

No 297.

nesses, but pretended to be subscribed by the granter, which the LORDS did in respect of the custom, and that masters and tenants are in use to give and take discharges without witnesses; and that in the case of writs, letters, and bills betwixt merchants, the Lords are in use to sustain them, though they want witnesses; and there is the same, if not more reason in the case of tenants, by reason of the great and exuberant confidence betwixt them and their masters. Some of the LORDS thought it hard to recede from the law, there being no limitation or exception in behalf of tenants; *et ubi lex non distinguit nec nos*; and that there is a great disparity betwixt merchants and tenants; counts, letters, and bills of exchange, and other writs of that nature, being secret transactions betwixt merchants and their correspondents, whereunto witnesses and other persons, neither are in use to be, nor is it fit they should be privy; whereas discharges by masters to tenants are in use to be, and there is no inconvenience that they should be subscribed before witnesses; and there is no difficulty to get witnesses to them; and if they want witnesses, and be not holograph, masters may be prejudged, it being easy to imitate and forge a single subscription; and there being no means of improbation of the same. See WRIT.

*Dirleton, No 179. p. 76.*

1675. December 14.

CRAWFURD against M'CARTER.

No 298.

Found in conformity with Boyd against Story, *supra*.

CRAWFURD, as assignee by George Hamilton to a bond of 800 merks granted by M'Carter, chargeth him thereupon. He suspends upon a reason of payment, and produceth several discharges, bearing receipts in part of a greater sum. The charger *answered*, That he offered him to prove, that there was another bond due to the cedent besides this, to which the receipts are ascribable, and produceth the extract of a bond of a greater sum anterior to this bond. It was *replied*, That the prior bond was cancelled, because, by inspection of the principal, it is evident that the name of one of the cautioners is torn from it, and the witness to his subscription, to hide which it is lately registrated; and it is offered to be proved by the oath of George Hamilton, to whom the prior bond was granted, that it was paid to him otherwise than by the receipts produced. It was *duplicated* for the charger, That the oath of George Hamilton his cedent could not prove against him. It was *triplicated*, That seeing the assignee founds upon another bond to which he is not assigned, whatsoever may take away that bond is competent against him by the creditor's oath.

Which the LORDS found relevant.

*Fol. Dic. v. 2. p. 235. Stair, v. 2. p. 380.*