where a Part of the Estate of Douglas was given away to the Heir of a second Marriage, and the Heirs of his Body, which failing to return to the right Heir of the Family of Douglass: The Clause of Return was found not to be a simple Substitution but of the Nature of a Paction betwixt the Family and the Heir of the Second Marriage, that failing him and his Heirs (in Support of whom alone the Estate was given) the Estate should come [illegible] to the Family. But where, as in this Case, an Estate is provided to one Person and his Successors, which failing to other Heirs, and all these failing [illegible] to the Granter &c. the Clause of Return is no stronger than a common Substitution; there being here no Conveyance for a certain Use, nor implied Conditions, but only a simple Destination pointing out the [illegible] of the Proprietors Heirs one after another, and leaving every Substitute in his full Right of Property and free Power of Disposal. 2° Whatever Effect the Clause of Return might have, with Regard to the Persons in whose Favour it is conceived, it can operate Nothing in Favour of the intermediate Heirs, called to the Succession before these Persons. [illegible] Second Tailzie made by the great Grandson of the Maker of the first provides the Estate to the very Person in whose Favour the Return by the first Tailzie is conceived: how then can the Deed in his Favour be understood prejudicial to the Clause of Return. It was replied, where any Substitution is onerous in Favour of the last Termination, it works a Fideicommiss in the whole Destination. And if it were otherwise, this Absurdity 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 Investiture, did disable the Son of the eldest Grandson of the Maker of the first Tailzie, to alter the Succession gratuitously by a Deed in Favour of his Daughters, to the Prejudice of the Heirs Male of the former Investiture 26 January 1726 Marquiss of Clydsdale contra Earl of Dundonald.

Some Tailzies contain Clauses de non alienando or non contrahendo debitum, that the Fiar shall not alienate his Fee nor affect it by his Debts. Simple Clauses of that Nature are most unfavourable and inconvenient. For they are inconsistent with Property, by obstructing Commerce the common Interest of Mankind, and putting Men out of Capacity to provide Wives and Children, which the Law of Nature obligeth them to do. But the Feudists hold that such Clauses may be allowed with a Quality viz. that no Alienation be made or Debt contracted to affect the Fee, or alter the Succession without Consent of the Superior or some other

other Person named, which is but of the Nature of an Interdiction. A Person who acquires Lands by his own Industry may with some Shew of Reason intail them with Clauses not to alienate or contract Debt, allowing Provisions for Wives not exceeding such a Proportion of [illegible], and for Children to affect a Part of the free Rent. But it is unreasonable so to clog Estates descending from Predecessors, and not to leave to our Successors, the same Freedom that our Predecessors left to us. Especially considering, that the Heir may happen to fall under such Circumstances as he must be unavoidably miserable with the Honour of an Estate, if disabled to borrow Mony upon it e.g. If he were taken Prisoner by an Enemie or fined for some Transgression, and hath not wherewith to discharge his Ransom and Fine; it behoves him in the one Case to live still a Prisoner, and in the other to suffer his Escheat to fall. The Lord Stair (Lib. 2. Tit. 3. § 58. verb. Clauses de non alienando) advises a Man who has Reason to suspect the Frugality of his Heir, to fence a Part of his Estate with prohibitory Clauses, disabling the Heir to contract Debt without the Consent of Persons in whom he confides, and leave a Part of the Estate to his Discretion. However the Majorates of Spain whereby the Estate of a Person of Merit and Fortune nobilitated by the King, cannot be alienated, is reasonable and surely established. With us if the Maker of a Tailzie oblige himself and his Heirs of Intail not to alienate, neither he nor any of these Heirs can do so, by any voluntary or gratuitous Deed, which may be reduced upon the Act of Parliament 1621 as done in Defraud of the Heirs Substitute, who are Creditors by the Clause Hope min. pract. Tit. Tailzies § 369 Stair Ibid. § 59. Stewart's Answers to Dirleton's Doubts Tit. Tailzies. So one having taken an heretable Bond with Infeftment to himself and the Heirs of his Body, which failing to his Father whom failing to a third Person his Heirs and Assignays whatsoever; containing an Obligation upon the Creditor to do no Deed prejudicial to the Tailzie; and upon the Debtor not to pay without Consent of the third Party: That third Person was found to have Interest as Heir of Tailzie to declare voluntary Payment of the Sum in the Bond without his Consent to the Creditor unwarrantable: and the Debtor ordained to renew the Bond in the former Terms; without Prejudice to either Party or their Creditors to declare, how far the Sum might be affected by the Creditors of the first Fiar, or disposed of by him for necessary Causes 3 Feb. 1674 Drummond contra Drummond. An Obligation in a Tailzie not to alter, without any Irritancy, was sustain'd effectual against a posterior gratuitous Deed importing an Alteration 19 July 1667 E. Callender contra