

lar successors for their own payment, otherwise no assignee could be secure, but after the assignation the cedent might write receipts in his book; but though he should grant a holograph discharge bearing date before the assignation, it would not prove against the assignee. The defender *answered*, That the count-book was sufficient to prove liberation, being by a judicious person, though not a merchant, for it could be done to no other intent than to preserve the memory of the payment made, which though most ordinary amongst merchants, is no special privilege of theirs; and albeit an undelivered discharge would not be sufficient, yet that being but *unicum chirographum*, requiring delivery, hath no effect without delivery; but a count-book contains many writs, and requires no delivery; and albeit it should not prove against an assignee, as neither would an holograph discharge, yet it is sufficient against an executor creditor, who can have no right till the defunct be dead, and so there can be no hazard of receipts posterior to their right; and therefore against an executor creditor a holograph discharge would prove.

“THE LORDS found the allegiance of the count-book written with the defunct’s own hand sufficient to instruct payment of the articles mentioned therein; but seeing the defender who paid was on life and present, ordained him to make faith that he truly paid accordingly.”

Fol. Dic. v. 2. p. 260. Stair, v. 1. p. 143.

1665. July 1. Mr JAMES NASMITH *against* ALEXANDER BOWER.

THIS being a concluded cause, a question arose upon the probation, an account being produced between two merchants, referred to Bower’s oath, that it was his hand-writ, and yet resting, he deponed it was his hand-writ, but not resting. The question arose, whether he behoved to condescend and instruct how it was paid; because, though the account written with his hand unsubscribed, was of itself sufficient probation, the quality was not competent, but he behoved to prove payment, it being alleged that a merchants’ hand-writ is sufficient, and that a note on the back of a bond, or foot of a count, by the debtor’s own hand-writ, though not subscribed, has been found probative.

“THE LORDS found, that if this had been a current count-book, it would have been probative, but having been only some few schedules of paper, found it not probative without subscription, albeit it was acknowledged by the oath to be the deponent’s hand-writ.”

Fol. Dic. v. 2. p. 260. Stair, v. 1. p. 293.

No 514.

No 515.
An account on several pieces of paper, not probative to instruct a debt against the writer of it, who acknowledged that he had written it, but that he had also paid it.