

having in his Contract of Marriage bound himself to invest his Lady's  
 Liferent to be held of his Heirs Male and of Tailzie, and obliged the  
 to warrant the Liferent and also to pay certain Provisions to Heir Female  
 and entertain them till the Age of 21, a Tailzie was sufficiently established  
 thereby; it being inconsistent that any should warrant a Right upon a  
 Estate except the Proprietor, or that an Heir Female provided to a Tailzie  
 out of it should also have the Estate itself. The Lord however did not do  
 this Point; being shy to sustain a Tailzie, which is the Alienation of  
 whole Estate, tending to debar his own Children from the Succession  
 of the Estate, and leave judges an arbitrary Power in so great a Matter. But  
 a Fideicommissa in the wife's Land could have been made even by Warrant  
 -cilly importing them: So Tailzies are sometimes tacitly inferred from the  
 Proprietor's presumed Will, or from Consequences, &c. If a Man having  
 taken a Wadset to himself and certain Heirs of Tailzie both hereafter and  
 the Reversion to himself and his Heirs in general; this Reversion would be  
 just Interpretation, descend to the Heirs of Tailzie: Because it is not sup-  
 -posable, that a wife Man would give the Wadset to one Heir, and the Reversion  
 to another. *M'Kenzie Treatise of Tailzies* A Father who had  
 three Sons, whereof the eldest was dumb, having made a Disposition of his  
 Estate to his second Son, which failing to return to himself and his Heirs  
 declaring that, because his eldest Son was not able to manage his Estate  
 he gave it to the second whom he intended to disinherit the eldest; and after  
 the second's Death, the eldest having as Heir to his Father, claimed the Estate  
 the Estate was found to descend to his third Brother, the eldest being past  
 elogia as unfit to manage, and allowed only an Aliment which is inconsistent  
 with a Right of Property. *Hay of Douglas contra Hay*. The Lord  
 Stewart (Answers to *Douglas* *Tit. Heirs Male*) thinks that the eldest Son  
 might have been <sup>excluded by his Father</sup> in the (case of ~~tailzie~~ provided, and yet restored  
 by Law in the Event happening.

Albeit no Obligation that dispenses not with Delivery is valid, till it be  
 delivered, yet Tailzies require no Delivery: Because the Maker retaining  
 still such an Interest therein, as intitles him sufficiently to be Keeper thereof,  
 Law doth not presume that he designed to keep the Tailzie from being oblig-  
 -tory by his not Delivery. *M'Kenzie* *Tit.*

The inherent Right in every Man to dispose of what is his own, brought forth  
 Tailzies, but in Process of Time the Daughter destroyed the Mother and  
 died became a great Restraint upon the Freedom of Disposal. The great In-  
 -conveniences <sup>thereof</sup> prompted those bound up by them to seek their Invention  
 for Methods to render them ineffectual. In Order to clear how much the  
 Maker and Member of a Tailzie are tied thereby; I shall consider their  
 -ferent Strength and Effects of a Tailzie, according to the several ordinary  
*Fenors*

Fenors thereof.  
 Where the Maker of a formal Tailzie, doth only substitute the persons  
 who are to succeed to him or after another, as in this simple Tailzie. And  
 the Destination may be made either by him, or by any of the succeeding  
 Members, even the Inhibitor were so: So long as any one of  
 them still remains in interit the Fee and he is not bound by an  
 Inhibition; without an Obligation not to alter the Tailzie. *Lab 3. L. 2.*  
 §. 15. *Treatise of Tailzies* A Yobleson having provided a Tailzie  
 to his eldest Son and the Heirs Male of his Body, which failing to return  
 to himself, and after his own Decease renewed the same in favour  
 of his eldest Grandson, and the Heirs Male of his Body, which failing to  
 return to himself, and after his own Decease renewed the same in favour  
 of his other Grandsons, which failing to return to himself, which all failing to return  
 Heir Female of his own Body without Disposition. The son of the eldest grand-  
 -son executed a Deed, whereby calling Heirs Male of his own Body, he obli-  
 -gued himself to provide the Estate in favour of his eldest Daughter and the  
 Heir Male of her Body; which failing to his other Daughters, in their Or-  
 -der. After the Decease of the Heir Male of the Maker of this last In-  
 -tail's Body without Issue, there arose a competition for the Estate, be-  
 -twixt the only Son of his eldest Daughter, and the Heir Male of the second  
 Grandson of the Maker of the first Intail. It was pleaded for the latter,  
 that the Maker of the original Intail having conveyed his Estate to  
 Heirs Male, with a Clause of Return to himself failing them, that impor-  
 -ted a prohibition to alter the Conveyance and Course of Succession  
 established for the Preservation of his Name and Family: So that his  
 great Grandson had no Power by a gratuitous Deed to settle the Estate  
 upon his own Daughter and her Heirs. For when the Maker of an  
 Intail invests himself of the Fee and substitutes himself to his own  
 Donee; that Substitution being purchased at no less Value than the  
 whole Subject, is in the strictest Sense onerous, and consequently in-  
 -alterable by any of the intermediate Substitutes in prejudice of the Ma-  
 -ker of the Tailzie. To which it was answered so Where an Estate is gi-  
 -ven away to a Stranger or one not a *liquis successuris*, with a Limitation  
 to particular Heirs, and a Provision of Return to the Grantor; this induces  
 hath the Force of a Paction between the grantor and Stranger Receiver  
 of the Estate, that failing the Heirs in the Limitation, the Estate should  
 return to the Grantor: Because he is not settling his Succession, but gives  
 away his Estate from his Successors for a particular Use, which implies  
 this reasonable Condition that *causa cessante* when such Use is at an End,  
*cessante effectus*, he himself or his righteous Heir shall recover the Estate.  
 As in a late Case betwixt the Duke of Douglas and Lockhart of Lee  
 where