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not intimated till the seventh day of May thereafter. To which it was *answered*, That the Bailies did no wrong, because the ticket subjoined to the end of the count had no date, and consequently was null, especially being written with another hand than the count itself; and though the date of the furnishing was set down on the head of the count, yet that date could not be interpreted the date of the obligation subjoined. It was *replied*, and offered to be proved by the witnesses, subscribers of the ticket, That it was truly subscribed of the date of the count.

Which the LORDS found relevant *hoc loco*, notwithstanding of the decret.

*Gilmour, No 149. p. 107.*

Newbyth also reports this case :

1665. *June 29.*—IN a pursuit betwixt Richard Thorntoun and William Miln, upon a ticket which wanted a date, the same being quarrelled as null, the LORDS found the date of the ticket might be supplied, and proved by the witnesses inserted.

*Newbyth, MS. p. 31.*

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The maxim *chirographum apud debitorem repertum, &c.* extends not only to a bond found in possession of the debtor, but to an assignation found in possession of the cedent, and therefore, proof by witnesses to the contrary was rejected.

1666. *December 14.* ANNA FAIRLY against CREDITORS of Sir WILLIAM DICK.

ANNA FAIRLY *alleging*, That she had obtained an assignation from umquhile Mr Alexander Dick, as factor for his father, in satisfaction of a sum due to her by his father, pursues for delivery of the assignation. The Creditors *alleged*, That the assignation being in the hands and custody of Mr Alexander, the granter, it must be proved by writ, he being dead, that it was delivered, and not by witnesses; for there is nothing more frequent, than parties, upon intentions, to subscribe bonds, assignations, and other rights, and yet do not, *de facto*, deliver them; or, if they have been delivered, to satisfy them and retire them. If witnesses were admitted to prove the delivery, or re-delivery of such writs, the lieges would be in extreme insecurity, contrary to our law, that admits not witnesses above an hundred pounds; and therefore *chirographum apud debitorem repertum præsumentur solutum*; which presumption cannot be taken away by witnesses. The pursuer *answered*, That though this holds in bonds, where there is a debtor, and no other adminicle to instruct the debt, yet this is an assignation, and the cause thereof otherwise instructed, and most likely to be truly done; and it is offered to be proved, that this assignation was delivered back to Mr Alexander, to be made use of as agent for the pursuer.

THE LORDS refused to sustain this member of the probation; but, because of the poverty of the poor woman, recommended the case to the creditors, to be favourable to her, and did forbear to write the interlocutor.

*Fol. Dic. v. 2. p. 216. Stair, v. 1. p. 412.*