

No 204.

A ticket bearing receipt of money from a person in name of another, presumes the money to have been the debtor's, and not the deliverer's.

1672. *January 20.* TROTTER *against* Mr JAMES ROBERTSON.

ROBERTSON of Newbigging having disposed his estate to Mr James Robertson, his son, who gave a backbond for a small annuity, which being assigned to John Trotter, he pursues for payment. The defender *alleged* compensation, and for proving thereof, produced a ticket granted by a creditor of his father's, bearing the creditor to have received the annualrent of that sum from the son in name of the father, and discharging the father, and therewith producing the bond due to that creditor. The pursuer *alleged*, That the compensation was not proved, because the ticket, bearing the money received by the son in name of the father, did presume that the money was the father's, and not the son's, nothing being more ordinary than to send money with any friend, and the receiver doth ordinarily express the deliverer to prevent the making twice use of the same payment; and if that should import that it were the deliverer's own money, it would be of a very dangerous consequence, and might make recourse against the sender of that money, to pay the same to the deliverer; but the presumption is much stronger, when the deliverer is a son, who, if he had meant, that the payment should be allowed to him in satisfaction of the annuity, might easily have expressed the same in the discharge, *et in dubiis interpretatio est facienda contra proferentem*. It was *answered*, That the son having the discharge in his own hand, and being debtor to the father, it must be presumed the son's money, otherways the father would have called for the discharge.

THE LORDS found, That such discharges did presume the money to be the debtors, and not the deliverers, unless by other circumstances, or evidences, the presumption were preponderate; but the son being at the bar, they did resolve, before answer, to take his oath, for clearing by whose money this payment was made; and he having deponed that he had intromission with other rents of his father's, besides this annuity, though he did declare it was exhausted otherways, yet the LORDS found the presumption for the payment by the father's means was not taken off, and that therefore the discharge produced did not prove the compensation.

*Fol. Dic. v. 2. p. 151. Stair, v. 2. p. 52.*

1708. *February 24.*

The CREDITORS of JOHN CORSE *against* JAMES PEDIE, JOHN LUKE, and other Partners of the Easter Sugary of Glasgow.

No 205.

Where a person had subscribed the books of a

JOHN CORSE having subscribed, in the books of the African Company, L. 500 for himself, as much for James Pedie, and the like sums for John Luke, Robert