

SECT. V.

Intromission, how relevant to be proved.

1605. July 27.

MURRAY *against* KNOBLE.

No 159.
A hoard of
money be-
ing sued for
by the King's
donatar al-
though it ex-
ceeded
L. 100, yet
it was ad-
mitted to
probation *in*
favorem fisci.

JAMES MURRAY, son to his Majesty's master-wright, having by gift of his Majesty, a huird, alleged found in the — pursued, one Knoble whom he alleged to have received the same from him that found it, to deliver it to him, as having right by his gift. It was *alleged*, That summons containing the sum of L. 400 could not be proved, but by writ or oath of party. It was *replied, in favorem fisci*, it might be admitted to be proved by witnesses, because the fact being hid and obscure, and consisting *in facto*, could not be proved by writ; and seeing this question arose not upon any bargain or condition made by the pursuer, but upon a fair dealing betwixt the finder of the huird, and the defender; the pursuer could not be compelled to refer the matter to the defender's oath, but might prove it by witnesses. THE LORDS found, That the summons might be proved by witnesses, in favour of the fisque.

Fol. Dic. v. 2. p. 225. Haddington, MS. No 954.

1624. November 25.

BISSET *against* BISSET.

No 160.

AN executor pursuing an intromitter with the defunct's money, the LORDS found, That he ought to prove the intromission by writ or oath of party, but not by witnesses.

Fol. Dic. v. 2. p. 210. Durie.

. This case is No 139. p. 12358.

1628. December 17.

CHALMERS *against* LD. CRAIGEVAR.

No 161.

A PENSION being granted payable out of feu-duties, it was found relevant to the pensioner to prove by witnesses his uplifting the feu-duties, in order to clothe his right with possession.

Fol. Dic. v. 2. p. 225. Durie.

. This case is No 7. p. 10061. *voce* PENSION.