

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.