

1737. *January 19.* MURRAY *against* COWAN.

No 62.

IN a process for recovery of money lost at play, with the triple value, founded upon the British statute, 9th Queen Anne, the defence was, That the action being brought upon a penal statute, and for a penalty, was fallen by the lapse of a year, in terms of the English statute, 31mo Elizabeth, cap. 5, declaring that no action shall be sustained upon any penal statute made, or to be made, unless within one year of the offence. And it was *pleaded*, that as this is a sovereign law in England, it must regulate the said penal British statute, 9th Queen Anne, the same way as if the limitation were engrossed in the act. *Answered*, It is by no means the same; the action arising upon the British statute, is in its nature perpetual, because not limited by the act. The act of limitation, so far as its authority goes, will found a defence so as to take away the action, *ope exceptionis* only; but as the laws of England have no authority here, the said act of limitation cannot be founded upon to bar the action. THE LORDS repelled the defence. See APPENDIX.

*Fol. Dic. v. 1. p. 322.*

1738. *February 9.*

RUTHERFORD *against* Sir JAMES CAMPBELL of Aberuchill.

No 63.

AGAINST an action for payment of an accmpt of furnishing made to a Scotsman at London, which was offered to be proved by the defender's oath, a no process was *objected*, founded upon the English act of limitation, which declares, that no action does ly after six years. *Answered*, *imo*, No penal statute is authoritative *extra territorium*. The English statute may have this effect in Scotland, to infer a presumption either that the debt is not due, or that it is paid; but, this presumption is taken off by the mean of proof condescended on. *2do*, Were the question to be tried in England, the statute would be found not to take place, because of a late statute *quarto Annæ*, cap. 16. § 19., which declares, That the prescription shall not run so long as the debtor is beyond seas; and the defender has been all along in Scotland, which is the same case. THE LORDS found the pursuit not cut off by the English prescription.

*Fol. Dic. v. 1. p. 322.*

\* \* Clerk Home reports the same case :

CAPTAIN RUTHERFORD, as assignee by Daniel Cockdale, coach-maker in London, to an accmpt of furnishings made by him to Sir James Campbell while at London, during the years 1724 and 1725, brought a process against