special warrant may allow a summons to be sufficient for citation thereafter, as well as they may give other privileges. No 75.

*Fol. Dic. v. 1. p. 541. Stair, v. 1 p. 248.*

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1667. *December* 10. HOGG *against* COUNTESS of HOME.

No 76.

AN inhibition being served upon an obligement to warrant, the LORDS sustained a reduction thereon, though there was neither decreet of eviction nor liquidation of distress; the pursuit being only declaratory, and the decreet to be only effectual after eviction and liquidation.

*Fol. Dic. v. 1. p. 541. Stair. Dirleton.*

*** This case is No. 109. p. 7039. *voce* INHIBITION.

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1670. *July* 8. HAMILTON *against* HAY.

No 77.

INHIBITION being served on a bond conditional, not to be paid but upon the creditor's doing a deed whereupon decreet was given for an abatement of the sum in the bond as damage and interest, the fact being found imprestable; the LORDS found, that the said decreet purified the condition, and therefore that the inhibition should stand good for the rest that was decerned; and this against a creditor of the common debtor's, though his debt was prior to the decreet, but he had done no diligence before the inhibition.

*Fol. Dic. v. 1. p. 541. Stair. Gosford.*

*** This case is No 115. p. 7046. *voce* INHIBITION.

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1695. *December* 4. ANDREW MARTIN *against* GEORGE SCOT.

No 78.
Inhibition upon an obligation to compt and reckon.

PHESDO reported Andrew Martin writer against Mr George Scot of Gibieston, late Stewart of Orkney, who being pursued in a reduction *ex capite inhibitionis, objected*, I cannot take a term, because the bond (which is the ground of the inhibition), is not a liquid obligement for a precise sum, but only to pay 16,000 merks after count and reckoning how much of the same is truly resting; so that count must first precede. *Answered*, There is a day prefixed betwixt and which he was to have counted, which is long ago elapsed, and so the whole sum must be presumed as resting. THE LORDS found this could not stop the taking a term in the reduction, but it would have no effect till the count and reckoning were finished, if the defender offered to prove the sum was satisfied in whole or in part, and craved to count and reckon thereanent; and the

No 78. inhibition would subsist as good for all that should be found due on the event of the count. It occurred to some of the Lords, that the defender (though a singular successor) stating himself now as the contradictor, should enact himself to pay the balance *in eventu*; but the plurality thought it sufficient damage to him that his right would be reduced, and laid open by the inhibition *in quantum* the bond subsisted, and was not diminished by the defalcations and instructions of the count, especially in the case of such alternative conditional bonds.

*Fol. Dic. v.* 1. *p.* 541. *Fountainhall, v.* 1. *p.* 683.

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1698. *December* 27. MILNE and HAMILTON *against* COCKBURN.

No 79.
A summons had remained blank for a considerable time after inhibition had been raised on the dependence. The inhibition reduced.

SIR ROBERT MILNE and Sir George Hamilton raise a reduction against Sir James Cockburn of that Ilk, of an inhibition served by him against Sir Robert in 1690, on a depending process for a great sum of money. The reasons were, 1*mo*, That this could not be called a depending process, because it sleeped for many years, till a new wakening of it was raised. 2*do*, The summons produced was not the ground of it, but another summons abstracted, which was only executed for the first diet. 3*tio*, The summons was wholly blank as to the subsumption and debt, and lately filled up. *Answered* to the 1*st*, That a summons not insisted on, but afterwards wakened, is still a depending process, and cannot be reputed dead, no more than a man asleep can be called so. To the 2*d*, It is denied: And as to the 3*d*, The constant practice of the writers to the signet has been to raise inhibitions on blank summonses and charges to enter heir; and whatever may be done for the future, such cannot be quarrelled for bygones, *quia error communis facit jus*, so as to excuse and sustain them till the custom be altered, as has been often found in other cases. THE LORDS took trial before answer as to the matter, and, by examining witnesses, it appearing to have been blank many years after the inhibition, and the summonses only of late to have been filled up, they reduced the inhibition as wanting a sufficient warrant; but, to advertise the lieges of their hazard, they resolved to make an act of sederunt, that the inhibitions served on dependencies shall ingross the tenor of the summons, else they shall not be sustained.

*Fol. Dic. v.* 1. *p.* 541. *Fountainhall, v.* 2. *p.* 29.

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1713. *July* 17. WEIR *against* DEUCHAR.

No 80.

AN inhibition upon a conditional debt was discharged by the Lords, in respect there was no present just reason for inhibiting.

*Fol. Dic. v.* 1. *p.* 542. *Forbes.*

*** This case is No 76. p. 7016. *voce* INHIBITION.