

No. 109. will never be understood any tailzier designed to restrict his heirs from making suitable provisions to their wives and children, which is necessary for the continuance of the tailzie, because otherwise it would be a tacit exclusion of marriage; and therefore a general clause, *de non alienando, et non contrahendo debitum*, will never exclude them.

It was allowed from the other side, That an heir of tailzie, however strictly tied up, is still understood to have a power of endowing his wife and children with rational provisions: But it was contended, that the wife's share can never go beyond the terce, which is determined by the law to be a rational provision.

“ The Lords found, The bond of annuity is comprehended under the prohibitive clause in the tailzie; but sustained the said bond, in so far as the same can be supported by a terce.”

Rem. Dec. No. 90. p. 178.

1728. February 2. LORD STRATHNAVER *against* DUKE OF DOUGLAS.

No. 110.

An entail containing strict prohibitory and irritant clauses with regard to the contracting of debt, but no prohibition to alter the order of succession, was found notwithstanding to imply such a prohibition.

Fol. Dic. v. 2. p. 434.

* * This case is No. 17. p. 15373.

1730. February. EARL OF LAUDERDALE *against* HEIRS OF ENTAIL.

No. 111.

A general clause in a tailzie, prohibiting the heirs of entail to sell, annalzie, alienate, wadset or dispone the lands, &c. under irritancies, is not understood to restrain them from selling for payment of the tailzier's debts. See APPENDIX.

Fol. Dic. v. 2. p. 433.

1730. February. BORTHWICK *against* BORTHWICK.

No. 112.

An heir of entail, with strict prohibitory and irritant clauses, *de non alienando et non contrahendo debitum*, cannot grant bonds of provision to his younger children, so as to affect the estate after his decease. He can indeed grant a jointure to his wife, equivalent to the legal third, but there is no consequence from that,