thereafter notify his dissent and disapprobation thereof, find that he can claim no preference to the other creditors on his diligence."

N. B. This case is shortly reported by Lord Elchies, (Presumption, No. 8.) It was affirmed on appeal. Several other points were involved in the case, which were not decided at this time.—*Vide* Elchies, voce *Fraud*, No. 7, and *Inhibition*, No. 2.

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

MURRAY brought an action, upon the statute 9*no Annæ*, for recovering of a sum of money gained at play by the defender Cowan from one Paterson.

The defence was, that the action being brought upon a penal statute, and for a penalty, *viz.* triple value, it was struck at by the English statute of limitation of the 31st of Elizabeth, Cap. 5, whereby it is enacted that no action shall be brought by any common informer, upon any penal statute made or to be made, unless such action is brought within one year of the offence committed.

The Lord Ordinary having advised with the Court, pronounced the following interlocutor:—"Having considered the debate, with the Act of Parliament, 9*no Annæ*, and act of limitation founded on, and having advised with the Lords thereanent, repels the defence proponed for the defender, and founded on these acts."

In a petition against this interlocutor, the defender

PLEADED that the statute of Elizabeth must govern all penal statutes made after its date, unless where such subsequent statute contains a virtual or actual repeal of it. The statute of Queen Anne, however, neither expresses nor implies any repeal of the act of Elizabeth. Further, it cannot be doubted that any British statute made since the Union may have a reference to a statute made in England before the Union, so as to make the statute referred to binding on the whole United Kingdom; not, indeed, in virtue of the English act so referred to itself, which cannot, by its own force, be binding in Scotland, but in virtue of the British statute giving it effect over the whole kingdom. And there are many such references in the British statutes.

ANSWERED, 1*mo*, No English statute has *per se* any force in Scotland, and the act of Queen Anne does not directly or indirectly extend the statute of 31st Elizabeth to Scotland. 2*do*, Even if the 31st Elizabeth were in force here, it does not apply to this case. That act concerns merely penalties, of which, the whole, or a part, goes to the crown, which does not take place here. Moreover, this action is not purely penal. It is *actio mixta, partim rei persecutoria, partim pœnalis*, and such an action does not come under either the words or the spirit of the 31st Elizabeth.

The Court ADHERED—Lord Kilkerran observes.

"At pronouncing the interlocutor reclaimed against, several of the Lords were of opinion that the act of limitation of Elizabeth did not at all limit the act 9*no Annæ* as to Scotland, supposing it to concern this case. I own I was not clear in that, but was of opinion that the act of limitation did not concern this case even in

England, for that the act of limitation, by the express tenor of it, is only where either the whole, or a part, of the penalty goes to the crown, whereas here no part of it goes to the crown."

"When this Bill came to be advised, the generality of Lords seemed still of opinion that the act of limitation, supposing it to affect this case in England, did not do it here; but I again stood out against the interlocutors being laid on that point, and accordingly the Lords simply adhered."

"I do not understand how the action *qui tam* can need to have the king's name in it, except the king has an interest; but be that as it will, in point of form, which, by the by, is certainly not so, yet were it so, still I do not see the act of limitation can reach any other case than is expressed in it, which only is where the king can pursue."

N.B. This case is reported in Mor. p. 4508, and by Elch. *Pactum Illicitum,* No. 9, and *Prescription,* No. 13.

1737. *January* 25. SIR J. DALRYMPLE of Hailes *against* HEPBURN of Beanston.

BY tack, dated in 1609, the parson of Prestonhaugh, with consent of the patron, and of the dean and chapter of Dunbar, set the teinds of the lands of West Fortune and others to Sir Patrick Hepburn, for three liferents, and three nineteen years. This tack contained an obligation upon Mr. Hepburn, the parson, "Before the ish and end of the years of the tack, to renew, make, seal, subscribe, and deliver to the said Sir Patrick Hepburn, his heirs, &c. other new sufficient tacks of the foresaid teinds, during as many years as is above specified, efter the ish of this tack, and for payment of the same farm and duty."

By the statute, 1693, the teinds of parsonages were granted to the patrons of the parishes; and the estate of the patron of the parish of Prestonhaugh having been sold judicially in 1704, Sir D. Dalrymple, father of the charger, purchased the estate, including the patronage and teinds.

The tack above mentioned expired in 1728. Upon this, the question occurred whether the obligation to renew it for the like number of years was binding upon the charger, who was a singular successor.

The Lord Ordinary "found that such obligation was not effectual against a singular successor."

In a petition for the suspender, it was

PLEADED, that by the act 1449, tacks, clothed with possession, are made real rights, and binding on singular successors; that an obligation to grant a tack is equally binding as a tack itself; and that this reasoning applied *a fortiori* to the charger, whose right flowed from a donator of the right to the teinds, in virtue of the act 1690, c. 23, abolishing patronages, and the 10th of Queen Anne restoring patronages, whereby patrons are made donators of the teinds not heritably disponed, which gift should be construed favourably to the heritors. Besides, the