

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.

No. 7. more but that they be a true anterior creditor, but not that they have a real right on the subject; for it were hard to put creditors to adjudge before they try the strength of their right, whether it can remove impediments, yea or not; for if I succumb in that, then I have all that expense in my pocket; and if I prevail, then I will adjudge and make a right to the subject, whereby I may compete with you for the mails and duties, and till then you keep the possession, because yet I have no positive right to the lands. The Lords found he, as a personal creditor, had a sufficient title to reduce on the act of Parliament 1621, against alienations made in defraud of prior creditors, though sundry doubted much of this.

Then Robslaw repeated his reason, founded on an inhibition before the Earl's right. Answered, I have raised reduction of that inhibition as illegally and unwarrantably executed, bearing date the 16th of August, 1668, which, by the calendars and almanacks produced, was on a Sunday. The Lords found this nullity both relevant and proved, and therefore reduced the inhibition. This agrees with the Roman law, *L. 3. 7. et 11. C. De feriis.*

*Fol. Dic. v. 2. p. 406. Fountainhall, v. 2. p. 139.*

A MEDITATIONE FUGÆ Warrant may be executed on a Sunday; see Kemp against his Creditors, No. 10. p. 8554. *voce* MEDITATIONE FUGÆ.

See APPENDIX.