

52 *M.L. one having Tailzied in the Deed of his three daughters the far greatest part of his heredit
 Estate was found to be intailed not only to the Tailzied Estate and a third share of what
 was untailzied, but also to have a legal claim to a third share of the Tailzied Estate. Because
 all the daughters were equally intailed to the succession of hereditage and movables at Inheritance
 and collation takes only place where the hereditage and movables fall by Law to different
 persons 19 November 1720 Riccart contra Riccart.

53 *N.1. A nobleman having provided his Estate to his eldest son and the heirs male of his Body, which failing
 to return to himself and after his sons decease provided the settlement in favour of his eldest Grandson and
 the heirs male of his Body, which failing to his second Grandson and the heirs male of his Body, which
 failing to his other Grandsons, which failing to himself, which all failing to the eldest Heir Male of his
 own Body, without Division: The said eldest Grandson executed a Deed, whereby failing Heir Male of
 his own Body, he obliged himself to provide the Estate in favour of his eldest daughter and the heirs
 male of her Body; which failing to his other daughters in their order: After the decease of the
 said eldest Grandson, the said eldest daughter, and the Heir Male of her Body, died. It was
 pleaded for the latter, that the maker of the original entail having conveyed his Estate to Heir male
 with a clause of Return to himself failing those, had imposed a prohibition to all the conveyances
 and course of Succession established for the preservation of the name and Family: so that his Grand
 son had no power by a private deed to settle the Estate upon his own daughter and her heirs.
 For when the maker of an entail directs himself or his executor, and substitutes himself to his own
 decessor; that substitution being intended at no less value than the whole, it is in law
 a substitution for a particular use, and consequently inalterable by any of the intermediate substitutes
 in prejudice of the maker of the entail: It was also said, that where an Estate is given away
 to a stranger, or is not conveyed successively with a limitation to particular heirs, and a
 provision of return to the Grantor, this indeed binds the force of a paction between the Grantor
 and the Heir Male of his Estate, but failing the Heir Male of the limitation, the Estate should
 return to the Grantor: Because he is not settling his Succession but gives away his Estate from
 his Successors for a particular use, which implies the reasonable condition that the conveyance
 when first it is an end, cannot be affected, he might as well have said, that the Estate
 which was a part of his Estate of daughter was given away to the Heir Male of his
 second marriage, and the Heir Male of his Body, which failing to return to the Heir Male of
 the Family of daughter, the clause of Return was found not to be a simple substitution,
 but of the nature of a paction between the Family and the Heir Male of the second marriage; that
 failing him and his Heir Male (in favour of whom alone the Estate was given) the Estate
 should come back to the Family. But where, as in this case, an Estate is conveyed
 to an Heir Male successively which failing to other Heirs, and all those failing to return
 to the Grantor by the clause of Return is no stronger than a common substitution, there
 being here no conveyance for a certain use, nor implied condition, but only a final
 destination, or pointing out the Succession of the predecessors Heirs, one after another,
 and leaving every substitute in his full Right of property, and free power of disposal.
 2^o what other Effect the clause of Return might have with regard to the persons in whose
 favour it is conveyed, it can operate nothing in favour of the Intermediate Heirs, who
 Succession before these persons. The former Tailzied made by the said Grandson provided the
 Estate to the very person in whose favour the Return by the said Tailzied was conveyed. How then
 can the Deed in his favour be considered prejudicial to the clause of Return: It was replied,
 that where a substitution is onerous in favour of the last Termination, it works a Fidei-commissum,
 in the whole destination. And if it were otherwise, it would follow, that the first
 substitute preferable in the Succession, would have a weaker Right than one called after him.
 The Lords found that neither the clause of Return nor the substitution, in the former
 Indenture did disable the eldest Grandson of the maker of that Tailzied gradually to
 alter the Succession by a deed in favour of his daughters to the prejudice of the Heir
 male of the former Indenture 26 January 1726 Marquis of Clydesdale contra Earl
 of Dundonald. vid. bokr. pag. 1013.