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of all actions on penal statutes made or to be made; and as it could not be doubted but in England any action on this statute was limited by this law, so it could not be supposed the intention of the Legislature, in making a law for the United Kingdom, was, that actions thereon should last longer in the one part of it than the other; and therefore, by a rational interpretation of the act, the action given by it was to be understood to last no longer than by that statute it was limited.

Answered, That as the Parliament, as now constituted, was the Legislature of Scotland as well as of England, if it should be laid down for a rule that actions given by statute in both parts of the kingdom should be subject to the same prescription in each, there was no reason why the rule obtaining in the one ought not to be followed as well as that in the other; and therefore it was necessary the endurance should be determined by the laws of the respective kingdoms, as was found in the case of a game debt, 19th January 1737, Murray of Livylands against John Cowan, No 62. p. 4508.; and indeed, as this limitation was only one of many general regulations concerning penal actions, the reasoning used here would have the effect of introducing the whole English law regarding this subject.

The Lords found, That the claim for the penalties enacted by the act of the 12th of the King, was limited to two years by the statute of the 31st of Queen Elizabeth; and found the defenders behoved to discover, upon oath, the extent of the profits on the books reprinted abroad, and imported and sold by them. (See Literary Property.)

Act. *W. Grant.* Alt. *H. Home* & *J. Graham.* Clerk, *Forbes.*

Fol. Dic. v. 4. *p.* 110. *D. Falcnoar, v.* 1. *No* 153. *p.* 195.

1766. *December* 2. William Mackenzie *against* James Wallace.

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Action for usury not limited by the act 31st Elizabeth.

An action for usury, upon the act 12th Ann ch. 15. was brought before a sheriff, in name of the private party and procurator-fiscal, concluding for triple the sum for which the usury had been exacted, in terms of the statute; one half to the private party, the other to the procurator-fiscal.

In an advocation, *pleaded* for the defender, The action is prescribed by the statute 31st Elizabeth, ch. 5. which enacts, 'That all actions brought upon 'any penal statute, made or to be made, must be sued within two years 'after committing the offence, when the penalty is appropriated to the Crown; 'and, where the penalty goes to the Crown or other prosecutor, the prose-'cutor must sue within one year, and the Crown within two years after that 'year ended.'

The last act of usury libelled on in this case, was more than a year prior to the citation; so that the action is prescribed as to the private party. And, as

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to the interest of the Crown, it would seem that the statute of Queen Anne gives the Crown no share of the penalties, except in the case of usury committed by scriveners, and others particularly mentioned and distinguished from common usurers.

But, supposing the Crown to have had an interest, no proper action was brought for making it effectual. Procurators-fiscal hold their commissions from inferior judges, and are not authorised to sue for penalties in behalf of the Crown. His Majesty's advocate has brought no action; and, therefore, the claim is prescribed.

It never could be the intention of the Legislature, that a penal action, limited to three years in England, should subsist forty years in Scotland; and, accordingly, it is laid down by Erskine, IV. 4. 66.; and Bankton, II. 12. 22. p. 188. that the act 31st of Elizabeth limits the endurance of such penal statutes as extend to Scotland. And so it was decided in the last case that occurred, 13th January 1747, Booksellers of London *contra* Booksellers of Edinburgh. *supra*.

Answered; It has been matter of dispute, whether acts of the British Parliament extend to Scotland, without express words to that purpose; as in the case, 18th December 1753, Duke of Douglas *contra* Lockhart, No 351. p. 7640. But as it would be adverse to the principles of law, so it would be contrary to the 18th article of the treaty of Union, to hold that a statute of the English Parliament, in the year 1589, can have any legal effect in Scotland.

Accordingly, in an action for the triple value of money lost at play, upon the 9th of Quen Anne, the defence founded upon the statute of Queen Elizabeth was repelled; 19th January 1737, Murray *contra* Cowan, No 62. p. 4508.

The decision in the case of the Booksellers seems to have proceeded upon different principles. The statute 12th Geo. II. ch. 36. was intended for the encouragement of the manafacture of paper; and the same article of the Union, which prohibits any alteration of the private law of Scotland, declares, that the laws for the regulation of trade, customs, and excise, shall be the same in Scotland as in England.

Besides, though the act of Queen Elizabeth were admitted to limit penal actions for what may be denominated *new delicts*, or things for the first time declared criminal by a new statute, that would not apply to usury; a crime known in the law of Scotland long before the Union; and which must, therefore be tried according to the established forms of that law.

"THE LORDS repelled the defence founded upon the act of the 31st of Queen Elizabeth."

Reporter, *Justice-Clerk*. Act. *David Dalrymple*. Alt. *Lockhart, Maclaurin*.
Clerk, *Pringle*.

G. F. *Fac. Col. No 47. p. 275.*