

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-

NO. 6. When this period elapsed, and no further production of titles was offered, the pursuer moved to have great avisandum made. This was opposed by the defender, who insisted, that it was necessary, according to the forms of Court, to extract an act, and call it before the Lord Ordinary on the acts, who alone could make avisandum with the titles, as already produced; and grant certification *quoad ultra*.

cessity of extracting an act.

The pursuer, on the other hand, was satisfied with the production already made, and required no decree of certification *contra non producta*.

The Lord Ordinary, (2d February 1805), "declines to make great avisandum at the pursuer's desire, with the writings produced by the defender, as a title to exclude; and in respect a day was taken and assigned to the defender to satisfy the production, finds the pursuer must, at her own expence, extract an act thereupon, and follow out the same in the ordinary manner."

The pursuer reclaimed to the Court. The cause was remitted back to the Lord Ordinary, to recall his interlocutor, and to make avisandum with the production already made.

The rule appears to be this: If the defender appears and makes the production required, avisandum is immediately made, without any further procedure.

If the production is not made, when the term for doing so has expired, it is necessary to extract an act, and call it before the Lord Ordinary of the acts, before the pursuer can obtain circumduction against the defender for not producing, and decree of certification *contra non producta*. These important steps have the effect of reducing the deeds under challenge. But if this is not insisted for, there is no need for taking these steps; Stair, B. 4. Tit. 20, § 20.

Lord Ordinary, *Bannatyne*. For Petitioner, *Baird*. Agent, *J. Cawin*, W. S.
Clerk, *Walker*.

F.

Fac. Coll. No. 208. p. 465.

1805. July 6:

FAIRLIE and Others, Petitioners.

NO. 7.

It is not competent to grant letters of horn-

UPON presenting a decree of the Justices of the Peace for Ayrshire, to the Lord Ordinary on the Bills, for obtaining letters of horning to enforce it, a doubt occurred about the propriety of granting, and the application was re-