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.

Jones v. Cannon.

been produced as a witness, but who had died, before he had been in the usual form *recalled* and sworn, to the truth of his declaration, and maintained, that even if it could not be deemed, to be complete legal evidence, he was entitled to put it in, for the consideration of the Court, *ad informandum animum Judicis*, and quoted Van der Linden Judic. Practyk., b. 3, c. 4, § 5; Voet 22: 5, 14, 15; *l. ult* C. *de Testib.* (4. 20.)

The *Court held*, that whatever might have been the practice in the late Court, this declaration, could not be put in evidence, for any purpose, or to any effect, in this Court, and rejected the declaration.

Ruthven *v.* Poggenpoel.

[4th September, 1829.]

Injury Verbal—what words not actionable.

Ruthven v. Poggenpoel.

This action was brought, to recover damages from the defendant, for the injury sustained by him, by reason of certain defamatory words and expressions, spoken by the defendant, of, about, and against the character of the plaintiff.

The defendant had granted a promissory note, for Rds. 400, which came into the plaintiff's possession, who caused it to be presented to the defendant for payment, on which occasion, it was alleged, that the defendant had said: "that the whole of said note, had long ago been paid, and that he owed the plaintiff nothing," although he well knew, that Rds. 300 were still due on it by him to the plaintiff.

These were the words on which the action was founded.

After hearing the case opened, by Mr. Denyssen for the plaintiff, the Court, without calling on the defendant, held that those words, afforded no ground of action, and dismissed the action, with costs.

In Re Insolvent Estate of Loudon.

Discount Bank *v.* Dawes.

[28th September, 1829.]

Preference,—Notarial Bond,—General Mortgage,—no preference, unless enregistered in General Registry Office.

Special Mortgage on a Slave,—no preference without such Registry, although enregistered in the Slave Registry Office.