

R E T O U R.

1554. December 10.

A. against B.

No 1.

ANE retour made in the form of a rollment of Court, subscribed with the clerk of Court, containing the names of the inquest, and their declaration, is sufficient within the burgh to be served as heir, howbeit it be not under the seal of the inquest, closed under the Baillie's seal, conform to the order of Chancery used in retours; as was found, by interlocutor, in a poor man's action.

Fol. Dic. v. 2. p. 352. Maitland, MS. p. 112.

1561. November 21.

WOOD against AN INQUEST.

No 2.

ANENT the summons raised at the Queen's Grace's instance, and John Wood; for his interest, against A., and others of Inquest, for manifest and wilful error for serving of Walter Wood, second son of umquhile G. Wood, as heir to the said G., of certain lands, howbeit of verity the said John, eldest son to the said G., was in life the time of the said serving, and yet is nearest and lawful heir to his said father. It was *alleged* for the said Inquest, That the said John Wood, eldest son foresaid, was, in time of the serving, and seven years immediately continually before, forth of the country, and reputed as a dead man, by his father and the whole country; wherefore, the said Inquest should be assolizied of wilful error; which allegiance was found relevant, and admitted by the Lords, and the said Inquest assolizied from wilful error.

Fol. Dic. v. 2. p. 352. Maitland, MS. p. 129.

An inquest was assolizied who had served a second brother heir to his father, tho' the eldest was alive, because the eldest has been long absent, and reputed dead.

1562. July 17.

LORD DRUMMOND against WISHART.

No 3.

In the summons of error pursued at the Queen's instance, and my Lord Drummond for his interest, against certain persons of inquest, and George Wishart of that ilk, for his interest, it was *alleged* for the part of the Queen's

An inquest absolved from a charge of wilful error.

No 3.

Grace, and the said Lord Drummond, That the said inquest had manifestly and wilfully erred for the causes underwritten, eo quia vigore ejusdem retornaverunt et deliberaverunt quod dictus quondam Jacobus Wishart, pater præfati Georgii Wishart obiit ultimo vestitus et sasitus ut de feodo ad fidem et pacem nostram de totis et integris terris de Tor cum pertinen. cum molendino ejusdem cum suis pertinen. ; nec non de totis et integris terris de N. et A. cum pertinen. jacen. in baronia de Kincardine, infra vicecomitatum nostram de Perth; et quod dict. Georgius est legitimus et propinquior hæres ejusdem quondam Jacobi Wishart patris sui de præfatis terris et quod dictæ terræ de Tor cum molendino ejusdem nunc valent per annum 24 lib. 6 sol. et 8 d. ; sed in rei veritate præfat. terræ de Tor cum molendino ejusdem nunc valent per annum sicut tempore præfat. deservitionis nec non et continue ultra per spatium ultra quod memoria hominum non existit immediate dict. deservitionem preceden. per eosd. valuerunt et solverunt prout de presenti solvit annuatim 5 caldras farinæ avenatiæ, unam caldram hordei, 5 duodenas caponum, unum pinguem suem, et 20 solidas monetæ; nec non et quolibet termino summa decem librarum nomine grassum veluti per eosd. durante tempore dicto per colonos, habitatores, et occupatores ejusmodi terrarum et molendini de Tor cum pertinen. solvebatur et solvitur, et sic computando solum modo pecunia caldræ farinæ avenatiæ ad decem et caldræ hordei ad decem duodecim capones ad duodecim solidos et pretium suis ad decem solidos prout mos est retornationis in similibus annis retroactis præfatæ terræ, et molendinum valuerunt summa et solverunt quinquaginta lib. aut circiter et sic longe ultra præfatam summam 24 lib. 6 sol. et 8 d. in dicto retorno content. prout dictis personis plane constabat, quare retornantes ut supra, voluntarie et manifeste errarunt. Secundo, Retornaverunt et deliberaverunt, quod præfatæ terræ de N. et A. tempore pacis valuerunt 5 lib. 13 sol. et 4 d., cum in rei veritate dictæ terræ tempore pacis valuerunt 9 lib. prout omnibus annis retroactis ultra quod memoria hominum habebatur et reputabatur prout ad huc habetur et reputatur fore et esse dicti valoris 9 librarum terrarum antiqui extentus et ad tot. lib. se extenderat et ita communiter durante præfato tempore, retornatus et taxat. in singulis retulis præfati vicecomitatus de Perth, prout notorie constabat præfatis personis inquisitionis; quapropter retornantes dictas terras tantum valuisse 5 lib. 13 sol. 4 den. tempore pacis manifeste et voluntarie errarunt. Tertio, Præfatæ personæ retornaverunt et deliberaverunt quod præfatæ terræ de N. et A. cum pertinen. valent nunc per annum, et annuatim valuerunt ultra quod memoria hominum non existit, valuerunt 9 caldras 13 bollas farinæ avenatiæ duas caldras et octo bollas hordei et quinque duodenas caponum et quolibet termino 9 lib. nomine grassum præter alia servitia veluti per singulis eisdem annis retroactis tam ante præfata deservitione quam post durante præfato tempore ultra memoria hominum per colonos et inhabitatores tantum solvebatur et solvitur, ut notorie dictis personis inquisitionis constabat præfato tempore deservitionis, et sic quod dictæ terræ annuatim durante præfato tempore valuerunt et valent summam cen-

