

and debated upon, the Ordinary may consider the reason and subsumption, and determine accordingly, wherein there is no hazard to any party; for, if the case be doubtful, the Ordinary will report; and however an amand or a bill will bring it before the whole Lords.

THE LORDS found, that the Ordinary ought to advise the testimonies of witnesses, when they are libelled upon, and produced before litiscontestation.

*Fol. Dic. v. 2. p. 209. Stair, v. 2. p. 500.*

\*\*\* Dirleton reports this case :

It was moved, Whether or not a decret of an inferior Judge, being questioned upon that ground of iniquity, that the libel was not proved, and the depositions of the witnesses being produced by the pursuer *ab initio*, the Lord of the Outerhouse may advise the probation, or if it ought to be advised by the whole Lords? It was found, That the depositions being produced, (as said is,) the Lord may give his own interlocutor, as upon any other writ produced *ab initio*, to instruct the libel: Though some of the Lords were of opinion, that the probation ought to be considered and advised by the hail Lords; and it was hard, that the probation being found sufficient by a competent Judge, it should be in the power of one single Lord to review the same, and find the contrary.

Clerk, Hay.

*Dirleton, No 445. p. 217.*

1677. June 21.

RAMSAY against AUCHINLECK.

SIR ANDREW RAMSAY having obtained a decret before the Commissaries against Auchinleck, for a bargain of victual, he suspends, and raises reduction on this reason, that the decret was null or unjust, the Commissaries having found the allegiances proved by witnesses, which did not prove; and the testimonies being produced, the question arose, Whether they shall be published to the party, and if the Ordinary should hear them debated, proved or not proved, or if they should be kept close, and advised only by the Lords, as they use to do in concluded causes?

THE LORDS found, that they should be shown to either party, and the Ordinary hear, and determine whether the Commissaries had committed injustice, in finding it proved or not, in the same way as the Ordinary can determine upon a writ produced before litiscontestation; but whatever is produced after litiscontestation, *ad modum probationis*, in a concluded cause, can only be advised and determined *in presentia*.

*Fol. Dic. v. 2. p. 209. Stair, v. 2. p. 526.*

No 385.

No 386.

Publication of testimonies of witnesses, taken in inferior Courts, is allowed in reductions.