

THE LORDS seemed to be clear that the bond was usurious; but found the penalty of usury taken off by the indemnity. See USURY.

No 6.

Fol. Dic. v. 1. p. 461. Forbes, p. 312.

1710. July 26.

HASWELL against The MAGISTRATES of Jedburgh.

HASWELL having incarcerated his debtor in the tolbooth of Jedburgh, and he having made his escape, Haswell pursues the Magistrates by a subsidiary action to pay the debt. *Alleged, imo*, This did not happen during our time; and though we be liable *ratione officii*, yet you must call the Magistrates, during whose administration the fault was committed; for they may have defences to elide the pursuit which are unknown to us. *Answered*, He is concerned with none but the present Magistrates; and if they please they may recur for relief against their predecessors; but it has been found, this allegiance could not stop their being decerned. THE LORDS repelled this defence. *2do, Alleged*, This action arising *ex delicto vel quasi*, being either the fraud or the fault of the Magistrates and their goaler that their prisoner escaped, either *dolo* or *lata culpa quæ dolo æquiparatur*, the same is pardoned by the Queen's last indemnity, this escape being prior thereto. *Answered*, The Queen did pardon all fines or forfeitures arising to her by crimes, but never intended to take away the interest of private parties; and here the Magistrates came directly in the place of the rebel imprisoned, and become liable as he was; and no casualty by this escape arising to the Crown, it can never be reputed to be remitted; and when it was pretended that denunciations prior to that indemnity were taken away as to their penal consequences and effects, the LORDS found they fell not under the indemnity. And, upon these grounds, the LORDS likewise repelled this second defence, and found the indemnity did not comprehend this case.

Fol. Dic. v. 1. p. 462. Fountainball, v. 2. p. 593.

1712. February 22.

MRS MARGARET ROBERTSON Supplicant against ALEXANDER ROBERTSON of Strowan, her Brother.

UPON a complaint offered by Mrs Margáret Robertson, against Strowan her brother, for violently invading her during the dependence of a process at her instance against him, for payment of her proportion of the provision stipulated by their father to the younger children in his contract of marriage; and craving that in the terms of the act 219, Parliament 14, James VI. sentence might be given in her favours against the invader, as having thereby lost the plea, the LORDS found, That the act of indemnity did not acquit Strowan from the

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No 7.

In an action against Magistrates for allowing a prisoner to escape, the Lords repelled the defence that the delict was pardoned by a subsequent act of indemnity.

No 8.

Batter. *pendente lite* not pardoned by an act of indemnity.

No 8. penalty of the foresaid act of Parliament, in respect the indemnity pardon only public crimes, and penalties; and was not calculated to prejudice the interest of private parties, secured by the statute in their just pursuits.

Fol. Dic. v. 1. p. 462. Forbes, p. 593.

1712. November 19.

ALEXANDER AGNEW Kirk Treasurer of Kirkum, against HUGH CAMPBELL of Aires.

No 9.
One committing fornication since the act of indemnity, subjected to the double penalty of a repeated transgression, upon account of fornication committed by him before the indemnity.

IN the discussing of a suspension of a decret obtained by Alexander Agnew before the Sheriff of Wigton, against Hugh Campbell for the sum of L. 200 as the penalty for his relapse into fornication, he being a landed man, conform to the act 38, Parliament 1. Charles II.,

THE LORDS found that fornication committed by the suspender since the act of indemnity, subjected him to the double penalty of a repeated transgression, in respect of fornication committed by him before the indemnity: Albeit it was *alleged* for the suspender, That there could be no relapse but where the person accused was formerly guilty of the same crime; and any fornication before the indemnity cannot be pleaded, because the indemnity dischargeth persons to be sued, vexed, or disquieted in their bodies, goods, chattels, &c. for any prior offence; so that the first fornication thus sopited and extinguished by the act of oblivion, ought not to be ripped up again, or brought in remembrance, to infer any penal consequences; but the subsequent offence should be reckoned as the first: In respect it was *answered* for the charger, *imo*, The act of indemnity cannot alter the nature of things, or hinder a second offence to be a relapse, and thereby liable to a double penalty, which is no part of the penalty of the first transgression indemnified, but only the penalty of the relapse, which would be due, albeit the penalty of the first fornication had been discharged or paid; nor *2do*, Is it a novelty, that crimes indemnified as to penalties due to the fisk, may be urged and proved in order to recover damages to parties lesed, or to other ends. Thus, albeit a ward-vassal may at his pleasure lawfully alienate a part of his lands within the half; yet if he afterwards dispone so much more as with the former part exceeds the half, the alienation that was lawful at first, will come *in computo*, to infer the pain of recognition. *3tio*, No act of indemnity extends to crimes committed after the term therein limited, to lessen or abolish the punishment thereof; and consequently the double penalty of the suspender's second fornication committed after the indemnity, cannot be abated.

Fol. Dic. v. 1. p. 462. Forbes, p. 633.