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

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

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.*

1756.

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,

1756.

HIS MAJESTY'S ADVOCATE v. MACKENZIE.

was obtained on this debt, upon which adjudication was led against his estate.

Upon Earl John's death, he was succeeded by his son, Earl George, who, being convicted and attainted of high treason, his estate was forfeited to the crown.

The respondent then produced his claim of debt and adjudication.

But the appellant, on behalf of his Majesty, objected to this claim, on the following grounds,—1st, That from the nature of the original obligation, and from the peculiar circumstances, no interest could accrue on this debt. 2d, If interest was due, it could only be for the original principal sum, but not on the new capital accumulated in the decreet of adjudication; for, by the vesting Act, "no decree could "be allowed on account of penalties;" and, as giving the creditor compound interest by an adjudication, was a statutory penalty, no decree could be made in the present case for such a penalty.

Mar. 17, 1753.

The Lord Ordinary pronounced this interlocutor:—"Find "that the claimant is a just and lawful creditor on the estate, "real and personal, of the said George, late Earl of Cromarty, "and entitled to payment, furth thereof, of the said principal "sum of 2300 merks Scots money, and annual rents thereof, "from and since the 26th March 1705, and in time coming "until payment, and also to the expenses paid out by him "and his predecessors, preceding the forfeiture, in deducing "his adjudication; and decerns and declares accordingly."

July 10, 1753.

On reclaiming petition, the Court adhered. On further reclaiming petition from the respondent, the Court altered so

Mar. 9, 1754.

far as to "sustain the petitioner's claim for the accumulated "sum and annual rents thereof, from the *date* of the *adjudi-* "*cation*, and decerned accordingly."

Against these interlocutors the appellant brought the present appeal to the House of Lords, contending, that by the vesting Acts, the respondent was barred from the benefit of penalties for failure of payment or for any other penalties whatsoever, against the Crown, and therefore excluded from the interest of his accumulated sum.

After hearing counsel,

It was ordered and adjudged, that the said interlocutor of the 9th March 1754, complained of be, and the same is hereby reversed; and that the interlocutor of the

Lord Ordinary of the 7th March 1753, and the said interlocutor of the Lords of Session of the 10th July following, adhering thereto, be, and the same are hereby affirmed.

For the Appellant, *W. Murray*, *R. Dundas*.

For the Respondent, *A. Forrester*, *Geo. Brown*.

NOTE.—Unreported in the Court of Session.

JOHN STEWART, Esq., . . . *Appellant;*

Sir KENNETH MACKENZIE, Bart., . . *Respondent.*

House of Lords, 20th December 1757.

ENTAIL—DEBTS—PROVISIONS.—(1) An entailed estate having been sold under an Act of Parliament, and this Act having been obtained by the fraudulent allegation of debt, which did not exist, the sale was set aside, and the entail held to be still a binding and subsisting entail, though the maker and the institute had concurred to put an end to it, before the Act had been obtained. (2) Held that two of the debts founded on were not true debts; but that Lady Anne's bond of provision was a true debt, yet that no interest was chargeable against the estate on it, during Lord Royston's possession, as during that possession he was bound to keep down the interest of the debt on the estate.

This is the sequel of the case reported in vol. i., p. 578.

The cause having returned to the Court of Session, an account was ordered to be taken. The appellant, besides the allowances out of the money arising from the sale of the estate, for the expenses of passing the Act, and for a small part of the estate not comprised in the entail, claimed the following:—

1st, For the amount of Lady Anne and Lundine's debts, as accumulated by adjudication, and stated in the Act of Parliament at 51,350 merks Scots, with arrears of interest, and, 2d, For £800 as four years' rent of the estate with which Sir James Mackenzie had power, by the entail, to charge the same, for provisions to younger children.

To these claims the respondent objected, 1st, As to Lundine's debt, that it could be no charge on the entailed estate, the security having been granted eighteen years after the