

No. 129. 1726. *December 27.* CANT *against* BORTHWICK.

The act 1685 has no retrospect, and therefore regulates not the constitution of tailzies made before the act, so that such need not be recorded.

Rem. Dec.

* * * This case is No. 109. p. 15554.

No. 130. 1741. *November 23.* BAILIE *against* STEWART.

The act 1685 was introduced for the security of creditors, as well as for the security of entails; and therefore a declarator of irritancy having been obtained against an heir of entail, who possessed the estate upon a general service, for neglecting to insert in the retour the limitations of the disposition of entail, with which he connected by the service, his debts were found good against the next heir, the tailzie not being recorded in the terms of the act 1685, which they would not have been at common law, in respect of the provisions in the right itself, which was sufficiently qualified thereby, at least while it stood as a personal right without infestment: And it was found, That the estate might be affected for these debts, though, by declarator of irritancy, the same was established in the person of the heir, who did not represent the defunct debtor, and so the estate was now neither in the debtor's person, nor *in hæreditate jacente* of him; which the Lords did not regard, because, as to the creditors, the case was the same, in virtue of the act 1685, as if the debtor had been absolute proprietor. See APPENDIX.

Fol. Dic. v. 2. p. 436.

No. 131. 1743. *December 20.* LORD MAXWELL *against* WILLIAM TAIT.

Tailzie not recorded, what effect it has with respect to disabling heirs to sell?

The Earl of Nithsdale having tailzied his estate, disposed the same to Lord Maxwell; who, having sold part thereof by a minute of sale to the said William Tait, charged him to implement the same; and, in support of the charge, pleaded, That the disposition in favours of the charger having never been recorded in the register of tailzies was not good, by the act 1685, against third parties, it being there ordained, that such tailzies should only be allowed which are recorded in the manner therein prescribed; *2do*, That although the tailzie be the deed by which the charger holds the lands, and so must make part of the progress given to the suspender, who, on that account, cannot plead ignorance, in case his title were quarrelled by any succeeding heir, yet this can afford no objection, in respect the same is clothed with infestment long ago.