

March 30,
1814.

RECOVERY.

“ same as
“ aforesaid.”

Observations
in Judgment.

however, that it was delivered on the 10th, and that the deed making the tenant to the *præcipe* was executed on the 20th, the question was, Whether, if the deed was executed before the end of the term, they were not bound by the statute to consider the tenant to the *præcipe* as regularly made? He was of opinion that they were; and it ought to be observed, that, besides other distinguished authorities, such had been the opinion in judgment of Lord Kenyon, who was peculiarly well versed in the law of real property. (*Vide* 2 H. B. 46.—5 T. R. 177.)

Judgment

Judgment *affirmed*.

Agent for Plaintiff in error, FLEXNEY.

Agent for Defendants in error, VINES.

SCOTLAND.

APPEAL FROM THE COURT OF SESSION.

SURTEES and others—*Appellants*.

ALLAN—*Respondent*.

April 6, 1814.

USURY.—LI-
MITATIONS.

ACTION upon stat. 12 Anne, sess. 2, cap. 16, against usury. Decided by the Court of Session, and the judgment affirmed on appeal, that the limitations in 31 Eliz. cap. 5, being understood as incorporated in the British stat. 12 Anne, applied to Scotland as well as to England.

Action on stat.
12 Anne,
against usury.

THIS was an appeal from a judgment of the Court of Session, in an action founded on stat. 12 Anne,

sess. 2, cap. 16, against usury. The suit was at the instance of private parties only, and more than a year had elapsed between the period of the last of the alleged usurious transactions, and that of the commencement of the action.

April 6, 1814.

USURY.—LIMITATIONS.

The defence below was, that the limitations as to penal actions enacted by stat. 31 Eliz. cap. 5, extended to Scotland, and that consequently any proceeding by private parties was barred, the action not having been brought within a year of the alleged usurious transaction. 2d, That there was in point of fact no usury. The Court decided the case for the Defender, (July 2, 1800,) upon the ground of fact only. From this there was an appeal, and the House of Lords (March, 1802) “remitted the cause to the Court of Session, to review the interlocutors complained of generally.” In addition to the former defences, it was then pleaded, that the parties could have no title at all to insist in the action without the concurrence of the King’s Advocate.

The Court of Session, (July 1, 1807,) before its division into Chambers, with three dissentient voices, gave judgment, “FINDING, that all actions for treble value brought in this country, (Scotland,) under the authority of the statute of Queen Anne, against usury, are subject to the limitations applicable to such penal actions in England, and that the concurrence of his Majesty’s Advocate is not necessary in the present action.” The case came again to the House of Lords, and the question was, Whether the limitations in 31 Eliz. cap. 5, did, or did not, extend to Scotland.

In an action by private person on stat. 12 Anne against usury, the concurrence of King’s Advocate not necessary.

April 6, 1814.

USURY—LI-
MITATIONS.

Authorities cited for Appellant in support of the argument, that the statute of Elizabeth did not apply to Scotland:—*Murray v. Cowan*, (Jan. 19, 1737. Dict. *voce Foreign.*)—*M^cKeckney v. Wallace*, (Dec. 2, 1766, Fac. Coll.—*Vide* also 2 Hume Com. 396, and reference there to *Wilson v. Jackson*, 1775.)

Authorities relied on for Respondent to show that the statute of Elizabeth did apply to Scotland:—*Booksellers of London v. Booksellers of Edinburgh*, (1 Falc. 195—346.—*Vide* also Elch. Rep.) cited as a solemn opinion of the Court on the point, though not properly a judgment.—*Morrison v. Connel*, (June 24, 1808, Dict. App. 1, *voce Usury.*)—Bankton, b. 2. t. 12. s. 22.—Ersk. b. 4. t. 4. s. 110.

Adam and Leach for Appellants; *Romilly and Horner* for Respondent.

April 27, 1814.
Observations
in Judgment.

Lord Eldon (Chancellor.) This was an action originally brought in 1798, upon the penal stat. 12 Anne, sess. 2, cap. 16, against usury. It was insisted in defence,—1st, That the action had prescribed,—the limitations in 31 Eliz. cap. 5, being incorporated in the British statute 12 Anne, and applicable to Scotland as well as to England. 2d, That there was no foundation for the charge of usury. The Court, in May, 1800, pronounced an interlocutor, finding it unnecessary to give judgment upon the question of prescription, but finding that there was no ground for the charge of usury, and therefore sustaining the defences on the merits. The cause being appealed, the House of Lords (March 2,

1802) remitted it back to the Court of Session, April 27, 1814.
 “to review the interlocutors complained of gene-
 rally.”

