

S E C T. IV.

Process before the Term of Payment.

No 26. 1610. *June 16.* DAVIDSON *against* MACKUBIN.

HE who has arrested sums of money in the hands of him who was addebted to his debtor, calling the defenders to make them forthcoming, will get no process, if the day of payment contained in his obligation, who is called to make the sums forthcoming, be not come, albeit the pursuer offer to delay execution till the day of payment be bypast.

Fol. Dic. v. 1. p. 538. Haddington, MS. No 1894.

No 27. 1619. *December 17.* NAPIER *against* MURRAY.

THE LORDS found no action to make arrested goods forthcoming, at the instance of Andrew Napier, because the day of payment of his principal bond was not come.

Kerse, MS. fol. 234.

No 28. 1624. *February 6.* WOOD *against* WADDELL and EDGAR.

IN the double poinding, pursued betwixt Wood and Waddell and Edgar, &c. the LORDS found, that it was not lawful for a man to raise and execute summons for payment of a debt, before the day of payment; and that any sentence proceeding upon such a citation, *per quam actor plus petebat tempore*, was null.

Fol. Dic. v. 1. p. 538. Haddington, MS. No 2992.

* * * Durie reports this case.

1624. *February 5.*—IN an action betwixt Wood against Waddell and Wallace, the LORDS found, that actions intended, and summons raised for payment of sums, or doing of any other deed, whereof the pursuer's term of payment and doing thereof was not come the time of the raising of the summons, ought not to be sustained, nor respected as good and lawful diligence; and that any sentence following upon such intended actions, albeit the term be by-past, be-