In Scotland Fees of Lands and Heritages are divided by the Manner of holding into several Kinds: and Fees of both Lands and Moveables, or of hereditary personal Rights are with Respect to the Vassal or Creditor respectively serviceable or transmissible.

## Tit. 5.

### Fees of Lands and Heritages distinguished by the Manner or Tenure of Holding.

Such Fees are divided into Ward, Blench, Feu, Burgage, and Mortifications 2° but Burgage and Mortifications are Public and Private or Base Fees.

### Sect. 1.

### Of Ward, Blench, Feu, Burgage and Mortification.

A ward fee (called in England Tenure by Chivalry or Knight-service) is a Denomination from the Wardship of the Vassal, the chief Casualty falling to the Superior, a Right to the Nature of his Vassal's Lands while he is Minor and supposed incapable to serve the Superior in his Wars; and of the Female Vassal's Lands till Age of 14. When she may marry a Man to serve for her. So if that were the only Reason, the Ward of Females should last no longer than the 14th year of their Age, seeing they may then marry. This is the properest feudal Right called a military Fee, from the Original of Fees, which at first were granted for military Services, by the Lombards and other northern Nations that conquered Italy, to their own Souldiers. Therefore Sir H. Spelman (posthume Treatise of Feuds) and Mr Somner (Treatise of Gavelkind 49) says, that every Inheritance is improperly and corruptly called a Fief or Fee, that is not holden militiæ gratia the Ground of all Fees Spelm. Gloss. ad verb. feud. G. Pholof Syntag. jur. univ. Lib. 6. tit. 4. §. 1. But Services commonly called personal Attendence hosting hunting watching and warding being considered as oppressive, derogatory to the Allegiance due to the King and tending to occasion and foment Rebellion, the annual Value of such Services due by any Charter Contract Custom or Agreement, is appointed to be paid annually in Money, and to be ascertained and determined by Agreement of Parties or by Arbitration, and in Case of Variance by the Lords of Session summarily. And Clauses in Writs whereby the said Services are agreed or to be agreed and payable, are void and null 1. G. 1. cap. 54. §. 10. 11. 12. 13. all Lands are presumed to hold Ward, where another holding doth not expressly appearing the Charter 25 Feb. 1662 Arbuthnet contra Keiths Craig Feud. Lib. 1. Tit. 10. §. 19. Nor will it take off the Presumption of Ward-holding, that the Charter contains a particular Reddendo of a Cane or Duty pro omni alio Servitio et quæstione seculari; or bear a particular Duty cum Servitijs debitis et consuetis, unless expressly to be in Name of Blench or feu Farm. Craig Ibid. & Lib. 2. Tit. 3. §. 14. Stair Lib. 2. Tit. 3. §. 8. Lib. 3. Tit. 5. §. 37. For the Tenor of the Investiture doth seldom mention Ward expressly. If the Superior hath transacted for a liquid Quota, or annual Prestation,



tion in Place of the Rents that fall to him by the Ward, the Holding is called Ward-Ward. When a Subvassal holds Ward of a Ward Vassal, this is called Ward-Ward, or Ward upon Ward.

A Blench Fee is when the Vassal stands obliged only to pay in duplicate Duty to the Superior for Acknowledgment as a Rose, a Penny, a Pair of Gloves &c. nomine albæ firmæ, or of a nominal Rent in Name of Blench Duty, and ordinarily with the Quality si petatur tantum. This seems nearest to the Feudal Form in the feudal Law, but is not the same with Base for the Latter remitted all Services as in our Blench holding, the two greatest Duties being still continued always paid in Acknowledgment.

A Feu-holding (answering to the Fee-farm in the Laws of England) is that whereby a Vassal is bound to pay to the Superior a certain Sum of Money or Quantity of Victual, or so much Money and so much Victual, now in feudo firmæ in Name of Feu Duty. This feu holding is not drawn from the old feudal Law as Sir George Mackenzie (Inst. Lib. 2. Tit. 4. §. 6) would have it: but from the emphyteutical Lease, or Law in Perpetuity in the civil and Canon Laws; whereby barren ground is given by the Proprietor to another, to be possessed forever, upon Condition of his cultivating and improving it with Planting and Policy, and paying a small yearly Rent or Pension called Canon to the Proprietor §. 3. Inst. de locat. conduct. l. 2. C. de iur. emphyt. c. ult. X. eod. and the Master or Granter of the emphyteutical Lease, as with us the Superior of the Feu, had the direct Property reserved; and the perpetual Tenant, as our Vassal, had only the useful Property. For when by an emphyteutical Lease, the Owner gives his Land and reserves to himself a Rent out of it, there is made as it were a Partition of the Rights of Property, between him and the perpetual Tenant: The former remaining Master in so far as to enjoy the Rent which he has reserved, as the Fruit of his own proper Lands, by which he retains the chief Right of Property, and enjoys the Thing as Owner of it, together with the other Rights reserved to himself; and the Latter on his Part acquiring a Right of transmitting the Estate to his Successors for ever, of Selling it, giving it away, alienating it with the Burden of the Rights which the Gwer of the emphyteutical Lease has reserved to himself; as also a Right to plant, build, and make what other Changes he shall think proper, for improving the Estate, which are so many Rights of Property Les Lois Civiles &c Tom. 1. Part. 1. Liv. 1. Tit. 4. Sect. 10. §. 5. In short, the first Master of the Estate retains his original Right of Property, except in so far as he transmits a Share of it to the perpetual Tenant; and the perpetual Tenant acquires the Right of enjoying and disposing of the Estate, with the Burden of the Rights reserved to the Master. The emphyteutical Lease seems also to have given Rise to the English Fee Farms and Copyholds. Feus may be granted by any Persons of their Property, if not expressly prohibited