

No 301. 1672. June 21. The Laird of HERMIESTON *against* COCKBURN.

THE LORDS found, That in the case, and in all time coming, where witnesses are adduced before answer, they will only allow one term; so that upon any diligence, they will admit no witnesses but those who are cited by the first diligence.

Clerk, *Mr Thomas Hay.*

Fol. Dic. v. 2. p. 202. Dirleton, No 171. p. 69.

* * * Gosford reports this case :

IN the action depending betwixt the said parties, by an act both parties being ordained to adduce witnesses *ex officio* before answer; it was *craved* for the Creditors, That they having taken out diligence against some witnesses, they might have a second term for citing of other witnesses.

THE LORDS did refuse the same, and declared they would grant but one term for citing of witnesses *ex officio*, either to the pursuer or defender.

Gosford, MS. No 492. p. 258.

No 302. 1672. December 6. CLELAND *against* CLELAND.

AFTER an act before answer for proving death-bed, parties can propone no new defence, nor crave terms to prove the same.

Fol. Dic. v. 2. p. 202. Stair.

* * * This case is No 87. p. 3307, *voce* DEATH-BED.

No 303.

After an act before answer no new proof is admitted by posterior acts of liti-contestation.

1674. June 4. COCKBURN *against* HALYBURTON.

By act of Parliament every minister being appointed to pay L. 40 to be a stock to universities, the Bishop of Edinburgh appointed George Halyburton his servant to be collector thereof within his diocese; but the said act of Parliament being rescinded, the Council did dispose of what was already collected, and gave a precept to Margaret Cockburn, relict of Mr Patrick Cook, minister at the Pans, for the supply of herself and many children, directed to George Halyburton to pay her a certain sum out of what he had collected; who being pursued thereupon, *alleged*, That he being but collector, was only liable for diligence in getting and keeping that collection, and that what he had received was kept in a lock-fast trunk within a chamber in the Bishop's house, where he lay, and that the trunk was broken up, and the money taken away without his fault; and it being *answered*, That he, as collector and mandatar, was absolutely liable for custody against theft, and could only have been liberated, if by force.