

1675. February 11. DOUGLAS *against* JACKSON and GRAHAME.

No 75.

THE LORDS found, that a pointing is not lawful, unless it be begun before the setting of the sun ; and what is to be done at that time, be all done and complete before the day light be gone.

*Fol. Dic. v. 1. p. 263. Dirleton, No 250. p. 121.*

\* \* \* Stair reports the same case :

ROBERT DOUGLAS having pursued JACKSON for spuizie, or restitution of goods pointed from him, insists, upon this reason, that the pointing was not done in due time of day, but in night, at least after sunset. It was *answered*, That it was sufficient that it was done with day light.

THE LORDS found, that the pointing was not valid, unless it were begun before sun-set, and ended during the day light.

*Stair, v. 2. p. 321.*

1703. November 10.

MR WILLIAM GORDON, and ELISABETH WOOD, his Spouse, *against* SIR WILLIAM HOPE.

No 76.

SIR William Hope having obtained a decret of removing from the house of Balcomie, against Mr William Gordon, and thereupon having charged and denounced him, he obtained letters of ejection, which he did execute upon the 9th of October 1702.

An ejection, begun to be executed about break of day, illegal.

Mr William and his wife did raise a complaint before the Lords of Session, that the said ejection was not only executed with the utmost rigour, dragging his wife violently out of the house, when he was in prison, and using the children no better ; but likewise that the same was illegal, being done in the night-time, at least before the rising of the sun. Whereupon THE LORDS, before answer, ' allowed a mutual probation to either party, for proving the precise time ' of the day at which the ejection was executed, and whether before or after ' sun rising ; and likewise to prove the custom in burgh and landwart in the ' like cases.'

It did appear by the probation, that the ejection was executed with great rigour ; and Sir William's instrument of ejection bore to have begun betwixt six and seven in the morning, upon the 9th of October ; and the current of Mr William's witnesses proved, that the same did begin at the break or point of day ; and there was no condescendence or probation of any custom or practice of executing ejections in the night-time, or after sun-setting, or before the rising thereof.