

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-