

\* \* A similar decision was pronounced in the case of a process of compt and reckoning against tutors and curators, though it had lien over more than ten years, December 1731, Creditors of Libberton against his Tutors and Curators. See APPENDIX.

No 470.

1680. February 5. BROWN against HEBURN.

THE act 10th, Parl. 1669, about the interruption of prescription, respects only the future time, and has no retrospect. This remedied by act 15th, Parl. 1685.

No 471.

*Fol. Dic. v. 2. p. 131. Stair.*

\* \* This case is No 382. p. 11208.

1684. December. COUNTESS of WEMYSS against M'KENZIE of Applecross.

No 472.

IN an action to make furthcoming at the instance of the Countess of Wemyss against M'Kenzie of Applecross, the LORDS found, That actions founded upon arrestment were not to prescribe, if they were wakened at any time within five years after the ten years mentioned in the act of Parliament in the year 1669 concerning prescription.

*Fol. Dic. v. 2. p. 131. Sir P. Home, MS. v. 2. No 639.*

\* \* Fountainhall reports this case :

1684. December 3.—THE Countess of Wemyss for payment of a debt of 11,000 merks due to her, arrested the like sum, and it being debated, that the arrestment was null by the 9th act of Parl. 1669, because not wakened within five years; and this being advised, the LORDS found the sense of the said act of Parliament 1669, anent prescriptions, does not extend to actions for making furthcoming, if they be interrupted within the space of ten years posterior to the date of the said act; and find, that, by the said act, the course of ten years is necessary to the prescription of actions of furthcoming, and that the wakening every five years is to be understood posterior to the elapsing of the said ten years; and therefore the deceased Earl of Wemyss having interrupted by the wakening and declarator within the ten years, find that the pursuer's action is not prescribed; and adhere to their former interlocutor, finding that Sinclair of Maye's bond is not in implement of the contract of marriage. Some of the extraordinary Lords were for referring the explaining the ambiguity of the act to the approaching Session of Parliament. But others opposed this; because,