

take a term to produce, and that before certification, at that term he would prove part and pertinent, and alleged the practise in the case of the Town of Stirling, observed by Durie, 24th June 1625, No 18. p. 6621.

No 49.

THE LORDS sustained the defence. and would not put the defenders to take terms, till the lands in question were first proved to be part and pertinent, and allowed the pursuer to insist *primo loco* in his declarator for that effect; and as to the practise alleged, they found in that case, the defenders alleged upon no right, whereas the defenders propone here upon an express infeftment.

Fol. Dic. v. 1. p. 445. Stair, v. 1. p. 585.

* * * Gosford reports this case :

1669. *January 19.*—IN an improbation pursued at Hayston's instance against the Town of Peebles, bearing likewise a declarator of property of the lands of Eastshiells, wherein he called for all evidents of the Town of Peebles, of a commonty which he alleged was part and pertinent of Eastshiells; the LORDS refused to grant certification, seeing the pursuer was not specially infeft in the said commonty, which was contained in the Town of Peebles' infeftment; but ordained him first to insist in his declarator of property, because there was no reason to cause the Town produce all their evidents to a person who was not specially infeft.

Gosford, MS. No 87. p. 31.

1671. *July 14.*

DUNBAR *against* MAXWELL.

No 50.

AN apparent heir, not retoured, has no title to pursue an improbation of deeds derived from his predecessors. See Johnston against Johnston, No 45. p. 6640.

Fol. Dic. v. 1. p. 442. Gosford. Stair.

* * * This case is, No 86. p. 2223.

1671. *November 22.*

The LAIRD of Rowallan *against* The EARL of TWEEDDALE, LORD RUTHERFORD, and Others.

IN an improbation pursued at Rowallan's instance, as heir to his predecessors, who were infeft in the lands of Ingerston and Spittlehaugh, it was *alleged, 1mo*, That he being only general heir, could not pursue an improbation, which was to take away the defenders real right of their lands. This defence was repelled, in respect his predecessor's infeftment was produced, to whom he was served heir in general, and the allegiance only competent in a reduction. *2do*, It was

No 51.
A general service is a sufficient title in an improbation of rights affecting an estate, in which the