

- NO. 3. The Lord Ordinary sustained the objections.
On advising a reclaiming petition for Mackay, with answers, the Court adhered.

Lord Ordinary, *Balmuto.*
Alt. *Hagart.*

For the Common Agent, *Williamson.*
Clerk, *Menzies.*

R. D.

Fac. Coll. No. 207. p. 475.

NO. 4.

1800. Dec. 20.

JOHN PATERSON against JAMES REID.

An action is competent in the Court of Session, for a sum above 200 merks, though below L. 12 Sterling.

JOHN PATERSON brought an action in the Court of Session against James Reid, for payment of the balance of an account, amounting to L. 11 : 8 : 3.

The defender contended, That the action was incompetent in the Court of Session, because the sum concluded for was below L. 12 Sterling.

The Lord Ordinary sustained the action; and a petition was refused without answers, on the ground that the act 20th Geo. II. c. 43. § 38. prohibiting advocations for sums below L. 12 Sterling, refers to the act 1663, c. 9. against advocations for sums below 200 merks, but makes no alteration upon the act 1672, c. 16. § 16. prohibiting summonses in the first instance for sums below that amount.

Lord Ordinary, *Balmuto.*

For the Petitioner, *Turnball.*

Clerk, *Menzies.*

D. D.

Fac. Coll. No. 209. p. 479.

1802. Jan. 21.

SMITH and another, Petitioners.

NO. 5.

The deposition of a witness was allowed to be taken, to lie *in retentis*, although the summons was but just executed, and the parties not yet in Court.

A PETITION was presented to the Court in the name of Alexander Smith and Robert Auchterlony, trustees under the settlement of Dr James Young, praying, that a witness, of whose deposition there was danger of their being deprived before the proof could be regularly taken, might be immediately examined, his deposition to lie *in retentis* till opened by authority of the Court. The summons in the action in which this evidence would be necessary, had been raised and executed, but the *induciæ* were not yet expired; and in the mean time, the witness, as he was in a very declining state of health, (to which effect a certificate by his physician was produced), was

in great danger of dying. It appeared to the Court to be a case attended with difficulty, as there was here no one regularly in the field who could be called upon to object. They therefore first appointed the petition to be intimated on the walls of the Outer and Inner House, and copies of it to be sent to the defenders in the action, who resided at a distance.

When the petition was again taken into consideration, it was mentioned from the bar, that, in the Douglas Cause, Sir John Stuart's deposition was taken in circumstances not very dissimilar. There, an action of declarator was already in Court, but the reduction in which his testimony was to be used was not yet come into Court. The two actions were, however, on similar grounds, and against the same defenders; so that there was a contradictor in Court, though not in the same cause. It was mentioned likewise, that in Baird against Baird, (not reported), a reduction of a settlement was raised and executed against the defender, but the *inducia* were not expired, when an application was made to the Court, on the part of the pursuers, by petition, on 8th January 1799, to allow one of the instrumentary witnesses to be examined, a certificate being produced of his bad health. The deposition was to lie *in retentis*. The defenders, on the 25th, likewise presented a petition, acquiescing in the above request, and craving the same privilege for themselves as to the examination of another witness. The desire of both petitions was granted, 29th January 1799. (See APPENDIX, PART II.)

No person appearing to object, the Lords allowed the examination to take place, to be sealed up, and transmitted to the clerk of Court, to be there till opened by the authority of the Court.

For the Petitioners, Gillies.

Agent, James Young.

Clerk, Home.

F.

Fac. Coll. No. 18. p. 36.

1805. May 15.

DICK against FARQUHARSON.

NO. 6.

MARY DICK having made up titles, by a service to her ancestor George Campbell of Crunan, brought an action of reduction against John Farquharson, Esq; of Baldovie, who was in possession of this estates, which had been carried off by diligence.

Objections were first made to the pursuer's title, which were repelled.

The defender then made a production of titles, which he argued were a sufficient title to exclude the pursuer. This plea also was repelled.

The cause being in this state, the Lord Ordinary, (18th January 1804), assigned ten days for satisfying the production.

If the pursuer of a reduction does not wish for certification *contra non producta*, he may obtain *avisandum* with the titles produced, without the ne-