

without Determining the Relevancy allow both parties before answer, to prove such points as the Lord thinks fit; and upon such an Interlocutor, an Act may be taken, called an Act before answer. 29 January 1631. *Buchan v. Riddimiston contra Vans.* This is also done, where pursuer's claim Rights are in hazard of being carried away by two pickt witnesses to be provided by either party, in the question concerning deeds granted or dealt with, or Deeds in Confines Majoris Altit sought to be Deviced upon the notity and before said lib. 4 Sept. 352 Vob. *Leventhous touching the Stealing of Money from a Collector or Quater and lib. of Licence or Negligence in keeping thereof* 4 June 1674 *Buchan contra Raly, Burton, or in Dilatations of property or Service, upon long Possession or part and per hundred, and in Actions of Ejection or Inturbsion* *lib. 10 Feb. 2857.* Again Acts before answer are made in process where the parties are High Landers, and so be the Rule the preservative of proof would have too great Advantage of the latter 26 July 1662 *Robertson contra McIntosh* 20 Feb. 1668 *Farquhar of Gentry contra Gordon.* In which case the Allegations hereinde being Commonly Contradicted, cannot be found Relevant and put to proof by an ordinary Act of Litiscontestation; and therefore the Lord with out preferring either party to the sole proof, do partly and necessarily admit both parties to prove their respective Allegances, for Explicating the most pregnant Evidence, which they have the whole matter before them Concerning the Relevancy and proof. The same terms and Means of proof by oath of party, writ or witness, is allowed here as in ordinary Acts of Litiscontestation. But to prevent the drawing out of process to a great length, the the Relevancy therein be not Decided, and parties are allowed after Closing of the proof to Resume the Debate upon the Relevancy of such point as they desire Means to be Noticed. Advocates must propose all they have to say before or at pronouncing the Act without Expecting to be allowed another Litiscontestation or proof upon themselves or any other point than competent and omitted 4 June 1674 *Cockburn contra Raly Burton* Act of Decr. 29 July 1674 unless the Lord ex officio & proprio Motu appoint the same for clearing any doubt in the proofs as they may do at Dissolving any Conclusion

Cause upon Litiscontestation 6 December 1672 *Clakland contra Clakland.* And Instantly Instructions of the pursuers shall be found Relevant by presumption, without Oath of party, or by Pleading the Defenders as Confessed without taking any to Depose, and no Defence or Exception is sustained Relevant to be provided; or the Exceptions are Rejected in respect of the Replied instantly Verified; or the Replied are Rejected in respect of a Duply instructed; or if all Relevant points not Impugning the verity of the Allegance against which they are proposed be instructed: the ordinary may Devise which is called a Direct without such contestations. Nor the ordinary may advise and Determine upon writs produced for Interest or proof, and oaths of parties Comparing, which require no Act of Litiscontestation; or upon the Testimonies of witnesses libelled upon and produced a 6 June 1677 before Litiscontestation 27 January 1677 *Donaldson contra Rinn* 21 June 1677 *Ramsay contra Auchinleck* Again the ordinary may before Litiscontestation advise Rejoinder of Production of Deeds of Injurious Judges upon Iniquity or Nullity for want of proof. And Determine whether the proof whereupon they proceeded be sufficient, in the same way as he may Determine upon writs produced as Justice 21 June 1677 *Ramsay contra Auchinleck*. Nor is it hard, that proof found sufficient by a Competent Judge should be Reviewed by one single Lord. For if the case be doubtfull, he will Report it to the whole Court, and the Lord should Refuse to do so, in Demand or a Bill would bring it before them. Again, where the ordinary upon Hearing of a Cause ordains, without any Act of Litiscontestation or Equivalent thereto, some writs founded on in the pleading which are in the parties hand to be produced, that an Allegance might be framed according to the tenor of these writs, the ordinary is competent to hear the parties and Decide upon such writs when produced, 9 Feb. 1681 *Cockburn contra Lady Crimstarn*. But the ordinary is they to advise or Decide upon Inqualified Oaths, or such as are not so plain and short as to be writ and signed at the Bar; or upon many and large or Intricate writs produced; with which he makes great Advancements to the Lords in presence said lib. 4 Sept. 46 55 Sept. 2517. And what ever is produced after Litiscontestation