

1675. June 30. WARDLAW against WARDLAW.

MARGARET WARDLAW having obtained a decret against her brother, and thereupon denounced him, pursues reduction of an assignation made by him upon the act of parliament 1592, c. 128. The defender *alleged* absolvitor, because the pursuer's decret, whereupon her horning proceeded, is null, as being pronounced by the Sheriff of Fife in vacance time, without dispensation. It was answered, That the decret was after Michaelmas, which albeit in the vacance is the Head Courts of all the Sheriffs, and nothing done at that Court can be null, and consequently at none thereafter, in respect of the general custom of all inferior Courts, to keep Courts after Michaelmas without dispensation.

Which the LORDS found relevant.

Fol. Dic. v. 1. p. 502. Stair, v. 2. p. 337.

* * * Gosford reports this case :

IN a suspension raised by Wardlaw of a decret pronounced against him in the Sheriff Court of Fife, upon this reason, That the decret was null, being given in the time of vacation, without a dispensation ; it was *answered*, That the decret was given in October, after the Head Court at Michaelmas, and so needed no dispensation, it being the custom of Sheriff Courts to proceed in all actions depending before them after the Head Court. It was *replied*, That the vacation being from the rising of the Session until the sitting down thereof, the suspender was *in tuto* not to compear. THE LORDS did consider this as a general case, and found that if the charger could prove that it was the custom of that Court to proceed legally in actions after the Michaelmas term, that the decret should not be null, yet they reponed the defender, if he had any just defence, to propone the same before the Ordinary.

Gosford, MS. No 765. p. 476.

1711. January 9.

JOHN RUSSEL of Braidshaw, Writer in Edinburgh, against JAMES MILLER, Coppersmith in the Canongate.

JAMES MILLER being charged at the instance of John Russell, to make payment of L. 149: 19s. Scots, contained in a decret obtained at the charger's instance against him, before the Commissaries of Edinburgh, dated the 21st of March last, he suspended and raised reduction of the decret, upon this ground, that it was *ipso jure* null, for being pronounced in close time of vacation, when no inferior Court could sit ; seeing, by act of sederunt July 21. 1696, the LORDS discharged the clerks of the bills to write upon any bills for dispensations to in-

No 216.

All inferior judges hold courts after Michaelmas, without dispensation.

No 217.

A party suspended a decret, because it was obtained before a sheriff on 21st March, by virtue of a