

ad hoc. For by Reason of the Natural Bias on every ones Mind
 favour himself. This prosecution is for what is due either by a
 real or personal right. so that My Lord said (L. 4 Tit. 3 § 20) fol-
 lowing the Opinion of Holtman. ^{It seems to have no}
 ground for sharrdeling this Definition, as if it were adapted on-
 ly to personal Actions. Action in the last Sense, is a prosecution
 legal Demand of a persons right, in order to a Judicial trial or
 Determination thereof. Action when distained by the Judge as
 right and is properly called a process, because all Actions before
 are proposed in these terms, ^{no process for such a Reason, that}
 there can be no further procedure therein. But in the vulgar ac-
 ception, an Action when called by the Clerk or Judge, is only
 the name of a process, and so long as it is proposed in one
 writ or course of process, the Decret be given, is termed an Action
 Action in a larger Sense is called a plea, which signifies all that
 is done between the Allegants or Contending parties from the
 first Judicial Act, till they acquiesce, and so may comprehend
 several Instances: As when a Decret is obtained, and but
 not paid to be Depending, so long as the Parties hold to be
 stand in Judgment. The Controversie in question to be tried
 is properly termed a cause, for that it is the cause of being
 cely, instance and plea, where it is described by the pursuer
 Re who brings the Action is called the pursuer, and he again
 whom it is brought, called the Defender. In the Courts of England
 he who brings an Action Real, is called the Demandant, and he
 against whom it is brought is called the Tenant. In Actions
 personal and Mixed, the former is termed the Plaintiff, and the
 latter the Defendant. ^{and in the Courts of Equity, the pursuer is called the Plaintiff, and the}
 goods under the name of a Defendant, and the pursuer is called the Plaintiff. ^{and in the Courts of Equity, the pursuer is called the Plaintiff, and the}
 Every one has a right to pursue, or demand of what
 who is not Incapable, or under some Restraint by Law. Those
 Incapable by Law to pursue are such as have no personam, sta-
 dy in Indico §. 21. of Minors Wankers tutors and Curators, or
 having tutors and Curators, and wanting their Concurrence. ^{Who}
 Defect the ^{may} supply by appointing to the Minor a Cur-
 ator ad interim of the said Law, or one who has denounced and
 is retained. ^{One who is Incapable to pursue, and is not forbidden by}
 the 1st of Parl. 17th of King Charles II. ^{and a wife cannot sue in her own right}
 Consent of her husband ever for an heritable debt. ^{the}
~~_____~~ ^{It seems to be forfeited or unreasonable, Rea-}
 son to Concur 9 January, 1623. Marshall contra Marshall
 6 July 1673 Hacked contra Godon. Nor can the pursuer be
 own husband except upon special and weighty Considerations,
 as when Vergil is Intromittor, or when the pursuer and demand
 against him who is Directed from his Regularly Noote
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The writ of action is taken in 1680.

is forced to prosecute or commence and Action. Et. Cul. Manswilt
 agree vel dunt. But after he had commenced the suit, he cannot
 let it drop or stand when he pleases, without Consent of the Defen-
 der, though he is ready to pay the costs. Novell. 112 Cap. 3. The
 pursuer ought not to bring his Action without a just reason,
 for if he do he may be Condemned to pay costs to the Defender.
 Nor should he Demand more than is due to him for others ways,
 he will get no Expence of Office from the Defender. Albeit the
 pursuer is at liberty whether he will sue or not, the Defen-
 der may be forced to answer, if the Charge be brought.
 Unless the Defender is a person whom Law allows to be fitted
 in Judgment, as a Minor whose tutors and Curators are not
 fitted to answer him, or a Wife whose husband is not called
 for his Interest. No Defender tender his Case Rationes aut
 Instrumenta to Exhibit his accounts or papers, or
 to the pursuer ad fundum, and an Account make up a Charge
 against himself. L. 1 C. A. Cull. infim. C. de Dono. ^{esse llet}
 Contestation. Because No man is bound to furnish a weapon
 to cut his own throat. Or to contribute to Ruine his own for-
 tress. L. 7. C. de Testib. Albeit he was Tutor to the pursuer
 46 35. ^{ad Tit. 8. peric. Tit. l. 9. pr. ff. de Dono}
 his factor, or in Copartnership with him, ^{ad l. 9. pr. ff. de Dono}
 why a Tutor or factor, or Partner is Excepted is because the
 Account Books or Relative Writs of such a Defender are not
 understood to be the pursuers. Glad in a count and becoming
 against the Representative of one alleged to have been
 factor to or Copartner with the pursuer, ^{proceeding} the
 pursuer having Granted Exhibition of the Account Books of the
 Defender, ^{proceeding} to make up a Charge against the Defen-
 der, the Books were ordered to be put in the hand of the Lord
 Auditor, to the End that of his Lord shays upon Inspection there
 if found that the Defender, ^{proceeding} was a partner or factor
 to the pursuers, ^{proceeding} the Books might be Exhibited to
 the pursuer to frame the Charge by; and if no such partnership
 or factory appeared, should be given back to the Defender,
 without allowing the pursuer to look into them. July 1668
 Pet. of Paton contra Pet. of Paton. But after this con-
 sideration any Defender may be Compelled to Exhibit his
 accounts or other Writings to the pursuer ad Medium
 probationis for proving his Charge, ^{proceeding} L. 9. C. de Excepto. Equally
 a Defender who is an out-law at the time had not personam
 standi in Judicio, and can neither pursue nor defend. ^{proceeding}
 offers. on Act. par. 7 §. 3. But when an oath or any other
 thing is Required from a Defender at the time to which ^{proceeding}