

1666. *January 4.* LAIRD of MILTON *against* LADY MILTON.

THE LAIRD of Milton pursuing a reduction of a decret of divorce pronounced by the Commissaries of Edinburgh, at the instance of the Lady Milton, his step-mother, against Calderwood, her last husband, upon adultery, desired that the testimonies of the witnesses might be made private to him, being a matter of so great importance, as tending to take away the right of the Lady's jointure, dispoed by her husband to this Milton.

THE LORDS refused the desire; but ordained the Clerks to give a note, expressing the names, designations, and the preambulatory questions in the depositions, as their age, married or not, purged of partial counsel, &c.

Stair, v. 1. p. 333.

No 198.

Witnesses' testimonies taken in an action of divorce before the Commissaries, and of which a reduction was raised, not allowed to be published.

1667. *June 12.* MITCHELL *against* MITCHELL.

THE LORDS, upon a bill, ordained witnesses to be received before litiscontestation, and their depositions to lie *in retentis*; because they were in town for the present, and were to go to Zetland, and *senes valetudinarii* and *peregre profecturi*; and, upon such like considerations, others may be received witnesses *in hoc statu*.

Clerk, *Scot.*

Fol. Dic. v. 2. p. 192. Dirleton, No. 74. p. 30.

No 199.

1669. *February 16.*

CREDITORS of BALMERINO *against* LA. COUPAR.

IN a reduction upon the head of death-bed, the LORDS allowed the depositions of witnesses to be taken, to lie *in retentis*, though it was before the day of compearance, and no allegation made, that the witnesses were old or valetudinary, or that there was a penury; for the LORDS thought, though many witnesses were called, there might be few who truly knew the defunct's condition, and these might be removed out of the way, by death or by collusion.

Fol. Dic. v. 2. p. 192. Stair.

No 200.

* * This case is No 98. p. 10421. *voce* PERSONAL AND TRANSMISSIBLE.

1675. *February 4.* CRANSTON *against* MR MARK KER.

UPON a bill, it was desired that witnesses should be examined in relation to a process, that their depositions should lie *in retentis*; but the LORDS found, that

No 201.

Proof to lie *in retentis* was not allowed.