

proceedings? We all agreed, that unless falsehood had been specially submitted and determined, that it is competent; but then we thought these warrants being now lost and amissing not sufficient;—and therefore adhered, but with the addition, in respect no direct evidence was offered of the falsehood.

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### INDEFINITE PAYMENT.

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No. 1. 1739, Nov. 9. *FORBES against INNES.*

THE Lords found that the indefinite payment must be imputed as the creditor would have it, to the debt worst secured, and they considered the engagement for Sir John Gordon not as a subsidiary obligation, which implies a condition of discussing the principal, whereas here Robert undertakes the debt on condition that the creditor would not follow out the diligence he had already raised.

\* \* The case, Creditors of Harwood against Paterson of Kirkton 7th December 1742 is referred to as decided in the same way. That case is thus mentioned in the Notes.

FIND that the creditor may apply indefinite payments or intromissions to payments of such debts as were not secured by inhibition and other diligence. We also thought that he could likewise apply these intromissions to payment of debts not bearing annualrent, but the point seemed finally settled by the decret 1737 which ascertains the sum that bears annualrent.

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### INDEMNITY.

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No. 2. 1747, July 3. *ALEXANDER against DENHOLM.*

DENHOLM having in several different companies scandalized and injured Alexander, that he had given notice to the Rebels of the Duke's march which had occasioned Alexander to be confined till he proved his good character; he now sues Denholm for damages, and Denholm pleads the indemnity, which the Sheriff sustained; and on a bill of advocation we were divided about the indemnity; the President against it. Arniston and I wanted first to see the proof, but at last we agreed to advocate.

No. 3. 1752, Feb. 26. *STRACHAN against M'LACHLAN, &c.*

STRACHAN pursued these four defenders, libelling that in February 1746 M'Lachlan who was Aid-de-Camp to General Husk, and Bruce, Judge-Advocate to the army, when

our army was marching to Aberdeen after the Rebels, came to his house while he was there, beat him, and carried off horses, oxen, cows, and sheep, worth L.241 sterling, and carried them to Aberdeen, and delivered them to Laurence Dundas, Commissary of the army, and Robert Gardener, his clerk, who sold or roused them for their own use, and therefore concluding against them all for the value. The case was reported by Lord Milton. There was no compearance made for M'Lachlan and Bruce, but for Dundas and Gardener. It was alleged that several cattle taken from Rebels or persons suspected were brought by the troops to Aberdeen, and by order of the General roused and the price distributed among the soldiers, and they knew not whether any of these belonged to the pursuers, but pleaded the act of indemnity in favours of persons acting for the Government, and though there was no compearance for the other defenders, yet as that was a public law the Court ought to take notice of it. Answered, That the act did not indemnify the taking goods from peaceable subjects, which the pursuer was; that though it fell under the indemnity, yet unless the defenders prove by their books or otherwise that the price was by order distributed among the soldiers, they ought to be liable for the money they kept. I thought that the fact as laid in the libel was evidence sufficient that it was done for the service of the Government, especially as to M'Lachlan and Bruce are not charged with having sold them or having received the price but with bringing them to the army and delivering them to the Commissary. Minto, Drummore, and, I think, Dun thought that the indemnity extended only to injuries done to Rebels or persons suspected, or the taking away their goods, and were it otherwise in that time of Rebellion, the troops might plunder any loyal subject's house. President said there was no use for an indemnity for taking a Rebel's goods who is in actual Rebellion. I read that clause of the act touching the forcing horses and carts, &c. or quartering soldiers, which I supposed could not be restricted to the horses, carts, or houses of Rebels, and the acts behoved to be such as from the circumstances appeared to be for the service of the Government, which were indemnified to whomsoever done, and such I thought this was done so far as concerned M'Lachlan and Bruce. However, on the question, it carried to repel the defence on the indemnity even as to them, and an act was pronounced for both parties before answer to prove. But on a reclaiming bill, showing that Strachan was carried prisoner on suspicion to Aberdeen and kept there, we unanimously found the indemnity for M'Lachlan and Bruce, and superseded as to the rest, 26th February 1752.—(18th December 1751.)

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### INDIVISIBLE.

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No. 1. 1749, July 11. *MRS DUNBAR against JAMES STEPHEN.*

TACKS being written on one sheet of paper, the question was, Whether both were null or only the last? We found only the last tack null and sustained the first.