

1630. November 27. LD. LAUDER *against* COLMSLIE.

No 29.

MUTUAL contracts suffer the negative prescription as well as simple obligations.

Fol. Dic. v. 2. p. 98. Durie. Spottiswood.

* * * This case is No. 1. p. 10655.

1630. December 23. OGILVIE *against* LORD OGILVIE.

No 30.

A CONTRACT of marriage, notwithstanding that marriage follows, may prescribe as well as any other obligation.

Fol. Dic. v. 2. p. 98. Durie.

* * * This case is No 7. p. 6541. *voce* IMPLIED OBLIGATION.

1637. July 26. L. LAWERS *against* DUNBARS.

No 31.

THE umquhile Countess of Murray, and the Earl of Argyle, her husband, for his interest, having obtained decret *in anno* 1583, against Dunbars, for the violent profits of certain lands in Murray, pertaining to the Countess in conjunct-fee, by her right thereof made to her by the umquhile Earl of Murray, her first husband; which decret was given against the defender's therein comparing; after which decret no other thing being done therein, while about the year 1597, at which time the parties in the sentence being all then dead, the Laird of Lundie, son procreated betwixt the said Earl of Argyle and the Countess of Murray, obtainer of this sentence, obtains this decret transferred in him, as executor to the Lady his mother, who was conjunct-fiar of the lands, and in some other Dunbars, as representing the defenders in the first instance, (the Laird of Lundie not being then, nor at no time thereafter decerned executor to the Earl of Argyle, husband to the Lady, and to whom, *jure mariti*, the benefit of the sentence behoved to pertain,) and in this case the matter so stands, while the year 1636 or 1637, that Lundie disposes his right of the said sentence to the Laird of Lawers, for satisfying of a debt paid by Lawers for Lundie, which Lawers obtains himself executor-dative decerned to the Earl Argyle, husband to the Lady, and upon these rights now pursues the said Dunbars for payment of the sums contained in the said decret of violent profits. And it being *alleged*, That the said decret was prescribed, conform to the act 28th Parl. 5th James III. there being 40 years since the date thereof, and no documents taken thereon since. Whereto it was *replied*, That sentence *in foro contentioso* prescribes not, as was found by the Lords in an action betwixt

Found, that the act 1469 extends to decrees, though *in foro contradictorio*.