

DIVISION V.

Proved, or not proved.

SECT. I.

Bastardy.—Adultery.

1611. January 11. CHURNSIDE against WILLIAMSON.

No 536.

IN an action of bastardy, if the defender allege, that the defunct must be reputed lawful, because she was so old that it was not possible to prove the marriage of her parents, the exception will be repelled, upon a reply, that her mother was esteemed her father's concubine; that she herself was in all her life esteemed a bastard; that her father married a wife in the defunct's mother's time, who lived many years reputed his lawful wife, bore him bairns, who are esteemed lawful bairns.

Fol. Dic. v. 2. p. 263. Haddington, MS. No 2084.

1615. January 13. ROY against ROY.

No 537.

IN action of declarator of bastardy pursued by one Roy against Roy, the LORDS found this exception, that the person alleged to be bastard was eighty years of age, and was reputed lawful; except the pursuer would condescend upon the name of the bastard's father and mother, and allege certain circumstances, that they were never married, or that the defunct was esteemed bastard.

The like decided of before betwixt Ninian Churnside and Williamson, *supra*.

Fol. Dic. v. 2. p. 263. Kerse, MS. fol. 143.

1626. July 7. SOMMERVILLE against L. HALCRO.

No 538.

A DECLARATOR being sought by Alexander Sommerville of the bastardy of one Sommerville against L. Halcro, as debtor to the bastard; the LORDS found the exception relevant, viz. that the father and mother of the alleged