

prescription of such debts and contracts will continue to be governed exclusively, by our previous Law of Limitations, we shall not undertake to determine. It is believed, however, that these are points which will cause more embarrassment, in practice, than would at first sight appear.

It was intended to examine somewhat closely our old Common and Statute Laws, relative to prescriptions against mercantile debts and contracts, to compare them and their policy with our new enactments, and contrast the respective merits of the two systems—if what we now possess can be fairly termed a system; but such an enquiry would carry us far beyond our proposed limits. A comparison of that nature, moreover, in the present instance, is not very necessary, and could not be attended by much practical utility. We would remark, however, that every lawyer, wishing to have clear views of the subject of mercantile prescription, (which we by no means pretend or hope to have, so long as the present law remains unamended), will have to look pretty closely and carefully into the matter. He will find it necessary to determine what really has been the operation of this Amending Act upon the old Statute of Limitations, and to what extent it has directly or indirectly interfered with our pre-existing law, on the particular subject under discussion. In the case, for example, of promissory notes, which are subject to the five years' prescription, under the 34th Geo. III., Cap. 2. Sec. 8, we presume that when they are made and negociated by and between merchants, they will henceforth be liable to two kinds of prescription—five years to create a presumption of payment, which, being sustained by the oath of the party, will destroy the demand, and six years to establish a *bar* to the action. A merchant and a non-merchant may, respectively, plead the 34th Geo. III., and offer their oaths. The merchant and trader alone, (at least so it would appear from the *words* of the Act), can plead the six years' prescription, in which no oath is required. But, suppose the drawer and holder be merchants, and there be intermediate endorsers, non-merchant, or *vice versa*, how will these prescriptions apply? and, in the case of securities, or guarantees, upon some special contracts of a mercantile character, to which persons, merchant and non-merchant, are parties, how is the six years' prescription, and the prescriptions under the previous law, to operate?

* It is pretended by some, and with great appearance of truth, that Lord Bacon was the author of the Statute of Limitations, 21 Jac. I., Cap. 16. It has been repeatedly stated, also, by great English lawyers, that that Act is very loosely and badly drawn. If such be the case, what could be fairly expected even from our collective wisdom? They might illustrate the difficulties of the subject, by referring to the failure of Bacon, and under this momentary shade of, perhaps, the greatest intellect ever bestowed upon any of the children of men, escape unseen, or, at least, uncensured. But, it must be frankly admitted, that there is a peculiar amount of mystification about this effort of our lawgivers; and we are forced to grope and guess our way through this remarkable, though not unusual, obscurity in high places—under this total eclipse of one of the brightest of our *legislative luminaries*, and one from whom, indeed, much better things might have been and are still expected, the 8th Vic. Cap. 31. to the contrary, notwithstanding.