

SECT. III.

Prohibitory, Irritant, and Resolutive Clauses.

1662. February 26.

VISCOUNT of STORMONT *against* CREDITORS of EARL of ANNANDALE.

No. 76.

Clauses in a tailzie, prohibiting the contracting of debts, and irritating the contravener's right, are effectual against creditors.

Stair. Gilmour.

* * This case is No. 5. p. 13994. *voce* REPRESENTATION.

1677. July 26.

JANET STEVENSON *against* MARGARET STEVENSON, and GEORGE MUIRHEAD,
Her Husband.

In a declarator at the said Janet's instance against the said Margaret her eldest sister, to hear and see it found and declared, that they had lost the benefit of a tailzie and disposition of the estate of Stevenson, and that it did not accresce to the pursuer as second sister, upon that ground, that their father John Stevenson considering that he had only three daughters, and that his estate had been very ancient in that name, albeit not great, therefore, by a disposition or tailzie he did ordain his eldest daughter to have right to the estate, she marrying with advice of her nearest friends, one that should assume the name and arms of the house of Stevenson; and if she failed, the second; which failing, the third should have right to the said estate, fulfilling as said is; they always paying to the sisters who did not exceed 2,000 merks to each of them; and seeing the said Margaret, the eldest sister, had married one George Muirhead, who was not obliged by his contract to take the name and arms, and did not assume the same himself now for several years since his marriage, therefore they had lost the benefit of the tailzie, and it ought to accresce to the pursuer: It was alleged for the defender, *1mo*, That the tailzie whereupon the declaration was founded, could be no ground for this conclusion, *first*, because it was a private and latent deed lying beside the father, whereupon no infetment followed during his life-time, neither was it made known to the defender the eldest sister, to put her *in mala fide* the time of her contract of marriage, but on the contrary, by the advice of her nearest friends, she did only assign the sum of 5,000 merks provided to her as the eldest heir-female by her

No. 77.

A tailzie of lands was made by a father to his daughters *successive*, upon condition, that if the eldest did not marry one who should assume the name of the family, the next should succeed. The eldest failing to do so, it was found that the next might serve herself heir of tailzie, although there was no irritant clause.