

petition to the whole Court. Which warrant is frequently granted when the pursuer's case is favourable, and the Defendant a person of bad Character.

When witnesses are very old or Valuedary and feeble and process is fitted for some time, the Lord will soon bestow Diligentiation, upon Application by Bill, to grant Diligence for fitting them to Depone, and to take their Oaths both in Latin, ^{or English} if they should see in the Mean time, and thereby the party lose his Means of proof. What is done, 1^o In Latin Regiam a Minor, quatenus placitum de hereditate patris na 26 July 1662 Lady Milintown contra L. Milintown 31^o January 1665 Kello contra Pringle 15 Feb. 1678 Gordon contra Maxwell Shaw h. b. 4 Feb. 41 87 Vint. Third l. 2^o 9^o This is also done when there is just ground to fear, that the necessary witnesses in a cause will be put out of the way by the Defendant, as having a Dependance upon him, unless he find Caution to produce them 13 January 1676 L. Castlehill contra Whiteford 16 Feb. 1669 Executor of Dalmerie's Co. Cowper contra Lady Cowper. 3^o The Lord's use to become Witnessed ad futuram rei Memoriam in the Indirect Matter of Inprobation 25 March 1623 The art. contra Scot Mandarill Prim part 7 Feb. 27 86 Vint. In the Indirect Matter the Lord used to receive. But the the Dates of Witnesses are sometimes in Use to be taken before Deposition in a Depending process, yet this is inconsistent with form, to receive Witnesses upon a Bill without the foundation of a process, or even upon a summons not Executed, which will not make a Dependance 4 Feb. 1675 Grant contra Ker of Moristown observed by Dirlston. 20 Feb. 1629 Blath contra Frotter. It is not necessary to cite the other party to the Examination of witnesses who Oaths are taken to fly in Robert's. For all objections are approved against them to be made at any time before Conclusion of the cause 13 January 1676 L. Castlehill contra Whiteford. Which suppon of taking the oaths of old or dying persons, or who are suddenly young out of the Kingdom ad futuram vel perpetuam rei Memoriam in civil cases, is agreeable to the civil law l. 40 ff ad leg. Aquil. l. 355 ff de Rebus Cunctis and to the Opinion of the Doctors of the civil and Canon laws, Propp. g. vint. de test. lib. 1. Quasi. 76. n. 828 Reg. It is also observed in the Court

of Chancery in England, Praxis Altra Curie Cantuarie p. 37. But it is not now in use in France since the ordinance of 1667 Feb. 13 which abolished the Use thereof, Les Loix Civiles de France 1^o part 1 Liv. 3 Feb. 6 sect. 3 p. r. as being thought inconvenient, and full of Uncertainty.

If either party offer to prove by writs not in his own hand he shall and gets a Diligence against the Oath of the other party; and the other party swears, that his objections cannot produce a maybe Refused, which is always done. When appointed & admitted to either parties production pro it de jure, he may file the other party's affidavits of present or by a Diligence, a liberty to Depone thereon; and yet may be file from his oath or use any other proof Ready at the term by writ or witness 22 June 1679 Walwood contra Walwood. The Relevancy and Manner of proof being paid on both sides being admitted the ordinary observed this order in pronouncing his Interlocutor thereon. If the Exception of Defence be Rejected, not simply, but in respect of the Reply, a term is assigned to the pursuer for proving his Libel and Reply in the proper Manner. If an Exception importing the Futility of the Libel be sustained he is conty, as when one pursues upon a bond proposes payment, a term is assigned to the Defendant for proving his Exception according to Law. If a Relevant Exception not acknowledging the truth of the Libel be allowed, as when the Defendant found upon Compensation: the pursuer gets a term to prove his Libel and the Defendant the same term to prove his Exception. If an Exception be Rejected in respect of the Libel and Reply, and the Reply be sustained to Elide the Reply, a term is assigned to the pursuer to prove his Libel and Reply, and to the Defendant to prove his Reply in the legal Manner, and Diligence Requisite are granted to both parties, or to either of them respectively for fitting the Defendant or witnesses to give Oath, or Oaths of writs to Depone and produce, Reserving to the other party to object contra Producentia.

When the ordinary pronounceth his Interlocutor Determining the Relevancy and proof on both sides, and assignd terms for proving the same, this is called Diligentiation per te Comparatule vid. Sup. pag. 162. 157.

Sometimes, as in Debt and Intestate cases, the ordinary, after hearing the Debate, ob hoc Nobili officio, with