

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.*