in their Person; and the Substitute may after the Original Creditor's De=
=cease, charge summarily for Payment 18 January 1625 Wat contra
Dobie 26 June 1624 Keith contra Innes 4 Feb. 1680 Robertson contra
Preston.

Sir George McKenzie (Treatise of Tailzies) tells of a C[illegible]
wherein he and others were consulted: A Fiar of Lands did res[ign in]
the Superior's Hands for new Infeftment to himself in Liferent, to
his Daughter E. in Liferent only, and to the Heirs of her Body in Fee
which failing to A. B. in Fee: The Daughter having died without
Children, the Question was how A. B. could come to the Right of the
Estate? Some of the Lawyers were of Opinion, that he behoved to
serve Heir to E. Because tho the Lands were resigned to her in Liferent
yet seeing they were to descend to her Children in Fee, and no Child
existed, the Fee remained still with herself. But this was rejected, because
the Taxative only in Liferent excluded her from the Fee. Others would
have the Fee continued in the Superior, who only could make a Right to
the Lands. But neither did this satisfie, because it non agebatur, by the Resig=
nation in favorem, to transfer the Fee to remain with the Superior. Sir
George himself and others thought more probably, that the Fee remain[ed]
with the Resigner. For that Dominium nunquam censetur [an] per resignation[em]
amissum, donec alteri fuerit quaesitum. And as had the Person in [whose]
Favour Resignation was made refused, or been incapable to accept the [Fee]
it would certainly continue with the Resigner; so it behoved to continue [in this]
Case, where the Condition failed. One having signed a Disposition of [his Es]
=tate to his Son which failing to   subjoin'd to the Disposition [a Doc]
=quet empowering a certain Person to fill up the Blank in the Name of [a]
Friend and his Heirs &c. The Docquet was found to import a Subst[i]=
=tution in Favour of the Person therein named. Albeit it was plea[ded that]
in constituting Rights and Conveyances, the regular legal dispositive or obli=
=gatory Words must be used, before a Person can be deem'd to convey or bind
himself: For it were dangerous to countenance the Alteration of the Stile
whereby Heritage is transmitted; upon which Account, it cannot be conveyed
in a Testament tho made in Liege poustie, or by a missive Letter, nor
could such a Testament or Letter import an Obligation upon the Heir
at Law to divest himself. In Respect it was answered, that the Docquet
must have at least the Force of a Fideicommiss, so as to oblige the Heir
at Law to make the Substitution according to the Granter's Intention[s, this]
is not contrary to the formal Stile of Conveyances: For when the Legal
Heir comes to implement his Predecessor's Will, he is obliged to do so by
formal Conveyance. But Law hath not tied down Proprietors to a precise
Form

Form in the naming of Substitutes, any Thing doth it, that expresseth the
Will of the Granter. Nor is it any Absurdity to name a Substitute by a
missive Letter, if the Date be supported by Witnesses: And tho Heretage
cannot be disposed of by Testament it may by any other Deed. 13 July 1722
Kennedy of Colzean contra Arbuthnot.

Substitutions in Scotland differ from those in the civil Law in so far as
the Latter were altogether cut off by the Institute's entering Heir l. 5 [illegible]
impub. et aliis substit. Whereas with us a Substitution in Moveables takes Effect
tho the Institute enter by being confirmed Exec. (Which serves in mobilibus)
And obtain Decreet against Debtors for Payment; notwithstanding whereof
the Substitute will exclude, and be preferred to the Institute's nearest of Kin
13 July 1681 Christy contra Christy. Tho Sir James [illegible] [illegible]
says that all Substitutions in moveable Bonds, should be only of the Nature
of common Substitutions in the civil Law, and so evanish if heirs adie
=rit. 2° By the Roman Law there three Kinds of Substitutions 1° Vul=
=gar Substitution, whereby a Person did substitute an Heir to himself in
his own Estate, in Case the Heir institute cannot be Heir, being preven=
=ted by Death, or should decline to enter to an onerous [illegible] Inheritance. § 1.
Inst. de vulg. substit. 2° Pupillary Substitution, an Act whereby a Father
substitutes an Heir to his Children living under his Power at the [time]
of his Death, and dying in their Pupillarity, before they can name
Heirs to themselves Pr. Inst. de pupill. substit. 3° Quasi Pupillary or
exemplary Substitution, which is the Father or Mother's Institution of an
Heir to their Children that are Lunaticks, Idiots, interdicted, Prodigals,
deaf or dumb, in Case they die in that Condition [illegible]. But the pupillary
and Quasi Pupillary Substitutions are peculiar to the Romans and unknown
to other Nations, Groenweg. de Legib. abrog. Inst. de pupill. substit. So pupil=
=lary Substitution hath no Place in Scotland 13 July 1681 Christy contra
Christy. That is, tho a Father may make pupillary Substitution either to
his own Children or to Strangers who are under Age, with Respect to
the Goods which he himself leaves to them; yet that Part of the Pu=
=pillary Substitution impowering a Father among the Romans, by Vir=
=tue of his paternal Authority, to dispose not only of the Goods which he
left to his Son, but of what other Effects the Son had belonging to him
any other Manner of Way, in Case the Son should die before he was of Age
sufficient to dispose of them himself, is not received in Scotland. Nor doth the
Law of England allow so large an Extent to the paternal Authority,
as to enable Fathers to make Testaments for their Children under Age

Cowel