

A Superior having in his Minority confirmed a Tailzie made by his Vassal, may revoke the same. For he hath not only Prejudice by obtruding upon him Vassals out of a new Family, but also by altering the Succession from Heirs whatsoever to Heirs Male. Seeing greater Advantages arise to the Superior v. g. by the Marriage of an Heir Female, than of an Heir Male: Nam femina hæres in Wardam cadens, se cum totam hereditatem plerumque trahit, cum maritagi hæredis masculi plerumque non nisi ad estimatio Craig Feud. Lib. 2. Tit. 16. §. 5. Minor etiam leoditur, quod rei sua libera Administratione prohibetur Craig. (Fid. §. 8.) says, that the Sovereign to whom the Parliament is in Place of Tutor and Curators, privilegio juris communis utitur in this case. But the several of our Kings have in their general Revocations revoked Infeudments granted by them to Heirs of Heirs Male and of Tailzies: yet such Revocations, whereof the Effect hath never been judicially discussed (Nov. Lib. 2. Tit. 3. §. 43.) can infer no more than a Kriple or Design to save from Prescription, idem Lib. 3. Tit. 4. §. 33. Whatsoever is said to this, if either the Minor Master of a Tailzie or the Superior ratify a Tailzie made or confirmed in Minority, the same would stand good. For albeit that which is null as such Deeds are, cannot recover by Ratification, yet the Confirmation proceeding from one who had originally Power to do the Thing is often held for a new Grant or Tailzie Craig. Fid. §. 8. McHenry's Fid. As a Tutor cannot make a Testament for his Pupil, or name an Heir or Exor to him: So neither can he make a Tailzie for him of his Lands or Money Stewart answers to Durlot Doubts Tit. Tailzies.

Heirs of Heirs Male

Doctors sometimes grant Bonds or enter into Contracts, whereby they oblige themselves and their Heirs of Line, to resign their Estates, in Favour of such and such Heirs of Tailzie. Which Obligations if not implemented by the Grantors, are to be made effectual by Diligence against their Heirs of Line Sir Thomas Hope (Mm. Pratt. Tit. Tailzies §. 35 & 36.) declares a Bond of Tailzie without an onerous Cause to be no ways obligatory upon the Grantor. In Sir George McHenry's Opinion (Just. Lib. Tit. 8. §. 10. and Treatise of Tailzies) it binds him once to tailzie the not to confirm the Tailzie. And if granted for an onerous Cause, tho' not adequate and proportionable, he is not only bound to make the Tailzie, but cannot alter it when made. For that speech pretio non emimus Terent. adelph. Act. 2. Sen. 2. A Man is not presumed in Law to buy the mere Hopes of Succession. Thus a mutual Contract of Tailzie betwixt two Persons for an onerous Cause, cannot be resiled or parted from without mutual Consent.

both 14 January 1631 Sharp. contra Sharp. Nor will the Maker be free from his Obligation, upon offering to discharge the mutual Engagement, this being a kind of Exambion or Obligation to alienate, which is not satisfied by offering to quit the Lands exambion, or to deliver back the Price.

Price. But the Lord Stair (Just. Lib. 2. Tit. 3. §. 59) inclines to think, that if the Cause onerous be of small Moment, equal only to the Hope of Succession; it sufficeth once to perfect the Tailzie which the Grantor of the Bond may alter hereafter without violation of the former grant, in order to the making the Tailzie. Because the Grantor of such a Bond of Tailzie is not satisfied his Obligation by making the Tailzie, and is bound to continue the Lands for urgent just causes, not being in a position to do so, the same with Design directly to frustrate the Tailzie. But the Lord Stair is of opinion, having power in Infeudment of a Bond of Tailzie, the Grantor is not to be allowed to alter it in his own Time at his Pleasure, but is bound to continue the same, his Heirs cannot alter the Infeudment of a Bond of Tailzie, but is bound to continue the same, first in the Execution of the Bond, but in the sequel it obliges against a part of the Value of it for ever, hope may be made, Lib. Tailzies §. 36.

A formal Tailzie is made by a Superior of the same as in an original Charter proceeding upon a Resignation in Favour of a Descendant, his Heirs of Tailzie; or in a Charter upon the Vassal's Resignation, for himself or for his Heirs of Tailzie, or in a Charter upon the Vassal's Resignation, for himself or for his Heirs of Tailzie. Nor can a Superior alter a Tailzie without the Superior's Consent. Craig. Fid. Lib. 2. Tit. 15. §. 8. which is confirmed by making his Condition word by the Vassal's Deed. See also (Fid. §. 43) asserts, that as the Superior is not obliged to alter the Honor of the Investiture, or to receive singular Successors except such as Law obliges him to enter into Apprisers or Adjudgers: So neither is he obliged to receive a free apprifed or adjudged, but only to receive the Apprifed and Adjudged, and their Heirs what-soever, unless the Debt and Obligation whereupon the Diligence proceeded be provided to Heirs of Tailzie. But that learned Author does with the same Breach, that if the Apprifor or Adjudger have Infeudment to himself and his Heirs of Tailzie, the Superior ought not to refuse it; seeing he is bound to receive a Stranger to whom an Apprifor or Resignation is apprifed, and much more ought he to acquiesce in an Alteration of Heirs. Entry is held of the Sovereign, is not refused upon the Vassal's Resignation, or the Confirmation of his Deed in any Terms he pleases.

Tailzies being Alienations, require to be made in clear and express Terms. If Resignation of the Fee be made in Favour of Heirs of Tailzie, without naming them and no Tailzie be in the former Infeudment, Infeudment upon such Resignation, will go to the Heirs of Line (Craig. Fid. vers. rumpur autem). A Clause in a Contract of Marriage in Case thereof shall not be Heirs Male procreate betwixt the Parties contracting, to succeed to an Estate, was found to import no Obligation to provide that Estate in Favour of Heirs Male of the Marriage 2 January 1706 Dundas of that Id. contra Dundas. In the Case of Nicolson of Fiddichie It was pleaded, that a Father having