

No 56.

at that time for suppressing the rebellion ; but is justified by the act of Parliament made to that end.

Pleaded for the pursuer, He knows not that Ardloch was concerned in the rebellion ; which if he was, is a matter that cannot be properly enquired into now, as he is indemnified ; he is therefore fully re-instated in all his former rights ; he has property in his effects, and action for recovery thereof ; the pursuer is not insisting against Auchany for the penalty of spulzie, or for the value of cattle intromitted with, and employed for the public service, or even disposed of by order ; he might defend himself for these acts, as being done against a rebel in open hostilities ; or if that was not the case, upon the indemnity, if the fact was committed for suppressing the rebellion ; but this is a pursuit for cattle, still in his possession, or what he has converted to his own use ; and the indemnity was never intended for defending any person in converting to his own use the property of another, either innocent, or who must be held as such.

Pleaded for the defender, It is a material fact that Ardloch was in the rebellion ; as in that case it was just to make war against him, to seize his effects, and he can have no action for recovery thereof ; if the effects of a good subject should be seized for suppressing the rebellion, he might vindicate what of them were extant ; but he could have no action for the value of any not extant, because the intromitter was justified by the indemnity ; and it might be doubted whether he was not excluded from any action for the value of what was used or disposed of, though by the intromitter for his private use, which was indemnified ; but the goods of a rebel were lawful prize ; at least though vindication should be competent, there could be no action for the value.

THE LORDS found, that if Ardloch was concerned in the rebellion, no action did ly.

Reporter, *Strichen.* Act. *Lockhart.* Alt. *H. Home.* Clerk, *Forbes.*

Fol. Dic. v. 3, p. 233. D. Falconer, v. 2. No 247. p. 302.

1752. February 26.

JOHN STRACHAN, late Tenant in Redfoord, against LIEUTENANT ARCHIBALD MACLAUCHLAN.

No 57.

An officer of the army seizing, during the rebellion, a person's goods who is suspected of being concerned in the rebellion, and on that account made prisoner, and disposing of

INFORMATION having been given to the officers commanding his Majesty's troops, who were in pursuit of the rebels in 1746, that John Strachan had been in the rebellion, they ordered him to be apprehended, and his goods to be seized. Accordingly, on the 26th of February 1746, Lieutenant Maclauchlan, with a party of soldiers, apprehended Strachan in his own house, seized all his horses, cattle, and sheep, and carried him prisoner to Aberdeen ; and the goods were delivered to the Commissary for the army ; who, by orders from the general officers, sold them, and accounted to the government for the price. Strachan remained prisoner for some months, but afterwards was dismissed.

He brought an action of spuilzie and damages against Lieutenant Maclauchlan; and *insisted*, That he had continued loyal during the rebellion, and was living peaceably at home when the spuilzie was committed; that therefore, though the acts of indemnity might extend to justify the apprehending suspected persons, pressing horses, carriages, &c. for the King's service, entering houses, quartering soldiers, and such like, during the rebellion, yet they could never justify the robbing an innocent person of all his effects.

Answered for the defender, That it was the duty of the officers of the army to apprehend the persons, and seize the goods of all concerned in the rebellion; and in the discharge of that duty, it was impossible in every instance, to avoid committing of mistakes; that it was chiefly to secure them from the consequences of such mistakes that the acts of indemnity were made. This is evident from the generality of the words of these acts. It is not necessary to prove the pursuer's accession to the rebellion. It is sufficient that he was suspected thereof, and that the officers were so informed; and that the goods were seized, 'with an intention to suppress the rebellion, for the preservation of the public peace, or for the service and safety of the government;' and were not converted to the private use of the seizers, but were disposed of on account of the public; that as the pursuer can have no action for wrongous imprisonment, so neither can he have any for the seizure of his goods.

'THE LORDS found the defender entitled to the benefit of the acts of indemnity; and therefore sustained the defence, and assoilzied.'

Reporter, *Lord Milton.* Act. *Ja. Ferguson, Lockhart, and Burnet.*
Alt. *Ro. Craigie, Ja Dundas, & Bruce.* Clerk. *Kilpatrick.*

B. Fol. *Dic. v. 3. p. 233.* Fac. *Coll. No 8. p. 12.*

1758. December 1.

YOUNGER CHILDREN of CAMERON of Lochiel *against* His Majesty's ADVOCATE.

SEVERAL years prior to the 24th of June 1745, Cameron of Lochiel granted moderate bonds of provision to his younger Children. The bonds contained a power of revocation, and dispensed with the not delivery.

Lochiel having been attainted for the rebellion of 1745, and his estate forfeited, his children claimed upon these bonds of provision.

Objected for his Majesty's Advocate, *imo*, They contain a power of revocation. *2do*, There is no proof offered of the bonds having been delivered evidents prior to the 24th of June 1745.

'THE LORDS dismissed the claims.'

Act. *Montgomery.* Alt. *Crown Lawyers.*

J. D. Fol. *Dic. v. 3. p. 233.* Fac. *Coll. No 138. p. 253.*

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these goods for the use of the army, is, by the acts of indemnity 19th George II. freed from all action at the instance of the proprietor, although dismissed from prison without being brought to a trial.

No 58.
In claims upon forfeited estates for bonds of provision, delivery prior to the statutable date of attaintainder must be proved.