

1711. June 11. & 12.

DONALDSON *against* WALKER.

No 508.

A DOCQUET in the following words, In witness whereof, I have subscribed these presents, &c. does not import the writ to be holograph; and, therefore, the party was forced to offer a probation of holograph, *comparatione literarum*, and by witnesses who saw it written and subscribed.

Fol. Dic. v. 2. p. 258. Forbes. Fountainball.

* * This case is No 188. p. 11511. *voce* PRESUMPTION.

1725. February.

MR JOHN KENNEDY of Kilhenzie, Advocate, *against* CAPTAIN HUGH ARBUTHNOT of London.

CAPTAIN ARBUTHNOT being sued, as heir to Kennedy of Baltersan, upon three bills accepted by Baltersan, at London, for value, payable to Thomas Kennedy, and which the pursuer Kennedy of Kilhenzie had right to, the defence was, "That Captain Arbuthnot being an heir, bills do not prove their date against him, but like holograph writs are presumed to be granted on deathbed; and therefore he is not liable, unless the pursuer instruct the bills were accepted while Baltersan was in *liege poustie*, or 60 days before his death."

No 509.
Bills prove
their date a-
gainst an
heir.

It was *urged* accordingly for the defender, *imo*, There is even less reason that bills be allowed to prove their date, than holograph writs. *2do*, If bills were allowed to prove their dates, the law against deathbed deeds would be entirely eluded: For it were easy to get a sick man to antedate a bill; and all deeds on deathbed would come to be transacted in the way of bills. *3tio*, Whatever might be done in the case of foreign bills; with respect to inland bills, and these not among merchants, there is no reason for allowing them any privilege of this kind.

On the other side it was *pleaded*, That if bills prove not their date against the heir, it must follow that they prove not their date in any other case; for so it is as to holograph writs, from which the argument in the present case is drawn. Now, holograph writs prove not their date against any third party: See 14th January 1662, Dicky *contra* Montgomery, No 497. p. 12606.; 21st June 1665, Braidie *contra* Fairny, No 498. p. 12607. And for the same reason it must hold, if one becomes bankrupt in terms of the act 1696, whereby all his voluntary deeds, within 60 days of the bankruptcy, in satisfaction or security of any of his creditors, are void, all holograph writs, though bearing date long before, will be annulled by that statute, because they do not prove their dates. If then bills prove not dates, more than holograph writs, it must