be understood strictly during the Granters Liege poustie; or
Extended to Death bed? for Answer to which, we must Distinguish
Dispositions made with such a Reserved faculty to Strangers from Di
positions in favour of the Disponers Apparent heir. Sir George Mac
: zie (Treatise of tailzies pag.) Is of Opinion, that a Reserved pow
to Alter at any time in the life of the Maker of a tailzie, made in favo
of a Stranger, without the Addition, & in Articulo Mortis, Simple
only that he can do it in liege poustie, and not on death bed: for
that these words in Articulo Mortis, do often used in our Statu
would else be superfluous; and our law being Justly Jealous of a
rights made on Death bed, a Reservation lieing to Except the
Disponers frailties to be Imposed on at a time when he cannot
right to have the Use of his Judgement Stands not the Answer
unless it were very Express: But every Mans private Sense ought
to be Interpreted by the Standard of the Law, and the Genera
Sense of the Nation. But Sir James Stuart Answers to Dirlet
Doubts the faculty to Alter, and Tit. Death bed thinks, that a
Reserved faculty to alter at any time during the Disponers
life, without the Words claim in Articulo Mortis or on Death
bed in a Disposition Made to a Stranger or any person who is
not apparent heir to the Disponer, may be exercised by the
Disponer on death bed: Seeing the Receiver of the Disposition
having no other right Must take it with the Quality, and if
Accepted it cannot Complain; nor has the heir any prejudice
by the Exercise of such a faculty, because if it had not been,
Right would have gone to Another. And for the same Reason
when a man dispones his Estate to a Stranger, with a provision
that he should be liable to Satisfy all Bonds obligations and
Deeds done by him during his life; these words during his
life, should be Understood during his Natural life: Seeing
the tailzie being a free gift, any provision therein in favour
of the Maker, ought to be Largely Construed Stuart ibid Tit
Tailzies. But Such a Reserved faculty, or even a faculty to Alter
on Death bed in a Disposition to the Disponers Apparent heir
who would Succeed tho it had not been Made, doth not Impower
the Disponer to Divert the Succession by any deed on death
bed but it can be Exercised by the Disponer only in liege
Poustie: seeing the Disponer is only then in Legitimate potest
to

to Convey any any Heritable Interest to the prejudice of his heir.
Stuart ibid Tit. Reduction ex Capite Lecti. and the King cannot by
any Right under the Great Seal break that or any other law,
nor Make a dying man to be of a Sound Mind whom the law of
Death bed presumes to be otherwise. and for the same Reason, if a
man grant a Disposition to his Eldest Son and the heirs of his
Body, with a Clause of his being Liable to all deeds of the Disponer
during his life, that Clause would be Understood Civiliter during
his Liege poustie Stuart ibid Tit. Tailzies. A father having
taken the Rights of Lands purchased by him to himself in
liferent and to his Eldest Son in fee Reserving to himself a
power to Sell and dispose upon the Lands either in liege poustie
or upon death bed, and to burden the same by his Testament
or otherwise, a disposition of these Lands by the father to his
Second Son was, notwithstanding the said Reservation
Reduced ex Capite Lecti at the Instance of the Eldest Son.
albeit it was alledged that the Eldest Son was in the Case of a
Stranger getting a Disposition affected with such a Reserved
power; Because the father being Infeft only in liferent,
and the Eldest Son in fee with the Reservation the the
Eldest Son could no otherwise come to the Estate than by the
Disposition. In Respect it was Answered, that a father
Infeft in Lands to himself in liferent and to his Eldest
Son in fee, can have no more power than if he had taken
them to himself in fee and Substitute his Eldest Son: and yet
if the father had taken the Lands to himself in fee he could not
have Disponed the same on death bed to the Prejudice of the Son
who was Alioqui Successurus. The True Design of a Law is often
more Considered, than the Nicety of form or propriety of
words. What if the father had only Annulled the Eldest Sons
fee by Declaring it should not belong to him, without trans
mitting it to Another, could not the Eldest Son in that Case
have right to Serve heir to the father in the Lands where
of the fee was in effect originally stated in him? In Favour
Law Disposition from a father or acquisitions by him
In favours of an Eldest Son are not Considered as Singular

Titles