

suer's favour), could not furnish him action to call for reduction and improbation of the said real writs of the said lands made to the defender.

No 40.

Act. *Hart.*

Alt. ———.

Clerk, *Gibson.**Fol. Dic. v. 1. p. 445. Durie, p. 544.*

* * Spottiswood reports the same case :

ELIZABETH RIGG, Lady COCKPEN, by contract of alienation, disposed to John Ramsay, her son and apparent heir, the lands of Southside; who, upon that disposition, intended an improbation against the Laird of Conheath, of all right he or his authors had to the said lands of Southside. *Alleged*, He had no interest to improve his rights of these lands, because the pursuer was not seised in the same, although they were disposed to him by contract; and he not being infeft, could not seek to improve any real rights of the said lands, nor urge the defender for production thereof, having no real right himself; which allegiance the LORDS found relevant.

*Spottiswood, p. 168.*1631. *January 18.*SHERIFF of FOREST and The KING'S ADVOCATE *against* TOWN of SELKIRK.

No 41.

IN an improbation and reduction pursued by the Sheriff of Forest and the King's Advocate against the Town of Selkirk, for the burgh mails and small customs, wherein the Sheriff pursuer was infeft, it was *alleged* by the defenders, That they could not be holden to produce, at the Sheriff's instance, because the burgh mails and small customs being of the King's annexed property, no infeftment could be given thereof; to which it was *answered*, That whether his infeftment was good or not, yet seeing the pursuit was at the King's Advocate's instance, they ought to produce, and then reason whether his right or theirs was best. THE LORDS found, they ought to produce at the Advocate's instance, and that Sheriff might be informer of the King's Advocate, seeing the Sheriff had made count to the Exchequer of the burgh mails and small customs of Selkirk, diverse years bygone.

1632. *January 31.* IN the same action, after the town of Selkirk had produced certain infeftments, granted by King James V. they *alleged* they were not holden to produce any further, because the pursuer's infeftment, whereupon he pursued the improbation and reduction, was later than their infeftments produced; and, till he produced older infeftments than theirs in an improbation, they were not holden to produce further; which the LORDS found relevant, and therefore the Sheriff was content to produce older infeftments.

Auchinleck, MS. p. 98.