

of his own debts, contained in his list 1734; and the reason of the balances being so large at his death, was by giving large provisions to five younger children of L.5000 sterling; and the question suggested by the President was, Whether an heir of entail paying and extinguishing part of the debts upon the entailed estate, becomes thereby creditor to that estate, so that by gratuitous bonds of provision, or even by contracting onerous debts, he can again charge the estate with debt to the same extent, and he was clear of opinion that he could not. I was also of the same opinion. I thought an heir of entail was not bound to apply his personal estate in payment of the debts of the entail, and therefore might, if he was pushed by the creditors, take assignments in name of a trustee, and then they would be still subsisting debts, but that if he once extinguish them, he could not again rear them up, and if the law was otherwise, the debts on an entailed estate, however they might grow by not-payment of interest during an unfrugal heir's possession, yet could never grow less, for if a frugal heir paid any debts, he thereby became creditor to that extent on the estate, which must descend to his heirs, especially if his heirs-at-law and of entail were the same; and I thought this was a case very different from that of Pulrossie, where the debts on the entail were in reality never diminished, but money borrowed from one creditor to pay another, though the tailzier's bonds were not extant, and to cut out these new creditors would have been sanctioning a fraud, and yet more different from the case of the Duke of Queensberry, who purchased a feu whereof the superiority only was entailed, and took a resignation *ad remanentiam*; and from that of Sir Peter Fraser of Durris's creditors, who had redeemed a wadset and paid adjudications affecting the entailed estate, but were not debts of his or of the tailzier's. However, it carried by a great majority that he might sell lands to the extent demanded.

No. 46. 1752, July 1. SIR KENNETH, &c. M'KENZIE *against* STEWART.

LORD ROYSTON, of consent of these two pursuers, his nephews, obtained an act of Parliament for sale of Royston, with power to the trustees, therein named, to apply the price for payment of the expense of the act, and for payment of two great debts therein mentioned, and to get them conveyed to the purchaser. Sir Kenneth and Gerard M'Kenzie now pursue John Stewart, Royston's grandson and heir of line, to account for the price to them as next heirs of entail. Answered, the price exhausted by those debts. Replied, they were fictitious debts, and before extinguished. But we found we could not enquire into the matter, or review the act of Parliament, and therefore assoilzied. Reversed in Parliament 14th March 1754.

(The import of the Lord Chancellor's speech, referred to by Lord Elchies as stated on his copy of the appeal case, (not preserved) is given by Lord Kames in his report of the same case, DICT. No. 164, p. 744-5. The report as in the Fac. Col. is DICT. No. 65. p. 15,459.)

No. 47. 1752, July 1. CLAIM OF MERCER ON THE ESTATE OF LETHINDIE.

IN 1732 Sir Lawrence Mercer made a strict entail of his estate of Lethindie, in favours of himself and heirs-male of his then marriage, and heirs of their bodies, whom failing to the heirs-male of his body of any other marriage, and heirs of their bodies, whom failing to