

of Parliament appoints the irritant clauses to be inserted in procuratories, charters, precepts and sasines, in the original infestment, that they may once become effectual real burdens upon the settlement; but when it mentions these clauses to be repeated, the words are rights and conveyances, which points at new dispositions and resignations, not retours; for an heir who bruiks by virtue of a service, enjoys the estate upon the right to which he is served, services and retours thereon being properly transmissions of the old rights; and thus the Legislature prevented an absurdity that might have otherwise followed, by the heir of entail's taking out a new charter upon his own resignation, leaving out the irritant clauses, and then selling off the estate.

It was duplied, That the words in the beginning of the act of Parliament are, *statutes and declares*, which plainly were intended to give authority to prior entails, whereof there was some doubt if effectual before that statute; and if it were otherwise, tailzies made before the act would not only be in a better case than those made after it, though authorized by a special statute, but the care and anxiety which the statute discovers, to prevent the ensnaring of strangers contracters, would be rendered ineffectual, because there can be no security but that in some part of the progress of an estate an entail may have been and may be brought out, to exclude creditors who had contracted *optima fide*. 2do, By the words rights and conveyances is meant, that the irritant clauses must be repeated in the subsequent titles, establishing the tailzie in the heirs, whether services, charters, precepts, &c. for the reason of the Legislature is mentioned, *viz.* that creditors might contract *bona fide*, when they saw that the heir was seised of an estate, and no express limitation upon him from contracting of debt.

“ The Lords found, that the act 1685 regulates the transmission of tailzies made before the said act, as well as those made since; and found, that the general reference in the sasine was not sufficient to interpel creditors according to the act 1685.”

Act. Ja. Boswell & Jo. Crawford, jun. Alt. Dundas & Pat. Boyle. Clerk, Murray.
Edgar, p. 202.

1726. February 1. STEWART against DENHAM.

The provisions and irritant clauses by the act 1685 must be repeated in every conveyance of the tailzie, even in a general retour, if that is the title of the heir's possession.

No. 128.

Rem. Dec.

* * * This case is No. 94. p. 7275. *voce* IRRITANCY.