

1747. *July 3.*      ALEXANDER *against* DENHOLM.

No. 2.

WHETHER the act indemnifying those who acted in the service of the government during the Rebellion, was pleadable against a libel for scandalizing the pursuer, that he had given the rebels notice of the Duke's march, on which the pursuer was committed to prison till he brought proof of his good character, was debated but not decided.

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1752. *February 26.*      STRACHAN *against* M'LACHLAN, &c.

No. 3.

STRACHAN, a farmer near Bervie, sued Lieutenant M'Lachlan, who was Aid-de-Camp to General Husk, Bruce Judge-Advocate, Laurence Dundas Commissary for forage, &c. and Gardiner his clerk, for that in February 1746, when our army was marching to Aberdeen, the two first came to his house, beat him, and used him ill, and carried his horses, oxen, cows, and sheep, worth L.241, with them to Aberdeen, and there delivered them to Dundas and Gardiner, who sold them by roup, and applied the money to their own use. There was compearance only for Dundas and Gardiner, who pleaded the indemnity for all the four, being a public law, whereof the Court was bound to take notice; and the President, Justice Clerk, Milton, and I, thought it clearly within the indemnity; but the majority were of a different opinion, and some thought that the indemnity did not extend to any injuries done to loyal subjects. However, the Court repelled the defence on the act of indemnity, and sustained process against M'Lachlan and Bruce, and ordered the pursuer to give in a condescence of the points he offered to prove against the other two defenders, 18th December 1751; but on a reclaiming bill and answers, shewing, *inter alia*, that Strachan himself was on suspicion carried to Aberdeen, and detained prisoner till after the battle of Culloden; we unanimously sustained the defence on the indemnity for M'Lachlan and Bruce, and superseded as to the other two till the condescence should be given in.

See NOTES.