

Pleaded for the King's Advocate: It is not true that the act 1685 regards only tailzies whereon infestment has followed, and not personal rights; nor was this found in the case of Westshiels; but there an heir, in personal right, who had not inserted the clauses in his general services, having disposed it, the Lords found the purchaser could not object to the conditions of his own right; but here the case is different, as the tailzie was not recorded, whereby it was no tailzie; besides, there has infestment followed upon it, in which Sir James, abstracting from his disposition, was apparent heir, and could thereupon alienate; the principle whereupon it was found in the case of Park, 16th November, 1750, No. 60. p. 4728. that heirs of tailzie only forfeited for their life, was, that they had only in them an estate for life, which they could not alienate; and therefore, where the estate may be alienated, it may be forfeited; the claimant can only take it as heir to the attainted person, whose obligation which he urges was to let it descend to him as heir; but the attainted person can have no heir; and he cannot insist as creditor, this claim not being founded on any irritancy.

No. 24.

The Lords found that the tailzie upon the estate of Kinloch, not being registered in terms of the act of Parliament 1685, no claim could be sustained thereon; and therefore dismissed the claim.

Clerk, *Murray*.

D. Falconer, v. 2. No. 177. p. 211.

1751. January 10. DAVID KINLOCH *against* The KING'S ADVOCATE.

David Kinloch of Kilrie, son to Dr. James Kinloch of Labathy, the brother of Sir David Kinloch, claimed the same estate, upon an irritancy incurred by the first Sir James, by disposing part of the estate, whereby he forfeit for himself and the heirs of his body; which irritancy, by an absolute disposition, was not purgeable; and therein this case differed from that of Park, No. 60. p. 4728; and though the tailzie was not recorded, it was obligatory against the heir succeeding by virtue of it, and the irritancy might have been declared against him.

No. 25.
An irritancy not declared before forfeiture, is not proponible to evict a forfeited estate.

Answered: There is no difference betwixt this case and that of Park; as the irritancy might have been purged by the purchaser's re-disposing; but here also there is no tailzie; the estate was forfeited by Sir James; and the claimant, who could not have taken it from a disponee, cannot over-reach the forfeiture.

The Lords found, That the tailzie upon the estate of Kinloch not being registered in terms of the act of Parliament 1685, and the irritancy not being declared before the conviction of the late Sir James Kinloch-Nevay, no claim can be sustained thereon; and therefore dismissed the claim.

D. Falconer, v. 2. No. 178. p. 213.