In a process of error the pursuer craves, that the Service (where
the Defender is served heir to such a Man) may be Reduced: Because
is a Nearer Relation to the Deceased than the Defender; And that it m
be found that the Inquest who served such a one heir, have erred,
ought to be punished in their persons and Goods tanquam temere Ju
=tes super assisa; that is by Escheating of their Moveables, a Years
Imprisonment and Infamy Act 48 Par. 6 J. 3 junct. Reg. Majs Li
Cap. 14 Skene Not. ibid. This grand Inquest do enquire not only into
the verity and Validity of the Retour, but also into the Ignorance and
partial malice of the Members of the Inquest who made it.

A Retour may be also Reduced, by a Summons of Reduction in En
=lish under the Signet without Declaring the Inquest guilty of Will
error 12 Feb. 1628 Ker contra Scot 1°/ Where the Inquest did not mista
in the proximity of blood, by serving a Remoter heir while there was
Nearer, but only Mistook the person that died last vest and seised: In
far as it is Instructed that another stood Infeft as heir to the pers
to whom the Controverted heir is served, as if he had died last vest an
seised in the lands. Because his Seisin being produced to the Inquest
they could not nor were obliged to know that there was a posterior
Infeftment in favour of another as heir to him. Thus where a
woman had been served heir to her Grand father as he who d
last vest and seised in Certain lands, and there was afterward pro
duced an Infeftment to her father as heir to the said Grand fath
which cleared that the father and not the grand father died la
vest and seised: the Grand daughters Retour was found Reduci bl
without the solemnity of a latine Summons of Error, and Calling
Inquest. Because the Inquest seeing only the grandfathers Seisin p
=duced to them, and knowing Nothing of the fathers Infeftment, ha
Reason to find the grand father to have died last vest and seised
July 1663 Mow contra Dutchess of Buccleugh. 2°/ A Retour ma
be Reduced without an assize of error, where it is proved, that
the person served heir to was forefeited, and so died not at the fa
and peace of the sovereign According to another point of the Brie
seeing that was presumed; Or where there is More pregnant Evi
produced for anothers being Nearer heir to the Deceased than
who is served, and there was No Competition at the time of the
=vice; or where the party Interested appeared at the service an
did not object 22 March 1633 The King contra E. Strathern
or where the Inquest Retoured a wrong Extent of the fee, upon
duction to them of Rights Containing a wrong Extent. In a
which Cases the error not being Evident and Gross, the Re
=tour may be Reduced, and the Inquest not found punishable t
tem

temere Jurantes. For willfull error is an Evident and Gross error in the
positive proof, especially of the Predicessors death and his being once Infeft,
of the heirs special Relation and degree of blood, his age and the Extent of
the Fee Stair lib. 3 Tit. 5 §43. And such willfull Error must be Inferrd
upon principles and grounds Represented to the Inquest at the time of
the Verdict. Tho the Retour of the Service may be Reduced upon other grounds
than were under the Inquests View at the time, Arg. Act 13 Par. 22 J. 6.
3°/ Because the pain of Willfull error is so great, the Inquest cannot be
made Liable to it, if not pursued within 3 Years after the date of
the Retour Act 57 Par. 5 J. 4 junct Act 13 Par. 22 J. 6 But the Retour
it self may be Reduced and the wrong heirs title annulled at any time
within 20 Years d. Act 13 Par. 22 J. 6. Even upon Other grounds than
those offered to the Inquest, McKenzie observ. on Act 64 Par. 8 J. 3.
For our Law is still More favourable to Just Reparation, than to
Vindicta publica. In Which Case the Lords of Session have Sustained
Reduction of Retours before themselves without an Inquest upon
Reasons proved by Witnesses 7 July 1663 Mow contra D. of Buccleugh.
But a Retour of five Years possession of a forefeited person, was not
Sustained to be Reduced by way of ordinary Action, but by a Summons
of error in Latine under the quarter Seal, tho such Reductions were
ofttimes allowed before 28 June 1667 Hume contra Creditors of
Kellow. In the Reduction and Improbation of the service of an heir
to his predecessor in lands, no Certification for not production will
be granted, unless not only the party, but also either the Director of the
Chancery who is presumed to have the Service in his Custody as the
Warrand of the Retour, or the Judge and Clerk before whom the
service was deduced, be called in the process 17 Feb. 1624 Lord
Elphingston contra E. Mar. A principal service before the Year
1650 was sustained to satisfy the Production in Reductions and Im=
=probations, without producing the Retour it self, or Alledging that it
was Extant in the Chancery. Eodem die Inter Eosdem. Because the
Books of Chancery were Destroyed by War. But now albeit in Reduc
=tions and Improbations of Decreets or writes Recorded in the Books
of Session, these will not be Reduced for not production by the De
=fender, if he Declare the date of the Recording, and the writes be
found there upon Record: Yet in a Reduction or Improbation of a
Retour the pursuer is not bound to search the Chancery for
it, or to Extract or produce it albeit Extant there; but Certifi
cation will pass against it, unless the Defender produce the same
20 March 1633 The King contra E. Strathern. The Reason of the
Difference is, because Clerks of Session are Answerable for what is
Registred in their Books, and obliged to Extract the same, or
Exhibite