

635.40 ACTION ON ACCOUNT - DEFENSE OF PAYMENT.¹

This issue reads:

"What amount, if any, has been paid to the plaintiff on the defendant's account?"

On this issue the burden of proof is on the defendant. This means that the defendant must prove, by the greater weight of the evidence, the amount of all payments made on the defendant's account.²

As to this issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence that payments have been made on the defendant's account, then it would be your duty to answer this issue in favor of the defendant by writing that amount in the space provided.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue in favor of the plaintiff by writing the word "None" in the blank space provided.

1. This defense is available to an account debtor whether the account is unverified (N.C.P.I.-Civil 635.20), verified and itemized (N.C.P.I.-Civil 635.30), or an account stated (N.C.P.I.-Civil 635.35).

2. *Goodwin v. Hinnant*, 250 N.C. 328, 108 S.E.2d 658 (1959).