

S E C T. X.

Proof taken to lie *in retentis*.

No 195. 1629. February 20. BLYTH *against* TROTTER.

IN an action, wherein the pursuer was to prove his libel, the witnesses being going out of the kingdom, to sail to foreign countries, so that the pursuer was in hazard to tine his probation, if they should die before their return, it being desired, therefore, by the pursuer of the cause, (no litiscontestation being made therein,) that the said witnesses should be examined, and the depositions kept *in retentis*; it was found, that the desire could not be granted, while the defender was summoned to hear what he would say against that desire, and because he was then out of the country; so that he could not be summoned in due time before the witnesses would depart; therefore, the desire of the examination was refused.

Fol. Dic. v. 2. p. 192. Durie, p. 428.

No 196. 1633. November 12. WEIR *against* LOCHINVAR.

ONE Weir being addebted to Weir, arrests in the hands of Lochinvar the sum addebted by him to the said Weir, and pursues Lochinvar to make the arrested goods forthcoming, and refers the quantity to his oath. A day is taken to give his oath. At the said term it is *alleged* by Lochinvar, That the principal party, Weir, is dead, and so the action must be transferred against any that may represent him. To which it was *answered*, That Lochinvar must give his oath, for, in case Lochinvar die, the pursuer will lose his probation.—THE LORDS ordained Lochinvar to take a short day to give his oath, and thereafter the process to stay till the action be transferred.

Auchinleck, MS. p. 174.

No 197. 1665. January 31. KELLIE *against* HOME.

IN a process against a minor, *qui non tenetur placitare*, it was found, that the depositions of witnesses might be taken, to lie *in retentis*, if need be, till the minor become major, the witnesses being old or valetudinary.

Fol. Dic. v. 2. p. 192. Newbyth.

This case is No 11. p. 9063. *voce* MINOR NON TENETUR.

* * * A similar decision was pronounced, 6th January 1671, Kellie *against* Kinnear, No 14. p. 9066. *voce* MINOR NON TENETUR.