son and daughter, and in case of the eldest sons decease provided his part to the other two equally without mentioning their heirs; and the daughter having died before the Eldest son, who also died afterwards without issues it was found, that the sisters heir as heirs of provision to the eldest brother, had right to her half of his part, and that the same did not accrue to the second brother 5 January 1670 Innes contra Innes. By the Roman law no Distinction is made in the Descent by Succession of a Moveable estate or goods, and an Immoveable estate or lands, both which may be conveyed by testament, and pass ab Intestato to heirs who succeed to the whole estate real and personal. But in Scotland Succession is Distinguished 2°/ into Succession to heretage or a Real Estate; and Succession to Moveables or a personal estate: The former whereof goes to heirs, and the latter belongs to Executors and legatees.

Book 1.

of Succession to heretage.

Heretage and heretable rights of one Deceased go to his heir, who doth so Universally Represent him, that in the Construction of law they are Reckoned one and the same person; and the Deceased is in a Manner propogated a New in his heir, who keeps up his memory.

An heir is so Called from the Latine hæres, is in some of our Ancient Statutes (act 76 Par. 6 J. 4 Act 106 Par. 7 J. 5) termed heretor from the french word Heritier It may not perhaps seem Improper once for all here to observe, that heirs in our law are some times understood of those who are Actually heirs; some times of heirs by bitu or Designative, that is such as may be heirs. We Understand by heirs those who are such only Designative in the cases follow 1°/ When a Man appoints another Man's heirs to be heirs to him 2°/ When Certain persons and their heirs are named trustees for Executing a Contract of Marriage. 3°/ In the case of tacks set to one for his own life time, and for the life time of two or three heirs thereafter. 4°/ When provisions are made to heirs, so as they may not be obliged to represent those to whom they are heirs apparent. Vide Dirletown's doubts and questions of the Law Tit. de Feodo Pecuniæ & Nominum, quæst. 14

Chap. 1.

Concerning the several kinds of heirs.

Heirs are either heirs Institute who are named and appointed by the persons to whom they succeed, and Call'd to their estate by the Will of Man; or heirs at Law, to whom some estate of Inheritance descends by the Act of God and right of Blood In

In this our law Differs from that of France (Les Loix Civiles &c. Tom 1 part 2 Pref. Art. 7) And also from the Common law of England (Coke 1 Inst. 7. 8. 12) Which know no other heir besides the next of Kin or heir of blood. For in France and England it is God alone that can make an heir, and not Man. Foreiners who die in France without being Naturalized can have no heir but their estates real and personal go to the King Les Loix Civiles &c. Ibid. Art. 13 & Liv. 1 Tit. 1 Sect. 4 Art. 3. Nor do lands purchased by Aliens in England pass to their heirs; but the King is Intituled to them by Virtue of his prerogative Brook Abr. Verb. Denisin. Coke 1 Inst. 2. 8. 32 Hen. 8 Cap. 16 Cowel Inst. lib. 2 Tit. 1 § ult. But strangers may succeed to the estates of their friends in Scotland, Craig Feud. lib. 1 Tit. 14 § 3. Mckenzie observ. on act 65 Par. 8 Q. M. & observ. on Act 7 Par. 2 sess. 1 Ch. 2 vid. Infra pag. 1392.

Tit. 1.

of Heirs Institute.

An heir Institute or heir of Tailzie in General, is one to whom the ~~[illegible]~~ Succession is ascertained by Disposition or Express deed of the Deceased. Cassaneus (Consuetud. Burgun. p. 909) calls such an heir Hæres Hæreditatis; for that a Man may be heir of Blood, and yet may upon Displeasure be Defeated of the Inheritance. Heirs Institute are heirs of tailzie properly so Called, heirs Male, heirs of provision, and heirs Substitute in bonds; who may be Called special heirs, on whom estates are settled that would not have fallen to them by legal Succession.

An heir of tailzie in a proper sence, is one who having no right of blood, is Intitled to succession by a Deed Containing several substitutions of heirs or lines, failing others by Decease without leaving those of the Denomination therein specifyed. As where an estate is provided to the Fiar, and the heirs of his body, or the heirs Male of his body, or his heirs of a Certain Marriage, or to his eldest heir female; which failing to another person named, and his heirs of such a kind; which failing to a third person, ~~[illegible]~~ &c. A person may be an heir of tailzie who is otherwise Incapable to succeed Vid. Supra pag. 315. But having handled the matter of tailzies fully before vid. Supra pag. 437. I shall pursue it no farther here, but proceed to other heirs Institute.

An Heir Male, is an Institute heir who, tho not next in Blood to the Deceased, is his Nearest Male Relation who Can succeed to him.

An heir of provision (called in France an heir Institute by Contract) is one who, wanting the preferable right of Blood, succeed by