

No 35.

and by virtue thereof, while the term was bypast, albeit the letters were raised before the term; and therefore they repelled the allegiance whereby the horn-ing and letters were impugned for that reason.

Act. Neilson.

Alt. Belsbes.

Clerk, Scot.

Fol. Dic. v. I. p. 538. Durie, p. 92.

1628. July 4.

RACHELET *against* LAUDER.

No 36.

A charge given on Sunday to a magistrate to apprehend a rebel, altho' disobeyed, did not subject the magistrate in damages; but, without a new charge, he would have been liable, if he had not apprehended him the next day, if within his reach.

In an action, Rachelet a Frenchman, against Sir Lewis Lauder, Sheriff of Lothian, who was pursued for payment of a sum addebted to the Frenchman by his debtor, because he was charged by letters of caption to take the said debtor, he being then in his company, and did not the same, the LORDS found the said charge given to the Sheriff null, because it was given to him upon a Sunday, on the which the LORDS found it was not lawful to execute any such charges at no time of the day, neither before sermon nor the time of sermon, nor thereafter; and therefore found the Sheriff, for disobedience of that charge, not liable in the sum, and assolizied him therefrom.

July 30.—In the action of Rachelet *contra* Lauder, mentioned July 4, 1628, the LORDS found, that albeit the charge given to the Sheriff to take a rebel, execute upon a Sunday, was not of force to make the Sheriff liable to the creditor for his disobeying of the charge given that day; yet, it was effectual to make him liable to the creditor if after that day the rebel was in the Sheriff's company upon a week day and within the Sheriff's jurisdiction, and that the said charge was given upon a Sunday, as said is, was sufficient to produce that effect, without any other new charge, albeit the party *alleged*, that the charge given that day was a null charge, and so could not be effectual to work any thing, whereon any act or pursuit might be founded, which was not respected; and also found, that the Sheriff remained obliged to the creditor, if the rebel remained in the Sheriff's house all the night with the Sheriff's knowledge; for, albeit a magistrate cannot be charged in the night to take a rebel, yet he being charged before, and the rebel being all night in the Sheriff's house with the Sheriff's knowledge, he might have detained him upon the morrow, and so obeyed the tenor of the charge, and not doing the same, he was liable to the party for the debt. See SUNDAY.

Act. Bärnet, major.

Alt. Lermonth.

Clerk, Hay.

Durie, p. 382. & 395.