

majority, (Chief Justice and Burton, J.) *held*, he must be deemed, not to have been a party, and overruled the exception.

Russouw  
v.  
Sturt.

Menzies, J., *held*, that, as the plaintiff had, in the proceedings in the appeal, prosecuted by him, judicially averred, that he had been the *complainant*, in the case appealed, (which by § 113 of the Crown Trial, gave him the legal character of prosecutor, and subjected him, to all the consequences of the prosecution,) he was barred *personali exceptione*, from now pleading, that he had not been the complainant, and consequently, that the Court, could not now look into the record, in the Court below, to ascertain, whether he had been a party or not, and on this ground, held, that the exception should be sustained.

Exception repelled, with costs.

WELLS v. MACKENZIE, q.q. CAMPBELL.

[30th June, 1829.]

*Indemnification, ordered by Arbitrators to be given, means merely Personal.*

The plaintiff had obtained a rule on the defendant, to show cause, why he should not perform an award, which had been made a rule of Court.

Wells  
v.  
Mackenzie,  
q.q.  
Campbell.

The defendant offered performance, provided the plaintiff should perform his part.

The question between the parties was, whether the *indemnification* from the plaintiff, which the arbiters had awarded, should be given by the plaintiff to the defendant, meant, the plaintiff's personal obligation to indemnify, or good security by third parties, to indemnify the defendant.

The Court held, that *indemnification from the plaintiff*, meant *personal indemnification*, and made the rule absolute, with costs.

JONES v. CANNON.

[4th Sept., 1829.]

*Evidence—Declaration made before a Notary by a person, since dead, and not sworn to, not admissible.*

Joubert, for the plaintiff, proposed to put in evidence, the declaration before a notary, made, according to the form of procedure in the late Court, by a person, intended to have

Jones  
v.  
Cannon.