

No 5.

the party denounced and registered, agreeing with the denouncer, and satisfying him, should get the principal letters in his hands, and destroy them, and so defraud the King of his casualty; whereas upon the other part, if the extract should be registered to satisfy the production, the verity of the executions might be tried by the officer and witnesses therein contained; likeas, in this case, the collusion was manifest in respect of the collusion betwixt the denouncer and this pursuer, who having satisfied the denouncer, had obtained relaxation upon production of his acquittance; in respect whereof, the LORDS found, That the production of the extract satisfied the production, therefore they would not grant the certification for not production of the principal letters. It was *alleged*, that the contrary was done betwixt the Laird of Kinneir, younger and elder, but that proceeded upon the officers' deposition, who declared he could not clearly answer in the improbation of the executions, and depone thereintil, while first he saw his own execution and subscription.

*Fol. Dic. v. 2. p. 85. Haddington, MS. No 1638 and 1643.*

1609. December 13. LAIRD RUTHVEN *against* KERR.

No 6.

A pursuer was debarred by a horning, although the writ which he founded on bore to be entered into for the behoof of another who offered to insist.

THE Laird of Ruthven's taking burden upon him for my Lord of Dirleton, contracted with Andrew Kerr and young Innermerk, anent the conquest from them of the lands of Fenton; in the which contract, Ruthvens took them bound to pay certain farms to my Lord of Setoun, or to him to my Lord of Setoun's behoof, and thereupon having charged Andrew Kerr to pay the said farms, and litiscontestation being made in the cause at the term of probation, witnesses being produced, Andrew Kerr gave in horning against Ruthvens. It was *alleged* the horning could not stay the reception of the witnesses, because Ruthven was not contractor nor party in this cause to his own behoof, but to my Lord of Setoun's, and therefore the witnesses behoved to be received to my Lord of Setoun's effect, to whose commodity Ruthven's pursuit tended; nevertheless, because the charge was raised by Ruthven, and the suspension only raised and executed against him, the LORDS found no process in respect of the horning.

*Fol. Dic. v. 2. p. 84. Haddington, MS. No 1682.*

No 7.

1609. December 21. DOIG *against* DEMPSTER.

A MAN summoned his party, who has put him to the horn, to hear and see him decerned to be restored, because the debt is paid to him, which he refers to his oath. THE LORDS will give no process to the pursuer, being debarred by that same horning.

*Fol. Dic. v. 2. p. 85. Haddington, MS. No 1710.*