

1808. June 24.

JAMES MORISON *against* JAMES CONNEL.

JAMES MORISON, merchant in Leith, possessed three bills, dated 28th March 1801, drawn by himself upon and accepted by John Stein of Canonmills, to the amount of £1090. 15s. 6d. payable four months after date. On the 21st April 1801, James Connel, at the desire of Morison, discounted one of these bills, to the amount of £200 Sterling; and deducted the interest, at the rate of five per cent. till the bill became payable, and £2 Sterling in name of commission.

On the 23d April 1801, a bill for £445. 7s. 9d. and on the 2d of May another bill for £445. 7s. 9d. were in like manner discounted; and for these the sum of £8. 18s. in name of commission was deducted, besides the interest, at the rate of five per cent. for the period till the bills became due. Thus, a deduction was made at the rate of nine per cent. at discounting these bills.

Having become bankrupt, Morison, at the desire of his creditors, raised an action against Connel, narrating the statute 12th Anne, § 11. C. 16. and libelling that Connel, 'upon the 21st April 1801, on the pursuer's indorsation, discounted one of them, (i.e. the before mentioned bills,) of the value of £200; and upon the 23d day of the same month, he discounted another on the pursuer's indorsation, of the value of £445. 7s. 9d. and a third on the pursuer's indorsation, of the like value of £445. 7s. 9d.' for the doing of which the defender exacted the sum of £10. 18s. besides the legal interest; and concluding for treble value of the principal sums on which usurious interest had been charged. The summons was executed on the 29th April 1802.

In defence, the defender stated that the summons was not executed till the expiry of more than a year from the date of the alleged criminal acts therein libelled: That by the statute 31st Eliz. C. 6. § 5. introducing the limitation of penal statutes, action must be 'had, brought, sued, or commenced within one year next after the offence committed:' and, therefore, prescription having elapsed, all inquiry into the matter was precluded. Although the 31st Eliz. C. 6. § 5. was an English statute, yet it has already been found to apply to Scotland in as far as it affects or controuls the operation of British statutes relating to the trade of both parts of the kingdom, 13th January 1747, Booksellers of London against Booksellers of Edinburgh, No. 941. p. 11143. Ersk. B. 4. Tit. 4. § 110. B. 2. Tit. 12. § 22.

By the 18th article of Union, the laws relating to trade are declared to be the same in both parts of the kingdom; the statute of Anne, however, is a general mercantile regulation, intended for the benefit of trade, and ought to be interpreted in each in the same way. Hence it is that the statute James I. respecting monopolies, is held to apply to Scotland. Nay, the preamble of the statute of Anne, in as far as it narrates the various reductions of the rate of interest, refers to the 37th Henry VIII. C. 9.—13th Eliz. C. 8.—21st James I.

No. 2.

The statute 31st Eliz. C. 5. introducing a general limitation of penal statutes, applies to Scotland in questions under 12th Queen Anne, C. 11. § 16. respecting usury.

No. 2. C. 17.—12th Charles II. C. 13. which are all English statutes. In just and fair construction, therefore, the legislature must be presumed to have had in view the statute of Elizabeth, limiting penal statutes; and if there be any advantage in this limitation of the act, the subjects in Scotland are entitled to it by the articles of Union.

The pursuer maintained, that the statute of Elizabeth was an English statute which could have no operation in Scotland, not only because it had no relation to trade, but because it related to the law of prescription, on which Scotland already possessed a peculiar code, connected and corresponding with the other institutions of her municipal law. By the articles of Union, Scotland is protected from any alteration of her municipal law; and, therefore all British statutes must, as far as possible, be interpreted consistently with this important article of the national compact. In passing this act, the legislature must have intended that it was to be enforced according to the laws of the respective kingdoms, in the same way as if two acts had been passed, the one in addition to the former laws of England, the other in addition to the former laws of Scotland. Accordingly the Court have already so understood and decided this point, 2d Dec. 1766, M'Kechnie against Wallace, No. 38. p. 16433.—17th Jan. 1775, Wilson against Jackson, No. 41. p. 16433.

The Lord Ordinary pronounced the following interlocutor, (Nov. 12. 1802,) ' Finds that, as by the 18th article of the treaty of Union, the laws concerning the regulation of trade are declared to be the same in Scotland as in England; so that the statute 12th Queen Anne against usury being intended for the regulation of trade, that statute must have the same, and neither more nor less operation in Scotland than it has in England: Finds, that as all actions pursued in England on the said statute of Queen Anne against usury would be subject to the general limitation of penal statutes enacted by 31st Eliz. C. 5. so it must be held that the said statute against usury, which is a British act, extending to both parts of the united kingdom, and regulating trade and commerce within the same, must be subject to the same limitation in both; therefore finds that the present penal action, which is laid solely on the statute of Queen Anne, is barred by the act 31st Eliz. C. 5. in respect it was not brought by the pursuer till after the elapse of a year from the commission of the alleged offence.'

The Lord Ordinary afterward reported the case to the Court on memorials; and the following interlocutor was pronounced, (Nov. 24. 1807,) ' Find that the defence of prescription under the act of Queen Elizabeth, applies to the first bill discounted upon the 21st day of April 1801, in respect the same was settled a year before the commencement of the action; sustain the said defence accordingly, and in so far assoilzie the defender, and decern; and as to the second bill discounted upon the 23d April 1801, before answer, appoint the defender to give in a condescence as to the precise time when,

‘ and mode in which the same was settled, and how far the defence of prescription applies to that point; and repel the defence of prescription as to the third bill; and appoint the parties to give in memorials upon the merits of the question.’

No. 1.

Against this interlocutor, in so far as it authorised investigation into the circumstances of the second and third acts of usury, the defender reclaimed to the Court, on the ground that these were not charged in the libel with sufficient accuracy and precision.

And, on advising the petition with answers, (June 24. 1808,) the Lords assailed the defender.

Lord Ordinary, *Woodhouselee.*
Williamson et J. A. Murray.
Wardlaw, W. S. Agents.

Act. *Jo. Clerk et W. Clerk.* Alt. *David*
Ja. Marshall, W. S. and Gibson, Christie, &
S. Clerk.

J. W.

Fac. Coll. No. 62. p. 231.