USURY.—LI-
 MITATIONS.

The Appellants had very much misunderstood the remit, when they said that the House of Lords had decided that the statute of Elizabeth did not affect the statute of Anne. It meant then to give no opinion whatever upon the point. The Court below having thought it unnecessary to decide what effect the statute of Elizabeth might have on an act of 12 Anne, it would have been premature then to have given judgment on that question in the House of Lords.

The subject now came before their Lordships on two interlocutors of the Court of Session; by one of which, a hearing in presence was ordered on two questions:—1st, Whether the plea of prescription was well founded. 2d, Whether the concurrence of his Majesty's Advocate was necessary in the action. On the point of prescription, the question was, Whether the limitation was one year as to prosecution by a private party, and two years from the end of that one as to the prosecution at the instance of the Crown, according to the English law, or 40 years (or whatever was the number of years) according to the old Scotch law? On June 30, 1807, the Court pronounced this interlocutor, (signed July 1, 1807:—“On report of Lord Craig, “and having advised, &c. the Lords find, that *all actions for treble values brought in this country under the authority of the statute of Queen Anne against usury, are subject to the limitations applicable to such penal actions in England, and that*

Interlocutor,
 June 30, signed
 July 1,
 1807, finding
 that English
 limitation ap-
 plied to Scot-
 land.

April 27, 1814.

USURY.—LI-
MITATIONS.

Modes of proceeding for recovery of penalties under act of 12 Anne, sess. 2, cap. 16, were, as stated in that act, entirely English.

Limitations in stat. 31 Eliz. cap. 5, understood as incorporated in 12 Anne, sess. 2, cap. 16, and extended to Scotland without breach of treaty of Union.

“ *the concurrence of His Majesty’s Advocate is not necessary in the present action.*”

Having regard then to what the law of usury was in Scotland previous to the act of 12 Anne, it might be contended, that the legislature did not mean to include Scotland, or that, if it did, never had an act been passed with less consideration of what was due to Scotland. The phraseology was entirely English. Their Scotch neighbours, however, might perhaps understand that. But then the modes of proceeding were English, to which there was nothing analogous in Scotland.

Their Lordships would please to attend to the preamble of the statute of 12 Anne, as it had been said that it was an act which had some relation to *trade and public policy*; and their Lordships were aware, that, by the treaty of Union, (article 18,) the laws concerning the *regulation of trade*, customs, and excise, were to be the same in Scotland as in England; that the laws concerning public right, policy, &c. might be made the same throughout the United Kingdom; and that even the Scottish laws relating to private right might be altered, provided it was for the evident utility of the subjects within Scotland. The preamble was in the following terms:—“Whereas, the reducing of interest to ten, and from thence to eight, and thence to six in the hundred, hath from time to time by experience been found very beneficial to the *advancement of trade*, and improvement of lands.” Nobody could doubt then but that this was an act which had some relation to trade, and the including of Scotland was therefore certainly consistent with the treaty of

Union:—“ And whereas the heavy burden of the
 “ late long and expensive war hath been chiefly
 “ borne by the owners of the land of this kingdom,
 “ by reason whereof they have been necessitated to
 “ contract very large debts, and thereby, and by
 “ the abatement in the value of their lands, are be-
 “ come greatly impoverished; and whereas, by rea-
 “ son of the great interest and profit which hath
 “ been made of money at home, the *foreign trade*
 “ of this nation hath of late years been *much*
 “ neglected, and at this time there is *a great abate-*
 “ *ment in the value of the merchandizes and commo-*
 “ *dities* of this kingdom, *both at home and in foreign*
 “ *parts where they are transported*; and whereas,
 “ for the redress of *these mischiefs*, and the prevent-
 “ ing the increase of the same, it is absolutely ne-
 “ cessary to reduce the high rate of interest of six
 “ pounds in the hundred pounds for a year, to
 “ a nearer proportion with the *interest allowed*
 “ *for money in foreign states*: Be it therefore
 “ enacted,” &c.

