

\* n. 1. Where the Tenor of a Tailzied Estate with reserues and Jritual clauses do non abscondere non-  
 contrahendo debent habere contractu confidendo personal debet ad a gift of his single and separate  
 Estate being bona fide upon diligencia usat for payment a declaration of the Jurisdiction was raised,  
 wherein the plaintiff insisted to have the gift of several dollars bond, and the profits of the Estate  
 from the Incurrence of the Jurisdiction, to belong to himself. For that the no Adjudication was  
 had against the Tailzied Estate till after the gift of several, the personal debts anterior thereto was  
 a sufficient Jurisdiction, by which the contractor falling upon facts from his Right, his several  
 could not be gifted thereafter in the profits of the next Heir of Tail. And therefore the same  
 Reason for making the actual contracting of Debt on Jurisdiction ~~as~~ as who's an Adjudication  
 non est: because Law declares the Jurisdiction ~~to~~ bond, and the Estate is not directed nor  
 the Heir injured more thereby than by the contracting of Debt. 2<sup>d</sup> Granting that the bond contracting  
 of Debt was no Jurisdiction, and that the several Estate was duly established, it could be no Effect  
 till after the first Adjudication was had upon the Estate. For thereby the proprietor being fallen  
 from his Right upon facts, the several could last no longer than the several Right, which was continuing till  
 without any declaration; the a declaration is insufficient thereon to necessary to transfer and establish  
 the Right in the next Heir of Tailzied and the superior suffers no prejudice thereby, because the  
 Lands fall in non Entry & he hath the Interim profits.

It was answered by the personal creditors 2<sup>d</sup> It is not the contracting of Debt that makes an  
 Jurisdiction, but the allowing that Debt to be made a Real Burden upon the property, ~~whereas the same~~  
 might become a Real Burden upon the property, whereby the same might be directed from the  
 Heir of Tailzied as appears from the words of the Act of Parliament 1605. For if an Jurisdiction  
 were made by the simple contracting of Debt no Heir of Tail could enjoy the Estate a week  
 without incurring an Jurisdiction; he could have no commerce with mankind; he could make  
 no bargain, not for necessities, nor use his credit in any way, tho' odd and alabs he  
 entered Estate by other means in times more than in Debt. nor are these Inconveniencies sold  
 by allowing the Heir to purge before declaration. For this is not in the Law, and it is ridiculous to  
 suppose, that a Law unreasonable in itself to be made only because the Judges of it could be  
 mollified by a just Interpretation again, an Heir of Tailzied who hath an unincumbered Estate more  
 than sufficient to pay Answer all his Debt may perhaps be not able to clear it before declaration or may  
 find it a great loss to have him to clear it before the a man may burden the Right of his own  
 Estate with such conditions as he pleases; it were unreasonable to bind up another as to other  
 things than what concern the Estate. The Reason why a Tailzied Estate is not directed by an Adjudi-  
 cation thereof is the contractor of the Tailzied is because his suffering it to be directed veritates his  
 Right of property, and therefore such an Adjudication is individual as being obtain'd contra non  
 dominium. 2<sup>d</sup> A Real Burden may affect his own property with what clauses and conditions he pleases which  
 will be effectual among his Heirs and Successors to the utmost Extent, and the superior cannot possibly  
 to allow such Jritual and reserues clauses to be insert in the Jrituals. But the Real cannot  
 thereby impair the Bond's and Casualties belonging to the superior as sure why are expressly  
 reserved to him by the Act 1605. And it can not be said that the superior Casualties are reserved  
 when he gets only the non Entry duties, which the next Heir of Tailzied can at any Time deprive  
 him of by entering Casual, instead of the several commensuration with the former Casual life-  
 time. The several once established is a casualty of superiority, which might have its course  
 and no Debt of the Real by voluntarily alienating his Lands or incurring an Jurisdiction  
 can take away. For in this a Life Tail Estate differs from a common Assignment of Lands & Estates  
 which because it is no Real Right upon the Land but depends upon the donor's Right, consisteth for  
 his Interest comes to be extinguished.

The Lords found that it is not the bond contracting of Debt but the allowing it to be made Real  
 upon the Tailzied Lands that makes an Jurisdiction; and that the incurring an Jurisdiction of  
 a Tailzied takes not away the contractor's Life of several already paid, and therefore just and  
 the Liforont Estate. 18 July 1722 <sup>High</sup> Scot of Gala contra the personal creditors of the  
 Decent for James Scot of Gala.