

N. B. Major Forbes carried this estate upon a separate point, which is not here collected, as it turned upon the constitution of a special clause in the entail.

No. 20.

M. *Fol. Dic. v. 4. p. 271. Fac. Coll. No. 90. p. 135.*

* * This case was appealed. The House of Lords "ORDERED that the interlocutor complained of be affirmed.

 SECT. IV.

 General Service.

 1680. *June 23.*

 ROBERTSON of Strouan *against* the MARQUIS of ATHOL.

In the improbation Robertson of Strouan against the Marquis of Athol, they would not sustain process, till a full progress were produced connecting and coupling the rights together, whereof many complained.

 No. 21.
 Effect of a
 general ser-
 vice.

1680. *July 30.*—In Robertson of Strouan's improbation against the Marquis of Athol, the Lords "found the producing a charter and sasine following upon a comprising was not a sufficient title, though it was past 50 years ago; but he behoved to produce likewise the letters, executions, and decret of apprising, (for the letters and executions, it is hard *post tantum tempus*;) as also the bonds, or other grounds and warrants thereof."

1681. *February 26.*—In Strouan Robertson's service for making up his titles against the Marquis of Athol, he having served himself general heir to one of his predecessors who lived 250 years ago; and this day being to be served heir in special, the Lords, at Athol's desire, appointed three of their number to be assessors to the macers, (poor men would not get this allowance,) and the service was continued till the Lords should resolve these three points: *1mo*, If in the days of King James II. a charter be a sufficient document whereon Strouan may be served heir to that man to whom the charter is granted, though there be no sasine upon it, sasines at that time not being necessarily required, and which, by the 27th act James III. Parl. 1469, are called a new invention; and Craig, p. 143*, says, *charta sola olim sufficiebat*. See Dury, 24th June, 1625, Town of Stirling, No. 18. p. 6621. *voce* IMPROBATION. *2do*, If he could in his service pass by his father and others who were infest, and serve himself heir to his grandfather's grandfather's

* Edition 1655.

No. 21. father, &c. *3tio*, If the inquest, without incurring the hazard of perjury, might serve him heir in lands, whereof the Marquis instructed him or his authors denuded; (it is true, not indeed by a voluntary disposition, but by a legal diligence of comprising, which is not yet expired, albeit they were willing to mention it in the service.) The Lords shunning all these difficult locks, and waving the decision of these points, “declared they would sustain Strouan’s general service as a sufficient title in the reduction, and in the mean time stopped the special service;” by which Athol got this advantage, that he *medio tempore* might obtain a gift of the non-entry and other casualties of that piece of land. See Craig, p. 382, sasines are not 200 or 300 years old with us; yet, in Cap. 2. of King Malcolm M’Kenneth, near 500 years before Craig wrote, charters and sasines are mentioned.

Fountainhall, v. 1. p. 104, 112, 133.

1129. *January.* LORD HALKERTON *against* DRUMMOND.

No. 22.

A GENERAL service does not carry even the personal obligation in an infeftment of annual-rent, so as to be a title to demand payment, which the heir cannot insist for until he be also infeft. See APPENDIX.

Fol. Dic. v. 2. p. 371.

1738. *July 21.* EDGAR *against* JOHNSTON.

No. 23.

A SERVICE as heir-male general found not to carry a provision in a contract of marriage in favour of heirs-male of the marriage.

Kilkerran, No. 1. p. 508.

* * See No. 14. p. 14015.

1742. *July 21.* ALEXANDER STIRLING *against* JOHN CAMERON.

No. 24.

Whether an heir is to make up a title to a subject by a general or special service, in order to recover from the purchaser the surplus of

THE said Alexander Stirling being charged to enter heir in general to the deceased John Stirling, for payment of the debts due by him to his creditors, and having renounced, as judging the debts did exceed the value of the estate, the creditors thereupon obtained decreets *cognitionis causa* against Alexander, and adjudged the estate of John; and having obtained possession, they raised a process of ranking and sale, and when the day of the roup came, several offerers appeared, who offered a much higher price than what was put upon it by the Lords, and far exceeding the debts due to the creditors. John Cameron was pre-