

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-

ported to the Court. Upon advising a memorial on the subject, it was found to be incompetent; a decision which had been formerly given in Stevenson against Barclay, 9th March 1756, No. 27. p. 5747.

Lord Ordinary, *Glenlee*.

Act. *Fergusson*.

Agent, *W. Wallace Brown*.

*F. v. v.*

*Fac. Coll. No. 219. p. 493.*

NO. 7.  
ing upon de-  
crees of the  
Justices of  
Peace.

1806. July 2. DICK against MAGISTRATES OF EDINBURGH.

NO. 8.

By an act of sederunt of the Lords of Session, as Commissioners of Teinds, of the 31st January 1722, "The Lords of Council and Session, Commissioners for plantation of Kirks and valuation of Teinds, considering that processes before the Commission, do require great dispatch, and that there is only a weekly diet of meeting of the said Commission, and that the dispatch of business is much retarded by reclaiming bills; therefore, the Lords do hereby discharge their clerk, or his depute, to receive more than one reclaiming bill against any interlocutor pronounced by the Court; and declare that they will not hereafter receive nor hear any reclaiming bill but upon new documents, or matters of fact, and sufficient evidence given, that the same is recently come to the knowledge of the party reclaiming."

The Reverend James Dick, minister of Currie, raised a process of augmentation, in which the Magistrates of Edinburgh, the titulars of the parish, were called as defenders. On the 4th of December 1805, the cause was stated by the pursuer, when no appearance was made for the defenders, and the Court pronounced the following interlocutor: "The Lords having advised the scheme of the rental and prepared state, they modify, discern, and ordain the constant stipend and provision of the kirk and parish of Currie, to be for the last half of this present crop and year of God 1805, and yearly in time coming, 81 bolls 2 firloths of meal, 73 bolls 2 firloths of bear, 26 bolls of wheat, 11 bolls of oats, and L. 600 Scots money for stipend, with 100 merks money foresaid, for furnishing the communion-elements."

The Magistrates presented a petition against this interlocutor; upon advising which, "The Lords alter their former interlocutor, and of new modify, discern, and ordain the constant stipend and provision of the parish of Currie, to be for the last half of this present crop and year of God