

No 21.

Lords affoiz-
ed the jailor's
relict, because
her husband
behoved
to obey the
magistrates.

defenders having produced several partial discharges of the debt given by him, (for if they be discharges granted by one's cedent, they will not so much reflect upon him,) 'THE LORDS not only suspended the letters *simpliciter*, in respect of 'his discharges produced; but also fined him in 100 merks of expences for his 'calumny.' It were to be wished, that the Lords did more frequently modify larger expences than they do, *in pœnam temere litigantium* *. (Referred to *voce* REPARATION.)

Fol. Dic. v. I. p. 106. Fountainhall, v. I. p. 61.

1767. *January 22.*

MACPHERSON *against* ARROT.

No 22.

A factor for
the rebels, in
1745, indor-
fed precept
on tenants
for their farm
viñtual, by
order of the
pretender's
secretary.
He was found
not liable in
recourse.
The indorfee
was in the
knowledge of
his situation,
and he was at
the time un-
der absolute
controul.

JOHN ARROT, by order of John Murray of Broughton, secretary to the Pre-
tender, drew precepts on the tenants of the estate of Winton for their farm
viñtual. These precepts were accepted by the tenants, and indorfed by Arrot;
against whom action was brought, after the precepts had been protested against
the tenants, for not delivery, and against the drawer for recourse

The pursuer *contended*, That these precepts must be considered in the same
light as bills of exchange, so as to subject the drawer and indorfer in recourse.

The defender, on the other hand, *pleaded*, That the precepts were null, as
wanting the solemnities of probative writings. And, supposing them actionable,
that the indorfations could be made in no other light than that of an assigna-
tion, which implies warrandice from fact and deed only; and which warrandice
is not incurred in the present case, since the refusal of the tenants to deliver the
viñtual was not occasioned by the fault of the defender, but was a necessary con-
sequence of the suppression of the rebellion; so that the principles will apply,
which were established in the action brought by the Town of Paisley, against Mr
Murray, for restitution of the money levied by the rebels. *See* REPARATION.

'THE LORDS, in respect the precepts were drawn by the defender, as factor
'appointed by the rebels upon the estate of Winton, and purchased by the
'pursuer's author, when in the knowledge of the character in which he acted,
'and that the value paid was applied for behoof of the rebel army, which was
'then in possession of that part of the country, found that the defender is not
'liable in recourse.'

Act. Jo. Williamson.

Alt. Montgomery.

Fergusson.

Fac. Col. No 52. p. 281.

* What is in the text is all that had been printed of this case. What is on the margin is taken from the MS.