

1725. *February 13.*

JEAN LOTHIAN, Relict of LUDOVICK CALLENDAR, and GRIZEL CALLENDAR,  
Her Daughter, *against* JAMES WILLYSON, Merchant in Glasgow.

No. 108.

Found that the heir of entail could not challenge as deeds of contravention, rational provisions to a wife and children made before pronouncing interlocutor in the declarator.

The irritancies in the tailzie of the estate of Dorater being incurred, and declared against Ludovick Callendar, (as observed No. 14. p. 15369.) in the ranking of his creditors, there was produced a bond granted by him for 600 merks of annuity to his wife, and £8,000 Scots to his daughter.

Mr. Willyson, who had prevailed in the declarator, objected to the bond, as being granted not only subsequent to the deeds inferring the irritancy, but after executing a libelled summons of declarator and a pleading before the Ordinary.

It was answered for the wife and daughter: That by the tenor of the tailzie, there was express power given to the said Ludovick, to provide his wife and children with suitable provisions out of the estate; which power could not be taken from him without a sentence.

Replied for Willyson, That the Faculty to provide supposed the subsistence of the heir's right; but after defaulting of that by the contravention, his posterior deeds could be of no effect; and it appeared that this must have been the meaning of the tailzier, in so far as by the tailzie, not only the contravener's own right is irritated, but that of the descendants of his body; and it would be absurd, that the contravener should have it in his power to bring in these very descendants, to carry off by their provisions the subjects from which they were excluded by the contravention.

Duplied for Mrs. Callendar and her daughter: That the cause of granting the bond was anterior to the contracting of the debts which had irritated Ludovick's right; and the same writ which gave Willyson a title to quarrel these provisions, authorised Callendar to make them.

The Lords found, That the heir of entail could not quarrel rational provisions to the wife and children made before pronouncing the interlocutor in the declarator.

For Willyson, *Ja. Fergusson, sen.*

*Alt. Arch Stewart, jun.*

*Clerk, Hall.*

*Edgar, p. 168.*

\*\*\* See No. 15. p. 15371.

1726. *December 27.*

JEAN CANT, Relict of BORTHWICK of Hartside, *against* BORTHWICK of  
Crookston.

No. 109.

How far heirs of tailzie are at liberty to

Betwixt these parties the question occurred, If tailzies made before the act 1685, anent tailzies, fall to be regulated thereby, so as to be ineffectual against creditors, if not registered, &c.