

No 27.

Sinclair by the umquhile Lo. Sinclair her husband, conform to the contract made thereupon; for the which the said Sir George pursued as assignee to the Lady; it being *alleged* by the defender, That the action upon that contract was prescribed, conform to the 28th act of the 5th Parl. King James III. seeing the same appoints all obligations which are not pursued within 40 years after the date thereof, to prescribe; and this contract libelled, not being urged within 40 years after the date thereof, behoved to prescribe; the LORDS repelled this allegiance, and found, That the contract libelled being a contract of marriage, whereupon marriage followed, prescribed not, nor came under that act.

Act. ———.

Alt. *Aiton & Nairn.*Clerk, *Hay.**Fol. Dic. v. 2. p. 98. Durie, p. 18.*

* * Haddington reports this case :

THE Mistress of Sinclair's action sustained, upon her contract of marriage, to obtain her infestment of an annualrent of L. 100, albeit the action was not intended within 40 years after the date of the contract; because she could not pursue during her husband's life, and intended her action within less not 40 years after his decease.

Haddington, MS. No 2602.

1627. June 19.

LINDSAYS against L. BALGONY.

No 28.

Found, that
the act 1469
extends to tes-
taments.

IN an action betwixt Lindsays and L. Balgony, for payment to them as executors-datives to umquhile David Lindsay of Balgony their father, of the goods and gear contained in the testament of umquhile Lillias Oliphant, grand-mother to the defender, and who was convened as nephew and heir by progress to her; the LORDS found, That the testament which was the title and ground of this pursuit, could not produce this action, seeing the same was dated and confirmed in the year 1585; and so 40 years were expired before the intending of this pursuit, and consequently, that the same came under the act of prescription in the 5th and 7th Parliaments James III.; which was found, albeit these acts mentions only prescription of obligations, and this title was a testament, whereto the pursuer alleged these acts could not extend; which the LORDS repelled, and sustained the prescription of the testament, and so much the rather, because there was no writ extant to prove the debt contained in the testament, and intromission therewith after so long time.

Alt. ———.

Alt. *Aiton.*Clerk, *Scot.**Fol. Dic. v. 2. p. 98. Durie, p. 297.*