

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

No 538. bastard cohabited together by the space of ten years as married folks, and were reputed to be married folks. Which exception was sustained, notwithstanding of a reply, bearing, that the person whose bastardy he sought, was reputed and esteemed by all the persons in the whole country, where the parents of the bastard and also himself dwelt and conversed, a bastard, which being *pro fisco*, he ought to be preferred. This reply was repelled, and the exception sustained. See BASTARDY.

Fol. Dic. v. 2. p. 262. Durie, p. 210.

1642. February 25. CRAWFURD against PURCELS.

No 539.

Status defunctorum not to be enquired into after a long tract of time.

MALCOLM CRAWFURD having by gift under the Great Seal, the right of a tenement of land in Edinburgh, pertaining to the King as *ultimus hares*, by the decease of umquhile Hugh Crawford, last infest therein, who was bastard, and who died without lawful bairns, and Helen and Bessie Purcels, who were possessors of this land; and these defenders *alleging*, That this action ought not to be sustained, because it is 30 years since the time of the decease of the said umquhile Hugh, who is alleged to be bastard, and at the time of his decease he was betwixt 40 and 50 years of age, so that before that time there can be none living to prove the marriage of the said umquhile Hugh's parents; or that they cohabited together as married folks, for this is *ultra hominum memoriam*, and his lawfulness was never drawn in question all this time while now; likewise, while he lived, he was ever reputed lawful; the LORDS, in this case, (which was a case of such antiquity) found it a matter of dangerous preparative to give way to such actions, and to sustain and draw in question *statum defunctorum post lapsum tanti temporis*, which may concern the subjects of all qualities, who are of any years; and therefore, found no process on that gift, this allegiance being proved.

Fol. Dic. v. 2. p. 263. Durie, p. 894.

* * * Kerse reports a similar case, 10th January 1618, Hirpet against Scot, No 42. p. 2197. *voce* CITATION.

1667. February 25. LADY MILTON against LD MILTON.

No 540.

ADULTERY was found proved, though not any two of the witnesses concurred in the same individual act; for in such crimes which allow of reiteration of acts, all proceeding from the same *animus*, like so many links of a chain, the *semiplena probatio* of every one fortifies the whole, and makes it equivalent to the full proof of two concurring witnesses to one specific act; which