

No 18.

1628. *March 17.*A. *against* B.

IF a party compear once before a Commissary and propone defences, although he be absent when sentence is pronounced, and so the decret given for not compearance, yet he cannot be holden thereafter to reduce that decret, or allege the same to be null, as given *non suo judice*, for upon matter not consistorial, seeing he once compeared and omitted this defence.

*Auchinleck, MS. p. 113.*

1628. *December 6.*MAXWELL *against* LAIRD of Minto, and HAMILTON *against* SWYNE.

No 19.

DECRET obtained before inferior judges from Lammas to November, except they bear dispensation, are null; but if the said decreets be given *in foro contradictorio*, and the declinator omitted by the defender, the not inserting of the dispensation cannot be objected by the said defender, either by way of suspension or reduction.

*Fol. Dic. v. 1. p. 493. Auchinleck, MS. p. 56.*

\* \* \* Durie reports this case:

IN this pursuit, a decret given by the Commissary in time of vacance, being quarrelled by the suspender by way of suspension, because the judge had not a dispensation to sit in that feriat time, the decret, notwithstanding, was sustained, because it was given against him compearing; so that he not proponing the same before sentence, *videbatur consensisse in judicem*, and he could not now propone that which he then omitted.

Act. *Stuart & Burnet.*Alt. *Nicolson & Baird.*Clerk, *Gibson.*

*Durie, p. 406.*