

to pursue for fulfilling to them of that contract, in any head obligatory in their favours, by way of ordinary action *prout de jure*.

No. 16.

*Durie, p. 754.*

\* \* Auchinleck reports this case :

Contracts or bonds cannot be registered, or charges raised and executed thereupon, at the instance of consenters, the principal being dead, but it must be pursued by way of action.

*Auchinleck MS. p. 190.*

\* \* Spottiswood also reports this case :

By contract of marriage between Robert Brown and Christian Binnie, with consent of John and Alexander her brethren, it was provided, that the half of her tocher should be repaid by the said Robert to her said brethren in case of her decease without children. After her decease, her brethren registered this contract, and charged Robert for fulfilling that part of it. The Lords would not sustain the registration at their instances, after her decease, although they were parties consenters in the contract, and in whose favours that condition was conceived, but ordained them to pursue it by way of ordinary action.

*Spottiswood, p. 274.*

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1642. July 15. LADY GAIRLES *against* EARL GALLOWAY.

The Lady Gairles being provided, by her contract of marriage, to certain lands, which her father-in-law, the Earl of Galloway, obliged him to make yearly worth to her 6000 merks ; whereupon she having raised letters, and charges ; and the same being suspended by the Earl ; at the calling whereof the Lady declared, that she charged the Earl to make the rental of the lands good, conform to the contract, which she declared the lands were not able to pay, having never paid the half of the rental ; and it being here controverted by the suspender, that this trial could not be taken *hoc ordine* by a charge so summarily, but that it ought to abide an ordinary pursuit, by way of declarator, or other action, and not by way of suspension ; the Lords sustained the trial to be cognosced upon the charge in this suspension, and found no necessity that the charger should be put to any other pursuit or declarator therefore, and sustained the same to be taken *hoc ordine*.

No. 17.

Summary diligence upon a contract of marriage.

Act. *Stuart, Nisbet, & Neilson.*

Alt. ——— *& Oswald.*

Clerk, *Hay.*

*Fol. Dic. v. 2. p. 403. Durie, p. 899.*