

## I N D E M N I T Y.

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1663. *January 15.* GREENLAW *against* —.

GREENLAW being pursued by —, for spuilzie of two mares, in May 1654, *alleged* absolvitor, because he was then in arms for the King, and took these mares for the service, and had warrant from his officers, which he offered him to prove by his pass, and capitulation produced, expressly including him, with his officers, who capitulated.—The pursuer *answered*, The mares were great with foal, and altogether unfit for the service; and if they were specially commanded to be taken, it might be instructed by writ.

THE LORDS, considering this capitulation, being about that same time, found, That albeit there had been no order, yet the defender being then in arms, acting *modo militari*, the act of indemnity freed him, and would not give occasion to such process, and therefore assoilzied.

*Fol. Dic. v. 1. p. 461. Stair, v. 1. p. 156.*

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1675. *December 7.* GRANT *against* CRAIGIE.

CRAIGIE of Dumbarrie being decerned to pay L. 40 to the procurator-fiscal of Perth, as having committed a riot upon Sibella Grant, in laying hold upon her publicly on a Sabbath day, upon pretence that she had lace under her hoods, contrary to the sumptuary act; he suspends on this reason, that this being a penalty, was taken away by the King's act of pardon of penal statutes, it not being capital.—It was *answered*, That the act related only to penal statutes, and could not be extended to riots.—It was *replied*, That it bore expressly, 'all transgressions, not only against penal statutes, but other laws inferring arbi-

### No 1.

An act of indemnity was found to liberate one from a spuilzie, who had taken some horses for his Majesty's service.

### No 2.

A woman was rudely attacked, on pretence of having about her prohibited lace. The fine which had been awarded was found not exigible, in consequence of

No 2.  
the indemnity, although for reparation of an injury to an individual; because the suit had been in name of the procurator-fiscal.

‘trary or pecunial punishment.’—It was *duplied*, That it could not reach to the private interest of parties, which the King could not discharge; and in effect this was to the behoof of the person injured as an assythment for her affront; for though it be in the name of the procurator-fiscal, it is assigned to her.

THE LORDS found, That the decret being taken in the name of the procurator-fiscal, and not in the name, or for the interest, of the person injured, the same fell within the proclamation, without prejudice to her to pursue for her interest as accords.

*Stair, v. 2. p. 375.*

\* \* \* Gosford reports this case:

IN a suspension raised at Dumbarne’s instance, of a decret pronounced by the Sheriff-depute of Fife, whereby he was fined in the sum of L. 40 Scots, for a riot committed on Sibella Grant, in putting violent hands upon her on the Sabbath day, and pulling her hood off her head, upon these reasons, *imo*, That the decret was null, because it doth not bear any particular day assigned to the witnesses to compear and depone, so that the suspender was not obliged to be present to interrogate the witnesses, or to make objections, *2do*, That by the late proclamation, the King had discharged all penalties incurred by virtue of all penal statutes, unless the same were paid, or bond given therefor; and before the alleged riot, having been libelled to have been before the said day, and being pursued at the instance of the procurator-fiscal, who is answerable therefor to the King’s Treasury, the suspender was free, neither having given bond nor made payment.—It was *answered* to the *first*, That decreets of inferior judges, bearing that they were given upon full probation of the libel, against parties compearing by their procurators, needed not bear a particular day assigned for the probation, which should only be set down in the minutes of process.—It was *answered* to the *second*, That albeit the action was pursued at the instance of the procurator-fiscal, yet it was to the behoof of the party injured, like-as she was assigned thereto by the procurator-fiscal.—THE LORDS did repel the first reason, and found that the decret was not null; but as to the second, they did sustain the same, the process and decret being only in name of the procurator-fiscal, and so fell within the King’s late act of grace; but they reserved to the party injured to pursue *de novo* in her own name before any competent judge.

*Gosford, MS. N<sup>o</sup> 811. p. 510.*

No 3.  
An act of indemnity was sustained to

1704. *January 26.* JOHN BLAIR *against* MERCHANTS, &c. of KILMARNOCK.

JOHN BLAIR, Bailie-depute of the bailiery of Cunningham, pursues the merchants and other inhabitants of the town of Kilmarnock, for using false and