

The Clerk of the Register of Hornings humbly prays for the direction of the Court how he is to act.

No 400.

THE LORDS having considered the above memorial, were of opinion, That the Clerk to the Register of Hornings ought to register the above horning and denunciation, and ordained the memorial and deliverance thereon to be insert in the books of sederunt.

*Fol. Dic. v. 4. p. 112. D. Falconer, v. 1. No 110. p. 131.*

1746. June 12.

Mr JOHN ERSKINE *against* The Earl of BUCHAN.

No 401.

MR JOHN ERSKINE advocate pursued an action of sale of the estate of Cardross, which, by interlocutor 23d July 1745, was ordained to be sold on the 10th of October then next, and letters of publication to be executed accordingly.

An act appointing an estate to be sold 10th October 1745, was found current till as many days after 1st June 1746, as that was after 16th September 1745.

When the day came, the rebels had got possession of Edinburgh, whereby all judicial procedure was interrupted; and therefore, in the beginning of this session, Mr Erskine presented a petition, praying a day to be appointed of new for the sale, upon notice thereof to be given in the newspapers, and also craving an incident diligence for citing the present Earl of Buchan as defender, his father the former defender being deceased.

At moving this petition, it occurred to the Lords, that by the act of Parliament for adjourning the Court of Session, and remedying the inconveniences arising from the surcease of justice, it was enacted, "That all actions should be on the 1st of June 1746 in the same state they were in on the 1st of November preceding;" and therefore if the sale had been appointed to proceed on any day of November, the statute would have changed it to the same day in June, and so the act not having fallen, the day might have been prorogued by interlocutor of the Court; but, as in this case, the day of the sale was elapsed before the 1st of November, although the Session had then met, the term could not have been prorogued, but there would have been a necessity for new letters of publication.

THE COURT gave no judgment on this doubt, till the Earl of Buchan should be brought into the field, for which purpose they, 3d June, granted diligence.

The Earl being called, a new petition was given in, shewing, that by the same statute in all proceedings which ought to be performed within a limited time, the time intervening betwixt the 16th of September, when the rebels got possession of the city, and the 1st of June, was not to be reckoned, that therefore the act was still current, and fell to be fulfilled at a day as distant from the 1st of June as the day appointed was from the 16th of September, and thus it was still competent to prorogate the term.

THE LORDS granted warrant for the sale to proceed on the 10th of July next, and ordained notice to be given in the newspapers.

Petitioner, *Miller.*Clerk, *Forbes.*

*Fol. Dic. v. 4. p. 112. D. Falconer, v. 1. No 111. p. 132.*