No 170.
inspection of the books of the paper. These were in the hands of a third party, who refused this, alleging that he was sole proprietor of the newspaper, and that the examination of the books could not take place, without a disclosure of his affairs, which would be very prejudicial to his interest. The Court directed, that the Commissioner in the proof should have access to the books, and produce what excerpts from them he should think necesary.

spected by some confidential person, down to the date of the publication complained of. But he refused to do either, alleging that he had purchased the property of the newspaper in March 1797, that, therefore, the books were his; and that the examination craved, would occasion a disclosure of his affairs very prejudicial to his interest, and to which, as he was not a party to the process, he was not bound to submit.

Upon advising a petition for the pursuer, with answers for Paul, the Court, in general, were clear that the demand was reasonable. Whenever (it was observed) in order to explain a point in dispute between two parties, an inquiry into the transactions of one of them with a third becomes necessary, the books of the latter, if material information be expected from them, must be exhibited, but in such a manner as will occasion least inconvenience to him.

The Sheriff-depute of the county of Edinburgh, (the Commissioner in the proof), was ordained to get access to the books, and to produce what excerpts from them he should think material.

Lord Ordinary, *Methven.* Act. *Lord Advocate Dundas, Solicitor-General Blair, Hope, Boyle.* Alt. *Jo. Clerk.* Clerk, *Home.*

D. D. *Fac. Col. No.* 101. *p.* 237.

SECT. VII.

Depositation being acknowledged, the terms how relevant to be proved.

No 171.
It was found, that the conditions upon which a bond had been deposited, where to be proved by the oath of the depositary.

1624. *January* 22. LERMONTH *against* ALEXANDER.

IN an action betwixt Lermonth *contra* Alexander, the pursuer having convened Alexander defender, maker of a bond, obliging him to pay a sum to the pursuer and Mr Robert Lermonth, in whose hands the bond was put, for delivery of the bond foresaid to him, seeing he libelled, that it was put in the said depositar's hands, to have been given to the pursuer. The defender compearing, and *alleging*, That the bond (after it was exhibited by the depositar) ought not to be delivered to the pursuer, seeing it had never become his evident; and where it was set down in the summons, that it was depositated to be delivered to him, the depositating thereof for such an effect, or the conditions whereupon it was depositated, ought to be proved, either by writ, or by the oath of the party, maker of the bond; and the same ought not to be sustained, or found relevant to be proved by the oath of the depositar, whose declaration in a matter, especially of great importance, ought no more to be admitted, to make an evident of that moment to pertain to a party, to whom the same otherwise would not appertain, than a matter of that weight of the law could

be admissible to be proved by witnesses. The allegeance was repelled, and the LORDS found, that the condition, whereupon the bond was depositat, might be proved by the oath of the depositar, whose declaration, upon his oath, they found sufficient to infer sentence according to the conditions, as should be deponed by him therein. No 171.

Act. *Hope.* Alt. *Stuart, Mr Robert Lermonth present.* Clerk *Scot.*

Fol. Dic. v. 2. p. 226. *Durie p. 100.*

*** Kerse reports this case:

FOUND, in an exhibition of evidents, the putting, or depositing of bonds in the haver's hands, is probable by the oath of the depositar allenarly.

Item, There being an exception proponed, that it was deposited conditionally, the LORDS found the condition probable only by writ or oath of party.

Kerse, MS. p. 186.

*** Haddington reports this case:

NINIAN M'MORRAN pursued Mr Robert Lermonth to exhibit and deliver to him a bond of 2000 merks, made by Robert Alexander in Anstruther to the pursuer, and called the said Robert for his interest. The bond being produced, Robert Alexander *alleged*, That it could not be delivered, because it never became the pursuer's evident, but behoved to be redelivered to him, unless the pursuer would offer to prove that it was put in Mr Robert Lermonth's hands, which the pursuer offered to prove by Mr Robert's oath. It was *alleged*, His oath could not prove, because the bond being deposited in his hands, to be retained while certain conditions were performed to the maker, Mr Robert might by his own oath free himself and prejudge the pursuer. It was *answered*, That unless the defender would allege that the consignation was conditional, his bond, once come out of his own hand behoved to appertain to the party to whom it was made; and as Mr Robert might have delivered it to him, so his oath might verify that it was put in his hands, to be delivered to him; and alleged a practick betwixt the Laird of Powrie, Ogilvie, and his sister, and the Constable of Dundee, which answer the LORDS found relevant. Thereafter Alexander offered to prove that the bond was consigned to remain in Mr Robert Lermonth's hands till an assignation should be made and delivered to the defender, which the LORDS found only relevant to be proved by writ or oath party. The pursuer urged, that if they would prove it by Mr Robert Lermonth's oath, it might be presently taken, because he was at the bar; which the Lords would not grant, but assigned a term to prove by writ or oath of party.

Haddington, MS. No 2972.