

abstracted and withdrawn the former process depending at the time the advocacy was produced, to frustrate the poor tenants of their legal remedy, and then intent a new process of removing posterior to the advocacy; and hurried it through to a sentence, before the advocacy could be got produced again: and that the clerk would collude with thir poor men against the judge and these considerable gentlemen, contrary to his own interest, to carry away causes from himself, passes all understanding, and will never be believed.

REPLIED,--This is but founded on a slender presumption, and at most is but *fictio fictionis*, and can never burden them so as to presume their knowledge of that advocacy.

The Lords thought such judicial deeds were probative; and so found there was a contempt, and fined them in 100 merks to the parties for their damage.

*Vol. II. Page 338.*

1706. June 29. SIR JOHN SWINTON *against* The LADY CRAIGMILLER.

SIR Alexander Cockburn of Lanton being debtor to Sir John Swinton, he prevails with the Lady Craigmiller, his sister, to draw a bill on Sir Alexander Gilmor of Craigmiller, her son, for 1000 pounds Scots, payable to Swinton. This bill Sir Alexander refuses to pay, alleging he had no effects in his hand; whereupon it is protested in 1698 for not acceptance, and lies over till 1705; and then he raises a process against the Lady as drawer, to warrant her bill, and pay the sum therein contained.

ALLEGED,--The Lady could not be liable, the bill not being duly negotiated, nor the refusal of it timeously intimated to her, but suffered to lie over five or six years; by which neglect she was lesed, and prejudged of her relief and recourse against Lanton; for, he being now dead, she was precluded of all relief. And that she received no value for that bill, but was a mere gratuitous compliment to her brother. And, by the mercatorian laws and customs of foreign parts, if the creditor of a bill refused to be accepted or paid, do not do diligence against the drawer within the space of six or seven months after his protest, he is by his own negligence excluded from recurring against the drawer; because, by not certiorating the drawer, he may lawfully presume it is paid; and, if he knew the contrary, he could affect the goods of him on whom he drew, and so make his own relief effectual; whereas, by your taciturnity, he may break in the mean time, and so the drawer loses his relief.

ANSWERED,--Whatever prescription the municipal customs of other nations have introduced, as to foreign bills of exchange for expedition of commerce, yet this cannot extend to inland precepts as this: For the Act 1696 provides the same execution to pass on them that is appointed for foreign bills by the Act of Parliament 1681; yet that relates only to summary diligence, but not as to any prefixed time for negotiating such bills, as to which there is no rule yet fixed by our law, or a strict negotiating of them prescribed; therefore, the Lady, as drawer, must still be liable.

The Lords thought it very reasonable that even inland precepts should be limited to a time for recourse against the drawer, else it might be very prejudicial and ensnaring: Yet, our law having prescribed no time, the Lords repelled the Lady's defence, and found her liable in the sum.

*Vol. II. Page 339.*