

No 607.

to the bill. *2do*, The proving figures to be holograph is impossible, and of dangerous consequence. *3tio*, The decision betwixt Miller and Bonnar differs *toto celo*, for in that case there was a holograph account of debit and credit; whereas here there is no mention of payment made to the defunct, but only some figures set down, which seems rather a scheme how payment was designed by the debtor in the bill; especially considering that he hath no receipt.

*Replied* for the defender; The deceast Robert Watson acted herein like other rigid creditors who use to note payments made on the bill, but not to grant receipts, industriously to oblige the debtor, out of fear to be charged for the whole, to pay the balance more quickly. *2do*, Figures being mixed with some words may be proved to be holograph, as well as writ; the former being capable of as many varieties by their peculiar strokes as letters. *3tio*, The account exactly agreeing with the sum in the bill, and the interest stated accordingly, doth clear that the one relates to the other; *hoc maxime attento*, that it appears from the defunct's books, that he had no other dealing with the defender for several years before; and it is not probable that he would have inserted an extraneous account upon a principal bill.

THE LORDS sustained the defence, in respect the bill whereupon the account was stated, was still in the possessor's own hand.

*Fol. Dic. v. 2. p. 269. Forbes, p. 321.*

No 608.

A bill with a receipt of contents, written and subscribed by the creditor, and found among his papers after his death, not sufficient to exoner the debtor, in respect law presumed that the receipt was written *spe numerandæ pecuniæ*, and that payment was never made, seeing the bill and receipt were undelivered.

1709. July 20.

JANET COCHRAN, Relict of James Allan Writer in Edinburgh, *against* JOHN PRINGLE, Litster there.

IN the action at the instance of Janet Cochran, as having rights to all her husband's moveable debts, against John Pringle, for payment of L. 90 Scots contained in a bill drawn by David Forrester upon, and accepted by the defender, payable to James Allan the pursuer's husband; the LORDS found it not relevant to assilzie the defender, that the pursuer's husband had written and subscribed upon the bill a receipt of the contents; in respect the bill with the receipt upon it was found among the husband's papers after his death; and therefore the receipt was presumed to have been written *spe numerandæ pecuniæ*, and not being delivered, law presumes that payment was never made.

*Fol. Dic. v. 2. p. 269. Forbes, p. 349.*