thereof, as the Proprietor of Conquest has to dispose of his Purchase; what should hinder the one more than the other to bestow his own upon what Heirs he pleases? So that in short, I cannot see any tolerable Reason for calling in Question the Lawfulness of Tailzies, which are destin'd, as the Right of Primogeniture, to perpetuate Estates, and preserve the honourable Memory of Families. But at the same Time it must be owned that Tailzies are often, in Stead of attaining the intended Effect prove a Snare to bona fide contracting with Heirs under such a Limitation.

A Tailzie is properly made, by naming several Persons to succeed one after another: As when Lands are disponed to one and the Heirs of his Body or to his Heirs Male, or to his Heirs of such a Marriage; which failing to another Person named, and to his Heirs of such a Kind; and so to a third or further, according to the Humour of the Disponer, as he thinks fit to make the Tailzie long or short: Which all failing, to the Heirs whatsoever of the last Member of the Tailzie or of the Maker thereof, or to return to the Superior, or to go otherwise as the Disponer inclines. For Tailzies may vary in every Thing, as the Maker's Fancy leads him Stair Lib. 2. Tit. 3. §. 43. pr. Lib. 3. Tit. 4. §. 33. vers. Heirs by Tailzie. So that Bonds taken to Parents, and after their Decease to Children of the Marriage, or to such like nomination, are not Tailzies but Bonds of Provision. A Person in favour of whom Lands are tailzied in the first Place, is called the Institute or first Member of the Tailzie; and those to whom failing him and his Heirs they are provided to go, are termed Substitutes, or Second third &c. Members of Tailzie. If the Institute acknowledge the Tailzie by entering Heir and die without Heirs of his own Body; the Person called in the Second Place failing these is a proper Substitute, and must serve Heir to the Institute. But if such Institute died without entering Heir, the Person called in the Second Place is not his Substitute, nor doth serve Heir to him, but is a conditional Creditor whose Right is purified, by Removal of the Person called before him without any Right vested in his Person 2 Feb. 1720 L. Strowhaver contra D. of Douglass.

By the Law of England, a Fee granted to one and the Heirs to be gotten of his Body, is called a general Intail; because whatever Woman he takes to Wife, the Issue may inherite the Lands: And that where it is granted to a Man and Wife and the Heirs to be procreated of their two Bodys is called a special Intail; because in such a Case none shall inherit but those that are begotten by him on that particular Wife.

Tailzies

Tailzies are properly qualified Dispositions of Lands, most chiefly intended for the Preservation of ancient Families. But Sums of Money and Movables are often tailzied with Lands, as Accessorys for keeping heretable and movable Estate together 27 Feb. 1623 E. Levin contra Montgomry 10 March 1683 Riddoch contra [illegible] more. One a Jewel bequeathed to a Family with a Quality, that it shall not be alienated, cannot be disposed of gratuitously, except in favorem. However when Movables are left to Persons successively, failing one to another, we call not that a Tailzie, but a Substitution; Lord Sir John Nisbet observes (Douets Dict. Tailzies) that there is no Tailzie of Moveables or movable Sums.

Seeing Tailzies divert Succession from the natural and common Channel, they are ever strictly interpreted. For Law doth not favourably extend the Deeds of private Persons thwarting the ordinary Course (Fountainh. Lib. 2. Tit. 16. §. 4. But some think that when prevailing Custom makes any Thing to be done more universally than what Law prescribes the Practice should receive a favourable and liberal Interpretation: V. g. A Tailzie of the Estate of any great Family to Heirs Male, should be favourably interpreted, from the presumed generale Inclination of noble Persons so to do; and if there was a former Tailzie in the Family, it is favourable to maintain it from the supposed Will of the Disponer, which is the best Interpreter of what is disponed.

All Persons may make Tailzies, who can effectually oblige themselves. But Minors, even with Consent of Curators cannot effectually intail their Estates 26 January 1726 M. Clydesdale contra E. Dundonald & Mckenzie Treaty of Tailzies. Because they cannot properly be thought lesed thereby, seeing they continue Heirs notwithstanding the Tailzie: Yet their Prejudice is understood in that they wrong their Families and nearest Relations, unless they be Persons that may be passed by cum elogio, as notorious rei suæ deroctores, or openly flagitious &c. and generally such as might be disinherited sine querela inofficiosi testamenti: In which Case it may be doubted whether such a Tailzie could be sustained without the Consent of Tutors and Curators. For albeit Alienation of a Minors Heretage sine authoritate Prætoris, is null: Yet it were hard to tie up a Minor so (whose Curators are interested in the Persons to be passed by) as not to allow him to prevent the Ruine of his Family Mckenzie 162. And a Minor may dispone for onerous Causes, as for Payment of his own Debts, or the Debt of the tailzied Estate 15 Decemb. 1677 Nicolson contra Nicolsons.

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