

- No. 3. *ordinariam de removendo suspecto tutore*, although it would get summary dispatch when raised and executed. See APPENDIX.

Fol. Dic. v. 2. p. 402. Fountainhall.

- No. 4. 1706. July 16. A. against B.

Some tutors to a minor gave in a petition, craving the Lords' authority to a sale of some of their pupil's lands, lying in Anstruther, seeing the necessity of debt was evident, and the smallness of the subject could not bear a process. The Lords rejected the bill, as irregular, and found minors' lands could not be sold judicially, but upon a cognition and trial, comparing the rental and debts, and that by way of process only, and not summarily on a bill; and thought the drawers of such informal petitions, contrary to our fixed stiles and customs, deserved to be reprimanded and rebuked.

Fol. Dic. v. 2. p. 402. Fountainhall, v. 2. p. 343.

1714. July 25. SIR ANDREW KENNEDY *against* SIR ALEXANDER CUMMING.

No. 5.
The House of Lords having reversed a decree of the Court of Session, and ordered that that Court should tax the appellant's expenses; found, that this might be done by summary application. See No. 9.

Sir Alexander Cumming of Coulter having obtained a gift of the conservator's office from the Queen, and having reduced Sir Andrew Kennedy's prior gift, on malversations; and this by an appeal being tabled before the House of Peers, they, in May last, reversed the sentence of the Lords, and reponed Sir Andrew to his place, and gave order that the Lords of Session should tax and modify Sir Andrew's expenses conform to the custom of their Court; who accordingly applied, and gave in an account of £.1500 Sterling it had stood him by many voyages, to Holland, England, &c. Alleged for Sir Alexander, That there being no process depending betwixt them, but finally ended by an extracted decret, he was no more in the field, till he were of new cited and got the *inducia legales* to answer; and it could never be the meaning of the Parliament to condemn him in costs and damages unheard. Answered, It were a strange thing if a new process must be raised for expenses; and he can never pretend surprise; for he was present when the Peers reversed his decree, and adjudged the expenses; and Sir Andrew, ere he departed from London, intimated to him, at his dwelling-house, (he not appearing himself), that he would apply to the Lords; which obliged him either to come home and defend, or send a mandate; and the case was to be considered as if it were yet depending before the Lords, and then no citation is requisite. The Lords, by plurality, found no necessity of a new process, but that he behoved to be cited on a diligence to answer summarily, without abiding the course of the roll to the complaint.

Mrs. Lyon got summary execution against Aboyn and Kinnaird on the discussing of her appeal; but there the Peers had expressly taxed her expenses to £.40 Sterling. So there was nothing left to the Lords but the application and the executive part, by giving horning on fifteen days thereon.

Fol. Dic. v. 2. p. 402. Fountainhall, v. 2. p. 665.