

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

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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, expedited 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-

No 16.
mons of error
was requisite.
Found that a
retour may
be simply
reduced, un-
less the ques-
tion depend
on propinqui-
ty of blood.

as last vest and seased, whereas they produced the infeftments of their uncle and father, as heirs to their grand-sire in these lands; and therefore instructed that her grand-sire died not as last invest and seased, as of fee, but her father their author. It was *answered* for the charger, That the retour could not be taken away, *hoc ordine*, by reduction, but behoved to be by a summons of error, for reducing the service by an inquest of error, to be pursued in Latin, by a precept out of the Chancellery. It was *replied*, That there needed no service of error, but the retour and infeftment might be reduced, unless there had been the question of propinquity of blood, of a nearer heir, which might have made the inquest an assize of error, which could not be in this case, seeing the inquest had done their duty, who produced one of the grandsire's sasines, found him to have died last vest and seased, as of fee, and neither could know, nor was obliged to know, that there was a posterior infeftment to the defender's uncle or father.

THE LORDS found the reduction receivable *hoc ordine*.

Fol. Dic. v. 1. p. 170. Stair, v. 1. p. 196.

1667. *June 28.* SIR ALEXANDER HUME *against* CREDITORS of KELLO.

No 17.
A retour of a
forfeited per-
son was found
not reducible
unless by
summons of
error.

SIR ALEXANDER HUME being donatar to the forefaulture of John Hume of Kello, did obtain a warrant for retouring the said John, five years in possession of certain lands, before the forefaulture, but the inquest served negative; and now he pursues a reduction of the retour, on this reason, that it is contrary to the testimonies of the witnesses adduced. It was alleged no process, because the reduction of retours is only competent by a summons of error, in Latin, under the quarter seal. It was *answered*, That is only in the case where the assizers are insisted against for their error; and the constant custom of the Lords has been to sustain a summons of reduction before themselves of this method.

THE LORDS sustained the defence, and refused process, albeit it was known to them, that the custom has been contrary of a long time before.

Fol. Dic. v. 1. p. 170. Stair, v. 1. p. 466.

1677. *January 4.*

MITCHELSON *against* MITCHELSON.

No 18.
A service of
a younger
brother, to
which the el-
der was not
made a party,
found not to
interrupt the
service of the
latter, altho'
not reduced.

A YOUNGER brother being served, before the Bailies of Kirkcaldie, heir of line to the immediate elder brother; thereafter the eldest brother did desire to be served heir of conquest to the same person; and the Bailies not being clear to proceed, in respect of the former service, unless it had been reduced; THE LORDS thought, That, upon their refusal, the elder brother may advocate for iniquity; and that the brieves may be served before the macers, and that the eldest brother being wronged by the foresaid service, to which he was not cal-