*** 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 allegeance is not admitted, but a joint probation is allowed before answer; if there be any other allegeance found relevant, and admitted to either, litiscontestation should be understood to be made as to that allegeance; *2do*, And likewise as to that effect, that the parties are concluded, and cannot be heard thereafter to propone any other allegeance; *3tio*, The terms being run as to an allegeance 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.

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

SECT. XIV.

Wakening.

1628. *March* 27. Laird LENOX *against* Laird NIDDRIE.

No 305.

IF a process intented 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-

No 305. kening cannot be raised at the assignee's instance, except the cedent be likewise convened therein, unless the assignee first transfer the action.

Auchinleck, MS. p. 168.

1629. *December* 18. L. RENTON *against* RENTON.

No 306.

AN action being intented, and afterwards transferred in the heirs of the defenders principally called and deceased; and since the intenting thereof, and after transferring, the principal cause being wakened, in the which wakening some other parties were called, who were neither parties in the principal cause, nor yet in the transferring, but were called for their interest, who having acquired right from the defenders after the intenting of the cause; it was found that no process could be granted against them.

Act. *Craig.* Alt. *Stuart.* Clerk, *Hay.*

Durie, p. 476.

1671. *July* 1.

BRODIE of Lethim and the Laird of RICCARTON *against* The Lord KENMURE.

No 307.
A decree being stopped on a bill, found not to be recalled, but only the extracting forborne till the parties were heard on the grounds of their bill, and that tho' it lay over for several years, it needed not to be wakened.

BRODIE of Lethim, as having right from Riccarton, having several years ago obtained decreet against the Tenants of the Mains of Kenmure, thereafter upon a motion for the Viscount of Kenmure, the decreet was stopped, and now the pursuers desire out their decreet. It was *alleged*, That the cause having lain over several years, must be wakened. It was *answered*, That there being a decreet pronounced, there was no more process depending, and so needed not be wakened. It was *answered*, That a decreet, though pronounced, not being conditional to a day, but being absolute, and thereafter stopped, in respect the stop takes off the decreet, the process is *in statu quo prius*. It was *answered*, That the stop doth not recall the decreet, but only hinders the extract thereof till the supplicant be further heard, and it is his part to insist in the bill, and that it would be of very evil consequence if stopped decreets were recalled, for then not only wakening would be necessary, but in case the parties should die, transference should be raised; and, seeing wakenings are not requisite in concluded causes, much less after sentence is pronounced.

THE LORDS found no necessity of wakening, but allowed the defender to propone what further he had to allege.

Fol. Dic. v. 2. *p.* 202. *Stair, v.* 1. *p.* 746.