

- No. 2. yet were not made for compearance before a Judge. But in this process, albeit this comprising was sustained, the Lords inclined to make a statute, to eschew the like in time to come, that no such acts should be done upon that day, the same being the Sabbath, wherein all acts should cease, which behoved to have a warrant from a Judge, to be given by a Judge that day, seing that day was appointed for divine service, and for no other act.

*Fol. Dic. v. 2. p. 405. Durie, p. 262.*

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1628. June 26. LORD NEWARK *against* MAXWELL, his Son.

No. 3.

Premonition being made to the party's heir-apparent, the Lords sustained the order, although the day assigned to come and receive the sum was a Sunday, because the sum contained in the reversion needed not much telling, being only a rose-noble.

*Fol. Dic. v. 2. p. 405. Durie. Spottiswood. Auchinleck.*

\* \* This case is No. 25. p. 13450. *voce* REDEMPTION.

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1628. November 19. RAE *against* MAGISTRATES OF DALKEITH.

No. 4.

Magistrates being charged to apprehend a rebel with caption, and the charge being given on Sunday, it was found, That the charge was not null, but yet that the Magistrates were not bound to obey it, being given on such a day; but it being offered to be proved, that the rebel was in the Magistrates' company thereafter, at which time they ought to have apprehended him by virtue of the former charge, the allegiance was found relevant to be proved by their oaths.

*Fol. Dic. v. 2. p. 405. Spottiswood. Auchinleck. Durie.*

\* \* This case is No. 22. p. 11696. *voce* PRISONER.

\* \* See a similar case, 30th July, 1628, Racheld *against* Lauder, No. 36. p. 8132. *voce* LEGAL DILIGENCE.

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1663. February 3. CHARLES OLIPHANT *against* DOUGLAS of Dornoch.

No. 5.

Arrestment  
executed on a  
Sunday null.

Charles Oliphant, as assignee constituted by David M'Brair, charges Dornoch to pay the sum of 1800 merks. Compearance is made for an arrester, as having arrested before the assignation, at least before intimation. The assignee answer-

ed, No preference upon this arrestment, because it was executed upon the Sabbath day, and so is not lawful; for by the law of all nations, judicial acts done by authority of Judges, upon legal process, *diebus feriatis*, are null; and there is an act of sederunt to that same effect. The arrester answered, That there was no law prohibiting such executions, or declaring them null; and though it was a fault and breach of the Sabbath to do so, that annuls not the act; *fieri non debet, sed factum valet*.

No. 5.

The Lords were all clear that such executions should be prohibited in time coming, but *quoad praterita*, some were *non liquet*, yet the major part found the execution null; for they thought, that albeit acts of private parties on the Sabbath day might stand legally valid, as if extracts were subscribed that day, or a consignment made, (which had been found valid by a former decision) yet judicial acts, *auctoritate judicis*, are null, else messengers would ordinarily wait parties upon the Sabbath day, for all execution by horning and caption, &c.

*Fol. Dic. v. 2. p. 405. Stair, v. 1. p. 169.*

1684. March.

DUNCAN against BRUCE.

In a pursuit upon a bond, it was alleged for the defender, and offered to be proved by the pursuer's oath, That the bond was truly subscribed on the Sabbath day, though it bore the date of the day after, and consequently null; which allegation the Lords repelled.

No. 6.

Thereafter it was alleged, That the bond was *falsum in data, consulto*, and not by mistake.

Answered: That error *in data* is only considered when creditors are competing on diligences, and it is *jus tertii* to the debtor to object it.

This point was not decided.

*Fol. Dic. v. 2. p. 405. Harcarse, No. 194. p. 43.*

1702. January 17.

FORBES of Robslaw against The EARL of ABERDEEN.

Forbes pursues a reduction of the Earl's right and disposition to some lands he derived from Thomas Reynold. Alleged, you, Robslaw, are only a personal creditor to Reynold, and so cannot reduce or call for my rights on the said Reynold's estate, which are completed by infestment, except you had adjudged or affected the subject. Improbation of real rights has been sustained at personal creditors' instance, but not reduction. Answered, The act of Parliament 1621 introducing these reductions, *actione Pauliana*, of deeds done to their prejudice, requires no

No. 7.

An inhibition of a very old date reduced, having been executed on a Sunday.