

1707. February 8.

JANET MAITLAND, Relict of William Ross, Vintner in Edinburgh, *against* JOHN BAILLIE, Apothecary there.

No 19.

An account of furnishings being referred to oath, the defender acknowledged it; but added, he was to be allowed for drugs furnished by him in part. The quality found intrinsic.

JANET MAITLAND, as executrix to her husband, pursues the said John for payment of L. 238 Scots, as the price of wines and other things furnished to his family at several times; and the libel being referred to his oath, he deponed, that he believes he received most of the articles of the account, though his memory cannot serve him as to every particular; but that it was expressly pacified and agreed, that he should have allowance of his drugs and medicaments he had furnished to them, and whereof he gave in an account, extending to L. 190 Scots or thereby. At advising this oath, two questions occurred, *first*, If this quality was intrinsic or not? And after reasoning, it was found *such*, being all one as if he had bargained, "I take the wine, on condition the drugs I furnish you go for the price of it *pro tanto*." The *second* was, if he should be allowed to prove his account, or if his oath sufficed? THE LORDS found, that it could not be, in regard the party had not referred it to his oath; but it was *stated*, that the account being past three years, was prescribed *quoad modum probandi* by witnesses; but it was *answered*, that the last article of the wines being within the three years, that hindered the prescription, and John Baillie thought himself secure that he needed not constitute it, the one furnishing being to compensate the other. THE LORDS found it not prescribed, but that it might be yet proved by witnesses, and withal his oath did not constitute it; but allowed him a diligence to prove it, as he would be served *prout de jure*; and that there was a necessity of his so establishing it, before he could get his compensation allowed.

Fol. Dic. v. 2. p. 297. Fountainhall, v. 2. p. 348.

1711. June 5.

FORBES *against* DEBTORS of CRAIGY.

No 20.

THIS quality, that at receiving the goods, the pursuer agreed to accept of other goods in payment and satisfaction *pro tanto*, and that the deponent had accordingly furnished other goods to the pursuer, was found intrinsic, as being *pars contractus*.

Fol. Dic. v. 2. p. 297. Fountainhall.

* * This case is No 311. p. 12464. *voce* PROOF.