1705. *December* 4. KATHARINE PRINCE and THOMAS NICOLSON, Younger of TRABROWN, *against* MAGNUS PRINCE.

KATHARINE Prince and Thomas Nicolson, younger of Trabrown, her husband, gave in a petition, representing, That Magnus Prince, her cousin, had raised a summons against her, for payment of a blank sum, and thereupon had executed an inhibition; and that, if the same went to the register, it might exceedingly prejudge and impair their credit, seeing the ground thereof was wholly calumnious and unjust; for he had been her curator, and was, by liquid bonds, debtor in 7000 merks, and had, to prevent diligence, retired to the Isle of Sky, and then raised his groundless summons and inhibition: and they were ready to find caution to answer and fulfil his claim in the event; therefore, craved that the registration might be stopped.

The Lords thought a blank summons was no sufficient ground for an inhibition; because, though your true claim were but 1000 merks, yet you might afterwards fill up an hundred thousand, which mars all commerce and bargaining, every body being frighted by so great a sum: and that the same rule ought to hold in arrestments on a blank summons. Though inhibitions may be raised on a charge to enter heir, yet, generally, they should bear a liquid sum; and Stair, *Institut. lib.* 4, *tit.* 50, gives several instances wherein inhibitions may be malicious, and therefore stopt by the Lords. And, in a case before the Revolution, betwixt *Sir David Murray of Stanhope* and *the Countess of Kincardine, his mother-in-law*, the Lords refused an inhibition; and lately betwixt *Sir Gilbert Elliot of Stobbs* and *Doctor Oswald of Preston.*

The Lords thought this present case deserved particular consideration, and ordained it to be seen and answered. *Vol. II. Page* 297.

1705. *December* 21. The COUNTESS DOWAGER of SOUTHESK *against* The EARL of SOUTHESK and his TENANTS; and
The EARL of SOUTHESK's TUTORS *against* The COUNTESS DOWAGER of SOUTHESK.

MARY, Countess-dowager of Southesk, sister to the Earl of Lauderdale, being provided to a liferent annuity of 6000 merks *per annum*, pursues a poinding of the ground. Compearance is made by some of the Earl's tutors, who ALLEGED,—That the pursuer *intus habet*, having possessed the mains of Kinnaird these several years bygone, and had promiscuous intromission with other parts of the estate: which must be ascribed in payment of her jointure *pro tanto*; and offered to refer the same to her oath.

ANSWERED,---This was to involve her in a tedious count and reckoning: for any intromissions she had were all ascribable to other causes; either being applied for maintenance of the family for that term wherein her Lord died, or to the carrying on of some levelling and other works begun in her husband's time; and, by the acts of sederunts made by the tutors, she was ordered to perfect them; and she was willing to find caution to refund, if, upon the event of the count, she were found to have received more than she had right to.

The Lords, in respect of her offer of caution, repelled the tutor's defence, and decerned in her poinding of the ground.

There was likewise an action pursued against her, at the instance of some of the Earl her son's tutors, for delivery of his person to them.

ALLEGED,—It is *res hactenus judicata*, by which the custody of his person is adjudged to me. ANSWERED,—You must condescend before whom the same was obtained. REPLIED,---I need say no more but in general terms; and it is enough I condescend *in termino*.

The reason of their shunning to be more special was, That, by an Act of Privy Council, she was preferred to the custody of her son, and a special condescendence might bring in a debate betwixt two supreme judicatures, How far the Session can cognosce on the justice of the decreets pronounced by the Privy Council, or rescind and alter the same. For avoiding of which interfering, the tutors gave in a petition to the Lords, representing, That my Lord was within a few months of his pupillarity, and that, at his age of fourteen, he was to choose his curators, and it was fit he should be free; and therefore craved he might be sequestrated in some indifferent person's hand, that he might not be wholly influenced by my lady, his mother, in his election; as the Lords had lately done in the case of *Joanna Hamilton, daughter to my Lord Bargeny*.

ANSWERED,—This demand was irregular; seeing there was a depending process, at their instance, for delivering up his person, where *lis erat contestata*; and they behoved to prosecute and abide the event of that, and not crave a summary sequestration.

The Lords refused the desire of the bill, in respect of the state of the process, and that only four tutors craved it; whereas there were five on the other side.

Vol. II. Page 301.

1705. *December* 22. JOHN IRVING of SKAILS *against* WILLIAM GRAHAM of MOSKNOW.

JOHN Irving, late of Skails, pursues a reduction, improbation, and declarator, against Mr William Graham of Mosknow, of all rights of apprising and disposition he has on the said lands of Skails.

ALLEGED,—You have no title to pursue this action, being only apparent heir, who may indeed pursue for exhibition *ad deliberandum*, but not reductions of this nature; for, *esto* I were assoilyied from your instance, yet it would not be *res judicata*, nor an absolvitor against others who might afterwards intent the like pursuit, being *res inter alios quoad* them.

ANSWERED,—He passed from the conclusion craving reduction, which can be only sought by one having right; yet he, as apparent heir, might very well insist in the improbation, and offer to prove that the bonds on which the apprisings were led against his predecessors were false, or that the dispositions alleged denuding them were likewise forged; for, if he were pursued on the passive titles, for paying the sums contained in his father's or grandfather's bonds, he might very well, as apparent heir, reply on their falsehood, and offer to improve the same. And though he were not allowed to carry on the process of improba-