

The Lords found the tack expired, and preferred the last ; but yet thought the first sufficient to purge the spuilie, and restricted to the value.

*Vol. I. Page 672.*

---

1695. *February 22.* THOMAS MACINTOSH *against* ALEXANDER DUNCANSON.

MERSINGTON reported Thomas Macintosh against Alexander Duncanson, craving to be reponed against a decret *in foro* :—*1mo.* Because the messenger declared, under his hand, that he was not cited, and he had only sent into Edinburgh a blank execution, subscribed, which they had filled up. *2do.* The advocate was content to disclaim his compearance. *3tio.* That he produced several receipts of this debt.

The Lords demurred much if he should be reponed. *Vol. I. Page 672.*

---

1695. *February 22.* JAMES OLIPHANT *against* JOSEPH ORMISTON.

HALCRAIG reported James Oliphant against Joseph Ormiston, Whether he was obliged to stand to a division that was made of his debtor's effects and debts, and the executor was therein exonerated: For, where an executor is convened within the year, not having got time to discuss and ingather the inventory of the testament, and not being liable *ultra vires inventarii*, he is only obliged to assign ; and this was equivalent.

The Lords referred it to the Ordinary, to try if Ormiston was cited or not ; his factor's appearance not being sufficient without a special mandate, as he lived without the kingdom then.

*Vol. I. Page 672.*

---

1694 and 1695. LORD MERSINGTON, &c. *against* MR HARY FLETCHER.

1694. *July 3.*—THE Lords considered the bill given in by my Lord Mersington, and the other friends, on the mother's side, to Fletcher of Aberlady, against Mr Hary Fletcher his tutor, that he was remiss in pursuing the reduction of a decret obtained against the minor by his brother curators,—*viz.* Blackbarony, Salton, and Sir Patrick Murray, in buying the Lady Aberlady's jointure ; and, therefore, craved that a curator *ad hanc litem* might be named, and a sum modified for carrying on the process.

The Lords thought this equivalent to an action for removing him from the tutory as suspect, in regard Salton, his brother, was one of the defenders, and he not being a member of the house, he could not be summarily proceeded against ; therefore, they would not receive it *hoc ordine*, seeing *tutorem habenti tutor dari nequit* ; but ordained him to insist with all diligence in that action,