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his father was suspected to be concealed, though required in the King's name to assist in apprehending him; and 3dly, That after the constable had discovered the said Walter, senior, getting out by a back door of the said room, and had actually laid hold on him, the defender had assisted him to make his escape; and concluding the pains of law; which the Justices found relevant, and admitted the libel to probation.

Of this process, a bill of advocation was presented on iniquity; 1st, Because the defence had been repelled, that the constable had no warrant from a Justice of the Peace; 2dly, That the several grounds libelled on were *in cumulo* found relevant, although, in some of them, there was no relevancy; particularly the harbouring or entertaining a banished person was said to be no crime, unless he were intercommuned, and even the refusing to assist in apprehending a father, in order to his being scourged, was what the laws of humanity could not construct to be a crime in any man; 3tio, That notwithstanding an appeal made by the defender to the Quarter Sessions, against an interlocutor of the Justices, repelling an objection to a witness, they had proceeded to examine the witness, on pretence that an appeal to the Quarter Sessions did not stop examination of the witness.

This bill being reported by the Ordinary, the Lords were of opinion, that a constable might of himself apprehend and commit for a crime, without any warrant from a Justice of the Peace; and that neither was there any iniquity in sustaining the libel *in cumulo* relevant to be judged of, as the fact should come out upon proof, although certain of the particulars charged should not *per se* be relevant; but as to the particulars objected to in this case, gave no opinion. They were also of opinion, That an appeal to the Quarter Sessions does not stop the Justices from proceeding and finishing the cause by sentence; but that if against such sentence an appeal be entered, they should admit the appeal, and not proceed to execution till the same be discussed; and therefore, as it appeared from the proceedings, that after taking the oath of the witness objected to by the defender, the pursuer had declared his proof concluded, the Lords "Remitted to the Ordinary to refuse the bill;" but with this instruction, "To proceed to give judgment, reserving to the defender to appeal thereagainst as accords."

Fol. Dic. v. 3. p. 355. Kilkerran, (JURISDICTION.) No 1. p. 304.

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The Lords found that the statute 24th Geo. II. cap. 44. which provides, that

1753. February 6. DUKE OF DOUGLAS against LOCKHART of LEE.

AN action being brought against two Justices of the Peace, for protecting, by a collusive sentence, a fowler alleged to be a common poacher, libelling upon several acts of Parliament against partial and collusive administration of justice, and concluding damages, &c.; the defence was laid upon an act passed the 24th of his present Majesty; and because the dispute turned upon the follow-

ing point, Whether this act extends to Scotland, the statute must be set forth at large. The preamble recites, 'That Justices of the Peace are discouraged in the execution of their office, by vexatious actions brought against them for or by reason of small and involuntary errors in their proceedings; and whereas it is necessary that they should be (as far as is consistent with justice, and the safety and liberty of the subjects), rendered safe in the execution of the said office and trust; and whereas it is also necessary that the subjects should be protected from all wilful and oppressive abuse of the several laws and statutes committed to the care and execution of the said Justices of Peace; be it therefore enacted,' &c. The enacting clauses, as far as they respect the present question, are, 'That from and after the 24th of June 1751, no writ shall be sued out against, nor any copy of any process at the suit of a subject, shall be served on any Justice of the Peace, for any thing by him done in the execution of his office, until notice in writing of such intended writ or process shall have been delivered to him, or left at the usual place of his abode, by the attorney or agent for the party who intends to sue, or cause the same to be sued out or served, at least one kalendar month before the suing out or serving the same; in which notice shall be clearly and explicitly contained, of the cause of action which such party hath or claimeth to have against such Justice of the Peace; on the back of which notice shall be indorsed, the name of such attorney or agent, together with the place of his abode.' The statute proceeds to enact, 'That it shall and may be lawful for such Justice of the Peace at any time within one kalendar month after such notice is given as aforesaid, to tender amends to the party complaining, or to his agent or attorney; and in case the same is not accepted, to plead such tender in bar to any action to be brought against him, grounded on such writ or process, together with the plea of not guilty, and any other plea, with leave of the Court; and if, upon issue joined thereon, the jury shall find the amends so tendered to have been sufficient, then they shall give a verdict for the defendant; and in such case, or in case the plaintiff shall become non-suit, or shall discontinue his or her action, or in case judgment shall be given for such defendant or defendants, upon demurrer, such Justice shall be entitled to the like costs as he would have been entitled unto, in case he had pleaded the general issue only; and if, upon issue so joined, the jury shall find that no amends were tendered, or that the same were not sufficient; and also against the defendant or defendants, or such other plea or pleas, then they shall give a verdict for the plaintiff, and such damages as they shall think proper.' And it is further enacted, 'That no such plaintiff shall recover any verdict against any such Justice, in any case where the action shall be grounded on any act of the defendant, as Justice of the Peace, unless it is proved upon the trial of such action, that such notice was given as aforesaid.' And, by the last clause, it is enacted, 'That no action shall be brought against any Justice of the Peace, for any thing done in the execution of his office, or against any constable, head-

