contra Lord John Hamilton: For tho' prohibitio alienationis is not
where it hath Reference to no Person who can thereby have Interest: Yet
when it respects a certain Family, or certain Persons it is obligat-
their Favour l. 114. §. 14. ff. de Legat. 1. l. 7. §. 2. ff. de distract. [illegible]
Sande de prohib. rer. alien. Cap. 4. N. 3. Peregrin. de Fideicommiss. [illegible]
14. N. 3. And. Robertus Lib. 3. Cap. 14. Luet. Tit. de Substit. Nor [illegible]
Right made by the first Member of the Tailzie sustain'd, even [illegible]
as he had meliorated or improved the Estate: Tho it was alleged, [illegible]
Meliorations did never belong to the Maker of the Tailzie but [illegible]
nally the absolute Property of the institute Heir who did melior[illegible]
as he could have spent them might transmit them to any Stranger
to affect the Estate for them: Because it was thought the Heir of [illegible]
being una et eadem persona cum distincto, his Payment of the Debt
extinguish them confusione; seeing he could not be both Debtor and [illegible]
eod. die inter eosdem. For that an Heir of Tailzie represents the deceased
as fully in so far as concerns the tailzied Estate, as the Heir of Line [illegible]
Heir Male does quoad his Interest. And the Heir of Tailzie becomin[illegible]
ter of the Charter Chest, might destroy Discharges, fill up blank Pap[illegible]
renew by Collusion with the Debtors or Creditors former Securitys and
keep up as much Debt as he pleased to exhaust the tailzied Estate. Nor
can there be any Rule to know what the Heir of Tailzie has spent
or laid out. 'Tis true he might as Proprietor have spent the Rents:
But there's a great Disparity betwixt spending and assigning as a Cred[illegible]
A Father bound to provide the Conquest to the Heirs of a Marriage
might have spent and so not have conquest, but cannot dispone to a Stranger
contrary to his Obligation. A Father or Husband may by squandering away his
Movables, lessen the Children's Legitime or the Wife's third, but cannot p[illegible]
tend to a Liberty to do so on Deathbed. Nor can any Person dispone upon
Deathbed any Part of his Heretage, upon Pretext, that the Part dispone[illegible]
by him could not extend to the Value of the Rents he might have dissip[illegible]
ted. Nor can the not allowing Heirs to burden the tailzied Estate with [illegible]
provements — discourage the Frugality of Heirs: For an honest He[illegible]
of Tailzie would think himself obliged to improve so much as he could [illegible]
Estate he had got gratuitously for that End; and prudent Men will always
find themselves obliged to manage a tailzied Estate to the best Advanta[illegible]
while it is their own, and their Property can never end but with their Li[illegible]
A fiduciary Heir might indeed according to the civil Law pursue for Meli-
rations l. 6. C. ad L. falcid. Peregrin. de Fideicommiss. Ax. 35. N. 10. But [illegible]
was not hæres in Effect as an Heir of Tailzie is, but was a mere Trustee
Sequestrator that could not appropriate to himself the Fruits, upon which
Account

Account he was allowed a fourth Part for his Expence and Pains. If a
Person paying Debts upon a tailzied Estate, design [illegible] them up as
distinct Debts, to affect the Estate for Provision of his Daughters, or any other
Person's Use, he may take Assignations to such Debts in the Names of
his Children or other Person [illegible] should [illegible] and
use real Diligence thereon. Mckenzie [illegible]
A Clause in a Tailzie prohibiting to contract Debt [illegible] alienate, [illegible]
a Prohibition to alter the Order of Succession 2. Feb. 1728 L. Strathnaver
contra D. of Douglass. Not only because of the general [illegible] que prohibet
ma jus, censetur et prohibere minus; but also for that [illegible]
Intention of the Prohibition to alienate and contract [illegible] no other than
to preserve the Succession in the Channel [illegible] of the
Intail: In so far as a Man is not moved to tailzie his Estate [illegible] Af-
fection to the Estate: but from a Regard to the Persons [illegible] his Eye
to enjoy it.
The Maker of a Tailzie and his Heirs may notwithstanding an Obligation
therein not to alter or alienate, dispone for a necessary onerous Cause; or the
Lands may be adjudged for their Deed; tho Inhibition used upon the Clause
makes all subsequent Deeds even for onerous Causes reducible. Hope min.
pratt. Tit. Tailzies §. 364. Mckenzie Inst. Lib. 3. Tit. 8. §. 16. & Treat. of
Tailzies. A Woman having obliged herself in a Bond to enter Heir to
her Father, and to resign certain Lands in Favour of herself and the Heirs
of her Body, which failing to the Heirs of her Father, and to do Nothing
contrary to that Succession: It was found that she could not make a voluntary
Disposition of these Lands, nomine Dotis in Favour of a Man she married,
after executing of the Inhibition; to exclude the Succession; in Respect of her O-
bligation to do Nothing contrary thereto 28 January 1668 Binny contra Binny.
It was not determined here, whether that Obligation would have excluded just Debts
contracted by her or her Heirs without Collusion. But without all Question, the
Lands might have been effectually adjudged for Debts contracted before Inhibition,
tho after the Tailzie, Hope Ibid. §. 366.
Sometimes the Clauses in a Tailzie, not to alienate or contract Debt, are
backed with irritant and resolutive Clauses, for hindering tailzied Lands to be
carried off by Creditors of the Heir of Tailzie, or to be alienated for one-
rous Causes. vid. infra pag. 533. Some Clauses declare Debts contracted
by Heirs of Tailzie to be void and null for affecting the tailzied Estate,
without irritating expressly the Contraveener's Right to that Estate: O-
ther Clauses declare Debts contracted by the Contraveener to be of no Force
to affect the tailzied Estate and also annull his own Right to such an Estate.
A Clause in a Tailzie prohibiting the Members thereof to contract Debt, and
declaring Debts contracted by them to be void and null for affecting the tailzied
Estate, without irritating the Contraveener's Right; was found not to hinder
the