

The Lords found the defender ought to exhibit, reserving all defences against the registration, or any other legal effect, as accords.

No. 12.

Act. *Sir Walter Pringle, &c.*Alt. *Hugh Dalrymple, &c.*Clerk, *Mackenzie.**Bruce, fo. 51.*

* * See case, Schaw against Schaw, Sect. 6. *h. t.*

1723. *January.*IRVINE *against* IRVINE.

It was found, in conformity with Symson and Home against Home, No. 6. p. 15353. That a remote substitute may pursue contravention of a tailzie, where the nearer heir lies by and neglects his right. See APPENDIX.

No. 13.

*Fol. Dic. v. 2. fo. 427.*1724. *February 26.* JAMES WILLISON *against* CALLENDER of Dorator.

Callender of Dorator tailzied his estate, with clauses irritant and resolute, in favours of Ludovick Willison, *alias* Callender, the present Dorator, and the heirs-male of his body; and failing of him, to James Willison, his brother; with several other substitutions. The said Ludovick Willison, *alias* Callender, of Dorator, having contracted debts, contrary to the tenor of his right, James Willison, the substitute, pursued a declarator of irritancy: Against which this was made, That the tailzie not being registered in terms of the act 1685, the same could not be allowed, and was ineffectual to prejudice either Dorator or his creditors.

No. 14.
Tailzies good
against heirs
without re-
gistration.

To make good this defence, it was pleaded, That the act 1685, anent tailzies, is an entire new constitution, settling the rules that govern the whole subject of tailzies; and therefore derogates from all former practice in this matter: But so it is, that the act gives allowance or authority only to such tailzies as are authorised by the Lords, and recorded; consequently, without that, tailzies can have no manner of effect, and so can neither be good against heirs or creditors, these being the two classes with respect to which the act statutes equally.

It was answered, That the act 1685 is no new correctory law, abolishing every former practice anent tailzies. It is plainly a declaratory law, not restricting the power of making tailzies; introducing, indeed, some things new, for the security of creditors, but leaving the heirs entirely to that footing they are placed upon by the tailzie. Hence, the receiver of a disposition, containing strict prohibitory and irritant clauses, if he contravene the condition of his own right, must fall from the same, as the disponent has appointed, this new act notwithstanding; for though the creditor may, the heir can never object, that the tailzie is void, because not