22*d December*, 1826.—BLAND, *Chancellor*.—These pleas have been set down for hearing without a replication; consequently, the sole object is to obtain the judgment of the court on their sufficiency as they stand at this stage of the proceedings. The bill charges, in substance, not only, that the defendant for a valuable consideration became indebted to the intestates of the plaintiffs; but it also goes on to allege, that the defendant afterwards paid a part of the debt; and that although he, "well knows and has repeatedly admitted the said sum of money and interest to be due, and has promised at various times to pay the same," yet he has not done so.

It is perfectly well settled, that a partial payment is such an acknowledgment of the existence of the debt as will take the case out of the statute of limitations. But in this case, the partial payment referred to was made on the 16th of October 1793, and this suit was not instituted until the 29th of November 1825, a lapse of more than thirty years. This, therefore, is clearly not such an allegation, as if admitted to be true, would take the case out of the statute of limitations. But the subsequent promises, charged to have been made by the defendant, certainly would prevent the statute from being applied as a bar if admitted to be true.

It is an established principle, that where any allegation of the bill would avoid the bar created by the statute, such allegation must be specially denied by an answer in support of the plea; for otherwise, it will be taken as true, and the plea can then be no bar; because it will appear upon the face of the proceedings to have been sufficiently avoided. There is, in this case, no answer denying the subsequent admissions and promises charged to have been made; consequently, they must be taken for true, and are an ample avoidance of the pleas; which, therefore, can be of no avail whatever.

In the case of *Morgan* v. *Roberts* the defendant put in *three* pleas. No objection was made on the ground, that a defendant could not in equity, as well as at common law under the statute, be allowed to plead two or more pleas in his defence; and I sustained two of them, and overruled the third. Since then my attention has been particularly called to this point. This matter in England seems to be not yet finally settled.(*a*)

At common law, in almost all criminal cases, the accused is

(*a*) Whitbread *v.* Brockhurst, 1 Bro. C. C. 417; 2 Ves. & Bea. 153, note; Gibson *v.* Whitehead, 4 Mad. 241; Van Hook *v.* Whitlock, 3 Paige, 419; Beam. Pl. Eq. 14; Mitf. Pl. 296; Wyat's Pra. Reg. 280.