

In figures, offered to be proved to be the Creditors hand & word was sustained in a process at the Instance of his heir, to uphold the Acceptor except as to the said balance. In respect he offered to prove by witnesses, that payment was truly made for the said account, and the bill was still in the Factor's hand, the pursuer of Feb. 1709 Watson of Muir house contra Smith. An subscribed scroll of an account of charge and discharge in a sum due by bond was exactly stated, and given to the Debtor for it was sustained probative of the payment against the Representatives of the Creditors; the Debtor proving all ways that the account is the Creditors holograph writ, and was found lying by him at his death 19 Feb. 1709 Miller contra Representatives of Bonnar. In respect the bond and the account, summed together in the sum. An account and reckoning against a factor, he was allowed to discharge himself with payments and disbursements mentioned or otherwise to have been made by him to the constituent in his constituent's Holograph book of memory, and in scrolls or loose papers within the leaves thereof the factor always giving his initials in supplement thereupon 22 July 1714 Viscount of Garmockine and his Curator contra Wilson. But payment of a bond was not found by a Missive Letter, the Letter not being holograph nor in remercatoria 27 Decemb. 1710 Gordon of Buckie contra McIntosh of Borlams. In England payment of money may be proved by witnesses 28 June 1666 Minorlan contra McNeil.

Sometimes payment is presumed: as payment of a bond retained by and in the custody of the Debtor, or which the Debtor cannot produce, is presumed, unless the contrary be proved. Nam Holographum repertum penes Debitorem, whether principal or Cautiones 26 June 1623 Farniche contra Ray, Presumptio Solutum C. 2. ff. de pactis n. 1. de Deprobato vol. 2. Concl. 477. Yea it was found relevant to extinguish an heritable unregistered bond upon which forfeiture followed, that both were in the hands of the Debtor after the Creditors Decease before delivery to the assignee 26 January 1710 Simson and White contra Rollo. Because by taking the Debtors name from the bond, the seising would have

Have fallen for want of a Warrant: And the assignation which changed the Creditor, being put with the bond in the Debtors hand before delivery to the assignee, is Equiva lent to cancelling. One bond or bill found in his factors hand is, in the Interpretation of Law, Instrumentum penes Debitorem, and presumed to have been paid by the Constituent, and not by the factor, from his Simile having there of 22 July 1714 Viscount of Garmockine his Curator contra Wilson. This presumption takes not only effect against Bonds, but also against any other writ as an assignation found in the Creditors hand 19 Decemb. 1666 Fairly contra Dick. But the presumption that a bond is paid, arising from its being in the Debtors hand, or not received, may be enervated and taken off by proving that it came to him other wise than by fair delivery upon payment, viz. by finding or getting it up from a person who is not in whose hands it was lodged C. 15 C. de solid. Stair lib. 4 tit. 4 § 24 and both this presumption of Law hold where the Debt can be proved otherwise than by the writ found in the Debtors hand 27 Feb. 1638 Gordon contra Macle. That a bond in the Debtors hand is not satis fact and paid cannot be instructed by Missive Letters or the narrative of other writs, albeit these are admitted to prove the tenor of the bond, where the Exce's Amisio nis is sufficient by Instruction to take off the presumption of the writs being satisfied and relied by the Debtor Stair lib. 1 tit. 13 § 3 vers. Missives. A Goshaw Contracted by a wife for or self, was presumed to have been paid to the Husband from their having lived 22 years together, and the instance of her being the payment in his Testament: Albeit it was alleged by the heirs, that the Testamentary assignation could not prejudice him, but did import only Secutum Liberationis to effect the Deeds part of the free gear 16 Feb. 1671 Dods contra Scot. Where a Creditor by bond does thereafter grant bond to his Debtor for a certain sum the posterior bond doth not import a Liberation to the former Debtor of his bond, as if it were presumed that a Creditor would never make himself Debtor by an obligation to him who is standing indebted to himself but that he get Allowance or deduction of the proceeding Debt before he granted such a bond to his own Debtor. But both the bonds may subsist