

* * * Fountainhall reports this case :

OBJECTED against a fitted account, that the docquet of it wanted writer's name and witnesses. THE LORDS found this no nullity, seeing, in fortification of it, it was offered to be proved, the defender's father was sub-collector of that cess whereof it was the account, and they found the act of Parliament requiring witnesses related to bonds and writs of importance, and not to accounts. This is hard, for now since the act of Parliament, the discovering of falsehood may be elided by forging fitted accounts instead of bonds, seeing they need no witnesses, and then there will be no mean but *comparatio literarum*, which is very uncertain and vaccillant ; and why do we reject missive letters for want of witnesses as not probative, if this were good law. It is true bills of exchange for the favour of commerce need none, because they may be adminiculated by the party's books, and they require summer dispatch.

Fountainhall, MS.

No 519.

1683. March. JOHN CURRIER of Whytmure against PATRICK HALIBURTON.

A PERSON pursuing for a debt assigned to him by a merchant, it was *alleged* by the defender, That the debt stood discharged in the cedent's count-books.

THE LORDS finding that the book was an entire and fair merchant book, wherein the precise sum was marked received, of a date anterior to the intimation of the assignation, " they sustained it equivalent to a discharge."

Fol. Dic. v. 2. p. 260. Harcarse, (DISCHARGES.) No 418. p. 112.

No 520.

1685. March 20. MAXWELL against JOSEPH REID.

JOSEPH REID, Major of Carlile, and merchant there, having granted a note to Maxwell and Mulliken, declaring, That he had their bond for L. 150, for which sum he should be countable to them, or their order ; and having afterwards counted with Mulliken, and got a general discharge from him without getting up the note, (which was in Maxwell's hand) or any obligation to deliver the same, Maxwell pursued the Major.

Alleged for the defender ; That Maxwell and Mulliken being *socii* and partners in a drove of cows upon the road, any discharge of the one to that subject must oblige both. *2do*, The note being granted in England, where payment of the sums is proveable by witnesses, it ought to be sustained here.

Answered ; The note is neither discharged nor retired ; and there is no society in an obligation. *2do*, Though deeds done in England, according to the

No 521.

Payments stated in an account-book, admitted to do away the effect of a bond.