

the Estate to be affected for Debts contracted by one of these Heirs is  
 Tailzie. Because it implies a Contradiction, that an Heir of Tailzie should  
 be absolute Feor and dominus, without the Exercise of Dominion. And  
 a Tailzie is not fenced with a resolutive Clause irritating the Contravenor's  
 Right of Property, the next Member of the Tailzie cannot come to the Heir  
 without serving Heir to him, and thereby behaves to acknowledge  
 or Debts 11 March 1707 Bruce Lady Cudoch contra Forsyth and Wigan  
 22 July 1712 Competition betwixt the Creditors of Mr. Thomas and Mr.  
 Robert Craigs of Riccarton. But this last Case was reversed by the  
 House of Lords in Parliament upon an Appeal. A Clause in a Tailzie  
 annulling an Heir of Tailzie's Right for his contracting Debt, hath  
 effect, that the next Heir to the Member of Tailzie contravening, by contract-  
 ing Debt, might tho he had used no Inhibition against the Contravenor  
 obtain a Reduction of his Deeds, and a Declarator of his having lost a  
 Right to the Estate, and that the <sup>said</sup> next Heir should enjoy the same  
 and unaffected by the Contravenor's Deeds, and passing by him (as if he  
 were never in it) serve Heir to the Person who died last in feft, and did not  
 contravene or offend 26 Feb. 1662 V. Stormont contra Heirs & Executors  
 of E. Innesdale. But an Heir of Tailzie however strictly tied by  
 prohibitory and irritant Clauses is still notwithstanding <sup>understood</sup> to have a Power  
 of endowing his Wife and Children with rational Provisions necessary to  
 the Continuance of the Tailzie: Because otherwise it would be a total  
 Conclusion of Marriage. But then the Wife's Share can never go beyond  
 Force, which Law determines to be a rational Provision 27 Decemb. 1722  
 Cant contra Borthwick of Cruxichston.

Such Clauses irritant and resolutive being mighty prejudicial to Creditors &  
 Commerce, for supporting them against singular Successors an express Law was made  
 in the Year 1685 to the Purpose following. When a Tailzie is made with irritant  
 and resolutive Clauses inserted in the Procuratory of Resignation, Charter  
 and Precept of Seifin, that it shall not only be unlawful to the Heirs to sell  
 annulze or dispoze, or contract Debt or do any other Deed whereby the Tailzie  
 may be adjoyged or evicted from the other Substitutes in the Tailzie, or  
 the Succession frustrated; but also, that the Deeds of Contravention shall  
 be null, and the next Heir of Tailzie may pursue Declarator thereof,  
 passing by the Contravenor without representing him, and serve Heir  
 to the Person who died last in feft in the Fee, and did not contravene.  
 Such a Tailzie being judicially authorized of Course by the Lords of  
 Session, and recorded in the Register of Tailzies, and the irritant and  
 resolutive Clauses repeated in all after Conveyances of the intailed Estate  
 to any of the Heirs of Tailzie, is real and effectual both against  
 the Contravenor and his Heirs, and against their Creditors by

proving or Adjudication, or other Titles Act 22 Sept. 1. Par. 7.  
 Because, when the Clauses are inserted in the procuratory of Resignation  
 and Precept of Seifin, they must be inserted in the Seifin itself, as  
 in the former Editions. This Law is not a new corrective one, withdrawing  
 all the former Practice about Tailzies, & restricting the Power of making  
 them; but a declaratory Law leaving the Heir of Tailzie upon a Contracting  
 they are piced by the Tailzie, and introducing some new Regulations for the  
 Security of Creditors. Therefore a Tailzie cannot repeat it is still good and  
 binding upon the Heirs of Tailzie who accepted the same and possessed thereby  
 26 Feb. 1724 Millison contra Callender of Barroes, for any Liability in a Van-  
 our Right must necessarily affect himself. But an unregistered Tailzie cannot  
 prejudice or be effectual against Creditors in any singular Succession  
 by legal or conventional Titles; which is inferred by a strong Argument  
 -vise, viz. from the Act of Parliament relating Tailzies daily recour-  
 in the Terms thereof to be real and effectual against such Creditors and  
 singular Successors. Besides that the Clause appointing Tailzie to be registered,  
 was intended, as all other Publications, with a View to the Benefit of Creditors,  
 and not of the Heir, who may and is obliged to notice and know the Qualities  
 of his own Right 8 Decemb. 1724 Millison contra Creditors of Barroes.  
 Again, the omitting to repeat the irritant and resolutive Clauses in subsequent  
 Conveyances to any Member of the Tailzie, imports a Contravention against  
 the Omitter and his Heirs, to make the Estate fall to the next Heir of Tailzie  
 Act 22. Sept. 1. Par. 7. Thus where an Estate being tailzied with prohibi-  
 tory and irritant Clauses, the Tailzie was never registered, nor any Infeftment  
 followed upon it, and the immediate Heir of Tailzie served and returned  
 himself Heir of Tailzie, without inserting the Conditions Limitations and Irri-  
 tantcy in the Retour, and so possessed the Estate during his Lifetime: The  
 next Member of the Tailzie insisted against the former's Sons, who contin-  
 ed his Father's Possession to have the Irritancy of his Right declared upon  
 this Ground, that the general Retour aforesaid did not contain the Conditions and  
 Clauses irritant. It was answered for the Defender, 1. The Irritancy cannot  
 be incurred in this Case upon the Account of such Omission, because the Estate  
 becomes not thereby exposed to Creditors, against whom the Tailzie, never  
 having been registered is not effectual. 2. The repeating of the Clauses can  
 refer only to a special Service, after the Tailzie is clothed with Infeftment,  
 and no general Service, upon which only the Defender's Father's Retour pro-  
 ceeded, ever contained the Irritancy of the Right upon which the Successor  
 is served; a general Service being no Title of Conveyance of the Estate, but  
 only a Right to an unexecuted Procuratory of Resignation or Precept of  
 Seifin in order to execute Charters and Infeftments thereon, in which the  
 Clauses irritant are to be repeated, because no Conditions can qualify Infeft-  
 ments