

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 infestment.

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 infest in the said commonty, which was contained in the Town of Peebles' infestment; 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 infest.

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 infest 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 infestment 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

No 51.
 pursuer's predecessor died infest; tho' it would not be sufficient, if, after production, the pursuer were going on with his reasons of reduction.

alleged, That the pursuer's right was prescribed, his predecessors infestment being old, and no diligence done by the space of 40 years; and for any alleged interruption, it being only a summons raised in *anno* 1630, and the executions thereof not stamped, conform to the act 74. Parliament King 6. James 5;—it was *replied*, That the executions being subscribed by the messenger, needed no stamp, the act being only made when subscriptions were not in use; and as to summonses which might be executed by any Sheriff in that part, that act of Parliament was in desuetude. This allegation was likewise repelled, in respect of the reply. *3tio*, It was *alleged*, That the execution produced was in a schedule apart, and not indorsed upon the summons; neither did they bear the pursuer's predecessors names, at whose instance they were raised; and that the persons cited were only summoned conform to the within written letters, which might be applicable to any kind of summons whatsoever; and the messenger and witnesses being all dead, it were of a dangerous preparative that upon such citations which might be made up, the rights of lands should be taken away, where the defenders and their authors had been 100 years in peaceable possession. — THE LORDS, before answer, did ordain the pursuer to condescend what way he could instrust the verity of that execution produced, which they found to be necessary in this case.

Fol. Dic. v. I. p. 444. Gosford, MS. No 402. p. 202.

1673. July 24.

SCHAW against WATT.

No 52.
 An adjudication against an apparent heir upon his own bond, purchased in by him, not sufficient title, to improbate deeds affecting the lands, granted by his predecessors, unless their infestments be produced.

THE Laird of Cessnock having adjudged from Sornbeg, all right that might be competent to him of the lands of Foulshells, he assigns the adjudication to this Sornbeg, who being thereupon infest, pursues improbation and reduction of all rights granted by Sornbeg's father, goodsir, or grandsir, of the lands of Foulshells to Watt or his authors, whereupon he craved certification.—The defender *alleged* no certification, because he produced an infestment of Foulshells anterior to the pursuer's infestment; and the pursuer had no interest to crave certification of writs granted by his father, goodsir, and grandsir, unless he produce their infestments; otherwise any man, upon an adjudication, which passeth of course, of all lands the adjudger pleaseth to insert, assigning the same to the apparent heir, against whom the adjudication was deduced, may compel all the heritors of these lands to produce to him their rights made by any of his predecessors, without instructing that any of his predecessors were ever infest.—It was *answered*, That the pursuer, by the adjudication, is in the same condition, as to this process, as if he were served and retoured heir to his predecessors, in which case he might quarrel all the writs pretended to be made by his predecessors as false.—It was *replied*, That albeit an heir served hath interest to improve an obligation or personal right, because he may be therewith distressed;