

* * * Spottiswood reports this case :

No 22.

THERE WAS a charge given at James Rae's instance to the Bailies of Dalkeith, Archibald Weddel and James Douglas, for apprehending of the young Laird of Mains; the execution bore, that the officer gave the charge to them being both together in Dalkeith, and the rebel with them, and that he delivered a copy to Archibald one of the Bailies, in name and behalf of both. They being pursued for disobeying the charge, James *alleged*, That he ought to be assoilzied, because the execution bore not that there was a copy delivered to him. However, in respect he was present and saw it delivered to his fellow, the Lords sustained the charge. Next *alleged*, the charge was null, because it was delivered on a Sunday, as they were going to the kirk at the ringing of the last bell. THE LORDS found that the charge was not null, but yet that the Bailies were not obliged to obey, being given at such a time. And this has been found before betwixt Rachelet Frenchman and Sir Lewis Lauder, *voce* SUNDAY. To meet this last allegiance, it was *replied*, That the pursuer offered to prove that the rebel was in their company since, at which time they should have apprehended him by virtue of the former charge. Which reply was found relevant to be proven by the oath of the defenders.

Spottiswood, (CAPTION.) p. 31.

1629. November 21. LOCKIE *against* BAILIES of GLASGOW.

No 23.

IN an action against the Magistrates to pay the debt, because the debtor being incarcerated in their ward escaped, the LORDS found an exception relevant to produce liberation to the Magistrates, viz. that the debtor by instruments of iron in the night time, broke up the lintel of the window in the prison-house where he was detained, and escaped thereat, which was a case like to *casus fortuitus*, for which they cannot be answerable, neither can be *in culpa* thereby, specially seeing that same night of his escape, the Magistrates sought him in all the parts of the town, and upon the morrow and next day thereafter searched and sought him through the country; which manner of escaping and diligence done immediately thereafter, was found relevant to liberate the Magistrates, seeing it was not alleged, that either the Magistrates, or any of the under officers, or keepers of the goal, were accessory to the escape.

Act. Lawrie.

Alt. Aiton & Cuninghame.

Clerk, Hay.

Fol. Dic. v. 2: p: 170. Durie, p: 398.