

But by proposing such a Declarator together with other defenses, the Defendor doth not prorogate the Jurisdiction, his so doing being understood to proceed only from a Design to Vindicate himself from the Imputation of Litigiousness, See lib. 4 fol. 37 § 12.

Declarators Specially so Called, may be founded 1^o Upon Wrong Steps in the form of proceeding, or Upon Informality in the summons, or because it is not legally introduced, or not calculated, which want of calculating may be got helped before Trial, Calling in that respect, or Among belated, which Error if not in Substantive, the purpose is a course to amend at the Bar, and the Defendor to see the same in the Court hand to be ready at the Trial Calling 31 January 1633 d. Wem contra d. Garnatillie; Or for that there are more than six Defendants called in a process against Debtors, Act of Regule 1693 Act. 28, or that a Roll of many Defendors called in one Summons was not put upon the Utter house Wall his days before calling of the House for perorating their procurators to be ready. But such a Roll is not necessary in all cases where many Defendors are called; as in Action against strange persons under one Denomination, &c. The Members of a Society in Corporation or other Collegiate body the Executors of a Testator or in summons of Mails and duties, or pounding of the ground against tenants who may be Generally Design'd (as in the case of particular lands or benefits to such a Man inhabitant of a parish or Shire) &c. A Messenger is not allowed to amend the Substituting of Executions by the Executor and Witness, See the same and abide thereby as true, tho' that was formerly indulg'd; and where an Execution is once produced, another Execution of a Different Genor will not be received, tho' substituted by the Executor and Witness'd; Because it is not safe to trust the Verity of the Execution to their Memory, upon which Account Law appointed Executions to be signed by the Messenger and Witnesses when the Citation is given to the party, See lib. 4 fol. 35 § 32 in fine, fol. 38 § 17, but the Execution of a summons of Wakening being quarrelled, as Fidd for that the Defendor dwelling house was no Design'd, the pursuer was allowed to produce another more formal Execution under the same Messengers hand, Designing the said dwelling house; he offering to abide by his hand 2 Feb. 1709 Dundee contra Lady Arvoilick. Albeit such a Declaration of an Execution of Wakening, when the Conclusion is penal Inferring Confiscation of ones whole effects, would not be allowed, The Pursuer who intailed in his summons thirty days for the days of Sompearance, was allowed to amend the wrong days filled up 23 June 1713 Balgownie Lady Monro

Monro contra d. & Lady Newmain. But no such Conclusion can be added to a summons after Extracting Act or Decree there on 8 July 1719 Edin contra Edin. 2^o Another Dilatory defence may be that the pursuer hath not performed Standi in Judicio before of Re is Pursuer, wanting the Concurrence of his Tutor or Curator: Which defect the said cury will supply, if desired by appointing the pursuer advocate to be heard by Advocate, for Authorizing the Minor Curator. Or 2^o For that he lies Registered at the Court, upon a Denunciation at the Head burgh of the Jurisdiction where he lies: Which must be Justly verified by Production of the Letters of Calling and Register of Edifications. Where no thing can be objected against the process, tho' till the pursuer who is at the Court get himself Released, either by Expressing letters of Release, or to be refused only he may have performed Standi in Judicio, or Letters of his persons and Release, unless he assign the process, and Justice in the assignees name. But a Defendor at the Court cannot be Debarred from taking a day to Denounce and giving his call upon a dilator or litigious party, tho' he do not appear in any other thing where his personal presence is necessary 15 July 1627 Dickson contra d. Holdingsworth 12 July 1646 Barrow contra d. Barrow.

A Peremptory defence (called in England a plea in Bar, or plea to the Action) is that which excludes Action for ever. Such Allegation is made against the Validity of the pursuers title, or the Instructions thereof. The principal Advice till the Day of Sompearance, to the Day of Sompearance, but necessary titles will be allowed to be produced cum processu, &c. In the pursing for payment of an heritable bond, and the bygone Annals thereof proceeding, but predecessor's death, must give due notice of their initials letters, but he will be allowed to confirm their Annals, and produce the Confirmation cum processu, See lib. 4 fol. 38 § 16. Year, the Lord d. often did claim an imperfect title, the foundation of a right he not perfected with, when notice and discharge of a charge as a charge upon a bond requiring Acquisition 28 June 1671 Home contra d. Justice Clerk, a General Disposition in Primus Honorum, but sanguinis in an apparent heir or Heir of Line, and also Acquisition to be made, a Confirmed testament or Actour to be produced cum processu, which is drawn back to the date of the summons, and the original process then got out, as if the title had been produced at the beginning 24 July 1672 Dingwall contra Home. But the title of singular Successors will not be but gained if required after the