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MARCHIONESS-DOWAGER OF ANNANDALE *v.* MARQUIS OF ANNANDALE, &c.

or any person lawfully authorized on his behalf, to bring such action, or take such remedy for obtaining satisfaction out of the rents and profits of the estate in question, for such annual rent or interest of the said principal sum as hath accrued since the said Marquis attained his age of twenty-three years, or any part thereof, as shall be competent in that respect and as they shall be advised; and that the said cause be remitted back to the Court of Session to proceed therein, pursuant to this order, and according to law and justice.

For the Appellant, *Wm. Murray, C. York.*

For the Respondents, *Robt. Dundas, A. Hume Campbell.*

NOTE.—Unreported in the Court of Session.

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THE DUKE OF DOUGLAS *v.* LOCKHART, &c.

[Mor. 7638, et Kames' Sel. Dec. p. 42.]

The DUKE OF DOUGLAS, . . *Appellant;*

JOHN LOCKHART of Lee, and JAMES SOMERVEL of Corehouse, . . *Respondents.*

Et e Contra.

House of Lords, 27th March 1755.

ACT 24 GEO. II., c. 44—JUSTICES OF PEACE.—An action was raised against Justices of Peace for neglect and failure in the performance of their duty. They pleaded the Act 24 Geo. II., c. 44, as protecting them in the execution of their office. Held that this Act applied to Scotland. Reversed in the House of Lords.

This was an action founded on certain Acts of Parliament inflicting penalties upon the justices of the peace for the breach or neglect of their duty as justices, besides being bound to indemnify the private party. These Acts were 54 James I., c. 2; 12 and 16 James II.; 2 James III.; and 104 James V., c. 7.

It arose from the depredations of James Hodgeson, a poacher, who, in defiance of the law, had been in the practice of entering on the appellant's grounds, hunting with guns, and dogs, and nets, at all seasons, in violation of the laws for preservation of the game, and the Act of Queen Anne, 1707, c. 13.

It was stated by the appellant, that in these practices he was countenanced by the respondents, justices of the peace for the county of Lanark, whom the poacher supplied with plenty of wild fowl and game.

His Grace further stated, that when Hodgeson was apprehended and sent to prison, to stand trial for these offences, he was allowed his liberty on entering into recognizance to appear and stand trial upon any complaint that should be brought against him. By another warrant of the magistrates of Lanark, his dogs and nets were put into the keeping of persons appointed for that purpose.

The appellant being advised to carry on the prosecution; this was done before the sheriff of the county, with concourse of the procurator-fiscal, concluding for the several penalties by the above-mentioned statutes, and more particularly for the forfeiture of the dogs and nets, against Hodgeson.

His Grace further stated that the respondents, unknown to him, entered into a scheme in order to frustrate this prosecution.

They, it turned out, had held some private meeting, within the county, and professing to meet in the character of justices of peace, to take cognizance of the offence against Hodgeson, and without any complaint from the appellant, or without his being present, they proceeded *de plano* to judgment, James Hodgeson being then present before them. Upon Hodgeson confessing that he did hunt with net and dogs, but denied that he killed or destroyed any of the game, the justices accepted of this confession, and found him liable to pay a penalty of 20s.

In moving, therefore, in the prosecution before the sheriff, the appellant was met with the objection, that Hodgeson had been already tried, convicted and punished for the offence, by the justices. The sheriff sustained this defence, but the appellant, satisfied that the whole proceedings bore the evident marks of collusion, brought an advocation of this sentence to the Court of Session. In the meantime, Hodgeson made his escape; and the appellant brought an action before the Court of Session, against the respondents, founded on the Acts above-mentioned, for misbehaving in their offices as judges, and being wilfully guilty of partial administration of justice.

In defence, the respondents pleaded the statute 24 Geo. II., c. 44, in bar of this action, entituled "an Act for render-" ing justices of the peace more safe in the execution of their

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"office." This Act provides for the parties giving notice to the justices of the intended claim, so that just amends may be made. It also provides that no action will be competent, "unless commenced within six calendar months after the act committed."

