

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

the allegiance, and sustained the process, for that term of Whitsunday, which was not come, as said is; and albeit the summons was executed before the term, seeing thereby payment was craved to be made after the term was past only. THE LORDS found, that this action was *declaratoria juris*, and not principally for present execution.

A&t. *Nicolson.*Alt. *Kinross.*Clerk, *Hay.*

1628. *July 11.*—IN a poinding of the ground, Lady Ednam against the Laird Ednam, the Lady being infeft, conform to her contract of marriage, by her husband, in an annualrent of 3000 merks, to be uplifted out thereof; the LORDS found, that she had competent action against the tenants, for poinding of any of the tenants goods which they had on the ground, which was affected with that annualrent; and that the said goods were in law subject and liable to the payment of the annualrent, of all years and terms preceding before the poinding, notwithstanding that, at that time, they should be owing no farm nor duty to their master, heritor of the land; and albeit the terms of payment of the duties, *viz.* Yule and Candlemas, were not come, nor yet the legal terms, *viz.* Whitsunday and Martinmas; for the LORDS found, that, if the terms were come contained in the infeftment of the annualrent, appointed for payment thereof, albeit the term of paying of this duty to his master were not at that time come; yet the annualrenter might poind *omnia invecta et illata* within the ground, as well any strangers' goods and gear, as the goods of the tenants, labourers of the ground; to the which payment the said tenants' goods were subject, albeit the duties paid to their master yearly should not extend to the half of that for which their goods should be poinded; and this was found, notwithstanding of the 36th act, 5th Parliament, James III. which provides, That the goods of the labourers of the ground shall not be poindable for their masters debt, for a greater quantity than the year's duty payable to their master; which act the LORDS found did extend only where poinding was deduced against the tenants' goods for a moveable debt, as sums of money owing by the master to the creditor, and did not extend to annualrents claimed by infeftment, which they found affected the ground, and all the goods being thereon, to whomsoever they pertained, and for all bygones owing to the poinder, albeit the tenant were not debtor to the master, and before his terms were come, if the terms of paying the annualrent were past.—*See POINDING.*

Act. *Hope & Nicolson.*Alt. *Aiton & Morvat.*Clerk, *Hay.*

*Fol. Dic. v. 1. p. 538. Durie, p. 377. & 387.*