

## L E G I T I M.

## S E C T. I.

## Nature of Legitim.

1606. December 18. HOME against CHRISTIE.

No 1.

**I**N an action betwixt Francis Home and Christies, the bairns of his defunct wife, the LORDS found, that a widow deceasing having bairns, the gear in her testament receives no division, because the bairns fall no natural portion by their mother; and if the wife decease, leaving her husband and bairns in life, albeit by the order of the Commissaries, the testament will divide in three parts, yet the bairns get no part of the gear, unless their mother leave them her third in hail or in part, and the other two parts of the gear designed to be the husband's part and bairn's part, befalls together to the husband, so that the decease of the wife makes not the bairns to fall any bairn's part, notwithstanding the stile of the testament, unless she die intestate, in the which case they will fall executors to her part.

*Fol. Dic.v. 1. p. 543. Haddington, MS. No 1167.*

1622. January 30.

PATERSON, and his Spouse, against HOPE and DOUGAL, and their Spouses.

JOHN PATERSON, burgess of Edinburgh, and his spouse, Galbraith, being executors decerned to umquhile ———, mother to the said Galbraith, who died intestate, pursue Henry Hope and John Dougal, and their spouses, who were executors confirmed to umquhile Thomas Galbraith, which Thomas was

No 2.  
Legitim is only of the father's means, not of the mothers,