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no action shall be brought against any Justice of Peace for any thing done in the execution of his office, unless commenced within six months after commission of the act, extends to Scotland. Reversed on appeal.

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‘ in six kalendar months after the act committed.’

Upon the authority of this statute, the defenders *pleaded*, That before taking out the summons, they ought to have had notice of the cause of action, in the form and manner therein described, and that the process ought to have been brought within six months of the sentence pronounced by them. In answer to this defence, it was maintained, That this statute does not extend to Scotland; which appears from this, that every single clause is adapted to the forms of proceeding in England, and is inconsistent with the forms of proceeding in Scotland.

It was *replied*, That many British statutes, which undoubtedly extend to Scotland, are expressed in the language of the law of England, mentioning the general issue, non-suiting, discontinuance, wager of law, imparlance, &c. terms not known in the law of Scotland. *Duplied*, A British statute, which reaches Scotland, may properly be expressed in English law terms, which can be translated into Scotch law-terms, and therefore easily adapted to the forms of Scotland. But there is more in the statute under consideration. The remedy enacted by this statute, for protecting Justices of the Peace from vexatious suits, is so connected with the peculiar forms of the law of England, such as giving notice in writing to the party’s attorney of the intended suit, trial by jury in a civil case, &c. that it is impracticable to apply the remedy in Scotland, without overturning our most essential forms, which certainly was not intended by the Legislature.

“ Found that this statute does not extend to Scotland.”

Upon a reclaiming petition and answers, the LORDS, 20th July 1753, altered by a narrow plurality.

Fol. Dic. v. 3. p. 359. Sel. Dec. No 38. p. 42.

. This case is reported in the Faculty Collection :

1753. Dec. 18.—THIS suit was for malversation in office as Justice of the Peace.

The defender *pleaded* the statute 24th Geo. II. cap. 44. resting chiefly upon the last clause, by which it is provided, ‘ That no action shall be brought against
‘ any Justice of the Peace for any thing done in the execution of his office, or a-
‘ gainst any constable, head-burgh, or other officer or person acting as aforesaid,
‘ unless commenced within six kalendar months after the act committed.’

Replied for the pursuer; The statute does not extend to Scotland; for that the English law-words used, and the English law-forms referred to in this statute, implied a limitation of it to England. Particularly, it mentions only vexatious actions brought against Justices of the Peace, where the trial of these actions is by a jury; therefore, the remedy provided by the statute cannot be applied to actions brought against Justices in Scotland, where trial by jury in

civil cases is unknown. That although the last clause of the statute is rather more general than the others, yet it cannot be taken separate from the others, but the whole must be extended or restricted together. In general, that it were of dangerous consequence to the law of Scotland, to admit of all the British acts which are not expressly limited to England; for in that case many acts, altogether inconsistent with our law, and which were never supposed to extend to Scotland, would be introduced into it. Instances of this are, 7th Anne, cap. 18.; 8th Anne, cap. 14.; 9th Anne, cap. 20.; 10th Anne, cap. 20.; 12th Anne, cap. 7.; 12th Anne, sess. 2. cap. 23.; 4th Geo. I. cap. 12.; 11th Geo. I. cap. 29.; 20th Geo. II. cap. 19.

