

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 prejudice 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 frightened 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.