

No 3. hear them farther thereupon ; and the indemnity was afterwards sustained to assoilzie from the fines.

Fol. Dic. v. 1. p. 461. Fountainball, v. 2. p. 215.

No 4. 1706. June 27. M'MICKEN against KENNEDY.

FOUND, That acts of usury were comprehended under the Sovereign's subsequent indemnity.

Fol. Dic. v. 1. p. 461. Forbes.

* * * This case is No 62. p. 524. *voce* ANNUALRENT.

1707. November 19.

SIR ALEXANDER CUMING of Culter against SIR ANDREW KENNEDY.

No 5.

An act of indemnity was found to exculpate the Conservator of the Scots privileges in the United Provinces from any malversations in his office preceding the date of the act, although he was called in question for the same before that act.

IN the reduction and declarator at the instance of Sir Alexander Cuming against Sir Andrew Kennedy, for reducing Sir Andrew's liferent right to the office of Conservator of the Scots privileges in the United Provinces, upon this ground, That he had neglected his duty at the Staple Port, and omitted to put the laws in execution against transgressors of the Staple, and been guilty of other malversations, the defender founded on the Queen's indemnity, dated 16th March 1703, to exculpate him from any malversations preceding that time. " In respect the said indemnity pardons, remits, and acquits all her Majesty's subjects of all breaches or abuses of, or malversations in public trusts, with all other crimes, delinquencies, or transgressions incurred by word, writ, or any other act, either of omission or commission, preceding the date, which directly or indirectly are, or may import the contravention of any law, custom, or constitution of Scotland ; and that in so far as the same may infer any pain or punishment, either in their lives, fortunes, estates, fame, or reputation.

Alleged for Sir Alexander Cuming. The Queen's indemnity cannot exoner Sir Andrew as to preceding malversations : Because, *imo*, Sir Andrew was prosecuted and complained on before the indemnity : And a person attainted of felony is not understood to be pardoned, without a special clause, remitting the prosecution and attainder, *Cromp.* 115. *N. 1. Lamb.* 502. *Dalton* 245., and Julius Clarus gives an instance of one who was executed 1558, albeit *obtinuerat literas impunitatis a principe*, which bore not that *tempore impetrationis erat in carcere detentus.* *2do*, Sir Andrew continued not innocent after the indemnity, but re-acted the malversations complained of ; and the breaker of the peace after pardon, forfeits the same, and may be hanged notwithstanding, *Crom. ibid. Dalt.* 247. 3. The civil prosecution of deprivation falls not