

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