

No. 63. already contracted, or to be contracted, done or granted by him; and in so far as any part thereof has been sold, to lay out and employ the price and proceeds thereof in payment and extinction of the debts still remaining due by the said deceased Sir John Home and Sir Alexander Stirling, in so far as the same do or can affect the lands, teinds, and others, which belonged to the said Sir John Home, or to purchase therewith other lands, and to entail the same in manner foresaid."

But upon advising a reclaiming petition, with answers, they, by the narrowest majority, altered their former interlocutor, and found, "That, under the circumstances of the case, the lands to which the petitioner succeeded as heir to Sir John Home of Renton, and which are not specifically described in the deed of entail, are not included under the tailzie; and that the petitioner is not bound to execute any supplementary entail thereof, nor to relieve them of his debts and deeds;" and remitted the other conclusions of the libel to be discussed by the Lord Ordinary. See APPENDIX.

Lord Ordinary, *Cullen.* Act. *Erskine, Morehead.* Alt. *Ross, Campbell.*
Agent for Pursuers, *A. Grant, W. S.* Defender, *R. Ayton, W. S.* Clerk, *Gordon.*

J.

Fac. Coll. No. 12. p. 23.

SECT. II.

Institute.

1726. February 26. WILLISON against WILLISON.

No. 64.

An institute in an entail having contravened, by contracting debt, &c. a substitute pursued a declarator of irritancy. Objected for the institute, The irritancies were only annexed to the contravention of the heirs; under which he, as being institute and fiar, was not comprehended. The Lords repelled the objection, and decerned in the declarator.

Fol. Dic. v. 4. p. 332. Edgar. D. Falconer.

*• This case is No. 14. p. 15369.