

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