SECT. VI.

Defences.

1547. June 6. & 16. John Cultar against John Logan.

No 122.

In actiounis of spuilzie or ejectioun, gif the defendar use and propone ane peremptour exceptioun, that he intromettit with the landis, gudis and geir alledgit spuilzeit be him, be ane just richt and titill, and it happin the samin exceptioun to be repellit be the Judge, the avail and quantitie of the spuilzie may be referrit to the persewar's aith; because the defendar, be proponing of that exceptioun, grantit the committing of the spuilzie and ejectioun.

Fol. Dic. v. 2. p. 187. Balfour, (OF Spuilzie and Ejectioun.) No 30. p. 473.

** See No 2. p. 5407. voce Herezeld.

1554. April 28.

STEWART against ____

No 123.

Fol. Dic. v. 2. p. 188. Maitland, MS. p. 119.

1573: March 20. Lord OLIPHANT against OLIPHANT.

The Lord Oliphant, assignee to umquhile N. Oliphant of Kellie, pursued Andrew and Peter Oliphants, heirs of tailzie to the said Laird of Kellie, for to give him a reversion, which the said Andrew obliged him to do to the said Laird of Kellie, his heirs and assignees, for redemption of certain lands analzied by the said Laird to the said Andrew. For verification of the said promise, the said Lord produced an instrument. The defenders offered them to unprove the said instrument, omni modo quo de jure, as false and feigned, but, at Vol. XXVIII.

No 124. Found, that one proponing improbation had passed from all other defences.