

D E P O S I T U M.

1593. *January 25.* BUCHANANE *against* BUCHANANE.

BUCHANANE ane of the dochteris and airs of umquhile M. Th. Buchanane, and Buchanane hir spouse, for his entres, persewit ane uther Buchanane to exhibit and delyver to hir his father's evidentis, whilk he had, or fraudfully had put away. It was *allegit* be the defender, That his houss being brunt be the hielandmen, he had delyverit the saids evidentis to James Carbraith of —, to the effect they micht be the mare saillie preservit; and sua thay beand out of his handis lang befor the intenting of this caus, thir persewers could have na action, bot behovit to seik the evidentis fra the said Carbraith. It wes *ansrit*, That sieing this defender had grantit that he anes had the evidentis, he behovit to redelyver thame to thir persewers, wha had na action agains the said Carbraith, bot the said defendar micht persew him as he thocht expedient, alwayes thare action was verie competent agains this defendar, and na uther.—THE LORDS repellit the allegiance, and ordenit this same defendar to exhibit and deliver.

Fol. Dic. v. 1. p. 234. Haddington, MS. v. 1. N^o 320.

1665. *July.* DOUGLAS *against* BISHOP of CAITHNESS.

THE Bishop of Caithness gives a ticket to the deceast Colonel Richard Douglas, bearing, that he granted the receipt of L. 40 Sterling from him in custody, which he obliged himself to deliver upon demand; which ticket being assigned to Mr Richard Douglas his nephew, he pursues for payment. It was *alleged*, That, in January 1648, the money being depositate in his hand for preservation *non tenetur reddere*, if it hath perished without the fault and fraud of the defender; but so it is, that, in *anno* 1648, he living in Durham, his house was then plundered upon the account of the engagement, and the money also; whereupon he is content to make faith. It was *answered*, That however the ticket

No 1.

A person was pursued for the delivery of a deposit. It was not sustained in defence, that he had delivered it to a third party for safety.

No 2.

A depositary found entitled to bring proof that the deposit had been lost without his fault.