

1776. December 13.

PEDIE, Petitioner.

No 154.

PEDIE, a creditor of Hamilton deceased, in the view of obtaining a preference to the creditors of his heir, on act 1681, c. 17, raised adjudication against the debtor's estate, on one diet, whereof the *inducia* did not expire till Saturday 11th January, and the three years from the debtor's death expired on Monday the 13th January. As the 11th was within the period of the Christmas vacation, Pedie petitioned the Court to authorise an Ordinary to decern in the adjudication, reserving all defences *contra executionem*, without allowing the defenders to take a day to produce a progress, as that would have prevented the decret being given within the three years of the debtor's death. THE COURT refused the petition. See APPENDIX.

Fol. Dic. v. 4. p. 149.

SECT. VII.

Dilatory defence.—If it must be instantly verified??

1630. July 2.

E. HUME against FRANCIS STUART.

No 155.

In a poiding of the barony of Coldingham, for a yearly annualrent, the defender offering to improve the execution of the summons against him; and the pursuer *answering*, that seeing he compeared, he thereby affirmed in effect the citation, and this offering to improve ought not to stay this process; but the defender, if he pleased, may intent his action by way of pursuit thereupon; and cannot now be received, being a dilator, which has not instant verification, as it ought to have, if it could be here received;—and the defender *answering*, That he compeared only here to quarrel the citation, and proponed the improbation, as a peremptory in the cause;—the Lords found, That the improbation of the execution might be proponed *peremptorie* in this judgment *et hac loco*, and received the same, without necessity of instant verification; but found, that the proponer ought to have all the terms for improving, which are given to prove other exceptions; for seeing, if the defender were decerned in absence, he might reduce the decret upon that reason, to offer to improve the execution, so he might now propone it by way of exception, which would be relevant by way of reduction, albeit he now compeared.

Act. *Advocatus & Nicolson.*Alt. *Craig.*Clerk, *Gibson.*Fol. Dic. v. 2. p. 188. *Durie*, p. 523.