April 27, 1814.

USURY.—LI-
 MITATIONS.

If this statute was applicable to Scotland, when it was recollected what the former law was under act of 1597, cap. 247, &c. it must be obvious that it made a most important alteration in the law of that country; and having done so, one would imagine that care would have been taken to make provision as to how the act should be enforced. They could easily understand in Scotland what was meant by bonds and contracts contrary to the provisions of the act being void. They might understand how the forfeiture of the treble value was to be enforced, as it might be said, if nothing had been stated

Important al-
 teration in
 usury law of
 Scotland, by
 stat. 12 Anne,
 against usury.

April 27, 1814.

USURY.—LIMITATIONS.

about the modes of proceeding, that the English forms of proceeding were intended to be employed in England, and the Scotch forms in Scotland. But then the act enumerated the modes by which the penalties were to be recovered. The second section went on to say,—“ The one moiety of all
 “ which forfeitures to be to the Queen’s Most Excellent Majesty, her heirs and successors, and
 “ the other moiety to him or them that will sue
 “ for the same *in the same county* where the several
 “ offences are committed, and *not elsewhere, by action of debt, bill, plaint, or information*, in which
 “ no *essoin, wager of law, or protection*, shall be
 “ allowed.” He need not tell their Lordships that they could not sue in Scotland by bill, plaint, or information; and as to *essoin, wager of law, &c.* they knew nothing at all about them. If then this was a British statute, applicable both to England and Scotland, rendering contracts of a certain description null and void, enacting penalties, and pointing out how they were to be recovered, and who was to have them, it was one which, at least as to the enumerated modes of proceeding, applied to England alone.

This being a penal statute, the informer, in England, was limited as to the period within which proceedings could be instituted, to one year from the date of the offence, and the Crown to two years from the end of that one. That arose on the statute of 31 Eliz. cap. 5, the preamble of which was in these words:—“ For that divers of the Queen’s
 “ Majesty’s subjects be daily unjustly vexed and
 “ disquieted by divers common informers upon penal

“statutes, notwithstanding any statute that may have been heretofore made against *their disorders*,” and then the statute proceeded to enact the remedy. Upon this it might be observed, with reference to certain proceedings now and lately before Parliament, that it was no new thing, where the enactments of a statute were abused by common informers, for the legislature to interpose and remedy the disorders.

An English statute having then enacted these limitations with respect to actions, &c. upon penal statutes, and the statute of 12 Anne having enacted a penalty, the statute of 31 Eliz. cap. 5, was to be understood as forming part of it, exactly in the same manner as if it had been incorporated in it. This showed the shape of the question with respect to England; and as the act was expressed in general terms, Scotland might be included. Their Lordships had now to say whether the state of the law was this,—that in England parties were to be liable to be sued under 12 Anne, sess. 2, cap. 16, only for one year at the instance of the common informer, and two years from the end of that one at the instance of the Crown; while in Scotland, parties were to smart under that liability for 40 years, or whatever was the period of prescription under their old law.

As to the text writers, they all agreed that the Courts ought to construe the statute with respect to the subjects in Scotland in Scotch transactions in the same way as it was to be construed with respect to English subjects in English transactions. They

April 27, 1814.

USURY.—LIMITATIONS.

Alluding probably to the acts for the relief of a great number of the clergy, against whom penal actions had been brought for non-residence.

April 27, 1814.

USURY.—LI-
MITATIONS.

said, that the intention of the legislature was the same as to both countries,—that the act of Eliz. must be understood as incorporated in the act of Anne, and must therefore be considered as extending to Scotland. That there were authorities both ways was not to be denied, but the later authorities appeared to be in favour of the limitations in the statute of Elizabeth. The question then might be put thus,—For what time did the legislature mean that the subjects in both countries should be liable for these penalties? The act said nothing about the limitation in point of time, and that must be implied from the statute of Eliz. even with respect to England. The question then was, Whether it might in the same way be implied with respect to Scotland? Aided by those authorities whose opinions he was accustomed to take in matters of law, his own opinion was, that it might be so implied, and that the judgment of the Court below ought therefore to be affirmed.

Result of the whole, that the English limitation did extend to Scotland.

Judgment.

Judgment *affirmed*.

Agent for Appellants, CHALMER.

Agent for Respondent, MILLS.