

1630. February 18.

WRIGHT against WRIGHT.

No 14.

THE defender producing a horning to debar the pursuer *ab agendo*, and the pursuer producing a ticket subscribed by the party at whose instance the horning was execute, whereby he declared he would not use that horning against him, and disassented that this party, or any other, should use the same against him to debar him from his pursuit: THE LORDS found that, notwithstanding of the said writ, any persons might produce horning against the rebel, albeit the party would not use the same at whose instance it was execute; for, as long as he was rebel unrelaxed, he could not have process, and being unrelaxed, any party might propone and produce the horning; but found, that this ticket would be a good ground whereupon the rebel might seek to be relaxed to have *personam standi in judicio* in that pursuit, albeit thereby he would not be simply relaxed therefrom.

Act. ———.

Alt. *Mowat*.*Fol. Dic. v. 2. p. 84. Durie, p. 493.*

* * * Auchinleck reports this case :

A HORNING being produced by a pursuer to stay his party *ab agendo*, although the said horning was executed at another man's instance, and the defender had purchased a warrant from him at whose instance he was denounced, that he would not use that horning to repel him *ab agendo*, yet seeing he remained rebel, the LORDS would not give him process, but granted him relaxation upon the said warrant to the effect only that he may have *personam standi in judicio*.

Auchinleck, MS. p. 86.

1630. June 19.

E. CRAWFORD Supplicant.

No 15.

An heir about to be served was protected by the Court from being debarred, because no creditor would be prejudged, and because he would have lost his action by prescription, if delayed.

A SUPPLICATION given in to the Lords at the E. Crawford's instance, craving, That seeing he was to serve himself heir to some of his predecessors before the expiring of the time of prescription, and that sundry of his creditors or other persons might produce hornings against him, whereby the Judge before whom his brieves were to be served might be hindered to proceed therein, and he would lose the benefit of the prescription; therefore that the LORDS would give command to the Judge to proceed, notwithstanding of the hornings to be produced by any person, and to dispense therewith: THE LORDS found that they could not grant such a warrant, nor dispense therewith, that not being proper for them to do; but they ordained and found, that the supplicant should have

a general relaxation and suspension from all hornings whatsoever, without necessity to express any particular, and which he might execute by a general execution of relaxation at the market-cross of Edinburgh without necessity of any particular citation, and which they declared they would grant, and granted the same to that effect, that his brieves might not be staid, but that the Judge and assizers might proceed therein notwithstanding of any hornings to be produced against the impetrator of the brieves; and, albeit there was a contrary supplication given in by the creditors and others who were infest in the lands by the Earls of Crawford, that the hornings might have that effect which in law they ought to produce, yet the other bill was granted, and the creditors' bill refused; for the LORDS found that the service would tend to the creditors' benefit.

No 15.

Fol. Dic. v. 2. p. 86. Durie, p. 520.

* * * Auchinleck reports this case :

1630. *June 22.*—NOTWITHSTANDING that the LORDS refused a general relaxation from all horning to the Earl of Cassillis upon the day of his service, yet the like favour being craved by the Earl of Crawford and the Laird of Coss, by bill, the day of their service to one of the Earl of Crawford's predecessors; the LORDS granted the desire of the bill, only *ad hunc effectum*, that they might have place to stand in judgment till they were served, without caution, which singular favour was granted for two respects; *1mo*, Because, by their service, no creditor would be prejudged, but the debtor made more able to give his creditor satisfaction; *2do*, In respect the prescription was so near, and if they lost this day, they lost their action for ever.

Auchinleck, MS. p. 87.

1631. *March 8.*

CHISHOLM *against* M'DOUGALL.

In a pursuit at Walter Chisholm's instance, as assignee constituted by the Goodwife of Gallashiels, and John Hume her spouse, against Sir William M'Dougall, for payment of certain duties of lands pertaining to her in terce, intromitted with by Sir William, wherein horning being produced against John Hume, spouse to the said Goodwife of Galashiels, in respect whereof he *alleged*, That no process could be granted at the assignee's instance; the LORDS found, That seeing the assignee declared that this pursuit was moved to the behoof of his cedent the Lady Galashiels, albeit the assignee was not at the horn, yet the cedent's husband being at the horn, as the said horning would have debarred her of it if it had been pursued at her own instance and her said husband's, so it should also stay the process at the assignee's instance, being done to their use, as said is; which was so found, albeit the principal party, viz. the Goodwife of

No 16.

Competent to any party, though neither creditor nor donatar, to object, *non persona standi.*