

1625. June 24.

TOWN OF STIRLING against L. URTHILL.

IN an improbation pursued by the Town of Stirling against the L. of Urthill, and other defenders, who were called for production of certain writs of some lands, which lands were not specially contained in the charter produced by the pursuers, for their title of the pursuit; and the defenders compearing, *alleged*, That the pursuer's title being a charter of that burgh, wherein no mention was made of these special lands, for the which the defenders were convened, but only that the libel bore, that the same lands were part and pertinent of that burghage, the same ought not to be sustained as a title which might force any person to produce to them their special evidents of these special lands by virtue of a naked assertion in the summons of part and pertinent. This allegiance was repelled; and the LORDS found it sufficient to the pursuers, being infest in their burgh, with the lands and pertinents thereof, generally to libel, that the lands specially libelled were parts and pertinents of their burgh; which title, the LORDS sustained against the defenders, who clad themselves with no right in their person, which had a probability to exclude the pursuers from the right to these lands; neither found the LORDS, that it was necessary to the pursuers to prove the lands to be part and pertinent of their burgh, *in ingressu litis*, where the defenders alleged no right in their person, nor proponed any argument which might force the pursuers thereto; but the summons and action was sustained upon that title, as part and pertinent, to force the defenders to take a day to produce, they not alleging any original right to the lands better than the pursuers.

In the same process, the LORDS found the charter foresaid a sufficient right to produce this action, being a charter granted by King Robert the Second; against which the defenders *alleged*, that the same could not give the pursuers action against them, being a charter whereupon no sasine was taken, and that the pursuers were never sinsyne, nor yet seased in any of the lands or others contained in the said charter; which allegiance was also repelled, in respect at that time of the charter, viz. King Robert the Second, sasines were not in use, and sinsyne, there is no necessity of sasine, it being a charter of an university.

Act. Hops.

Alt. Aiton.

Clerk, Hay.

*Durie, p. 166.*

\*\*\* Kerse reports the same case.

THE LORDS found no necessity to prove parts and pertinents in a summons of improbation, but ordained the defenders to produce, and after production, reserved to them to dispute anent parts and pertinents.

*Kerse, MS. fol. 208.*

No 18.

A burgh pursuing improbation need not libel particular rights to the lands in dispute, if they allege that they are part and pertinent, and the defenders show no exclusive title.