

sary; the Lords, (5th March 1777,) called the Sheriffs to the bar, and recommended to them to prepare an act for correcting this erroneous practice in time coming. In this case, the witnesses had signed the execution blank before it was filled up or signed by the officer.

EXPENSES.

1776. *June 25.* WILLIAM PORTER *against* DAVID THOMSON of INGLISTON.

WHERE a multiplepointing is raised emulously without necessity, and with a view to protract or raise unnecessary litigation; the Lords not only refuse to allow the pursuer the expense of raising it; but, in particular cases, find him liable in expenses to the other party. So they did, 25th June 1776, William Porter against David Thomson of Ingliston; although the multiplepointing, in this case, was brought in consequence of an interlocutor of an Ordinary sisting process until that was done: Because, in pronouncing that interlocutor, it appeared that the Ordinary had been misled by the party.

SIR JOHN GORDON *against* FORSYTH.

It has been maintained, that, in no case where penalties are imposed by law, are costs ever given, unless where special statute orders them to be paid. The Lords found the contrary, Sir John Gordon *against* Forsyth, where Forsyth, having acted as commissioner of supply, without a qualification, was found not only liable in L. 20 of penalty, but also in expenses, though the act imposing the penalty did not mention costs.

M'ADAM of CRAINGILLIAN *against* LOGAN of KNOCKSHINNOCH.

At a meeting of the commissioners of supply for the county of Ayr, 29th April 1775, Logan of Knockshinnoch, though possessed only of L. 83 : 13 : 4 of valuation, appeared and voted, first, who should be clerk to the commissioners; and, secondly, Whether or not his salary should be diminished.

In a complaint against him at the instance of John M'Adam of Craigingilian and Others; Mr Logan rests his defence upon his mistake in point of law, having been informed that L. 20 sterling of real rent, which he had, was equal to L. 100 of valued rent; and contended that no more, at any rate, than one

penalty could be exacted for his acting at one meeting; "The Lords found Logan liable in one penalty of L. 20 sterling, but in no expenses."

As to the expenses, it was contended for Logan, that there was no foundation for any; the complainers must pay them out of their penalty.

1775. July . WILSON *against* JACKSON.

It is a maxim of the law of England, that costs are never given to the King; it is below him to ask them. In a prosecution for usury, Wilson, procurator-fiscal of Renfrew, against Jackson, where the Lords annulled the deed, and decreed for triple value, in terms of the Act of Queen Anne; they refused costs, because, as the prosecution was at the instance of the procurator-fiscal alone, the forfeiture was for his Majesty's use.

1776. July 9. DUNCAN HENDERSON *against* THOMSON.

HENDERSON, an officer of excise, having brought a process of *cessio* against his creditors, met with considerable opposition, which, as he alleged, did not arise fairly from his creditors, but from an unlawful combination of certain smugglers, who instigated his creditors to oppose him, and had entered into a bond for that purpose, and to defray the expense of the litigation.

Having however prevailed in his *cessio*, and being liberated, he brought a process of damages against the alleged conspirators. The Lords demurred as to the relevancy; but, as he alleged proof *scripto* as to the bond of combination, before answer, they granted him a diligence for recovering it. He extracted it, and executed it against some of the defenders for production of the bond, as was done in the case of Stirling; and, though they could not be examined *in causa*, yet he examined them as havers. They came to town and were examined accordingly. After deponing, they claimed their expenses as witnesses, for in that character they had been examined; Lord Hailes and Lord Kennet, Ordinaries on oaths and witnesses, found them entitled to expenses, 9th July 1776.

Afterwards, before answer, the Lords allowed a proof at large to both parties, August 1776.

Personal expenses sometimes given in name of damages; see *Snodgrass, &c.* against *Wetherspoon, tit.* , Damages for Defamation.

1774. August . DAVIDSON *against* M'KENZIE.

UNDER a decree for conventional penalties, it has been understood and found, that the obtainer could claim no expenses of process, except they were specially