

proceed upon an implied obligation the proposer lies under
 under the obligation according to the Rules summing. Withed
 personal actions are those which are raised upon a personal obligation
 and competent only against the Grantor and his heirs or Executors
 Personal actions against heirs and the Proposer's heirs of one
 are termed actions on the passive titles. A Decret given against
 one upon the passive titles of his 10 Feb. 1682.

By having bound as his 26 January 1681 de Prodigio
 L. Afford. Upon proof in a process at one Creditors instance
 another, the Defendant's instance, to prove that passive title in an
 other proof against him so prominent at one Creditors instance
 for as the might prove that such a title is in fact in the hands of
 much more may be said. But the Defendant's instance is not
 upon these against him. But that thereafter a Decret against
 one as heir to his father upon proof at one Creditors instance
 sustained to prove him heir in another Creditors instance
 another Creditors, so long as the Defendant's proof in the
 January 1682 had not been a Decret. In an action on the
 five titles, the Defendant cannot propose a peremptory defence
 without acknowledging the passive title as the Defence of
 description 18 Decemb. 1691 Hamilton of Kinnel contra Sinton
 Kinnel ~~contra~~ 11 Feb. 1713 Sunde & Henry contra Lord
 claims, or payment 6 Novemb. 1669 Scot of Earl Woodward
 13 Feb. 1673 Maxwell contra Maxwell. Which pro-

the proposer from proving the passive title, and the Defendant
 not proof from it after this Constellation. It being only proper
 to a person who represents, to make a title Constellation upon
 a peremptory defence. For if the Defendant's not deny that
 Decret, he with no manner of Interest to or good against
 the proposer's title, or to delay him, upon any pretext he cannot
 make good; and the taking him as a Defendant is not
 Dictator. But the proposing a peremptory Defence may be
 said from before extracting of an Act of title Constellation, and
 will not bind the Proposer to Recur and deny the passive
 titles 15 July 1689 Gray contra Gray of Inverrichy. And the one
 proposing a Defence upon any title in the person of his predecessor
 shall be hindered from an Acknowledgement of the passive
 title, and fees the purpose of the burden of proving the same
 yet the reading a Defence in force as upon a Statute doth
 not Impart a Confession of the passive title, 10 Decemb. 1677
 Auchintoul contra Innes offered by Distelcum. Albeit the plea
 of payment, and Innes being the proof of it, doth subject the De-
 fender to pay the debt owing to the proposer, it doth not infer
 an Universal passive title against him, so as to make him liable

liable to other debts of the deceased 21 January 1675 Fairbair contra
 Corfars. The justice of an action on the passive title, who Est. was
 an Act of title Constellation upon one of them, failing to prove
 his point, is allowed to Recur and justify before the end of the year upon
 the other passive titles libelled 16 January 1711 Wallon of Southam
 contra Brown. For the Act of title Constellation doth bind both the
 parties only in so far as the contents. Real actions are such as
 spring from heritable rights of land or titles, or interests in such
 rights are sought to be affected and by against all her heirs
 successors, as well as the persons of the land, and their heirs.
 P. C. actions of pounding the ground for Annual rents due or for
 feu-tenent, pendents, &c. Declaratory actions, of which after
 wards are accounted neither to be personal nor Real.

Principal ordinary actions are the Distinctions of
 Declaratory, Prohibitory, Petitory, and Proscriptory actions. 3^o Distinctions
 were the 1^o ordinary actions.

Decl. 1.

Of Declaratory actions.

Declaratory actions, ordinary, term'd Declaratory, are those
 where in the pursuer's right is only declared, without any personal
 Condemnation against the defendant. Upon such Decretations they
 may raise petitory actions or debt, or possession. But here the
 Defendant in such petitory or petitory actions are hindered from
 any Exceptions that were competent to have been proposed,
 and omitted in the Declaratory actions.

Some actions are called General Declaratory, others special
 Declaratory. 1^o When a person is found to have been lawfully
 denounced to the King, and his movable goods declared to be owing
 to the Dowry by Decret of the court, it is called a general De-
 clarator of Dowry. After ward the Dowry may be proved
 Contribution and Decretion of these goods or payment of them owing
 to the dowry, which is the properly termed a special Declarator
 of Dowry, and is simply a petitory action for payment, and shall
 No thing Declaratory in it. Some times both such actions, Gene-
 ral and special Declarator are for the more Expedition and Dis-
 patch raised in one summons.

A Declarator may be raised upon any point of right or just
 Affection, for and touching and bearing the same, and uses only to be
 raised and insisted in, where another right stands or probably may
 stand in competition. In which the pursuer doth call any person
 he thinks may probably encroach his rights, and may rise up
 and deny, without charging them to Enter their oaths to hear and see it
 found and Declared that to both such a right. If the party is
 found and Declared, they need not to appear; seeing the
 thing is proved to be done by them; and all the procedure they
 can put in by a Decret against them in such a case, being only
 that they will not be heard to plead right to the matter in
 question pending on their person at that time; till they do use the De-