bable by witnesses, as the having of the same, or the having of the writs in other such cases are probable by witnesses. No 168.

Hay, Clerk.

Fol. Dic. v. 2. p. 226. Durie, p. 426.

*** Spottiswood reports this case:

ROBERT FARQUHAR pursued Robert Wallace for exhibition and delivery to him of a bond made to the pursuer, and which the pursuer put in the defender's hands, to be made forthcoming to the pursuer, whensoever he should crave it. The question was about the probation, that it was put in the defender's hands by the pursuer, which the defender alleged could only be proved *scripto vel juramento partis*: The pursuer *contended* it might be proved by witnesses, even as the having of an evident is ordinarily proved by witnesses. THE LORDS sustained it to be proved *prout de jure*.

Spottiswood, (EXHIBITION.) *p.* 124.

1678. *July* 27. BROWN *against* GORDON.

No 169.

IN the action Brown against Gordon, it being controverted, in a pursuit for exhibition of a writ belonging to the pursuer, which the pursuer libelled was delivered to the defender by a third party, whether the said delivery was probable *prout de jure*, or only *scripto et juramento?* This deing taken to interlocutor by Newton, the LORDS found it probable by witnesses; 13th December 1626, E. of Rothes, No 22. p. 12273, where the contrary was found.

Fountainhall.

1799. *January* 19. JOHN CADELL *against* ROBERT PAUL.

No 170.

In an action of damages, on account of an alleged libel published in a newspaper, with which the defender was said to be responsibly connected, the pursuer, with a view to establish this connection, craved production of

IN an action of damages brought by John Cadell against John Morthland and John Johnstone, on account of an alleged libel against him, which, in September 1797, had appeared in a newspaper called the Scots Chronicle, of which Johnstone was the printer, and with which Mr Morthland was averred to be responsibly connected, a proof was allowed, partly in order to ascertain the nature of this connection.

According to the deposition of one of the witnesses, Mr Morthland occasionally wrote entries in the books, which, with other material points, it was expected would appear from inspection of them.

They were in possession of Robert Paul, who, on his examination as a witness, was required by the pursuer to produce them, or allow them to be in-

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