

## SUNDAY.

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1622. February 9. MORTIMER *against* SCRIMZEOUR.

IN an action pursued by William Mortimer, burghess of Edinburgh, who was donatar to the escheat goods of one James Watson, and whereupon he had obtained decret of general declarator against one Scrimzeour, for making them forthcoming to the donatar ; the Lords found the poiding executed at Scrimzeour's instance, by virtue whereof he would have purged his intromission with the said rebel's goods libelled, to be null, because the same was executed upon a Sunday, which the Lords found not to be a competent day for such acts, and therefore repelled the allegiance founded upon the said poiding.

Clerk, *Hay*.

*Fol. Dic. v. 2. p. 405. Durie, p. 16.*

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1627. February 24. EARL CASSILS *against* MACMARTIN and LOWS.

In an action, Earl of Cassils against Macmartin and Andrew Lows, whereof mention is made, 15th of February, 1627. No. 1. p. 2167. *voce* CHARGE TO ENTER HEIR, the Lords repelled the allegiance, whereby it was alledged, that Mr. Andrew Low's comprising was null, because he had deduced the same, upon an heritable sum of money, the same not being made moveable before the comprising, which could not be sustained, seeing comprising could not be deduced, but for not payment of moveable sums. This allegiance was found could not be received in this place, by way of suspension or exception, but only was competent to be received by way of reduction, albeit it was alledged, that it was instantly verified by consideration of the tenor of the bond, insert in the body of the comprising ; which was repelled *hoc loco*, as said is. *Item*, in this same process the Lords sustained the comprising, albeit the letters whereby the same was raised, and the bill which was the warrant thereof, was dated upon a Sunday, and the letters signed upon a Sunday ; whereby the party alledged, the same being done upon a Sunday, could not be found lawful, that day not being a convenient day for such acts ; which was also repelled ; for albeit of the law *vox præconis debet cessare*, yet there was no prohibition, which extended to acts which had no citation upon that day, and which albeit they were judicial,

No. 1.

Poiding executed on a Sunday null.

No. 2.

A comprising sustained, tho' the letters were signed on a Sunday, and the bill, which was the warrant of it, was dated on a Sunday, but the Lords inclined to make a statute to prohibit the like in time coming.

- 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-