

owning her for such at bed and board were sufficient to infer a presumption of the marriage, as Stair shews, Lib. 1. Tit. 4.

*Fol. Dic. v. 2. p. 193. Fountainhall, v. 2. p. 580.*

No 208.

1804. February 16. MAGISTRATES OF INVERBERVIE, Petitioners.

A PETITION was presented to the Court by the Magistrates of Inverbervie, stating, that they had brought an action against Robert Barclay Allardyce of Urie, for reduction of a tack granted by their predecessors, and for ascertaining certain marches; that it was necessary, in this action, to take the depositions of several old and infirm persons, whose evidence might be lost, unless it were immediately taken; and praying that their depositions might be taken, to be sealed up, and lie *in retentis*.

No 209.  
In what circumstances a proof may be taken to lie *in retentis*.

It was *objected*, That the summons had not been called in Court; and the LORDS (January 21. 1804) upon that account refused the petition. The petitioners afterwards, when the ordinary *induciæ*, according to which the summons had been executed, were expired, renewed their application, which was granted, (January 21.) and the depositions ordered to be taken.

Against this judgment a reclaiming petition was presented by the factor of Barclay Allardyce, stating, that there was properly no action in Court, as the defender had left Scotland *animo remanendi* before the summons had been executed; that it had been executed at the mansion-house of Urie, and had been called upon the short *induciæ*; that the citation therefore was irregular, and, of course, there being no action in Court, the present application was incompetent, June 9. 1791, Sharp against Robson, No 55. p. 3721.

THE LORDS, by a narrow majority, refused the petition without answers. But great doubts were expressed from the Bench, with respect to the regularity of the citation, and the competency of the examination of these witnesses.

For Petitioners, *Baird.* Agent, *John Græme, W. S.*  
Alt. *Wolfe Murray, Jardine.* Agent, *John Innes, jun. W. S.* Clerk, *Home.*

J.

*Fac. Col. No 145. p. 326.*

## SECT. XI.

## Reprobator.

1580. June. BISHOP OF MURRAY against The LAIRD OF WESTER WEMYSS.

IN the action betwixt George Douglas, Bishop of Murray, John Douglas, and the Laird of Wester Wemyss, anent the teinds of Abernethy, there were cer-

No 210.  
Found that a reprobator of witnesses can-