the Summons, Such Singular Successors having no Radical right or Anterior ground of right. Reduction of a Disposition of lands upon the Act of Parliament 1621 Anent Bankrupts being raised and not sustained at the Instance of the granters personal Creditor: the process which Stoped during the time that the Creditor was Expeding his adjudication was allowed to go on after he obtained and produced it, without Necessity to raise a New Summons 3 July 1712 Spotswood contra Brown. Active titles are either original which were first vested in the pursuer, or titles by progress. Active titles by progress, are Retours of heirs Confirmations of Executors assignations, Dispositions &c. One having as heir to his father pursued for payment of an heretable debt due to his father, and offered to prove that he was heir by the Defenders oath; the Defender was found not obliged to give his oath upon the pursuers title, which ought to be produced before process could be sustained at his Instance as heir 3 July 1628 Maxwell contra Livingston Because 1o/ The Defender was not in tuto to give his oath, seeing if the pursuer should die, and another were Retoured heir to his father, the Defender might be Compelled to pay the Money over again. 2o/ If the service or Retour were produced, the Defender might perhaps Impugn it upon proper grounds of Law. A sentence obtained against one as heir to his predecessor for payment of a debt owing by the predecessor, was not Sustained as an Instruction of his title and Interest to pursue as heir, seeing that will not prove Active which proves passive 11 feb. 1629 Stuart contra Wilson. If one Claim lands or heretage as heir to another, and the Defender offer to prove that the pursuer is Bastard, the Claim of heretage must Cease untill the Question of Bastardy be Decided before the Spiritual judge Reg. Maj. lib. 2 Cap. 50 Craig Feud. lib. 2 Titl. 18 § 5 Titl. 22 § 11 Vers. Quoad Secundum Caput. Spotswood Pral. Tit Bastardy. That is, the Commissaries of Edinburgh.

2o/ A peremptory Defence may be Made against the Relevancy or verity of the Libel. A Libel is said to be Relevant, from the Latine Relevare to Releive or help, when the fact therein set forth, if proved, will in Law Infer the Conclusion libelled. Contraverting the Relevancy of a Libel or Defence, is Called in England a Demurrer, from the Latin Demorari, or the French Demeurer, to abide, because it is an abiding upon point of law, and a Referring to the Judgement of the Court whether it is sufficient in Law to be Sustained. It is also termed an issue joined upon Matter of Law to be Determined by the Judges.

It

It were Endless business to particularize all the Relevant allegences which might be Made in suits by either party, I shall therefore Content my self to touch upon those that are Common to all, Or to Many Actions; exceptions peculiar to particular Actions being Considered in their proper places.

Exceptions Common to all Actions, are 1o/ Exceptio rei Judicatæ, that is, that the Controversie is already Decided by Decree of a Competent Judge whether Inferior or Superior, betwixt the same parties, assoilzieing from the Conclusion libelled, upon the same Media Concludendi. Because a decreet of absolvitor doth not hinder the pursuer to insist upon a Different Medium, seeing Competent and omitted takes place only in Decreets Condemnatory in foro, and not in Decreets of Absolvitor Stair lib. 4 Tit. 40 § 16 Vers. But the Exception. Such exception rei Judicatæ is taken off, by Replying that the Decreet wherein the Matter was Judged is Annulled or reduced, but not that it is under Reduction, unless the production be satisfyed, so as the Reasons may be Discussed Stair ibid. § 17. 2o/ Exceptio litis Contestatæ, in the same or any other Court. For the Exception of lis alibi pendens takes place only where litis Contestation is Made 4 feb. 1706 Lord Balgonie contra Hay. Because litis Contestation being a quasi Contract or transaction betwixt the pursuer and defender, Neither party can resile from it, and pursue elsewhere, or in another Suit. Thus the Exception that litis Contestation was Made before the Commissaries of Edinburgh at the Instance of a party as factor for Another, was found Relevant to sist process before the Court of Session at that parties Instance as Executor Creditor to the other, against the same persons and for the same Cause; provided the Exception were Instantly Verifyed by an Extracted Act, and No other Ways 10 feb. 1663 Crawford contra [illegible] of Inglis. When one hath Chosen to bring his Action before a Court, he is understood to have given up his privilege of pursuing the same thing in any other place, where the sentence of the former Court will be Res Judicata and be put to Ready Execution. Since the Effect of such a New suit could only be to Distract and Annoy the Defender by Carrying him from one Court to another, and obliging him to have his Evidences, whether Witnesses or Writs, Necessary for his Defence in Different places; without doing the pursuer any possible service, Since one Decreet is as Effectual where it Reaches as Many. But one may Notwithstanding his action already Commenced, bring it over again before Another Court in a place where a sentence upon the first process would have No Ready Effect: and where the Exception of Res Judicata doth not Ly, Neither is that of lis alibi pendens Competent. So one who had sued an English company before the Chancery of England for great sums owing to the plaintiff by the Defendants, having brought an Action against the Company before the Court of