

No 12.
retoured nor
past the chan-
cery, and al-
though it
should never
be retoured,
the person
having died
shortly after
the service.

never furnish action to him who was served, and which ought not to produce any benefit to him, and consequently ought not to furnish any argument in his favours against this pursuit; notwithstanding whereof the service was sustained, as said is.

Act. *Nicolson et Lawtie.*

Alt. *Aiton et Neilson.*

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 170. Durie, p. 224.

1627. February 16.

Lo. COLVILL against HERD.

No 13.
A brother re-
toured heir to
his father in
an annual-
rent, prefer-
red to his sister
who had been
retoured heir
to the same,
when he was
abroad, with-
out necessity
of reduction.

IN a suspension of the Lo. Colvill against Mr Walter Herd, who was residenter, and dwelt with his family, in Vezon in France; and who, as served and retoured heir to his said umquhile father, craved payment of an annualrent out of the Lo. of Colvill's lands, wherein his said father died infest; and against Christian Herd, sister to the said Walter, who was retoured heir to her father, in the same annualrent also, before the said Mr Walter's retour, and who had thereupon obtained two sentences before the Lords against the suspenders; and so the brother and sister craving the right thereof, the sister, in respect of her prior retour standing, and sentences foresaid, which she alleged should give her preference, while the same were reduced, seeing also she produced a note of a sentence of excommunication against her brother for papistry, whereby she alleged, that he could enjoy no benefit within the kingdom; and the brother contending, that seeing he was retoured heir, and had of the law the preference to females, the excommunication should not debar him from his civil right, and the right due to him by nature, seeing there was also produced for him a testificate subscribed from the Magistrates of that town where he remained, bearing him yet to be living, and that he had wife and children begotten in lawful matrimony;—THE LORDS, notwithstanding of the excommunication and prior retours and sentences allèged for the sister, preferred the brother without necessity of reduction; and found, that he ought to be answered in this right; and if he was excommunicate, his right would accresce and pertain to the King, and not to the sister, *eo casu.*

Act. *Primerose et Bruce.*

Alt. ———.

Clerk, *Gibson.*

Fol. Dic. v. 1. p. 170. Durie, p. 276.

No 14.
A person was
retoured heir
to his grand-
father, and
charged the
superior to
enter him.
Found, that

1627. December 14.

BEG against The BAILIES of LANARK.

JOHN BEG being retoured heir in some lands in Lanark, as heir to his goodsire, charges the Bailies of Lanark to infest him therein, who suspend; and, in the suspension, compares one Gemmil, and is admitted for his interest, and allegeth,

that the charger cannot be infeft as heir to his goodsire, because his father was infeft in the lands since his goodsire's infeftment, which father had disposed the lands to this defender, who thereupon was infeft therein, which writs he all produced; notwithstanding whereof, the LORDS found, that the Bailies ought to have given infeftment to the charger, he being retoured heir; which retour standing, ought to receive obedience, for it might be that the father's sasine was false, or might fall for some just cause, which behoved to have its own trial, and could not be received *hoc loco* against the retour standing; but reserved the same *prout de jure* to be pursued by reduction, albeit it would have been a good defence, the time of the service, to have staid it.

Fol. Dic. v. 1. p. 170. Durie, p. 322.

1632. February 2. MUIRHEAD against LICHTON.

ONE Lichton, daughter to umquhile Lichton, being served and retoured heir to him, and as heir obtaining sentence, for delivery of her father's writs and evidents of his lands to her; and another being served and retoured as son and heir to the defunct, claiming the same, the daughter craving preference in respect of her sentence; and that she *alleged*, that her brother was dead before the service, and his alleged service was deduced only by a procurator, whose procuratory was only subscribed by a supposititious person, who was not truly that person, but called himself that man;—THE LORDS, notwithstanding of the decret, found, that if the son's procurators would offer to prove, that the son was on life the time of the service of him to be heir, which was deduced by an alleged procuratory, and not by his own personal compearance, that they would prefer him, that being proven, and admitted the same to their probation; and found no necessity to reduce the daughter's retour or decret; but found, that this trial should be received in this same place, without necessity of other process, or of any reduction.

Act. Sandilands.

Alt. ———.

Fol. Dic. v. 1. p. 170. Durie, p. 619.

1663. July 7. ISOBEL MOW against DUTCHESS of BUCCLEUGH.

THE said Isobel having served heir to William Mow her grandsire, charges the Dutchess, as superior, to receive her; she suspends, and compearance is made for certain persons, to whom the charger's father had disposed the lands in question, who raised reduction of the defender's retour and infeftment, upon this reason, that the retour was null, serving the charger heir to her grandsire

VOL. VII.

15 T

No 14.

the superior was bound to enter him, although an objection was offered by suspension, which would have stopped the service if previously offered.

No 15.

A daughter was served heir; and afterwards a service was, by procurator, expedite for a son. The daughter alleged the procuratory was false, and that the son was previously dead. Found, that if it could be proven he was alive, the service was good, without reduction of the daughter's.

No 16.

It was objected that a retour could not be done away by simple reduction, but that a sum-