No. 31. if such a service be lawful, it must be of a singular nature. It can admit of no proof, and therefore a jury is not necessary. Such a general service can signify nothing, but to be a legal declaration of the claimant's will to take up all subjects which are provided to him by any deed of entail made by such a person; and consequently to subject himself to all burdens imposed upon him by such entails.

But it appears to me, that the true state of the question is not what is above set forth. The case is not of a general service as heir of entail, but of a special service as heir of entail to the lands of Pitrichie. It is evident, from the whole circumstances, that Jean intended to make up her titles to the lands of Pitrichie. And the proper question is, Whether the stile of the verdict neglecting to mention the entail which was produced before the jury, makes an intrinsic nullity in the retour? It is clear, from the retour itself, that the jury had a deed of entail made by Sir Charles under consideration; for, otherwise, they could not depone that Jean was heir of tailzie to her brother Sir Charles. Now, I see no heterodoxy in supplying the above omission in the verdict from the preceding minutes and subsequent infeftment. Nor is there any analogy here to a sasine: A retour is not a matter of record. It is a private deed, calculated only to inform the King of certain facts; and when warrant is granted for infeftment, the retour is useless. And, accordingly, retours were not regarded before the year 1633. And as to a general service, which is but a late invention, it really imports no more than a declaration of the claimant's will to be heir; and, therefore, from the nature of the thing, it may admit of collateral evidence; and the same observation applies to a special service in a subject where the defunct died not infeft.

Quæritur—Would not Jean's infeftment, upon her service as heir of entail, even without possession, subject her to passive titles? Would she be allowed to plead the defect of her own right? It would be observed, that she had solemnly declared her intention to take up the estate of Pitrichie, which, at the same time, was declaring her consent to pay the debts. Now, the passive and active titles cannot be divided. If the service made Jean heir *passivè*, it made her also heir *activè*.

Sel. Dec. No. 47. p. 53.

1753. *November* 21. GORDON'S CREDITORS *against* GORDON.

No. 32.

While an entail remains a personal deed, and is made the title of possessing the estate, it will affect the creditors of the heir in possession, although it has not been recorded, and although the provisions and irritant clauses have not been repeated in the title-deeds of such heir.

Fol. Dic. v. 4. p. 331. Fac. Coll. Sel. Dec.

*** This case is No. 75. p. 10258. *voce* PERSONAL AND REAL.