

Warrants the promise to pay safely to the party preferred. The Decree should be therefore Reduced, and this is preferred; but other party cannot trouble the payer, and therefore, but must answer upon him formerly preferred. *13 Bar. 1. p. 1. Act 19. Parl. 10. G. 6. Stat. lib. 4. Feb. 18. 83. M. Kenne. on d. Act 3.* And the ordinarily a Minor whose tutors or tutors suffer a Decree to pass against him for not appearing, shall a double Remedy, Viz. either to Reduce the sentence, or pursue his tutors or Curators for damage and Interests, as *Seyna page 125*. Yet if one who is major be preferred in a suit, pointing to a Minor having tutors or Curators, the only action of Damages against his tutors and Curators, cannot Reduce the Decree of Preference: But if such a Minor has tutors or Curators he may be Reduced in the Decree upon relevant grounds, since in such no other Remedy being provided, shall serve the prayer not only against the principal Curator, but also against their assigns, says *29. How. 1676. West contra E. Callender.* If a Decree of preference in a Multiple pointing provided in absence of the Compellible be quarrelled for any Error in the Execution, or if the plaintiff can show a Necessary Reason for his absence, the Decree may be quarrelled either by Major or Minor *d. Act 3. M. Kenne. ibid.* But the our Custom doth not ordinarily require execution of a Decree in absence, but allows it to be taken or annulled by a Dispersion: Yet a person called and not appearing in a Multiple pointing cannot be Responsible or find relief against a Decree in absence to his prejudice by way of Dispersion, but only by way of Reducion. *1 Feb. 1670. Walton contra. Symphon.* And if the Decree be Reduced, the person formerly preferred shall be liable by Virtue of such a Decree before Reducion was Commenced can never be called in question: Nam. *Act Judicialis ad Tit. cum pro Veritate. Ca. 6. Tit. 3.* A third sort of Actions of a Declaratory Nature, are Actions Cognitiohus causa, or any thing to be done by the Defendant, but only Declaratory what debts were due by their Decayed predecessors, that may affect their herbage or Moveables. In which Actions Apparent Heirs without being Charged to enter Law, or

nearest of kin are called: Because, tho they have not Entered nor owned the Succession, yet they may do it thereafter. Upon which account they may object against the plaintiff's title, produced at Justice, but can propose no Exception which, if sustained, would infer a positive title, because they have no sufficient title to make their Contentions. *Stat. lib. 4. Feb. 19. 83.*

Some times also where a right arising from a special matter of fact is claimed as a Land and Decree, for which no Action having a special Name doth lie, action of Declarator is raised. Which imports to Actio in factum or actio prescriptis Verbis in the Civil Law, so called, because having no certain formula or Style, they were originally conceived in words adapted to the Subject, Judiciali processu, *lib. 2. §. 1. p. 1. Verbi. c. 6. §. 1. De man. act. p. 1. c. 1. in Eng. & Scotland, were very properly, ^{in the words of the Statute} included in the case of Algamy, for Actions of Declarator are adjoined to other Actions, as to the Section. *36.**

Sec. 2.

Of Rescissory Actions.

Rescissory Actions are such whereby a person aggrieved by some Act or deeds to which they were parties, have Remedies of such deeds, or Reducion of things to their first Estate for against such; tho they may be in the same Condition they were in before such Act or deed. This Rescissory Action is called under a strange Application, because deeds are those by which things are conveyed and things Reduced to the same Condition in which they were before the Execution of the said Act or deeds, because commonly just before Summation, to correct the Rigour of strict Law, and for rights such as found themselves greater Injustice without any fault of theirs, the Extraordinary Remedy of Reducion in Integrum, or called Relief was introduced among the Romans in some favourable cases, and was granted causa cognita by the Prince, or by one of their greater Magistrates to persons wronged by their sentence, or by the sentence of some Superior Judge, or by Contract or deed, which Relief was obtained either by way of Action or Execution. By the usage in France, one cannot present an Act or deed to be annulled to which he has been a party, without procuring Letters from the Prince, in order to obtain a Rescission of the deed and Reducion of things to their first estate, *Act Civilis. l. 1. §. 1. par. 1. l. 1. §. 1. c. 6. Sect. 1. par. 1. Act. Scotland, Reducion of Deed, or Reducion of persons or things to their first estate which in Quality signifies the same thing must as all other causes be heard and tried by the Established Judge in an Action of Reducion: Tho in some cases,*