

17th Testimonies & audits Aliens, or de Audit Aliis auditus, or de Audit
 ato Auditus, that is, where the witness gives for the Reason of
 his Knowledge, that he heard the Matter by Relation of Others
 prove not, Pross. Farm. lib. 2. cap. 69. n. 2 & pag. 146. lib. 4.
 fol. 43 & 15. But if the thing be proved fact invidio the
 of hearing, as fama & clamor, a Witness as testimony that he
 heard it, is good, tho he cannot be profertive who were like the
 porters, Sair lib. 2. Witnesst de propriis auditis who swear up
 things that fall under the sense of hearing, as that a Man said
 such things to the behind a Wall or Curtain, if the witness know
 his voice do sufficiently prove, Pross. Farm. lib. 2. n. 148 & fol.
 n. 175 & 176. of Calerid paribus, more ligard is had to wit
 respect deposing in favour of the Defendant, than to those who
 depose in favour of the pursuer, Pross. Farm. lib. 2. n. 65.
 132 & 133. 9th Deo witness prove more strongly than
 those who are living Pross. Farm. de Gestibus lib. 2. n. 65. & fol.
 lib. 4. tit. 20 & 20

10th A witness who swears only upon his Obed. lib. 2. is not proper
 a witness nor to be credited Pross. Farm. lib. 2. n. 68. & fol.
 & pag. Unless he give a pregnant Reason why he believed for
 that one was son to such a Man & Woman as he is
 him born in their house; or that a man and a woman were
 committed to adultery, because he saw *Medium cum Virgine*
solum cum solo lying in the bed together.

Both parties having pleaded what they had to say
 on the Evidence in the prepared state; the Lord & wife
 states, Objections and answers, and give sentence. The parties
 have not proved all the points litis contestatae, yet the Lord
 sometimes at advising find as much proved as may serve
 their intention. When there is *semiplena probatio* of a fact, or
 they will for making it fall in odore to De jury take the
 Oath of either party in supplement: or if some points be
 not clear, they will ordain farther proof to be led by both
 or either party as they see cause. If the Defendant fail in
 viny a Peremptory Exception, he will be decreet for all
 that is proved in the libel: because the Defendant by prop-
 viny a Peremptory, is understood to have confessed the
 Libel; Unless he propone it, denying always the Libel.
 General Rules are, *actora probante* the pursuer proving
 Libel or Reply, *Reus vindicator* the Defendant is bound
actora non probante the pursuer not proving, or the
probante the Defendant proving, *Reus absolvetur* the
 Defendant

Defendant is absolved or acquitted by *Infirmitas de Causa*
 If the pursuer be not ready at the calling of any cause in
 the Inner house, Roll, the Lord, as the Deput. de Deput. & they
 see just, either scot out the cause to be *sumotus de novo* in form
 -man form, or proceed to the cause as Record; *Ugarnst* the
 -termination in which proceeding, the pursuer will not be hear-
 ed, without paying 20th sh. *Ugarnst* the Lord to the other party. If
 the Defendant be not ready, in Roll or Decret or other Rule
 location, as the pursuer praved, and the Lord see just will be pro-
 nounced, and not Record, but upon payment of the like sum
 of 20 shillings to the adverse party, act of Decr. 20 Novemb. 1711
 35. If both parties insist and Debate, the Lord will collect sense
 and determine the cause instantly; or for farther clearing
 points therein, ordain both parties to Inform against a
 Landay and to give in their Informations the next process
 ing the Report, and then Interlocutor is therein pronounced,
 against which any of the parties finding himself aggrieved
 thereby, or by any part thereof may apply by petition for a
 Reformation. When any cause is called, and the Debate begun,
 no other cause may be called till that be ended. Thus if a
 cause hath been called, and after some 20 days continued till
 some thing be produced or done, which requires not in Extended
 Act, the same is to be again called after the day to which it is
 called, act of Decr. 1 Feb. 1715 joint. Act of Regul. 1672 Concerning
 the Deput. art. 9. But a Debate on Saturday in any cause
 proper for that day once begun, may be prosecuted and finished
 on any following day. If there happen an *interlocutor de debate* in a
 cause in the ordinary Action Roll, or in the *Presidents* Roll, Roll,
 and another in a cause in the Saturday-Roll, both which want
 to be carried on the next day, not being Saturday; the Debate
 first commenced must be first ended, and after that is over
 the other Debate pursued before any other cause is presented,
 act of Decr. 1 Feb. 1715. When the Lord at the Conclusion of
 any cause find the *congruent* party to have been Calumnious
 or litigious, they take in an Account upon oath from the
 party prevailing, of the Costs of suit, and Decree for the
 same against the person who is cast in the suit, if *Modum*
 and probable; or *taxand* and if the expenses of Extrajudicial
 Act of Regul. 1675 art. 23. And Large Expenses are *Modi-*
 -*ty* parties wronged by Calumnious Allegations Act
 of Decr. 20 Novemb. 1711 & 14. If a person who has cast
 his Name to a Calumnious Gift and process, was fined