

* * * Dirleton mentions the act of sederunt in the following terms :

No 303.

THE LORDS thought fit to make an act of sederunt, and to intimate it to the advocates, to the purpose following, viz. that when an allegiance is not admitted, but a joint probation is allowed before answer ; if there be any other allegiance found relevant, and admitted to either, litiscontestation should be understood to be made as to that allegiance ; *2da*, And likewise as to that effect, that the parties are concluded, and cannot be heard thereafter to propone any other allegiance ; *3tio*, The terms being run as to an allegiance not discussed, they are concluded as to the probation of it, as if the relevancy had been discussed by a formal act of litiscontestation, whereas it is remitted to be considered after probation, seeing often *ex facto oritur jus* ; and upon consideration of the circumstances after probation, the Lords have more clearness to determine relevancy.

Dirleton, No 183. p. 74.

* * * This act of sederunt is dated 23d July 1674.

1744. June 27.

ROBERTSON *against* ROBERTSON.

No 304.

WHERE a circumduction is craved on an act before answer, it is competent before the Ordinary on the acts to plead any point of law yet undiscussed in bar of the circumduction ; but if no point of law is pleaded, decree must attend the circumduction on the act before answer, as well as on an act of relevancy ; and were it otherways, there would be no form for keeping the cause in Court.

Eol. Dic. v. 4. p. 151. Kilkerran, (PROCESS.) No 5. p. 434.

S E C T. XIV.

Wakening.

1628. March 27.

Laird LENOX *against* Laird NIDDRIE.

No 305.

If a process intended at a party's instance lie over a space, and before it be wakened, the pursuer making another person assignee to the action, the wa-