

tailored Fees be ordinarily branched out into Limitations Restrictions  
 and Irritancies. It is the original Design of Testates especially  
 of Marriage, to bind up the first Institute from gratuitous Deeds prop-  
 erial to the standing of his Family, whom the Maker of the Testate  
 grows to suspect as inclinable thereto, rather than to restrict those  
 Heirs, who, being commonly naturals and presumed in Law, till the contrary  
 appear, cannot with so much Ground be suspected of Mismanagement. The  
 second Son never was in the absolute Fee of the Estate but had it assigned  
 to him by another, under Conditions and Limitations. Nor was it con-  
 ditioned, but that a Man could burden another with Irritancies, whatever  
 he could do as to the tying up himself. If it be asked what becomes  
 of the Fee, if the Heir incur an Irritancy? It is answered, that the Fee  
 immediately upon the next called to the Succession, as if the Contract  
 were naturally dead: So that upon a Declarator of Contravention, the next  
 Successor serves Heir to the Contraveener in the same Way as if he  
 were dead, without Danger of a passive Title, seeing the Heir represents  
 him only in Deeds compatible with the Investiture, the Warrant of  
 Service, is the Will of the Maker of the Testate 5 Feb. 1713 Don H. Mar-  
 toun contra Don. A Father and a Son who were both in feoff, having jo-  
 intly tailored their Estate in the Son's Contract of Marriage, in Favour  
 of the Son and the Heirs of his Body, which failing to other Heirs sub-  
 stitute with prohibitory and irritant Clauses; It was found that the Son  
 could not after the Father's Death, alter the Testate to the Prejudice  
 of a gratuitous Substitute 15 July 1715 Schaw and her Husband contra  
 Schaw of Greenwich.

yearning away the marginal Subscriptio from the signing of the first  
 and such Acts of a Testate, was found not annual it, about the Obligation to resign,  
 precatory Resignation, and Lines were contained in the first Sheet. Doubtless for  
 that Resigning was not an essential Solemnity in private voluntary Rights, but  
 because the Maker of the Testate considered it as valid, notwithstanding the  
 was scarce, by some Days to suffer signing a Revocation to any effect, except a local  
 effect, for which he decided it to subsist 23 January 1713 Don H. Martoun contra  
 Martoun & Livingstone. As Institutions in the civil Law were cut off by a super-  
 vening Decree of the Institutes in the other states it was necessary  
 to give a new sense to the Institutes. C. de successione lib. 6. C. de testat. et success. de hereditate  
 Martoun (Treatise of Testates) 1713. that gratuitous Testates were made by  
 the Maker happening to have Children born to him, whom it is not permitted the  
 Heir would abrogate or suffer to share, to gratify a dead man's will, but in the  
 in his opinion it were hard to take his part from him to be given to his  
 own Children, but this point having been once taken, the Law stands as it does,  
 because it was never held it should be more fully argued 13 July 1681 Christy contra  
 Christy.

These Perpetuities in England are easily vacated, partly by Warrants to set  
 them down, partly by the Statute, partly by foreign Actions of Replevin, Recovery,  
 wherein the Pursuer pretends that he was unlawfully deprived of such  
 Lands by the present Heir, who having received a Price or true valuation Con-  
 sideration is silent, and suffers, by Collusion, Sentence a plea against him irreco-  
 verably.

Sec. 2.

of Fees granted to one or more Persons are their Heirs.

I shall not here speak of Fees granted to one Person and his Heirs, because  
 these concluded in Favour of more Persons and their Heirs, after the ordinary Subject of  
 Debate in Law.

Fees are granted to more Persons, either jointly, or subordinately.  
 Conjoint Fees or those granted to more Persons jointly are concluded either in  
 Favour of Strangers and their Heirs; or to a Man and his Wife and their Heirs. For  
 in this Case all Persons, tho' nearly related together are reputed Strangers, if they be  
 not in a conjugal Society. Where Fees are granted to two or more Brothers or  
 Strangers jointly, and their Heirs, all are Heirs equally, or for their Proportions;  
 and unless the Fees be indivisible, till a Division thereof be made to them by the Action  
 communi dividundo. Thus Creditors in feoff for Security of their Debt, are Heirs propor-  
 tionably offering to their Debt, Stewards, answers to Direct. Doubts It. Fees of Bonds.  
 But the Members of a Community to which any Fee is disposed are not joint Heirs,  
 Heir