Answered for the defender; That since the Union, all acts of Parliament must be construed to extend to both kingdoms, except such where limitation to one of them is either expressed or implied. That as it frequently happens, that English lawyers are employed to frame the bills in Parliament, so these gentlemen naturally make use of the words, and refer to the forms of that law in which they are most versant, without any intention of limitation to England; and therefore when there is equal reason for extension to both kingdoms, the use of words, or reference to forms, known in the English law only, in case these words and forms can be translated into our law, will not alone imply limitation to England. To verify this, many instances may be given; in some of which, trials by jury of civil cases seem to have been as much in the eye of the Legislature, as in the cases now debated; particularly the acts of indemnity, 1st Geo. I. sess. 2. cap. 39.; 19th Geo. II. cap. 20.; the acts against gaming, 9th Anne, cap. 14.; 12th Geo. II. cap. 28.; 18th Geo. II. cap. 34.; the stage act, 10th Geo. II. cap. 28.; upon which judgments have been given by this Court, although the last clause of it is liable to the like objection as the clause in question. See also the annual mutiny acts, as well as 12th Anne, sess. 2. cap. 16.; 12th Geo. II. cap. 21.; 15th Geo. II. cap. 28.; 18th Geo. II. cap. 10. and 24. § 4.; 19th Geo. II. cap. 21. & 37.; 23d Geo. II. cap. 13.; 25th Geo. II. cap. 39. Further, were the use of words or references to forms sufficient to imply a limitation to England, what would be the use of an express limitation in many cases, as in 4th Geo. I. cap. 11.; 2d Geo. II. cap. 25.; 9th Geo. II. cap. 36.

With regard to the instances of statutes brought to show the danger of extension to Scotland by implication, these statutes either obviously do not extend to Scotland, or if they do, their extension is attended with no bad consequences.

In the present case, not only are the enacting words and purview of the act general, but no reason can be assigned why they should not be so. The original powers of Justices of Peace were nearly the same in both kingdoms. They are still more assimilated by 6th Anne, cap. 6. Ever since that act, the Scots form of the commissions of peace is laid aside; and in lieu of it, the English form is substituted. The members of the Privy Council in England, the Speaker

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of the House of Commons, and many others who have no property in Scotland, are put into every Scots commission of the peace. Justices of the Peace in Scotland are equally liable to vexatious prosecutions for things done in execution of their offices, as Justices in England, and by consequence are equally intitled to the remedy provided by this act.

In the last place, the defender chiefly rests upon the last clause of this act, which is entirely general, and has no reference to any English form of procedure whatever. Supposing, therefore, a difficulty in applying the other clauses to Scotland, there appears no reason for not applying this.

In this case, the LORDS, by their first interlocutor, found the act to extend to Scotland; but they did not give costs. By their second interlocutor, they found the act did not extend; but, by their third and fourth interlocutors, they adhered to the first, and

“ Found the act extends to Scotland.”

Aff. *Lockhart et Pringle.* Alt. *Ferguson, Millar et Swinton.* Clerk, *Gibson.*

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Fac. Col. No 93. p. 142.

* * * This case was appealed :

THE HOUSE OF LORDS “ Ordered, That the interlocutors complained of (viz. those which found, that the act 24th Geo. II. c. 44. extended to Scotland), be reversed.”

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The Justices of Peace act in a ministerial, and not in a judicial capacity, with regard to summoning tenants to perform the statute work, and granting warrant for poinding the non-compliants; and they, and not the overseer who obtains the warrant, are the proper persons to be sued, as defenders for an illegal warrant, or an irregular poinding.

1760. December 17.

WALKER and HERD *against* THOMSONS.

THE Justices of Peace and Commissioners of Supply of the county of Kincardine, had divided the county into districts in the year 1755, allotting the work for the inhabitants of each district to the roads within it; and they permitted a certain composition to be taken in lieu of the statute work.

At a general meeting in May 1757, they continued the same division of the county into districts, and fixed the composition-money to 1s. Sterling for the annual labour of a man, providing the same was paid against the 15th of June; otherwise the whole six days labour was appointed to be exacted.

In consequence of this resolution, the Committee on the road from Stonehaven to the bridge of Dee, caused notice to be given, in the church of Dunnington, on the 29th May 1757, That persons liable in statute-work should pay in to their clerk, before the 15th of June, the composition aforesaid; ‘with certification, That if they failed, their statute service for six days that year ‘ would be exacted to the utmost.’ Another notification was made, on Sunday the 14th of August, That the deficient should come out, and work at the highway, on the 15th, 16th, and 17th days of that month, or else to pay in their respective compositions. Numbers of people in the district accordingly paid