

Nov. 18, Repelled the defences on the delay of payment and on taking the bond 1737. Found that the balance in Ochterlony's hands of Mr Murray's money on 18th March 1736 ought by him to have been applied to pay the bills paid by him that day *supra* protest.

No. 33. 1743, Dec. 16. STRAITON *against* SCOTT of Millbie.

A BILL that went through the hands of several indorsers, being at last paid *supra* protest for the honour of the first indorsee, who repaid him, and the indorsations were scored, the first indorsee desired that the bill might be registrate at his instance in order to summary diligence; which we granted, as we did to Patrick Crawford of Auchnames, 13th January 1736. I had another difficulty. The drawer was in Hamburgh, and it was payable in Hamburgh, and I understood that it was drawn in Hamburgh, and I doubted if it was within the words of the act 1681, which are "foreign bills from or to the realm." And Arniston and others seemed to have the same difficulty. But upon looking at the bill, it was dated at Kirkwall in Orkney, and was clearly within the act.

No. 34. 1744, Jan. 5. DRUMMOND *against* GRAHAM.

A BILL bearing annual rent and penalty, being put in suit long after the alleged acceptor's death, a proof was brought to astruct the bill, and it was indeed very convincing, but it was only by parole evidence. We sustained the objection to the bill; *renit. multum* President, Arniston, &c.; and it carried indeed by the smallest majority to adhere to our former interlocutor of 9th December last.

No. 35. 1744, Feb. 22. ROBERTSON and HALIBURTON, *Supplicants*.

A BILL was accepted by a person drawn upon, but *supra* protest for honour of the original creditor, who had indorsed it; and it had then gone through several hands, and after that acceptance, was again indorsed to others, and then paid by Robertson, the person accepting *supra* protest; whereupon he and Haliburton applied for special warrant to operate against the drawer, and all others concerned. We granted it against the drawer, but we would not give it against any other.

No. 36. 1744, June 15. STEWART *against* EWING.

BREW drew a bill upon Faws for L.169 sterling, payable to Busta, indorsed to Ewing; which was protested for not-acceptance, 25th November 1736, when Faws had fish in their hand, but owed no money, and therefore refused acceptance. 15th December Stewart arrested in Faw's hands, and thereafter the fish had been sent to Barcelona for Brew's account.—The price was returned to Faws, and a competition arose betwixt Ewing, as creditor in the bill, and who concluded that that was a virtual assignation to the proceeds of the fish,—and Stewart, who insisted that a bill is no assignation, though it will give action against the person drawn on, if he wrongously refused acceptance, which cannot be said of Faws. The Lords appointed memorials, but they gave us little light; but the Court *nem. con.* found the arrestment preferable.