

APPENDIX.

PART I.

USURY.

1807. June 30. WALKER and Others *against* ALLAN.

Messrs SINCLAIR and WILLIAMSON, merchants in Leith, transacted business with Robert Allan, banker in Edinburgh, by obtaining discounts of bills, and drawing and depositing money from the year 1793, till their bankruptcy in April 1796. It was alleged that many of these transactions were usurious. A dispute having arisen among the creditors, whether the trustee should enter into a submission regarding these matters, or prosecute Mr. Allan criminally, a majority voted for the first measure. A petition having been presented to the Court by the minority, to have this resolution altered, and the trustee instructed to prosecute, the Court authorised any of the creditors to institute an action at their own expence, and either in their own name, or in name of the trustee. Accordingly, William Walker, merchant in Berwick, and others, creditors of Sinclair and Williamson, brought an action against Allan, charging him with having acted usuriously on several occasions, by contravening the statute of Queen Anne, Cap. 16. and concluding for having the debts due by such bills declared null and void, as well as for penalties.

Mr. Allan, in defence, argued, That none of the transactions were usurious; and separately maintained, that the right of action was cut off by prescription, no prosecution having been commenced within a year of the alleged offence.

The case was reported by the Lord Ordinary, when the Lords (15th May 1800) 'find it unnecessary, in this case, to give judgment upon the defence 'of prescription; find there is no ground for the charge of usury brought 'against the defender.'

No. 1.

An action upon the 12th of Queen Anne is limited by the statute of limitations.

No. 1. This case was carried by appeal to the House of Lords, when the cause was (2d June 1802) remitted back to the Court to be reviewed generally.

The case having come back, was again brought under the review of the Court, by a report from the Lord Ordinary, when a hearing in presence was ordered, upon the prejudicial defence of prescription.

The defender

Pleaded: By the 31st Elizabeth, Cap. 5. it is declared, that all actions upon penal statutes, where the penalty goes to the Crown or other prosecutor, shall be insisted in by the private party within one year from the date of the offence, and by the Crown within two years thereafter. This limitation of the right of actions, modifies the British act 12th of Queen Anne, C. 16. against Usury, which declared the debt null, and introduced penalties against the offending party. The act is totally silent with regard to the time within which action shall be brought; but as it fixes for both parts of the kingdom the rate of interest, and in both annexes the same penalty for a violation of the enactment; the same limitation must have been intended in both. It was already limited in England, and when extended to Scotland, it must be extended with its inherent limitation. The law was clearly intended to be the same in both kingdoms; Ersk. B. 4. Tit. 4. § 110.; Bankt. B. 2. Tit. 12. § 22.; Midwinter, 13th January 1747, No. 341. p. 11143. and No. 1. p. 8295.

Answered: The statute of usury contains no limitation of the right of action, and it contains no reference to any other law introducing any such; whence the object of the Legislature must have been, that as it was to be enforced in two different countries, it was to be enforced in each according to the respective laws by which each was regulated. The statute of Elizabeth having been passed before the Union, is the law of a foreign country; and can have no effect whatever here; Mackechnie against Wallace, 2d Dec. 1766, No. 38. p. 16433; Hume's Commen. vol. 2. p. 369.

The Court in this case held, that as the act of Queen Anne introduced into Scotland certain penalties for the crime of usury, these were introduced with such qualities and limitations as already existed in England, the same law being intended in this case for both parts of the island; they therefore (30th June 1807) 'found that all actions for treble values brought in this country, 'under authority of the statute of Queen Anne against usury, are subject to 'the limitation applicable to such penal actions in England, and that the concurrence of his Majesty's Advocate is not necessary in the present action.'

Lord Ordinary, *Craig*. Act. *Dean of Faculty Blair, Campbell*. Agent, *Crawfurd Tait, W. S.*
 Alt. *Gillics, T. H. Miller*. Agent, *Tho. Manson*. Clerk, *Ferrier*.

F.

Fac. Coll. No. 288. p. 658.

* * * See No. 45. p. 16440.