No 59. 40 years; since which Claud had made Mr William Brisbane assignee to his right, and infeft him in it; yet Gavin Hamilton of Raploch was ordained to be answered, because his son had, before any right made by him to Brisbane, given a bond to his father, to suffer him to bruik during his lifetime, whereupon he had served inhibition before Brisbane's right.

Fol. Dic. v. 1. *p.* 542. *Haddington, MS. No.* 2317.

1622. *March* 19. Napier *against* Lithgow.

No 60.

In a reversion pursued by Mr William Napier against one Lithgow and Wilkie, upon an inhibition, served by him against his tenant upon a contract, whereby Napier set to his tenant 32 acres of his lands, for payment of four chalders wheat and bear; the Lords found, that the inhibition was a sufficient ground to reduce a wadset given to the tenant of a tenement, albeit there was nothing owing of the tack-duty the time of the alienation.

Fol. Dic. v. 1. *p.* 540. *Haddington, MS. No.* 2619.

1665. *January* 12. Neilson & Callander *against* ———.

No 61.

A party pursued a transference on an old summons, on which inhibition had been used. Transference was refused; yet it was thought, a new summons in the same cause would be sufficient to make the inhibition effectual.

Neilson and Lodovick Callander, her spouse, pursue a transference of an old summons, on which there was an inhibition used. It was *alleged*, That the executions of the first summons were new, and by ocular inspection false, and craved the pursuer might abide thereby, who refused; and so being without an execution on the first summons, but having an execution on the second, were null, the pursuer craved them to be transferred *in statu quo*, but prejudice to the defender in the cause to allege no process, because the first execution was wanting.

The Lords refused to transfer; but some were of opinion, that a new summons, *in eadem causa*, would be sufficient to make the inhibition effectual, being raised on the summons of registration of a bond; others thought, that, albeit the stile bear, that inhibitions were not granted, but upon sight of the summons executed; yet it was ordinary to give it on an unregistered bond, or a charge to enter heir executed, though there was neither decreet nor dependence; and, therefore, though executions be put on to get these raised, yet they are not adhered to, but now used so, that this summons, though without execution, yet might be transferred, and thereon executions might be used, and thereby the inhibition stands valid, which was the more clear way; for, albeit a summons bear to cite to such a day next to come, and so ordinarily cannot be used, no citation being thereon within the year, yet the Lords

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.

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.

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.

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