

No 521. solemnity there, are valid though wanting the formalities used in Scotland, yet the *modus probationis*, and effects of rights, are to be governed by our own law.

“ THE LORDS, *ex officio*, before answer, ordained the Major’s count-books to be inspected as to the payment of the debt to Mulliken, and witnesses to be examined in fortification of the said books ;” for the discharge was vitiated in the date, and not insisted in ; but payment in general proponed. And it was informed that the defender was cheated and circumvened by the drovers, to whom he had paid the money in parcels, and neglected to retire his note.

*Harcarse*, (PROBATION.) No 790. p. 223.

1696. February 13. AINSLY of Blackhill against ADAM CHISHOLM.

No 522.

An unsubscribed scroll of a tenant’s account, delivered to him by the factor of an estate, found probative against the landlord.

PHESDO reported Ainsly of Blackhill against Adam Chisholm, Lord Lothian’s tenant in his lands of Newton, for payment of two sums contained in a bond and a bill or precept. The defence was, by a fitted account, under your father’s hand (who was chamberlain) ~~these~~ debts are all stated and paid. *Alleged*, It is but an unsubscribed scroll, which has been only made up for memory’s sake, and is liable to several errors and corrections, and so not probative. THE LORDS thought if this scroll had been in the chamberlain’s hands, there might have been some ground of cavil ; but being delivered by him to the tenant, and all written with his own hand, the rusticity of labourers on the one side, and the nimbleness of chamberlains on the other, pleaded it should be sufficient to exoner, though it was not so authentic as a merchant’s count-book exactly kept. Some urged, that, beside the proving its being holograph, the tenant should also be burdened to instruct that was his way of counting, by giving them unsubscribed scrolls of their accounts ; but this was not required, the Lords proceeding more upon material justice in this case than strict law, according to Constantinus’ rule in l. 8. C. De judiciis, Placuit in omnibus causis præcipuam esse justitiæ æquitatisque quam stricti juris rationem.

*Fol. Dic. v. 2. p. 261. Fountainhall, v. 1. p. 711.*

No 523.

An unsubscribed scroll of an account of charge and discharge, wherein a sum due by bond was

1708. February 19.

JAMES MILLAR, Coppersmith in the Canongate, *against* The EXECUTORS and REPRESENTATIVES of WILLIAM BONAR, late Clerk to the Mint.

IN the action at the instance of James Millar against the Representatives of William Bonar, for payment of L. 150 Scots advanced by the pursuer to him, as the fourth part of L. 50 Sterling, which Bonar subscribed for in the books of the African Company in the name of James Millar, who by bond stood obliged to repay the L. 50 Sterling to him, upon this ground, that the defenders