

tailzier should declare they should be so : He could not make them null, except in so far as they might affect the estate ; and this was sufficiently done, by prohibiting the contracting, and irritating the contractor's right ; but the other clause having been introduced by the anxiety of writers, was ordered to be inserted by the statute, and since then it has become necessary to add it : The claimant is not bound by the decret, finding Sir Archibald's debts affected the estate : It is true he was cited, but as it was pronounced in absence of him, and was collusive of Sir Archibald, he may be heard against it : The decret itself does not find Sir Archibald had right to dispose of the estate, but only that his debts might be made effectual against it, which is not enough to make it forfeitable for his crime, as he could not alienate by the nature of his right. By the English law remainders may be disappointed, and an entail docked, by suffering a recovery ; but, until recovery actually suffered, and the estate thereby reduced to a fee-simple, the remainder is safe against forfeiture ; and yet the tenant in tail is not reckoned guilty of any fraud, nor incurs any obligation to the person in remainder by docking the entail. It has often been found, on occasion of the former Rebellion, that heirs-substitute have their rights saved, as being in the remainder, and there is with us no distinction of heirs-substitute ; but the right of all is stronger than his who, in England, has a remainder, as the heir's right with us cannot be disappointed, at least without fraud.

No. 26.

Pleaded for the respondent : Tailzies made before 1685 do not invalidate the debts, unless it were so provided, and therefore the judgment to which the claimant was cited was rightly given ; and it will appear by the decret there was no collusion : By this tailzie the heirs were only prohibited to contract, without consent of certain persons, or the survivors of them ; and by being all dead, the estate became a fee-simple in Sir Archibald : The ground of the decision in the case of Park was, that the estate was unalienable ; but there is no ground for saving an estate which might be alienated, whatever warrandice the alienators might incur thereby.

The Lords dismissed the claim.

Clerk, Pringle.

D. Falconer, v. 2. No. 179. p. 213.

1751. July 17.

STRANG against STRANG.

A tailzie containing unreasonable conditions in defraud of the tailzier's contract of marriage reduced-

No. 27.

. This case is No. 118. p. 12988. *voce* PROVISION TO HEIRS AND CHILDREN.