

proceedings? We all agreed, that unless falsehood had been specially submitted and determined, that it is competent; but then we thought these warrants being now lost and amissing not sufficient;—and therefore adhered, but with the addition, in respect no direct evidence was offered of the falsehood.

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### INDEFINITE PAYMENT.

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No. 1. 1739, Nov. 9. *FORBES against INNES.*

THE Lords found that the indefinite payment must be imputed as the creditor would have it, to the debt worst secured, and they considered the engagement for Sir John Gordon not as a subsidiary obligation, which implies a condition of discussing the principal, whereas here Robert undertakes the debt on condition that the creditor would not follow out the diligence he had already raised.

\* \* The case, Creditors of Harwood against Paterson of Kirkton 7th December 1742 is referred to as decided in the same way. That case is thus mentioned in the Notes.

FIND that the creditor may apply indefinite payments or intromissions to payments of such debts as were not secured by inhibition and other diligence. We also thought that he could likewise apply these intromissions to payment of debts not bearing annualrent, but the point seemed finally settled by the decret 1737 which ascertains the sum that bears annualrent.

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### INDEMNITY.

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No. 2. 1747, July 3. *ALEXANDER against DENHOLM.*

DENHOLM having in several different companies scandalized and injured Alexander, that he had given notice to the Rebels of the Duke's march which had occasioned Alexander to be confined till he proved his good character; he now sues Denholm for damages, and Denholm pleads the indemnity, which the Sheriff sustained; and on a bill of advocacy we were divided about the indemnity; the President against it. Arniston and I wanted first to see the proof, but at last we agreed to advocate.

No. 3. 1752, Feb. 26. *STRACHAN against M'LACHLAN, &c.*

STRACHAN pursued these four defenders, libelling that in February 1746 M'Lachlan who was Aid-de-Camp to General Husk, and Bruce, Judge-Advocate to the army, when