

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-

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.