sufficient probation. See a note from Mascardus, *De Probationibus*, conclus. 977, *et seq.* verbo *Liber*, how far merchants' books prove against third parties; and of the qualifications requisite to make them instruct and constitute a debt. The Lords also found this legacy was not alimentary, nor priviledged so as to have any preference to be deducted before the other legacies, notwithstanding of sundry particulars condescended on why it should have preference, (which see in the informations;) but the Lords brought it only in *pari passu* with the rest.

Item, A debate arose upon one of the receipts produced, acknowledging payment from William, the executor, but thus qualified, "Out of the cash of the bank of Midlebrugh," which was contended to have been Robert's own money. ANSWERED, The allegeance was weak and frivolous. See this, and many other points and articles, discussed and determined in this count and reckoning, in the informations beside me. See Stair's Decisions, 17*th January*, 1662, *Andrew Willage;* but especially 20*th November*, 1662, *Wardlaw* and *Gray*. *Vide elegantem Legem* 7. C. *De Probationibus*. Mascardus *de Probationibus*, conclus. 977.

On the 24th of January, 1678, another point went to interlocutor, viz. whether William Andersone, the executor, ought not to have the third of the dead's part, for executing the office, since he was not a descendant of the defunct's body, and so *quadantenus* a stranger; especially the retention being craved not against a creditor, but only a legatar; and since, conform to the act of Parliament in 1617, he was content to allow any legacy left him in the fore-end thereof. Yet the Lords found he was not a stranger executor, and so ought to have no third.

What was Robert Andersone's wife's share in his moveables, (which was given up as an article of exoneration,) the Lords ordained the custom of Zealand therein to be proven by the declaration of the supreme judges there; and that Robert had a free estate, *scripto*, by his count-books, or otherwise; and found, that *nomina debitorum* followed his domicil, and so, albeit they lay in Scotland, the relict had right to a third, or other proportion thereof.

Advocates' MS. No. 669, *folio* 310.

[See the subsequent part of the report of this case, Dictionary, p. 11509.]

1677. *July* 27. The EARL OF WINTON *against* The MARQUIS OF DOUGLAS.

IN the former session there being a point taken to interlocutor, in the count and reckoning at the Earl of Winton's instance against the Marquis of Douglas, the Lords found the disposition made by the Earl of Angus to Dundonald, mentioning the wadsets, real rights, and other incumbrances on the estate of Paisley, amounting to L.108,770, did not prove the said incumbrances *per se;* but ordained the Marquis to prove them *aliunde*, by producing these wadsets and other creditors' rights, and gave him an incident for that effect: notwithstanding it was alleged for the Marquis, that since the said disposition was made use of for instructing of the charge, the same also might be made use of for instructing the incumbrances; which the Lords repelled, 1*mo*, Because no writ proves *pro scribente*. 2*do*, If the disposition had affirmed that the haill price of L.162,000 was exhausted by real debts, that narration could not have frustrated Winton's relief.

Advocates' MS. No. 670, *folio* 310.