

September Term 1767.

1767.

Present WILLIAM ALLEN, Chief Justice;
 WILLIAM COLEMAN,
 JOHN LAWRENCE,
 THOMAS WILLING, } Justices.

BÖHM and SHITZ *versus* ANDREW ENGLE.

ACTION on the Case for £ 802. The Plaintiffs under a power in the Will of *Henry Bolster* deceased, had sold at public vendue to the Defendant, a house and lot in the city of *Philadelphia* for £ 802, and shortly after tendered him a Deed for it, which the Defendant refused to accept, being advised by council that *Bolster* had no good Title to the Lot.—Upon which the Plaintiffs brought a special Action on the case for the consideration Money.

On the Trial, in support of *Bolster's* title, the Plaintiffs produced a Patent to *Jane Batchelor* dated 1694, and a Deed from one *Richard Tucker* (who had married *Jane Batchelor*) to *John Chambers* dated 1685, and deduced a regular title from *Chambers* down to *Bolster*. The Plaintiffs acknowledged the defect in the Title, in *Tucker's* conveying his Wife's Estate without her joining in the Deed, but insisted on sixty Years Possession as giving a good Title under the Statute of 32 H. 8. c. 2.

The Court for the Defendant denied the extension of that Statute, and urged that if the 32 H. 8. extended, the Statute of 21 Ja. 1. c. 16. likewise extended, being both made before the Settlement of the Province, but it appears to have been the Opinion of the Legislature of this Province, that these Statutes of Limitations did not extend, by their having made an Act to limit *personal Actions* in the very Words of the Statute of *Jams.** It was likewise contended on the Part of the Defendant, that though the Statute of 32 H. 8. should be extended, yet this Case was not within it; because, 1st The Act was made on a presumption that there might have been regular Conveyances and lost, but here it appears there was no Conveyance at all from the Wife by *Tucker's* granting for himself and his Wife.—2d. There is no Proof of sixty Years Possession, the Witnesses for the Plaintiff speaking only to 44 Years back.—3d. The Act of 32 H. 8. does not operate unless sixty Years elapsed since Right of Entry accrued, and here *Tucker's* Wife had no Right of Entry till the Death of her Husband, which was in 1703 and not sixty Years ago There was another point made for the Defendant, that in one of the mesne Conveyances, about sixteen Years ago, the Wives of the Grantors had not joined in the Deed, and were now living, and consequently might be intitled to Dower.

* 12 Ann. c. 2. See also State Lottery 69. and 4 Ann. 1. c. 2. § 6. See 1 State Lottery 92
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For the Plaintiffs it was answered, that in 2 *Peere Williams* 75, and many other cases, it was settled, that all Acts of Parliament made before the Settlement of the Colony extend, unless local in their Nature; that under this rule the Statute of Wills, Statute of Uses, and many other Statutes, were always held to extend; and that the reason of this Act extended as well as any other. That as to this Case not being within the Act, the presumption spoken of was not justified by the Act itself, which extended to every Case—2d. Though the Witnesses swear only to forty-four Years possession, yet after such a length of time it should be presumed the possession had been from the Date of the Deed to *Chambers*, which was in 1685.—3d. The Rights of *Femes Covert* are not saved in this Act (except such *Femes Covert* as were in being at the time of making the Act) and Possession was out of *Tucker's* Wife from the time of her Husband's Deed to *Chambers*.—As to the last Point it was said, that it was picked up at the Bar, and not objected to at the Time of tendering the Deed; that it did not strictly go to the title, but was only a claim of two old Women for their Lives, which the Jury might take notice of, if they pleased, by lessening the Damages.

THE COURT were unanimous and clear in their Opinion, that the Act of 32 H. 8 did extend to this Province, and gave it in charge to the Jury accordingly. *

The Verdict of the Jury was conformable to this opinion, by their finding for the Plaintiffs, having made an allowance for the Lives of the two Women in the Damages.

April Term, 1768.

WILLIAM ALLEN, Chief Justice.
JOHN LAWRENCE,
THOMAS WILLING, } Justices

RICHE and RICHARDS *versus* BROADFIELD.

AN Account of Sales of an Adventure shipt to *New-York*, said to be signed by the Factor, offered in evidence to prove a loss on the Goods. Objected, that the Factor himself ought to have been brought to give evidence, *viva voce*, or at least the account should have been proved by him, and certified under the City Seal of *New-York*, agreeably, to the directions of the act of parliament with regard to the proving Colony debts in *England*.—Answered, That this being a Mercantile Transaction, such Evidence as Merchants usually admit as proofs of a foreign Transaction, should be received here.

* See S. P. *Morris's versus Vandermere Esq.*