

1752. *December 21.*CUMMING *against* MARSHALL.

No 156.

Where a sum in bank-notes is commissioned to be sent by the post, what evidence is necessary that the commission was executed?

In a count and reckoning, exception was taken by the defender to an article of L. 100 Sterling, entered as a sum sent in bank-notes by the pursuer to the defender by post, 29th October 1751; with respect to which, it was acknowledged that the pursuer, by letter, was commissioned to send that sum by the post in bank notes; but as the bank-notes came not to the defender's hands, he had no reason to suppose the commission was obeyed. It was *answered*, That the defender's letter of commission, dated 28th of October 1751, came to the pursuer's hand upon the 29th, the evening of which an answer, inclosing the bank-notes, was, with the pursuer's other letters, put into the post-house by his son, or one of his clerks; That a copy of the answer was engrossed in the pursuer's copy-book of letters, and the L. 100 entered that very evening in the pursuer's cash-account. A proof being allowed before answer, the pursuer was not able to bring any direct evidence of a letter being put into the post-house addressed to the defender, and inclosing bank-notes; and no wonder, for, from the proof, it appeared to be his practice in remitting bank-notes, to inclose the same with his own hands in the letters writ by his clerks, and also to put the seal upon them himself. In advising the proof, it was the opinion of the Court, that the pursuer's books, with his oath in supplement, if required, was sufficient evidence that the commission was obeyed. An example was given of notifying the dishonour of a bill of exchange, where a copy of a letter to the drawer or indorser, engrossed in the copy-book of letters, is sufficient evidence; without necessity of bringing parole evidence that the letter was writ and delivered at the post-house.

Fol. Dic. v. 4. p. 159. Sel. Dec. No 30. p. 33.

* * * The Faculty Collection report of this case is No 30. p. 10095. *voce* PERICULUM.

No 157.

A debtor offered to prove by witnesses, that tho' he did not pay the debt instantly on the delivery of the goods, he, according to what was usually done, paid it a few days after.

1786. *March 11.*CHARLES MACDONALD *against* ALEXANDER CALLENDER.

CALLENDER, a butcher in Falkirk, purchased a parcel of sheep from Macdonald, a grazier in Stirlingshire, as the latter was passing through that town on his way to the Edinburgh markets. Macdonald afterwards pursued Callender for the price; who, in defence, offered to prove by witnesses, that though he did not pay the money instantly on the delivery of the sheep, he, according to what was usually done, paid it a few days after, when the pursuer had returned from Edinburgh. To this mode of proof the pursuer objected; and

Pleaded; It might be relevant to prove by witnesses payments made *unico contextu* with the delivery of moveables purchased. But in the present case,