

- No. 29. spect that the same was less than the sum of the debts due by him at the time aforesaid, after application of his separate estate: And found the pursuer was entitled to apply the price thereof in the first place towards payment of the said debt, and the remainder thereof, whatever it should amount to, to be laid out upon the purchase of lands, or heritable security, in favour of the pursuer and other heirs of tailzie called by Sir William's destination; and under the same provisions, &c. that were contained in the said tailzie, to be conjoined with the tailzied estate, and to remain inseparably therewith in all time coming; providing that the sales should not be at prices under the proved value; and providing that the sales of both estates should be with consent, and the prices applied at the sight of the three next heirs-male, majors for the time,

Act. Ferguson.

Clerk. Murray.

D. Falconer, v. 2. No. 249. p. 306.

- No. 30. 1752. July 1. M^CKENZIE *against* STEWART.

The possessor of an entailed estate, in concurrence with some of the substitutes, obtained an act of Parliament to bring the estate to a sale, for payment of debts of the entailer. The act mentioned these debts specially, and ordained the price to be applied to their payment, and that the overplus should be laid out on land, to be settled on the substitutes, conform to the destination of the entail. The estate was sold, and the payment of the debts mentioned in the act exhausted the whole price. A substitute afterwards brought an action of count and reckoning against the heir of line, insisting, that all the debts in the act did not affect the entail, and ought not to have been paid. The Lords found, That as these debts were specially narrated in the act, they had no power to inquire farther.

Fol. Dic. v. 4. p. 345. Sel. Dec.

* * This judgment was reversed on appeal.—The case is No. 164. p. 7443. *voce* JURISDICTION.

1753. July 13. MAJOR ARTHUR FORBES *against* KATHARINE MAITLAND.

No. 31.
Service of an heir of entail in general, without specifying the entail in the verdict, whether effectual?

Sir Charles Maitland, younger, institute in an entail of the estate of Pittrichie made by his father, expedite a charter of resignation in terms of the tailzie, but died without infestment, and without children. His sister Jean, next heir of entail, expedite a general service, in which the deed of entail was produced before the jury, who gave their verdict finding her next heir of entail to her brother Sir Charles, but omitting to mention in their verdict the deed by which she was made heir of entail. This service was expedite 6th May, 1704; and, upon the 24th of the same month, Jean executed the precept contained in the deed of entail; which