

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,