No 50. titular who can demand nine. The LORDS sustained the pursuer's title in the same way as if the action had been a reduction and improbation of land rights.

Fol. Dic. v. 1. p. 519.

No 51. 1731. *December 7.* LORD DUN *against* TOWN of MONTROSE.

AGAINST a declarator of the jurisdiction of constabulary, the negative prescription being objected, the LORDS found it was not *jus tertii* for the defenders to object the same; for though it is not competent to plead an exemption from the jurisdiction of the Crown, to which every one is subjected by his allegiance, it is otherwise with regard to a private jurisdiction, which is a burden upon the lieges, and the worst of servitudes. See APPENDIX.

Fol. Dic. v. 1. p. 521.

1766. *February 18.* ANDREW BURNET *against* ALEXANDER BANNERMAN.

No 52.
A person objected to a service, that there was a nearer heir than the claimant, and craved a proof of the fact. Answered, the objector himself having no title to serve, it is *jus tertii* to him to found on the right of another. The Court refused to allow a proof, reserving the objections as accords.

THOMSON BURNET of Kirkhill disponed those lands, and certain salmon-fishings on the river Dee, to trustees, for the behoof of Alexander Bannerman, his nephew.

Andrew Burnet writer to the signet, brother to Thomas, in the view of bringing a reduction of the settlement, so far as respected the fishings, which he considered as limited to heirs-male, took out brieves for serving heir-male in general to Thomas, before the Bailies of Edinburgh.

Alexander Bannerman objected to the service, upon the ground that there was a nearer heir-male in existence, the son of another brother, elder than Andrew; and the Bailies allowed him a proof, and granted commission.

Andrew Burnet advocated the brief; and, upon a remit to the macers, *pleaded*, 1*mo*, No more was necessary for him, but to prove that he was habit and repute nearest and lawful heir-male. That being proved, his service must proceed, and cannot be interrupted by a person who has neither taken out brieves to serve, nor so much as pretends to be heir-male. Upon the existence of a nearer heir, the claimant's service may indeed be set aside by reduction; but it is no reason to stop the service, that the objector has right to the subjects by disposition. It is still *jus tertii* for him to found upon the right of another; and, were that allowed, every service might be stopped upon allegations of the same kind.

2*do*, All objections to a service must be instantly verified, and no terms can be allowed for proving exceptions; Stair, III. 5. 33.; Bankton, III. 5. 24. and 30.