be pretended where it appears to have been the Express will of the tailzier, that no place shou'd be to any Heir so long as there was any possibility of a Nearer; that could not hinder his estate to be Impendent & Fettered; and therefore should not be Effectual as not done habile Modo, Derogatory to the Common law, so prejudicial to Creditors and Vassals, and Inconsistent with the Nature of property, more than if he should provide his heirs of tailzie to Succeed to him, without being liable to his debts. Yea, Yea, where no such thing is Expressed in the tailzie, as the Service of the Immediate Heir be stopped by Inference from the Predecessors Conjectured Will; Which is to Continue his estate and Dignity, and not to bury his Memory for Many Years in a simple possibility. 6. If a man may project whom and what degrees of persons he will Leave to Succeed him, God alone Disposes of these events. It Chokes Religion as well and Law, to Interpret the Will of the person so specifiedly, as to wail that for the Heir Called and marked out by the tailzie, the Heir should not plead the Lord to be Lord such an Heir. 7. If the Chancery is bound to grant Brieves to any apparent Heir applying, and the Judge and Inquest to whom these are directed, are under a Legal necessity to serve the Bearer Heir affirmative, he proving himself to be Legitimus & Propinquior at the time; et proximus est Heres Nemo Antecedit: The Inquest cannot look forward to possibilities, which are not the Subject of trial or Cognition, because a possible is not, but only may be. Which Reasons for the Heir had at the time been more strong and pregnant than those for the Nearer possible Heir. And the Lord Stair (Lib. 3 Tit. 5 § 50 Vers. Yet the Reasons) the contrary, is of opinion, that in all Cases a person who at the time of the predecessors death is Next Heir in being, may if born enter Heir Immediate, and if in utero may enter after birth. It is true, the Lords found that Sir Ewin having tailzied his estate failing his own descendants to the Earl of Rothes's second son, which failing to the Lord Melvil's second son, Melvil's second son could not be served Heir of tailzie, while Rothes might have a second son lived 12 feb. 1677 Bruce contra Lord Melvil. Which obliged the Lord Melvil to procure from the King a gift for Managing the Estate, as Curator Bonis Accountable to the Heir of Tailzie that should happen to Enter. But the Inconveniences of Tailzies for possible heirs are not obviated by a Curator Bonis, who Cannot safely pay or Contract Debts, or advance provisions to heirs Male in order to their Marriage; And is not personally Liable to Creditors. There in a subsequent case (2 January 1708 Lord Montbliard contra Mackenzie and her Husband) the Next Member of a tailzie on the predecessors death was allowed to serve Heir to him albeit there was a possibility of a Nearer Substitute. But still it Remain

Undecided

Undecided, whether upon the Existence of a Nearer heir, such a service would be Reduced; or if after the death of the heir Entered he could serve heir of tailzie to him, and be preferred to the heirs of the entered heir's own body; or if semel Exclusus, semper Exclusus? By the Roman Law, it is not allowed temporalem habere haeredem, sed is qui semel haeres extitit semper haeres manet l. 7 § 10 ff. de Minor. l. 88 § de haered. Institu. Because none Except a Soldier could be partly testate, partly Intestate. But the Dutch and French (Vinn. Comm. ad Tit. Instit. de Haered. Instit. § 9) and other Nations have Departed from that Rule and Sustained the making of an heir for a time. And tho this point has not been Expressly decided with us, I know no Contrary Precedent in our Law. Yea in one Case Succession falls to an Heir for a time by positive Statute: that is an estate put by the Immediate heir who is Papist, is settled upon the Next Protestant heir, with this quality that the former, if he purge himself of Popery within ten Years after his Exclusion, may return to the estate of his predecessor and serve heir therein to him Act 3 sess. 9 Par. K. W. & M. supra pag. 1394. If a person be Convicted by an Assize of having slain his father or Mother, Grand father or Grand Mother, he and his issue shall be Disinherited, and the Next Collateral served heir to the party slain, ad a. 20 Par. 14 J. 6. But the Collateral heir was not admitted where the parricide was only Denounced fugitive by Sentence of the court of Justiciary for not appearing to Undergo the Law, albeit the Punishment was Notorious 3 feb. 1674. Oliphant contra Oliphant. Seeing his being declared fugitive did not spare him Guilty, but reach Only his Effects for his Contempt of the Law.

3°/ The third head of the brief, of whom the fee is holden in Chief, must also be Instructed by Infeftments. The Giver of the Infeftment is presumed to Continue Superior, unless a Other Superior be Instructed, or Acknowledged by the heir. The Inquest will serve in this point as the heir desires upon his own hazard: Because of the forfeiture he incurs by Disclamation; And the Rights of any Subsequent Superior being in his own hands, he Cannot suffer prejudice by the Service, Stair lib. 3 Tit. 5 § 36.

4°/ The fourth head of the brief, by what service the fee is held must also be Cleared by the Writs. In dubio, the Holding is presumed to be Burgh: because that is the only proper Holding, and the Rest Viz. Blench, Ward and Burgage are Improper, and Degenerate from the Ancient Nature of Fees, and therefore not presumed, but must be made appear Stair Ibid. § 37. And where land held ward, or Feu cum Maritagio tax, the Rate for the Marriage must be Computed into and Retrieved at the Rate of 3 Years.

5. For understanding the fifth head of the Brief, concerning the Value of the fee now and in time of peace: It is to be observed, that recently in order to raise taxations more equally off particular lands: there was a general Valuation made of All the temporale lands in Scotland, when the Scots were at peace with England, called the Extent or Retour Long thereafter a higher Valuation was made when the Nations were at War. Whereupon the former came to be termed the Old Retour or Old Extent, or Valuation tempore pacis; And the latter the New

Retour