law principle, from which this doctrine of *ante-nati* flows, that of perpetual allegiance by birth, has never been translated as a part of the common law into the United States? How can he reconcile it to his censure *and strictures upon the determination of Judge ELLSWORTH in *Williams's Case?* He himself acknowledges that after the 28th of October 1795, no British subject can purchase lands within the United States, so as to be protected by that treaty.

*336]

If once this whimsical doctrine of *ante-natus* be admitted, it will give rise to an infinity of perplexing questions. An attainted loyalist, if he retains his citizenship, may return and be immediately eligible as a member of the house of representatives or the senate. After fourteen years' residence, though he cannot be naturalized without the consent of the state in which he was proscribed, yet he may be President of the United States.

I infer from all these considerations, that the expatriation of Daniel Coxe induced the forfeiture of alienage, and that he is thereby precluded from taking lands by descent in the United States of America.

Cur. ad. vult.[1]

ADAMS, *qui tam*, *v.* WOODS.

Statute of limitations.—Penal actions.

The act of 30th April 1790, limiting prosecutions upon penal statutes, extends as well to penalties created after, as before, that act, and to actions of debt, as well as to informations and indictments.[2]

THIS was a case certified from the Circuit Court of the United States for the Massachusetts district, in which the opinions of the judges of that court were opposed.

It was an action of debt for the penalty of $2000, under the 2d section of the act of congress of 22d March 1794, "to prohibit the carrying on the slave trade from the United States to any foreign place or country." (1 U. S. Stat. 347.) The words of the act are, "shall forfeit and pay the sum of two thousand dollars; one moiety thereof to the use of the United States, and the other moiety thereof to the use of him or her who shall sue for and prosecute the same."

*The defendant pleaded, "that the cause of action, set forth in the plaintiff's writ and declaration, did not accrue within two years next before the date and issuing forth of the writ in this case against him, in manner and form as the plaintiff hath declared, and this he is ready to verify: wherefore," &c. To which plea, there was a general demurrer and joinder. The question was, whether the plea was a good bar to the action.

*337]

The plea was grounded upon the 32d section of the act of congress of April 30th, 1790 (1 U. S. Stat. 119), which is in these words: "That no person or person shall be prosecuted, tried or punished for treason or other capital offence aforesaid, wilful murder or forgery excepted, unless the indictment for the same shall be found by a grand jury within three years next after the treason or capital offence aforesaid shall be done or committed; nor

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[1] After a re-argument, in February term 1807, the court affirmed the judgment, holding that Daniel Coxe had a right to take lands, in New Jersey, by descent. 4 Cr. 209.

[2] United States *v.* Mayo, 1 Gallis. 397.

shall any person be prosecuted, tried or punished for any offence not capital, nor for any fine or forfeiture under any penal stature, unless the indictment or information for the same shall be found or instituted within two years from the time of committing the offence, or incurring the fine or forfeiture aforesaid: provided, that nothing herein contained shall extend to any person or persons fleeing from justice." This cause was argued at February term 1804.

Lincoln, Attorney-General, for the plaintiff.—The offences described in the act of congress upon which the defendant relies are *mala in se*. They were crimes originally.

Informations are of two sorts: those in behalf of the United States and the informer; and those in behalf of the United States alone. They are considered as criminal process. The act describes only such offences as are to be prosecuted by indictment or information; for the words are, "unless the indictment or information for the same shall be found or instituted," &c. *Hence, it is apparent, that the legislature meant to limit only prose- [*338
cutions of that kind.

An action of debt *qui tam*, is a civil, and not a criminal process. The act of congress on which the defendant relies is entitled, "an act for the punishment of certain crimes against the United States." The limitation it contains is intended to be a limitation of criminal prosecution. Lord MANSFIELD, in the case of *Atcheson* v. *Everitt*, Cowp. 391, says, "now, there is no distinction better known than the distinction between civil and criminal law; or between criminal prosecutions and civil actions. Mr. Justice Blackstone and all modern and ancient writers upon the subject distinguish between them. Penal actions were never yet put under the head of criminal law, or crimes. The construction of the statute must be extended by equity, to make this a criminal cause. It is as much a civil action as an action for money had and received."

But even supposing that the act of congress meant to include actions of debt, under the terms indictment or information; yet it refers only to penal statutes, or offences then existing, and cannot extend to offences created by subsequent statutes. This may be inferred from the force of the terms used. "Any penal statute," must mean any existing penal statute. A similar construction is put upon the statute of 21 Jac. I., c. 4, by the judges in England. The words of that statute are "any penal statute," yet the court held that those words referred only to penal statutes then existing, and not those subsequently enacted. Cunningham's Law Dict. tit. Limitation; *Rex* v. *Gaul*, 5 Mod. 425; 1 Salk. 372; *Hicks's Case*, Ibid. 373. If the legislature meant the act to apply to all future penalties, they would have said, any penal statute now existing or which shall hereafter be enacted.

The legislature could not suppose that the term of two years would be a proper limitation of all penal actions. In the present case, it goes to a total annihilation of the penalties of the act. No vessel engaged in the slave trade can ever be subjected to condemnation; for the voyage is always circuitous, and generally takes up more *than two years to perform it. It is gen- [*339
erally from the United States to the West Indies, from thence to Africa, thence back to the West Indies or South America, and thence home. It is scarcely possible, that all this should be accomplished in two years.

