the said balance of L. 108 : 16 : 10d. Sterling. Mr Baillie's factory was continued to him after this clearance, till Sir Thomas died in the year 1740, without a second clearance; and Thomas his son being then young, no demand was made upon Mr Baillie; but after his death, a process was brought against his son Robert Baillie.

To the promissory note it was *objected*, That being granted in London, and payable in London, it must be regulated by the English statute of limitation; and therefore, that no claim can be sustained upon it after six years.

Two separate *answers* were made; 1*mo*, That the present claim, founded upon a promissory note granted for the balance of a fitted account, is not comprehended under the statute of limitation; the words of which are: 'All actions of account and upon the case, all actions of debt grounded upon any 'lending or contract without specialty, all actions of debt for arrearages of rent, '&c.' And to clear this it was observed, that the statute is strictly interpreted, and is not extended to cases which are not expressed; witness an action of debt for an escape, an action of debt for a fine, an action of debt for a legacy, an action of debt against a trustee, none of which come within the statute. Nay it has been found, that an action of debt on an award is not within the statute; because the statute relates only to an action of debt arising on a contract or lending *. Now, suppose Sir Thomas and Mr Baillie had chosen arbiters to determine their differences, and an award had been given for the same sum that was agreed to be the just balance by the parties themselves, it cannot be thought

* See Bacon's Abridgement, Vol. III. p. 508, 509.

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