

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

Corse, and William Corse, and for Robert and George Bogle, L. 250 each, extending in whole to L. 3000; and the payments made to the Company, conform to the subscription, being recorded in their books, either as made by John Corse and partners, or indefinitely as paid by the co-partners of the Sugary; and a certificate being given out, in the terms of the act of Parliament, stating these co-partners creditors of the Company in their several shares of what was paid up effecting to their respective proportions of the stock, extending in the whole to L. 1343.—there arose a competition betwixt James Pedie, Robert Bogle, and John Luke, and the Creditors of John Corse.

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company for  
others. The  
money paid  
was presumed  
to have been  
advanced by  
these parties  
to their man-  
datary.

*Alleged* for the Creditors of John Corse; That the whole L. 1343, with the interest thereof at five *per cent.* to the 1st of May last, belongs to them, in respect John Corse, their bankrupt debtor, being the only subscriber and person bound to the African Company, and there being no obligation upon those for whom he subscribed, the moieties are presumed to have been paid out of John Corse's own money, unless the other parties prove that they made the payments themselves.

*Answered* for Pedie, Luke, and Bogle; John Corse's qualified subscription in the books was as valid an instruction of their shares, as if there had been formal transfers in their favours, at least equivalent to a backbond of the date, which would have so affected his share, as his creditors thereafter could not reach the same by diligence, to the prejudice of the co-partners. And though he only was bound to the Company, yet he did effectually communicate a share to the rest, and might no doubt have pursued them upon their oaths to pay and relieve him of their moieties. Again, seeing the payments are set down in the books indefinite, as from the partners of the Sugary, or from John Corse himself, and in name of the rest, law presumes the advance was made by all of them, unless the creditors of Corse will instruct *scripto*, or *juramento*, of the partners, that he made the whole payments; for had Corse been the sole payer, the payments would have been recorded in other terms, to clear that all was paid with his money.

THE LORDS considering, that John Corse signed the Company's books for James Pedie and John Luke, each of them L. 500 Sterling, and for Robert Bogle L. 250; and that the said persons are also stated as creditors to the Company in the said sums, by the certificate obtained from the Committee of Directors; therefore the LORDS found, That John Corse's subscription was to the behoof of James Pedie, John Luke, and Robert Bogle effecting to their respective above-mentioned sums, and that the money is presumed to have been advanced by them; unless it be offered to be proved by their writ or oath, that the money was not advanced by them, but by John Corse.