nemo potest sibi imperare, nec efficere ne leges obtineant locum. As to
the Act of Parliament 1685, whereby Heirs of Tailzie are hindred to sell
analzie &c that respects only Heirs of Intail and not the first Fiars.
But when a Tailzie is completed by Infeftment the first Insti[illegible]
not gratuitously alter it without Consent of the Maker of the Tailzie.
A Gentleman having in the Year 1681 tailzied his Estate to him[illegible]
rent and to his eldest Son and his Heirs Male of a certain Marriage
which failing to the second Son and the Heirs Male of his Body,
failing to a third Son and the Heirs Male of his Body; and failing
and other Heirs therein mentioned, to the Father Maker of the Tailzie
nearest Heirs and Assigneys whatsoever; with and under the Provisions Reser-
-vations Restrictions and Limitations following, viz that if any [illegible]
of Tailzie aforesaid should sell analzie or dispone the Lands, or [illegible]
Deed whereby the Same might be evicted from any of them, [illegible]
Contravention should be null and the Transgressor forfeit his Right [illegible]
the next Heir of Tailzie who tho served Heir to him should not [illegible]
to perform his Deeds or pay his Debts. The Maker of this Tailzie in
Year 1685 purchased another Estate for a certain Sum of Money [illegible]
to the Seller by him, for himself and in Name and Behalf of his second
Son and the Heirs Male of his Body; and failing these and other Heirs
therein mentioned, to the Father and his Heirs Male of Tailzie and Pro-
-vision contained in his Infeftments of the former Estate, and under the
Provisions Limitations and Conditions contained in the said Infeftment[illegible]
The second Son thereafter altered this last Tailzie by making a new [illegible]
of his Estate in Favour of his third Brother's second Son, and died without
Children. In a Competition for his Estate, betwixt this third Brother [illegible]
the eldest Son of the eldest Brother: The Lords found 1° the Latter to be
next Heir of Tailzie of the Grandfather's second Son's Estate, by the [illegible]
-lure of Heirs of his Body. Because the Clause of Return of the [illegible]
Estate to the Grandfather and his Heirs in the former Estate, is not [illegible]
of Heirs actually served to him, who being then only a Liferenter of [illegible]
Estate could have no Heirs therein; but understood of the Heirs institute and
substitute in the former Estate, that is, such as by their Blood might have [illegible]
served Heirs, and are actually Successors in the said Lands. 2° The Lords found
that the Clause in the Tailzie 1685 of the last Estate mentioning the provisions
and irritant Clauses in the Tailzie of the Grandfather's old Estate, hath Respect
not only to him and the Heirs after him, but also to the Grandfather's second Son
and the Heirs of his Body. Albeit it was alledged, that Infeftment upon the Tailzie
1685 of the last Estate could not be affected with such a general Reference but
only with what is expresly therein contained as was decided
Colquhoun Lady Monboddo contra L. and Lady Newmains. In Regard it was
answered, that whatever might be pretended in a Competition with Creditors
who

who has contracted bona fide for an onerous Cause and [illegible] not obliged to
search other People's Charter Chests or notice any Right not standing in [illegible]
Record, which was the Case of the Lady Monboddo and Newmains: It is
otherwise [illegible] in a Competition with a gratuitous Assigney who by his
Acceptance of the Disposition effectually [illegible] the [illegible]
Son. 3° The Lords found that the [illegible] 1681 [illegible]
therein to be paid by the Grandfather as [illegible]
Liferent and to his second [illegible] gratui-
-tously alter the [illegible] that the [illegible] 1685 [illegible]
to Conditions Limitations and Provisions [illegible] comp[re]-
-hend Irritancys: Which [illegible]
1685, do affect the same so as the Fiar [illegible] not [illegible]
Order of Succession. Albeit it was alledged 1° That [illegible]
not [illegible] the second Son to alter the Tailzie 1685 But [illegible]
calling [illegible] second Line to succeed upon the failing of Heirs of his Body as
the immediate Antecedent of this Relative. 2° The [illegible] 1685 mentions
not Irritancys of the Tailzie 1681, but only Conditions Limitations and
Provisions, which import a mere Destination and no incapacity to alter the
Succession. 3° Esto that Irritancys were understood to be repeated, that will
not hinder the first Fiar from the free Disposal of his Estate: For however
it might descend to the Heirs with Qualitys and Conditions that by their
Acceptance would bind them, the original Constitution of the Fee in the Per-
-son of him who first acquired it was without any Restriction, except what
is made by Law or the Diligence of Creditors; and any Condition that he
could impose upon himself might be taken away contraria voluntate.
Nor could these Prohibitions flow from any Power in the Grandfather
who was never Fiar; since no Body can restrict Property but the Propri-
-etor, who cannot sibi imperare, nor bind where he cannot loose himself
while he retains the Property. So that in this Case if the Proprietor does
not incur an Irritancy, his Deed must be good against his Heirs who
take under him: If he doth incur it, then he can have no Heirs and what shall
become of the Fee? The next Member of the Tailzie could not serve Heir to
the Person last infeft before the Contravener: For the Fiar Maker of
the Tailzie altering the same, can never be said to have a Predecessor
to whom, upon the Irritancy of his Fee, an Heir of Tailzie may be ser-
-ved. In Regard it was answered. 1° That such restrictive Clauses af-
-fect the whole Chain of Succession, from the first Institute to the last called
by the Nomination. 2° Tho all Conditions are not Irritancys, yet all Irri-
-tancys are Conditions, and comprehended under that more general Word:
Albeit by the anxious Exuberance of Stile the modi and Conditions of
tailzies