

pay, and sent it to Jackson : Jackson turning insolvent in a little time after, one Watson, his creditor, got the account, and pursued John Drummond for the balance. Alleged for the defender, That, since the account relates to bills as the ground of the debt, he could not be liable unless these bills were retired and satisfied ; for they might have been protested for not-payment, and so come back upon the defender, as one or two have. Answered, Bills of exchange not being protested and returned *debito tempore*, the drawer is free ; and, if the pursuer, who is a creditor to Jackson, and not master of the bills, were obliged to produce them, Drummond, by collusion with Jackson, getting him to keep up the bills though truly paid, could not be overtaken ; which were absurd. And two of the bills being only protested, though all were drawn a good time since, the rest are presumed to have been satisfied ; and the pursuer produces a bill, drawn by Drummond on Jackson, posterior to the fitted account, which is satisfied. Replied, Law prefixes no determined time for returning protested bills ; and the intimating the protest was only necessary in case the defender had had effects in Jackson's hand, to be drawn out of it *debito tempore* ; or to put the defender upon his guard, not to give Jackson new credit. 2. When Jackson, the bankrupt, collusively furnished the pursuer with the said account and bill, he would have furnished him with the other bills also, for clearing the balance, had they been retired and satisfied. The Lords found no process against the defender for so much of the balance as answered to the bills that were not returned to the defender, till such time as the said bills should be returned to him.

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1686. *January.*

CRAIGHALL *against* ATHERNIE.

ATHERNIE having suspended a bond granted by him to Craighall, for his entry, upon this reason :—That his lands being a part of the abbacy of Northberwick, which was annexed to the crown in the year 1633, the king is superior, and nothing reserved to the lord of erection but the feu-duties, till redemption ; so that the suspender hath mistaken Craighall for his superior ; and here the king's advocate concurs with the suspender. Answered, By the Act of Parliament 1661, there is an exception of such vassals as had consented, or should consent, to rights of superiority of church-lands, as importing a resignation of the property in favours of the superior ; and here the vassal, in the year 1634, made a formal resignation of the property in the king's hands, in favours of Craighall, then lord advocate, who was infest thereon ; which is much stronger than a bare consent mentioned in the Act of Parliament, and would have been a valid right, though there had been no such provision in the Act of Parliament for making consents equivalent to resignations ; for, at all times, resignations were lawful, even before the Act of Parliament. The Lords found the letters orderly proceeded, and the sum payable to Craighall, as superior, for the entry.

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