

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-