

of the Superior's Right which is mainly considered. The Doctors think, that if the Superior be Debtor to the Vassal, the latter will not incur an forfeiture for not paying his Feud Duty. Corp. ov. Feud. Def. Spotswood Drath. Tit. Compensation. But with us Compensation will not save the Default 26 July 1678 L. Pour. contra Planters, unless at least the Vassal come and offer humbly to the Superior before the Term of Payment, Compensation of the Equivalent due to him to the Superior. M. Kenzie's Feud. Because the Reverence due by the Vassal, and his acknowledging the Superior by an Act of yearly Payment, is valued more than the Feud Duty itself. In the Opinion of some Lawyers, when an forfeiture is incurred by a Vassal ob non solutionem canonem in due Time, the same is void, and the Superior excluded from claiming the Benefit of it, by his afterwards taking Payment from the Vassal of the Feud Duty of these Years, by not payment whereof the forfeiture was incurred, so he is not bound to pay the Feud Duty. Several Questions and Doubts about a Vassal's Payment of his Feud Duty, are stirred, but not resolved by Sir George M. Kenzie Feud. The Superior may point the Ground for the Feud Duties of all years resting on him, and Heirs are also liable personally for the Feud Duties of Years that he possessed 24 Feb. 1632 Bishop of Galloway contra Vassals 30 January 1637 Cockburn contra Frotters 19 July 1665 Wincham contra Lady Finglton. But they are not liable personally to pay Feud Duties of Years, that their Ancestors or whom they were singular Successors possessed. If it were instructed, that they intromitted with as much of the Rents, as would satisfy the bygone Feud Duties 7 Feb. 1712 Hamilton and her Husband contra L. Burligh and Wright 29 March 1636 Cowan contra L. Finglton. 26 March 1629 Rollo contra the King 30 January 1639 Cockburn contra Frotters 19 July 1665 Wincham contra Lady Finglton. Annuity holders, who in their Infeudments of Annuity rent having, assignation to Heirs and Duties, may by a personal Action recover the whole Annual Rents due to them from any one, who hath intromitted with as much of the Rents of the burdened Lands 15 March 1637 Guthrie contra E. Galloway. The Reason of the Difference is, because now Feuds are constituted by formal Contract signed by both Parties, but only by Charter and Seisin, or a Writ flowing only from the Superior. Again a Superior cannot claim his Feud Duties for Years when the Vassal, by Reason of some public Calamity, had no Profit of the Land Corp. ov. Feud. Def. 19. But a Debtor is not bound for Annual Rents of Years when he by such a Calamity was deprived from the Rents of the Lands 26 June 1662 Adamsons contra L. Calmerino.

For clearing the Casualties of Blench Holding, we must distinguish Feods held of a Subject from those held of the Sovereign. Where a Charter of Lands held of a Subject bears the Residues of a Blench Duty, with the Clause si

si petatur tantum, or si petatur without the Word tantum, the Vassal cannot be conveyed for Payment of the said Blench Duty, except required from him yearly either before the Term of Payment or upon the Term Day 16 Feb. 1627 L. Temple contra Blair. For a Blench Duty is inserted in a Charter rather as a Recognizance of the Superiority than as any profitable Rent to the Superior. If the Words si petatur are wanting, Blench Duties of a yearly Growth as Wax Pepper &c. cannot be claimed beyond the Year. But Blench Duties of intrinsic Value and not of annual Growth, as Silver Spurs &c. may be pursued for at any Time within 40 Years M. Kenzie Observ. on Act 19. Par. 18. 9. 6. The King's Vassals holding Blench are liable only by Statute (Act 19. Par. 18. 9. 6.) for their Blench Duties if required alterly within the Year, and not to be charged for Sums of Money at the Prices set upon them by the Exchequer. But since the King ought not to suffer Prejudice thro the Neglect of his Officers to call in yearly his Blench Duties, whereof many are considerable, the Court of Exchequer continues to exact those Blench Duties tho of annual Growth and not demanded within the Year, and also to tax or liquitate the Prices Hair Lib. 2. Tit. 3. 9. 33. Which Sir George M. Kenzie (Observ. on d. Act 19.) looks upon as an unaccountable Practice. Seeing the Act about the Negligence of the King's Officers, doth not abrogate the Statute concerning his Blench Duties, and the Exchequer could not alter the Nature of the Holding, which is an express Contract betwixt the King and his Vassals; more than they could effectually declare, that Prescription (whereof this stinting the Exaction of Blench Duties to a Year is a Kind) shall not run against his Majesty. Some endeavour to reconcile the Practice of the Exchequer with the Statute, by asserting that the latter prohibits not the Value in Blench Duties when fallen due, but only the liquitating them in Charters. But this Distinction hath no Foundation; seeing the Law as appears from the Narrative, was made to obviate the Exaction of Prices not contained in the Vassal's Charters. Others more plausibly distinguish between Holdings in Blench bearing the Residues of an inconsiderable Duty, as a Rose or Penny which may not be converted to Money; and Holdings in alba firma, for a Duty affording some Profit, as gilt Spurs, Gloves, a pound of Copper &c. which may be valued. But lege non distinguente nostrum non est distinguere vid. Tit. 2. Lib. 11. C. Theod.

The peculiar Casualties of Ward Holding arising from the Nature of the Fee, are Ward, Special Recognizance, and Marriage.