The summons bore date 10th January 1752, and was executed on the 20th of the same month, so that the summons was raised within the six months.

It was in answer to this defence stated by the appellant, that the Act in question was by every clause thereof obviously meant to be limited to England, and could by no just construction be extended to Scotland. It was replied for the respondents, that this being a *British statute*, and containing no clause limiting the same, it must be understood to reach all parts of the United Kingdom.

July 28, 1752. The Lord Ordinary pronounced this interlocutor :-
"Having considered the foregoing debate, and Act of Par-
"liament founded on for the defenders, the justices of the peace,
"and having advised with the Lords thereanent: Finds that
"the said Act does extend to Scotland." On reclaiming
Dec. 19, 1752. petition, the Court "find that the Act of Parliament founded
"on extends to Scotland, and that the case falls under the said
"Act of Parliament; but find no costs due." On reclaiming
Feb. 6, 1753. petition, the Court altered and found "That the Act of Par-
"liament founded on does not extend to Scotland, and
"remitted to the Lord Ordinary to proceed." But on further
July 20, 1753. petition, the Court varied their last interlocutor, and "ad-
"hered to the interlocutor of 19th December last, finding
"that the Act of Parliament founded on, extends to Scot-
"land, and that this case falls under the said Act of Par-
Dec. 18, 1753. "liament." And to this interlocutor they afterwards adhered.

Against these interlocutors, the present appeal was brought by the appellant; the cross-appeal had reference to the costs.

After hearing counsel,

It was ordered and adjudged that the said interlocutors complained of in the orginal appeal be reversed, and the interlocutor of 6th February 1753, whereby the said Lords of Session found that the Act of Parliament founded on, does not extend to Scotland, and remitted to the Lord Ordinary to proceed accordingly, be affirmed. And it be further ordered that the cross-appeal be dismissed.

For the Appellant, *W. Murray, And. Bringloe.*

For the Respondents, *A. Hume Campbell, Gilbert Elliot.*

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NOTE.—Lord Elchies has the following note on this case:—"The first question was, Whether the Act 44 Geo. II., extended to Scotland? The President thought it did as to the prescription or limitation of actions against justices, but not as to the manner of trial, which, by that Act, can only be by juries. Others, again, thought it impossible to separate the clauses of that Act; and as the limitation extended to Scotland, so must the whole Act, and as it was impossible that the legislature could intend such an alteration of our law, which would confine all complaints against justices of the peace to the Court of Justiciary, they thought that none of it extended. But, upon the question, it carried that it does extend to Scotland." "But, 6th February 1753, found that the Act does not extend to Scotland, and so also now thought the President." "On further reclaiming, they changed their opinion again." *Vide* Elchies, Vol. ii., p. 234.

HIS MAJESTY'S ADVOCATE, . . *Appellant;*

SIR LEWIS MACKENZIE, . . . *Respondent.*

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HIS MAJESTY'S ADVOCATE *v.* MACKENZIE.

House of Lords, 25th March 1756.

OBLIGATION—DEBT—INTEREST.—A claim of debt was made on the forfeited estate of Cromarty, on an obligation dated in 1705, upon which adjudication against the estate had followed in 1722, for the accumulated sum in the adjudication, and interest. Held the claimant entitled to the accumulated sum, and the annual rents due thereon, from the date of the adjudication. Reversed in the House of Lords.

George, first Earl of Cromarty, granted a written obligation to Sir Kenneth Mackenzie, the respondent's grandfather, whereby he "acknowledged to be indebted to the latter in "2500 merks, or 2300 merks, I know not whether." This document was dated 26th March 1705. The Earl returned to Scotland in the following summer; but though the Earl lived for eleven years after its date, yet, during his life, and for seven years thereafter, no demand appeared to have been made.

His son, the second Earl, succeeded him.

In 1722, a decree of constitution against the second Earl,