

TITLE TO PURSUE.

1564. December 2. JOHN SCUGALL *against* ROBERT SCUGALL.

No. 1.

THE sone beand onlie appeirand air, and not servit and enterit air to his father, has just richt and titill to call and pursue for delivering to him of the house, tour, and fortalice, quhilk appertenit to his father, and now pertenis to his air.

Balfour, (Aires) n. 233.

1581. January 12. TWEEDIE *against* BELL.

No. 2.

There was one John Tweedie, that was apparent heir, with the assistance of the tutor of _____ pursued Adam Bell for the reduction of a deed of redemption of the lands of C. and *per consequentiam*, of certain infestments that passed after the deed, and upon the deed. It was objected by Adam Bell, That the said John Tweedie could have no interest to pursue as apparent heir, except he would allege him to be served nearest and lawful heir, for so he might ay thereafter renounce to be heir *et sic reddetur judicium elusorium*. To this was answered, That the deed was obtained against him *in prima instantia*, as apparent heir *et sic quod quisque juris in alium*, &c. To this was answered, That albeit the deed was obtained against him, and that he might pursue for reduction of the same as apparent heir, which was granted, he could not pursue for reduction of the instrument and heritable title, except he were institutus, cognitus et deservitus hæres juxta leges; for, as was reasoned among the Lords, that albeit an apparent heir may pursue in such things as are necessary and requisite for the obtaining of his retour and service, yet non potest auferre jus acquisitum alteri, aut alterius hæreditatem, nisi fuerit institutus et deservitus hæres. The Lords, after long reasoning *via voce*, found by interlocutor, That the pursuer had no interest to pursue the reduction of the infestment as apparent heir, but behoved to allege him to be served nearest and lawful heir.

An heir apparent cannot pursue reduction of an infestment of property until he be served heir in general.

Colvil MS. p. 315.