

- 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