

fore the pronouncing of the sentence, is null, and ought not to be profitable to the obtainer thereof; and in payment of farms, albeit the same cannot be uplifted before Candlemas, in respect that that time is, by perpetual consuetude, granted to the tenant to thresh out the corns, for payment of the master, and preparing of seed to the ground, before which time the tenant cannot conveniently be prepared, nor ready to satisfy the farms; yet the LORDS found, seeing the legal terms of payment are Whitsunday and Martinmas, that both these terms being by-past, pursuit may be moved for payment thereof, so that the sentence decern not the payment to be made till Candlemas be by-past.

No 28.

Act. *Nicolson* younger.Alt. *Douglas*.Clerk, *Hay*.*Durie*, p. 106.

1624. February 21.

BROWN against JOHNSTON, and RENTON against ACHESON.

IN an action betwixt William Brown and the Laird of Johnston, wherein the Laird of Johnston was desired to be decerned to make forthcoming to Brown, a sum addebted by the Laird of Johnston to Thomas Johnston, for satisfaction of a sum owing by the said Thomas to the pursuer, and which was arrested by the pursuer in the Laird of Johnston's hands; the LORDS decerned the Laird of Johnston to make the same sum forthcoming to the pursuer, as was desired in the summons, albeit that the term of payment of that sum addebted by the Laird of Johnston to Thomas was not come, neither at the intenting of this action, neither was the same to be paid for diverse terms yet to come; but the LORDS superseded all execution which might be used upon this decret against Johnston, while the term of his obligation were by-past.

The like was also done the day preceding this, in the action betwixt James Renton and Mr John Acheson, whereby James Renton was decerned to make a sum arrested in his hands, at the instance of Mr John Acheson a creditor, forthcoming to the creditor, after the decease of the said James Renton, seeing he was not debtor to the said Mr John for the same, while, after his decease, the liferent thereof being provided to himself; and, therefore, superseded the execution at the creditors instance, during James Renton's lifetime.

Act. *Belsbes*.Alt. *Cunningham*.Clerk, *Gibson*.*Fol. Dic. v. 1. p. 538. Durie*, p. 112.

No 29.

A decree of forthcoming sustained, though given before the term of payment of the sum arrested, execution being superseded till after that term.

* * See a similar decision 3d July 1628, Scot against Drumlanrig, No. 45. p. 846. *voce* ASSIGNATION.

No 29.

. The case of Brown against Johnston is reported also by Haddington :

WILLIAM BROWN pursued the Laird of Johnston to make a debt owing by him to Thomas Johnston of Castlemilk, and arrested in his hands by the said Brown, furthcoming to him, and referred the debt to Johnston's oath; who granted that he had given a bond of 500 merks to Thomas Johnston of Castlemilk, which bore the principal sum not to be payable before Whitsunday 1625, and some other conditions, whereof he remembered not particularly; but he should have retention of the sum, if the lands disposed to him by Castlemilk should be evicted or distressed. I proponed, that he could not be decerned to pay the sum, while Whitsunday 1625 were passed; notwithstanding whereof, the LORNS decerned presently to pay, the term of payment being by-past.

Haddington, MS. No. 3030.

No 30.

1625. *July 2.*L. RAPLOCH *against* HIS TENANTS.

No action to point the ground, till a term's duty be owing and by-past.

See No 32.

Fol. Dic. v. I. p. 538. Curie.

. This case is No. 5. p. 1277. *voce* BASE INFEEFTMENT.

1628. *June 26.*LADY EDNAM *against* The HEIR thereof.

No 31.
Summons of pointing the ground sustained, tho' executed before the first term of the annuity was due, it concluding only payment to be made at the term.

In a pointing of the ground, the Lady Ednam being infeft by her husband in an annualrent of 3000 merks out of Ednam, pursues the apparent Heir of her husband, granter of her right, and the Tenants of the ground, for payment of the Whitsunday's term 1628, and in time coming; and the tenants comparing, and *alleging*, That their goods could not be pointed for this term of Whitsunday libelled; because, the summons being raised in March 1628, and the husband having deceased only some few days before, in that same month, the relict could not intent any summons against the tenants, which might distress them, or their goods, before the terms of payment of their duties and farms, while their occupation, were by-past; and, therefore, this summons being raised before Whitsunday, which was the first term craved, and they not being debtors, neither of that term, nor of the Martinmas thereafter, while Yule and Candlemas were past; therefore, they *contended*, That this pursuit moved for the said term, and executed before that term was past, and before the terms of payment were come, at which, and whereby they would be only debtors of their duties, could not be sustained. THE LORDS repelled