them to shun telling the truth without hazard of perjury: but they cannot be Redarqued upon their Memory, as they could be upon a palpable fact. The some of the lords were opinion that a person Compearing and Declaring upon Oath that to his knowledge he could not Remember could not be held as Confessed: because he could not be thought Contumacious, and after one has sworn it is only to be Considered, whether the Oath proves or Not; and to Want Memory is no fault. 6 feb. 1675. Brown contra Carruthers observed by Stair & Tarbetoun. And where in the Reduction of a bond upon Minority and Lesion it being Sustained Relevant for the Creditor to prove by the Granters Oath, that he at subscribing affirmed or protested that he was Major, the Granter Deponed he Remembered not if he did then affirm or protest so, and could not Declare to his knowledge so far as he could Remember: the Lords found the oath as Concerned not Sufficient to support the bond against Reduction 30 March 1639 Weyms contra Maitland. But in such cases where parties Remember not, the Lords of the Session may allow them time to Inform themselves, and then pull to a positive Answer. But such a presumptive Oath or the holding a person as Confessed upon the Verity of a Matter Referred to his oath, is not so strong as a Real oath. For 1/ None can be Deponed against a Real oath; But they may find Relief against a sentence holding them as Confessed, by Improving the Exception of Citation given them, or by Instructing a Full Commission for a Commission to Deponed at home, or if they be held as Confessed upon Exorbitant quantities, which it cannot be supposed they would acknowledge. 2/ Holding as Confessed being only a presumptive proof, doth not Exclude Contrary proof by the other party. 13 January 1677 Meek Skipper Supplicant. 3/ Presumptive proof by holding one as Confessed, may be Decerned to be Redarqued by Contrary proof produced by him: In which case the other party may Confirm his Decreet by the testimony of Witnesses, which is not otherways Receivable. But a Decreet holding one as Confessed, cannot be so Disproved ex Intervallo sometime after: partly, because further proof of the same point, formerly to have been had, may be now lost by the death of persons who knew the same; partly, for that a sentence holding a party as Confessed for whom a term was taken, is a Decreet in foro which is Unquestionable ex Intervallo. 2/ Because it may be Expedient for one Litigant to draw a Confession from the other, upon whose oath he would not Refer his cause: where any fact Requires a term for proving, the party against whom it is alleged or his Advocate, is obliged before

Before Interlocutor to Confess or Deny it, which Confession or Denyal is Marked in the Minutes; and if he refuse to Confess or Deny, will be held as Confessed. But if he then deny what afterwards appears to have been known to him, he will be Decerned to pay without Modification all the other parties Expences occasioned thro' his Calumnious Denyal. Against facts founded on in any Extracted Decreet to Infer Relevancy not expressly denyed by the party Concerned, are Reputed as acknowledged, and there is No place thereafter to object for any effect, that they want proof. Act of Sederunt 1715.

Extrajudicial Confession, is either Express or tacite.

Express Extrajudicial Confession made Indiscriminately to Discover the Verity of what is Confessed, is Sustained in Civil as Well as Criminal Courts, if proved by Writ, as a Mistive Letter. Not in obligatory terms or by Oath of party. A Verbal Confession can only be proved by oath, and not by Witnesses. Confession before Arbiters, may be proved by Oath of party, or by the Decreet Arbitral if formal. But when the Lords of Session ex officio Allow Evidence to be produced for proving any point, they will examine Witnesses upon Extrajudicial Confession, as a Supplement to other proof, where the Nature of the point in question cannot be proved in the ordinary Manner, and yet doth not Exclude Extraordinary proof, as Occurs frequently in latent or Ancient Rights, or which are Suspected to have been Contrived by fraud. Confessions of dying persons as Testes vandam Conscientiam, or for Satisfying the Desire of parties proved by Writ, are Sustained as good Evidence: Because such Confessions are Understood to be serious, and not verba Jactantia. Stair lib. 4 Tit. 45 § 8. Confessions before Church Judicatories and Congregations reduced into Writ, are allowed as good Evidence in Civil Matters, tho they prove not in Criminal Courts. Stair ibid. But Extrajudicial Confession Uttered upon some other Design than to prove the truth of what is acknowledged, is Commonly held not probative.

Facit Extrajudicial Confession is termed Homologation, Concerning which Vid Sup. pag. 503.

Sect. 2.

Extraordinary Proof.

Extraordinary proof or proof by Many is proof in the opinion of the Judge arising from facts or Circumstances where the Law hath left the Effect to his Discretion. Such Extraordinary proofs are these following.

1/ Where the truth of one point of fact is Inferred from another, called Artificial proof: because it is not Direct and Express.