

Discharge, where in a Sum due by bond was exactly stated in Bond given to the Debtor for it, was sustained probative of the payment against the Representatives of the Creditor, the Debtor proving that the account was the Creditor's Holograph writ, and found by him at his death: in respect the bond and the account joined together, in the sum of 19 Feb. 1708. Miller contra Representatives of Bonnar. And such accounts are understood to be found to no other End than for payment, the Generosity of payment made, which no Man is presumed to do to his own prejudice. It hath been questioned, whether an account book of any person who is not a Merchant could prove payment made to him: Because a Discharge would not free the party Discharged without being delivered to him, and far less an account book which is neither subscribed nor delivered. But this is the most ordinary among Merchants to keep such Current account Books, that is the special privilege of their's, and albeit an Undelivered discharge which is but a plain Holographum would signify no thing, yet an account book containing many words is Effectual with out Delivery, and requires not to be Delivered. Again, the discharge of a Debt assigned made to the Creditor, to the prejudice of his assignee; being otherwise it would be in the power of any man in the world, or by granting a Holograph Discharge of a Debt anterior to the assignation of it: Yet an account book was found sufficient to prove payment of rent to him by his tenant against his Executor Creditor, this a kind of singular exception. Because such an Executor Creditor could have no regard by Decretful Receipts of that Debtor posterior to the right: but the tenant being alive was ordained to swear to the truth of the payment 20 November 1662 Wardlaw contra Gray. The account book of a Gentleman (who not a Merchant) was found to prove against his Successor as to the Articles writ by him, though not subscribed, and some Articles were writ with other hands 17 Decemb. 1675 Cassie & Drummond contra Drummond. A Creditor's account book recovered by a Diligence against the Curators of his Representative was sustained for proving payment of his Grant annual rent of a Debtor's bond 23 January 1709 Stuart contra Lady Enterline. An account book of a Merchant all writ with his own hand containing not only mercantile but also other affairs, was found to prove against his heir 300

Months and the annual rent thereof both as to shared and discharged of particular payments, the last of this matter being proved by before his death who died last only, and the last proved in the book were so much of the sum then due do. Clark, 7 June 1674. Purgance contra Binning James A Factor's Holograph count book writ by him of his known good deegar and requested before any question was found to prove payments made to the factor, even as to the sale of his payments, to the prejudice of the factor's assignee, the debtors having a ips given their oaths that they paid conform to the Articles posted in the book, and the Creditor being the assignee's brother, it was not presumed he would wrong him by falsely Entering such Receipts in his book. All be it an Unsubscribed count Book could no more than a Holograph discharge, per se without other testimonies, prove the time that payment was made to the Debtor to the prejudice of an ordinary assignee, Vix that it was before Intimation of his assignation, being such a count book or Holograph Discharge might have been made up to serve a turn after Intimation of the assignation is July 1682 & 88 January 1663. Here contra Simondene. But in a Compulsion of the Creditor of a person deceased, proof of some other debts by the Debtor's Confession in his account book in some Articles written with his own hand but not subscribed by him, was not sustained as sufficient proof of the Debt, thereby to Exclude the Common Debtors eyes to the prejudice of Creditors who had legal and formal Remedies provided to them upon their Debt; unless it were also proved that the particulars acknowledged in the account Book were truly and really paid and delivered to the Deceased Common Debtor 20 January 1631 The Creditors of Brown. A subscribed account was found taken away by an Unsubscribed account falsified thereto on the same page written by the Creditor in the last account and placing him Debtor in the second as per Note given for the Balance: But the said Balance was presumed paid, through the Note referred to were produced 20 July 1680 Hickman contra Farbel. The account consisting only of some few schedules of paper was found not probative for not being subscribed, albeit it was acknowledged upon oath to be the parties hand writ 1 July 1665 Nashmill contra Bower. Articles of a Factor's Disbursements were found not sufficiently instructed by his books, containing the way and manner of the Disbursements, but behoved to be instructed by him according as the Nature of each Article required July 1688 Binning & Baird contra Alexander. Where an account book containing different affairs