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 decerned 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

awarded by the Court; and if they awarded no expense of process, either because none were sought or none were given, a decree for the penalty could only carry the expense of putting it into execution. So found, 23d December 1757, *Allan* against *Young*. This decision held to be law, and approved of in the case, 16th July 1779, *Montgomerie Beaumont* against *Thomson and Alexander*.

Again, 27th November 1761, *Gordon* against *Maitland;* also, 4th January 1740, *Cowper* against *Stewart;* observed by Kilk., p. 375.

The case is different in adjudications: there the expense of process is recovered out of the penalty, even in cases where the penalty is restricted to necessary expenses.

The Lords were of this opinion, August 1774, *Henry Davidson* against *Sir Hector M'Kenzie*.

1764. *June* 23. GEORGE M'KAY *against* MUNRO of NEWMORE.

IN the process of proving the tenor, George M'Kay, Esq. against Munro of Newmore; the Lords finding it proven that Newmore had wilfully abstracted a sheet of a tailyie, of which the tenor was sought to be proven; they fined him in L. 20 to the poor, and found him liable in the expenses of process.

See B. Sederunt, 16th December 1761, *Harrison* v. *Wilson*.

1774. *July* 14. HARRISON *against* WILSON.

HARRISON, in an action before the Sheriff of Dumfries, obtained decreet against Wilson. Of this decreet, Wilson presented a bill of suspension, which at last was refused; but, in obtaining this refusal, Harrison was put to an expense of L. 7 : 17 : 6.

For this sum, he brought a process against Wilson before the Sheriff of Dumfries, in which the Sheriff pronounced this interlocutor, (4th March 1773):— "Finds the libel relevant, and that the pursuer has a just title to insist for repetition of the expenses libelled; as, otherways, a rich litigious debtor might expose a poor creditor to expenses exceeding the amount of his just debt."

The defence pleaded for Wilson was, that, as the Court of Session had decreed no expenses to Harrison, it was not competent for him to ask them in a subsidiary action before the Sheriff. But this plea was absurd. The Court of Session, in passing or refusing a bill of suspension, by their forms, are precluded from giving expenses; and, therefore, their not giving them could afford no defence in the present action before the Sheriff. For although it is a general rule that one cannot ask expenses by a subsidiary action, yet this only holds in cases where the Judge has it in his power to give expenses, but gives them not, either because they are not sought, or that he thinks them not to be due. But where he is precluded from giving them, merely by form, it is competent to ask them by a subsidiary action.