

knowledges a written obligation, he must prove the satisfaction of it by writ, seeing the party contractor is dead.

No 32.

THE LORDS refused to sustain the qualities of advance or payment by the oath; but allowed the defender to prove the tenor of the contract, that thereby it might appear, whether the advance was acknowledged in it; and assigned a term to prove and to adminiculate the advance or payment, if it did not appear by the contract; and that same term to the pursuer to prove that the cows were received.—See QUALIFIED OATH.

*Stair, v. 2. p. 729.*

1729. January 7.

THOMSON *against* SPENCE.

AN arrestment having lain over two years, without any diligence thereon, and the common debtor having thereafter assigned the subject arrested; in a forthcoming, at the arrester's instance, the LORDS, in respect of the *mora*, preferred the assignee.—See APPENDIX.

No 33.

*Fol. Dic. v. 1. p. 554.*

---



---

DIVISION III.

Litigious by Denunciation on a Horning.

---

S E C T. I.

Debt contracted after Denunciation.—Alienation after Denunciation.

1611. January 18.

ORD *against* KEITH.

THE King's donatar, pursuing for declarator of a rebel's liferent of lands, holden by him of the King, will not be impeded by any base infestment granted by the rebel, after his being year and day at the horn, albeit it be granted before obtaining of declarator.

No 34.

The King's donatar, pursuing for declarator of a rebel's life.

No 34.  
rent of lands,  
holden by him  
of the King,  
will not be  
impeded by  
any base in-  
feftment  
granted by  
the rebel, af-  
ter his being  
year and day  
at the horn,  
although it be  
granted be-  
fore obtaining  
of declarator.

He who is infeft in an annualrent, thereafter taking infeftment of the pro-  
perty of that same land, with provision, that the annualrent shall cease so  
long as the property is effectual, if, thereafter, the property be evicted from  
him absolutely, or be made unprofitable and ineffectual to him for a time, he  
may have recourse to his infeftment of the annualrent, wherein he will not  
be prejudged by acceptation of the infeftment of the property, in respect  
of the provision of the contract.

*Fol. Dic. v. 1. p. 554. Haddington, MS. No 2098.*

No 35.  
In an exhibi-  
tion of writs,  
the defender  
alleged they  
had been im-  
pignorated.  
Repelled on  
account of de-  
nunciation  
and inhibition,  
prior to the  
impignora-  
tion.

1626. December 21.

DUNDAS against STRANG.

SIR JAMES DUNDAS pursuing Mr William Strang for delivery of evidents;  
the defender *alleging*, That the same was impignorated to him for some mo-  
nies addebted by Borthwick of Newbyres, heritor of the lands, whereupon he  
shewed the said Borthwick of Newbyres his obligation and letter, bearing the  
hypothecation thereof; and, therefore, while he were paid of the sums ad-  
debted to him, he *alleged*, That he ought not to deliver the writs. This al-  
legeance was repelled, and the writs ordained to be delivered to the pursuer,  
for two reasons, and *replies separatim, imo*, Because, that, before the debt,  
Newbyres's debtor had sold the lands, whereof these were the evidents acclai-  
med, by contract passed betwixt him and the pursuer, whereupon the pursuer  
had both denounced Newbyres rebel, and served inhibition against him, both  
before the bond made by him to the defender, and before the impignoration  
of the writs; *2do*, Because the pursuer was infeft in the lands, and seased  
therein, which, albeit it was after the impignoration, yet it carried with it  
right to the evidents of the lands. But this last reply was not clearly admit-  
ted, seeing the LORDS doubted, that the sasine after the impignoration would  
have been preferred, if it had depended upon a contract made also after the  
impignoration; but the first reply was enough *per se*.

*Act. Aiton.*

*Alt. Lawtie.*

*Clerk, Gibson.*

No 36.

*Fol. Dic. v. 1. p. 555. Durie, p. 252.*

1627. January 23. THOMAS LINDSAY against PORTEOUS & LO. YESTER.

ONE being denounced at the King's Horn cannot make disposition of any  
thing *currente rebellione*, in prejudice of his superior or his donatar, if he hap-  
pen to remain year and day rebel; no, not to any of his lawful creditors.

*Fol. Dic. v. 1. p. 554. Spottiswood, (HORNINGS.) p. 148.*