

No 7.

On advising a reclaiming petition, with answers, the Court adhered to the Lord Ordinary's interlocutor.

Lord Ordinary, *Justice-Clerk.* Act. *D. Smyth.* Alt. *M. Ross.* Clerk, *Home.*
R. D. *Fol. Dic. v. 3. p. 232.* *Fac. Col. No 8. p. 18.*

* * * The case of Ritchie against Scot, July 1784, had been decided in the same manner. See APPENEIX.

No 8.

A native of this country, whose principal residence is abroad, and who has no fixed domicile here, bringing an action before our Courts, must either find caution for the expenses which may be awarded against him, or constitute a responsible person, residing in Scotland, his attorney, for conducting the action.

1797. June 10. JAMES HOPE against WILLIAM MUTTER.

WILLIAM MUTTER purchased certain lands from the trustees of Robert Hope, and obtained a disposition from them, in virtue of which he was regularly infest.

Robert Hope died in 1775.

James Hope, Robert's brother, after having been many years settled in Ireland, came, in 1795, to Scotland, and having got himself infest as heir of Robert in the lands purchased by Mr Mutter, he brought a reduction and declarator against him, for having it found, that he held them in trust for Robert and his heirs.

Mr Mutter stated, that the pursuer's family was still in Ireland, where he himself frequently went; that he had no fixed domicile in this country, nor any effects from which the defender could recover his expenses, in case they should be awarded to him, which in all probability would happen, as the action was palpably groundless. He therefore craved that the pursuer should be ordained either to find caution to pay the expenses in which he might eventually be found liable, or constitute a responsible person his attorney, for carrying on the action.

THE LORD ORDINARY declined granting this request; but, on advising an incidental petition for the defender, the LORDS ordained the pursuer to find caution.

Lord Ordinary, *Craig.* For the Petitioner, *Arch. Campbell, junior.* Clerk, *Home.*
R. D. *Fac. Col. No 3. p. 5. of Appendix.*