

1741. July 28.

HAMILTON *against* BOYD and others.

No 340.

THE LORDS found the time allowed by act 1703, for trying the crime of importing Irish victual, was not limited by that statute to six months; and that that limitation respected only the superadded penalty of transportation of the offenders.

Fel. Dic. v. 4. p. 109. Kilkerran.

*** This case is No 70. p. 7335. *voce* JURISDICTION.

1747. January 13.

The BOOKSELLERS of London *against* The BOOKSELLERS of Edinburgh and Glasgow.

By a statute of 12th Geo. II. it is enacted, ‘ That after the 29th of September 1739 it should not be lawful to bring into the kingdom, for sale, any book first composed and printed there; and that any person so importing, or knowingly selling any such book so imported, should forfeit all the sheets, to be made waste paper, and should further forfeit L. 5 Sterling, and double the value of every book, one half to the King, and the other to any that should sue for it, provided that the act should not extend to any book that had not been printed within twenty years before its importation.’

On the foundation of this act, Andrew Miller and others, booksellers in London, brought an action against Messrs Hamilton and Balfour, booksellers in Edinburgh, and Andrew Stalker, bookseller in Glasgow, for importing certain books, their property, which had been printed within twenty years in this kingdom, concluding for the penalties, with an alternative, that the defenders ought to pay them damages for every surreptitious copy sold by them; in name whereof they claimed only the profits made on the sale of the said copy, and to forfeit the remaining copies, to be destroyed; and in the process they restricted their libel to this conclusion; and offered to prove the number sold, by their books or oaths.

How far an action of damages was competent, either on this statute or on one prior thereto, 8th *Annæ*, was a question which was not at this time determined; but, being still *sub judice*, shall be noticed in its proper place. But the present dispute was, whether the defenders could be obliged to discover what they had sold, upon oath, or by production of their books, as it was alleged that there were penalties hanging over them, which, being partly due to the King, the pursuers could not waive.

Pleaded for the pursuers, ‘ That the action for penalties was prescribed; for that, by an English act in Queen Elizabeth’s time, a general limitation was enacted:

No 341.
Penalties enacted by a British statute, were found to be limited with regard to Scotland, by a general limitation of penalties enacted in England before the Union.

No 341

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. 105.*

1766. December 2. WILLIAM MACKENZIE *against* JAMES WALLACE.

No 342.

Action for
usury not li-
mited 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 advocacy, *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