tum librarum aut circiter et sic longe ultra prefatam summam 40 lib. prout præfatis personis tempore deservitionis constabat notorie, quapropter retournantes ut supra manifeste et notorie errarunt; et præterea dictas personas et earum quaslibet per earum manifesto et voluntario errore prædicto pœnas temere jurant. super assisa incurrisse et ob id in earum corporibus et bonis per jura et regni nostri consuetudine puniri debere. It was *alleged* for the part of the said inquest, and the said George for his interest, answering to the foresaid third reason, That the said inquest did no wrong in retouring of the said land, as it is contained in the same, because it has never been in use to have been in a retour, victual, poultry and grassums, nor other duties, nor yet reduce the same into a sum of silver; because the prices of victual have been seen different sometimes, sicklike victual as is alleged has been at 5s. the boll over head, some 6s., some 7s., and the price over head of the poultry, at 4d., and may, by chance, come to the same price again; and, therefore, it were a dangerous matter to make a certain price for victual and poultry, since it is so uncertain by alteration of time; and also howbeit, sometimes envious persons will take land over their neighbours' heads, and will give more for it than it is worth, and at last leave the same for poverty; and also, howbeit Lords' lands, or sicklike that over meikle are given to the world, will raise the mail, that the old tenants were wont to pay, and rack them to pay more for the land than they may, having a life to themselves, or that the lands are worth, or else will remove them therefrom; and howbeit they that have been in old possession, before they be removed, would bide and give more than they will win upon the said lands, and at the last leave the same for poverty, this is no cause why lands should be retoured to that avail; and also it were a great inconvenient and prejudicial practick, if every inquest should take inquisition of every man's rental, and what every man's land may give, before they form a brief, and made retour upon the same, which manner of retour has never yet been seen in this realm. And *answered* to the second reason, There is no relevant cause libelled, that the said inquest did any wrong in retouring the old extent, as said is, because there was no retour shown to them, nor other authentic or sufficient evident, wherever the said lands were retoured, higher or of greater avail, neither of old extent nor of new, in any time bygone. Which allégeance, made for the part of the inquest, and the said George for his interest, was found relevant by the Lords; in respect of which, the said Lords repelled all the said reasons made for the part of the Queen's Grace, and the said Lord Drummond for his interest, and absolved the said inquest from all manner of wilful error and ignorance, and decerned them and the said George quit from the petition of the said summons in all time coming, for the causes foresaid.