I have lately seen a set of papers sent from our consul in England to the secretary of state, in which orders were given to the master to go to the West Indies, and from thence to Africa, and to continue the trade, until the vessel should be no longer fit for a voyage.

In the act of 2d March 1799, to regulate the duties upon imports and tonnage, § 89 (1 U. S. Stat. 695), is the following clause: "That no action or prosecution shall be maintained, in any case under this act, unless the same shall have been commenced within three years next after the penalty or forfeiture was incurred;" which shows that the legislature did not consider the act of 1790 as applying to any offences subsequently created; otherwise, they would not have inserted a new limitation; or if they meant to extend the right of action to three years, they would have used affirmative words, and said, that actions for penalties under that act might be prosecuted at any time within three years, the act of 1790 notwithstanding.

Swann, contrà.—It is immaterial, whether this is to be considered as a criminal or a civil process. The act of limitation is a general law, applying to offences subsequently created as well as to those already existing. The cases cited from Cunningham's Law Dict. are grounded upon the peculiar words of the statute of James, and do not apply to those of the act of congress. There may be a little obscurity in the words of the act, but there is none as to the intention of the legislature. They meant to make a provision which should extend to all prosecutions upon penal statutes. The action *qui tam* is a common-law remedy, and existed as a mode of prosecution, at the time of passing the act of 1790; and although it does not expressly limit an action of debt for the penalty, yet it expressly limits all prosecution for the penalty,
*340] not the prosecution in a particular mode. The words are, "nor *shall any person be prosecuted, tried or punished." But if the opposite construction is correct, the United States would be barred from prosecuting, but an individual would not.

The court took time to consider; and now, at this term, February 18th, 1805—

Marshall, Ch. J., delivered the opinion of the court.—This is an action of debt brought to recover a penalty imposed by the act, entitled "an act to prohibit the carrying on the slave-trade from the United States to any foreign place or country." It was pleaded in bar of the action, that the offence was not committed within two years previous to the institution of the suit. To this plea, the plaintiff demurred, and the circuit court being divided on its sufficiency, the point has been certified to this court.

In the argument, the plaintiff has rested his case on two points. He contends, 1st. That the act of congress, pleaded by the defendant, is no bar to an action of debt. 2d. That if it be a bar, it applied only to the recovery of penalties given by acts which existed at the time of its passage.

The words of the act are, "nor shall any person be prosecuted," &c. (1 U. S. Stat. 119.) It is contended, that the prosecutions limited by this law, are those only which are carried on in the form of an indictment or information, and not those where the penalty is demanded by an action of debt.

But if the words of the act be examined, they will be found to apply,
*341] not to any particular mode of proceeding, but generally to any prosecution, trial or punishment *for the offence. It is not declared, that

no indictment shall be found, or information filed, for any offence not capital, or for any fine or forfeiture under any penal statute, unless the same be instituted within two years after the commission of the offence. In that case, the act would be pleadable only in bar of the particular action. But it is declared, that "no person shall be prosecuted, tried or punished;" words which show an intention, not merely to limit any particular form of action, but to limit any prosecution whatever.

It is true, that general expressions may be restrained by subsequent particular words, which show that, in the intention of the legislature, those general expressions are used in a particular sense: and the argument is a strong one, which contends that the latter words describing the remedy, imply a restriction on those which precede them. Most frequently, they would do so. But in the statute under consideration, a distinct member of the sentence, describing one entire class of offences, would be rendered almost totally useless, by the construction insisted on by the attorney for the United States. Almost every fine or forfeiture under a penal statute, may be recovered by an action of debt, as well as by information; and to declare that the information was barred, while the action of debt was left without limitation, would be to attribute a capriciousness on this subject to the legislature, which could not be accounted for; and to declare that the law did not apply to cases on which an action of debt is maintainable, would be to overrule express words, and to give the statute almost the same construction which it would receive, if one distinct member of the sentence was expunged from it. In this particular case, the statute which creates the forfeiture does not prescribe the mode of demanding it; consequently, either debt or information would lie. It would be singular, if the one remedy should be barred and the other left unrestrained.

In support of the opinion that an act of limitations to criminal prosecutions can only be used as a bar, in cases declared by law to be criminal at the time the act of limitations was passed, unless there be express words extending it to crimes to be created in future, Cunningham's Law Dict. has been cited. *The case in Cunningham is reported in 1 Salk. and 5 Mod., and seems to be founded on the peculiar phraseology of the statute of the 21 Jac. I., directing informations to be filed in the county in which the offences were committed. That statute was expounded to extend only to offences which, at the time of its passage, were punishable by law. But the words of the act of congress plainly apply to all fines and forfeitures, under any penal act, whenever that act might pass. They are the stronger, because not many penal acts were at that time in the code. [*342

In expounding this law, it deserves some consideration, that if it does not limit actions of debt for penalties, those actions might, in many cases, be brought at any distance of time. This would be utterly repugnant to the genius of our laws. In a country where not even treason can be prosecuted, after a lapse of three years, it could scarcely be supposed, that an individual would remain for ever liable to a pecuniary forfeiture.

The court is of opinion, that it be certified to the circuit court for the district of Massachusetts, that the issue in law joined in this case, ought to be decided in favor of the defendant.