A Tailzied or entailed Fee is that which the Owner, by exercising his inherent Right to dispose of his Property, settles to others than those to whom it would have descended by Law, and limits to certain Conditions. This the English call an Intail or Entail, or Tail, or Fee-Tail or Fee-Expectant, from the feudal Term expectativa or feudum expectativum.

We find no express Mention of Tailzies in the civil Law, (nor which is more to be admired in the feudal Law, tho they be annexed Quality of Fees. But in both there are Rights much of the same Nature, as Institutions and Substitutions and Fideicommissa or gifts in trust, others in the civil Law: and the feuda gentilitia in the feudal Law, which are proper Topicks of Argument by Analogy in our Controversy about Tailzies. Craig (Feud. Lib. 2. Tit. 16. §. 3.) and Sir George Mackenzie (Treatise of Tailzies) are of Opinion that we borrowed the Practice of Tailzies from our Neighbours in England, where they were allowed in Parliament by the famous second Statute of Westminster in the Reign of Edward I. first about the Year 1290, the English having taken the Hint from the Normans. But the Lord Stair (Inst. Lib. 3. Tit. 4. §. 33. vers. Fiue) thinks it more probable that the Custom of Tailzies was handed to us more naturally from the French, with with whom we had anciently more Intercourse than with the English; especially considering, that our Tailzies to Heirs Male are older than the Second Statute of Westminster. The Norman Authors or Writers are the best Directors to let us in to the true Knowledge & Nature of Tailzies.

The learned vary in their Sentiment about the Origen of the Word Tailzie. Some derive it from the French Word Tailler, because the hinder Heirs are thereby cut off, or because the Fee is curtailed, limited to certain Conditions. Others not satisfied with this Etymologie, for that forein Nations ignorant of the French Language used the Word Tailzie, think rather that it comes from the Latin talis, in Regard the Estate doth thereby go ad tales hæredes, and not to Heirs whatsoever. Both which Etymologies do significantly enough express the Thing. The learned Craig gives in to the last Opinion, as more probable in one Part of his Book (Feud. Lib. 1. Tit. 10. §. 17) which he rejects in another Place (Lib. 2. Tit. 16. §. 2.) and joins with the first: But seeing all our Lawyers agree, that Tailzies came to us from Normandy, we need not trouble our Selves to fetch the Derivation of the Form any where else than from the French Tailler.

Some will have Tailzies to be contrary both to the divine Law delivered by the Ministry of Moses, which upon the Application of the Daughters of Zelophehad provided that Daughters failing Sons should be admitted to succeed to their Father's Estate Numb. 27. 7. &c. and to the Law of Nature, whereby Females ought not to be in a worse Condition than Males, seeing both equally concur in the Act of Generation as Justinian reasons Nov. 118. Others contend that Tailzies are not only permitted but approved by the Laws of God and Nature, and by the civil Laws of the wiser Nations. Because 1° Leliophehad's Inheritance was ordered to be given to his Daughters only for his wanting Sons, which implies an Exclusion of Females so long as any Male existed. And even failing the Females were not allowed simply to succeed but upon Condition that they married within the Family, that is a Kinsman of their Father's Side; Besides that the Rule of Succession established by Moses being peculiarly calculated to the Jews is not indispensably binding to other Nations, who are at Liberty to make special Laws of Succession adapted to their several Interests and the Genius of the People. 2° By the old Law of the Romans agnati or Kinsmen by the Fathers Side who returned the Name of the Family, did wholly exclude cognatos or Kinsmen by the Mother's Side. And if we may believe Florus (in his Epitome prefaced to Books of Livy) no Male of any Degree barred Females from legal Succession to their Ancestors; and more as a fourth Part of any Person's Estate, could not be left to them by Testament. Which Law continued in Force, till the distinguishing Prerogative of Males was taken away by the vicarious Justinian, to please Theodosia his imperious Wife. 3° Many of our Kings have indeed in their general Revocations (Act 71. Par. 9. J. 3. Act 51. Par. 4. J. 4. Act 70. Par. 6. J. 5. Act 28. Par. 6 Q. M. Act 31. Par. 11. J. 6.) revoked Tailzies made by them in their Minority, from Heirs general to Heirs Male as against Law and a good Conscience, the righteous Heirs being thereby defrauded and disinherited. And Sir George Mackenzie (Observ. on Act 54. Par. 4. J. 4) tells us, that he had seen old Licenses granted by the Pope to make such Tailzies, for Reasons therein expressed; in Consideration whereof he dispensed with the Matter of Conscience. But our Kings revoking Tailzies from any private Scruple they might have had, or, which is more probable out of a Design to hinder Prescription doth not infringe or enervate such Deeds, if otherwise lawful. Nor is it obvious to conceive, how the Consciences of our Kings should be loaded or grieved, by making Tailzies in their Minority, and not be doing so after Majority? Nay, the Deeds of Majority have not as those of Minority, the Veil or Pretext of Ignorance of Law, or Negligence of Tutors or Curators, to palliate or excuse them: And if the former may be done salva conscientia, much more may the Latter. K. J. 6. (Act 31. Par. 11.) revoked Tailzies of Heritage as contrary to Law and Conscience, but allowed Tailzies of Conquest as agreeable to both. But we are here again, as much to seek for a solid Reason of the Distinction. Seeing the Proprietor of Heritage hath the same free Power to sell and dispose thereof

Males.