to all the persons who are bound by it. But personal Exceptions which some of the persons obliged may have, such as Minority, Interdiction &c. would not profit the others l. 25 §1, ff. de pactis. For these personal Exceptions do Not Extinguish the debt. But if one of the Common debtors had a personal Exception which should Extinguish the debt as to his portion, this Exception would avail the others for that portion. Thus for example, if one of the debtors should appear to be in his own right a Creditor to their Common Debtor, his fellow debtor might Demand of their Common Creditor a Compensation of the portion of the debt which would fall to the share of their fellow debtor, who is Creditor to him. And as to the overplus of what might be ascribed from their Creditor to this their fellow debtor, they could not Demand a Compensation of it, Unless they had other ways the right of their fellow debtor l. 10 ff. de duob. Reus Leg. Lex Cuiacius &c. Forni part 1 Lib. 3 Tit. 3 pag. 1 Inst. 8. The Common Exceptions in Actions upon personal Rights are 1/ Calumnia. Non possunt, or a promise Never to Insist for perjury. 2/ Payment or performance made to him, who had right to Discharge or bona fide to him whom the Defender had Reason to think to be the Creditor, tho he was Diverted in favour of another, which the Defender did not know. 3/ Error in the Essentials of a bargain. 4/ Discharge of the debt pursued. 5/ Confusion. 6/ Compensation. 7/ Exceptio Dolimali. 8/ Such personal rights is Competent not only against the Author of the fraud, but also against his singular Successor innocent and Not Conscious thereof, qui Utrinque jure Authoris, Stair lib. 4 Tit. 40 §21 Vert. Bal in personal rights. But purchasers of Moveables bona fide for an Equivalent onerous Cause, are Not Answerable for the Authors fraud. Because Moveables may have a Current course of traffick, the buyer is not obliged to Consider how the seller acquired the thing sold, Unless it was by theft or Robbery, which are labes Reales, following the thing thro all hands Stair ibid. Hence it is a Relevant Reply to the Exception of fraud offered against the purchasers right, 1/ that it is a land right against which fraud is Competent only by Reduction, and that the purchaser is a singular Successor no ways privy to the fraud when he purchased Stair ibid. pr. 2/ It is Relevant to Reply for taking off the exception of fraud, that it is a purchase of Moveables, which cannot be quarrelled for the sellers fraud. To which it is Relevant to Duply, that the Defender was partaker of the fraud, at least knew of it before the purchase; or that a decreet was pronounced against his author upon the fraud before the purchasers Infeftment Stair ibid. §22.

The proponing a peremptory Defence, as of prescription

15 Decemb. 1671 Hamilton contra Aiton 11 feb. 1713 Lundy and Henry contra Lord Sinclair, for payment or Compensation, Imports an Acknowledgement of the passive titles.

The pursuer Replies to the Defence and exceptions. To whom the Defender Duplys. The pursuer again Triplys, and the Defender Quadruplys &c. So Longas he one hath any thing to advance for supporting his libel, and the other his defence. Also objection against the Relevancy or Competency of a Defence which is negative, properly Differs from a Reply to an exception which is a positive allegation taking off the exception, and so of a Duplyy triply &c. The Allegations Competent by exception and Duplys are also Competent by Reply or Triply. And some are Repelled by Reply or triply, which are not sustained by exception or Duply, as reasons of Reduction ex capite Inhibitionis, interdictionis &c. because the pursuer is never required pursuing to delay himself. Therefore Impedimentum or Reply ought always to be sustained without an Oath, Stair l. 4 Tit. 40 §40.

The Defender is always allowed to be the Last speaker.

Tit. 3.

Litis Contestation.

By Litis Contestation in the Civil Law, no More is understood than a Judicial Contesting or Contestation of the just related Libel, parties Contesting of the pursuers Libel, and the Defenders answer, that which passeth before the Judge between the Plaintiff who Explains his Demand, and the Defendant who Contests it Lino Litis Contest.

Litis Contestation in the Law of Scotland is an Interlocutor of a Judge Determining after Hearing of both parties what is Relevant to be proved, the Manner of proof and assigning terms for proving.

Litis Contestation is made either Ab absente i.e. parte non Comparente, or parte Comparente. Litis Contestation Ab absente or parte non Comparente, is when at the first Calling of a Cause before the ordinary the pursuer Compearing in Absence of the Defender, and not being able Instantly to prove his Libel, Chuses rather than a Decreet in absence without proof, which may be Easily Reduced, to take a term to prove his Libel according to the Nature thereof, which is assigned to him. Litis Contestation parte Comparente, is when the Relevancy and Manner of proof are Determined and terms assigned to the parties on both sides Compearing. Which Imports a Warrand to either or to both parties to produce Contestes Libelli, under which Record Contestes Law