

lory, which is a sentence past upon the oaths and consciences of 15 sworn assisers, but ought to be tried by a legal and ordinary way of action and process of error;—the LORDS found the allegiance relevant, and received the same in this place, to be tried by the parties' own oath, which they found to be such a manner of trial, as the party served could not decline himself; and that there was no necessity, in respect thereof, to intent another process of reduction, or error, where the party himself was judge.

No 5.

Act. ———.

Alt Gibson.

Clerk, Hay.

*Durie, p. 793.*

1663. *January 16.* SWORD *against* SWORD.

ONE SWORD as heir served and retoured to Baillie Sword of St Andrews, pursues for intromission with the moveable heirship for delivery of the same, and produces his service done at St Andrews, and retoured, whereby he is served as oye to the defunct Baillie, his father's brother. Compears another party, who is likewise served heir to that same Bailie, at Edinburgh, and produces his service retoured, by which he is served heir to Bailie Sword, as his father's brother's son; whereupon he hath raised a reduction, in Latin, under the quarter seal, of the other service, which was prior; and alleges, that he being in a nearer degree of blood than the other, in so far as he is a father brother's son, and the other service bears him to be but a father brother's oye;

No 6.

In a competition of retours the Lords preferred neither till the merits were tried.

“ THE LORDS having considered both the retours, and that they were not contradictory, inferring manifest error of the assize, because it was sufficient for the assize to serve the father brother's oye, if they knew of no near degree; and also because the defunct Bailie might have had two father brothers, one elder than his father, and the other younger, and thereby two heirs, one of line and another of conquest, which not being clear by the retours, the LORDS will not prefer the first retour as standing, but would hear the parties upon the reduction.”

*Stair, v. I. p. 159.*

See APPENDIX.

VOL. XXXII.

76 U

I