

of the first diet of Compereance 18 July 1700 Bailiiff of Lamington  
contra Mirisid of Cullorallors.

If a summons be duly Executed, the pursuer may cause  
call it, that is, Cry or proclaim it, upon any court day within  
the year he pleases, after Elapsing of the last diet of Compereance  
Summons before the session being with ten limitations of days. But  
if a summons is not called within year and day after the last  
day of Compereance, it falls to the ground, and cannot be waiked  
27 July 1768 Drummond of Meig in sh. contra Stuart of Amers  
= ny tie 7 Novemb. 1684 Belshie of Fife contra E. London.  
Because the style of all Summons is to Compear the Ct. Day  
of St. Neal to Come: which implies the day of Compereance  
to be within the year, and consequently the Calling thereof  
within a year of that day. By the law of France, the Relations  
which one bears to prosecute for three years together with  
out any proceeding in the cause, are lost by a prescription called  
Prescription, which annuls the Instance, Les Loix Civiles Ct.  
bid. sup. p. 154.

### Tit. 2.

The Pleading in a cause.

The Pleading is all that is said by the Lawyers for the  
parties here in, or on both sides to the suit, or actions that  
is, the pursuer's Repetition of the Libel, which in England is in  
the Courts of Common Law termed the Declaration, and  
in the Courts of Equity termed the Bill; Answer to the Libel  
by the Defender, called Defence; the pursuer's Reply or Answer  
by the Defender, called Duply, which in the Courts of  
England is termed a Rejoinder; the pursuer's Implication  
or Duply, which the English term a Surrejoinder, the Defen-  
der's Quadruplica-tion or quadruply, called in England a  
Rebuttal from the French Couster to put back the pursuer  
in Application or Summing, called in England Surrebuttal  
or Answer to the Defendant's Rebuttal if the parties go so far  
in the pleading.

The Pursuer repeats his Libel, and the Defender  
makes his Defence, <sup>(called in some places Objections)</sup> some are properly termed objections,  
and some Exceptions. Objections are negative allegations  
setting forth some thing that is wanting to the pursuer  
for obtaining the Conclusion desired, as that his Libel is  
not good, or the Action in formal, or all parties necessary to  
be called Not fitted; or that the Libel is not Relevant, that  
is the premises do not infer the Conclusion according to Law;  
or that the Suit is not Competent in such a way. Exceptions  
are positive allegations supposing the Sufficiency, that is the  
Completeness of the Libel, but Excepting any  
Error or defect of the same. However Commonly any  
Answer

Answer to the Libel, is called an Exception, and any Answer  
to that answer is termed a Reply, &c.

A Stranger pursued in Scotland at the Instance of any per-  
son contracting with him in the place of his Native Residence,  
shall have the same Benefit for his Defence, as if he were pur-  
sued in the place of the Contract. Heart Answer to Dirlie, Double  
Intercept Against Strangers. Thus in a pursuit in Scotland for  
a bond made in England, or the land after the form of the place,  
the Defender having offered to prove that payment was made in  
England or Ireland, it was held not sufficient for him to prove his defence of pay-  
ment by witness according to the law of the place where both the  
bond and payment were made. 16 Novemb. 1626 Gulbreath contra  
Gunning same. But where Interest of a Debt contracted abroad  
is pursued here, or Judges Decree interest conform to the Law of  
Scotland, without regard to the State of Interest in the place where  
the Debt was contracted, it is held, that upon payment thereof, the  
Creditor will be Decreed to discharge the Debt simpliciter,  
without any Reservation to pursue the whole for what cannot be  
Recovered by our Law as Sumary 1776 Savage and Dun contra King.

A Defence is either Dilatory, or Peremptory.

A Dilatory Defence (called in England a Dilatory plea) is  
that which buys the Action for a time or stops the cause for a  
while till some Defects are Removed. In England Dilatory Pleas  
are either for Disability, or abatement. A Dilatory plea in Dis-  
ability, is setting to the Jurisdiction of the Court which is some  
times termed a foreign plea, as when the Cause of Action  
is out of the Jurisdiction of such a Court, or when the Actor  
is alleged in any Court that should be tried in another Court  
or Disability to the person of the plaintiff, as that he cannot com-  
mence any Suit by Reason that he is outlawed or Under Excommunication  
or Excommunicatus. A Dilatory plea in abatement, is for  
some fault in the writ, Declaration, &c. by our Law Dilatory  
Defences are Divided into Dilations, and Dilators specially  
so called.

A Declinator (the same thing with us a Recusatio Judi-  
cis among the Romans) is an allegation, that the Judge is  
either incompetent to Determine in such a cause, (called  
in England a Dilatory plea in Disability to the Jurisdiction  
of the Court) or ought not to do it, because he is Justly sus-  
pected of Partiality. The Grounds of Incompetency, and Just  
suspicion of partiality in Judges, are Explained in p. 610.  
A Declinator upon Incompetency ought to be offered before  
any other Dilatory. For after the Suit is Contested, the De-  
fender will not be allowed to Decline the Judge as Incom-  
petent. Quia primus Actus Judicij Judicis approbatorius. But