

DIVISION II.

Prorogation of Jurisdiction.

S E C T. I.

Decree pronounced by an Incompetent Court.—*Prorogatio de loco in locum.*—Decree pronounced in vacation time, how Prorogated ?

1583. February.

ROBERTON *against* DUNDAS.

No 15.

A person being summoned to compare *coram non suo judice*, the Lords found, that if he did not compare and propone his declinator, the decree pronounced against him must stand good till it be reduced.

THERE was a woman called Dundas, who, being pursued by virtue of letters raised upon a decret by one Robertson, brother to the Laird of Ernock, obtained suspension, *alleging*, That the said decret was given against her *a non suo judice*, by the Commissary of Glasgow, she in the mean time being for the space of 40 days before the same having her remaining and dwelling in Edinburgh ; and so the said decret, as she alleged, was null of itself, and merited not execution.—It was *answered*, and also reasoned among the LORDS, That the said decret, albeit it was given *a non suo judice*, behoved to stand and take effect ; because the party was summoned to the giving thereof, *et de jure, prout in L. 5. D. De judiciis, si quis ex aliena jurisdictione ad Prætozem vocetur, debet venire, et privilegia sua allegare*, and so the said defender, Dundas, being once warned, ought to have compared and alleged that she was not under the Commissary's jurisdiction, and to have proponed *declinatoriam exceptionem*.—THE LORDS pronounced, That albeit the decret was given *a non suo judice*, it ought to stand until it be reduced.

Fol. Dic. v. 1. p. 493. Colvil, MS. p. 403.

1586. July.

M'DUFF *against* DOIG.

No 16.

The contrary of the above case was found, a decree of an incompetent court being

THERE was one M'Duff that pursued one Doig for ejecting him forth of a room held of the Earl of Gowrie, of the barony of Strabran.—It was *answered*, That he had committed no spulzie ; because the said M'Duff's father, present occupier of the room, being convicted of a slaughter, and executed for the same, and his goods and gear being come into the King's Majesty's hands, and