

Sect. i.  
Of Ward.

Ward, is a Right to the full Rents of a Male Vassal's Lands till he be Major or 25 Years complete, and of a Female Vassal's Estate, till her Age of 14. Act 5. Oct. 3. Q. M. Act 42. Par. 2. f. 6. Upon finding Jurisdiction to waste the Fee or any Part or Pertinent thereof. The Ward of a Male Vassal endures till he be 25 Years complete: when Law supposes him capable to serve the Superior in the Wars. But a Female Vassal is out of Ward at 14 Years of Age: Because as our Lawyers (Craig Feud. Lib. 2. Tit. 2. §. 3. Hair Lib. 2. Tit. 4. §. 33. M'Kenzie Inst. Lib. 2. Tit. 4. §. 3) say, she may then marry a Man to serve the Superior in her Stead. But if that were the only Reason, the Ward of Females should last no longer than the 12 Year of their Age, seeing they may then marry. This Casualty of Ward tho' agreeable to the Reason of the Feudal Law, was not introduced by it (Craig Feud. Lib. 2. Tit. 20. §. 3) for that Law obliges not Pupils to serve either by themselves or Substitutes Feud. Lib. 2. Tit. 28. §. 11 *in minori*. But we have this Casualty from the Contract betwixt Malcolm 2. called M'Kenneth and his Subjects (Leg. Malcolm. cap. 1.) whereby he distributed his Lands of Scotland among his Subjects for the Ward and Relief of the heirs and was not obliged to accept even of a Substitute. By the primitive Nature of this Casualty, the Wardator, that is, the Person having Right to the Ward whether the Superior or his Donatary, was also Tutor to and had the Custody of the Minor Vassal's Person, in Order to fit him for his Service: Nay was preferable to all other Tutors except the Father of a Minor Ward Vassal whose Fee descended to him from his Mother or other Person than his Father Craig Feud. §. 7. & ff. in fin. Spotswood Prall. Tit. Minors and Pupils. Whence the Term Ward quasi Guard or Custody. But this feudal Right in Course of Time deviated from it's ancient Constitution. For when by the keeping up of standing Forces, the Superior had no Use for the personal Service of his Vassal to attend him in the Wars, he came to insist more for Profit than Service from his Vassal; and so fell by Disuse from his Right of Tutory and of educating the Ward Pupil 7 Decemb. 1665 E. Rothes contra Tutors of the C. of Buccleugh observ'd by Gilmour. So that the main Effect of simple Ward now is, that the Superior during it enjoys the full Rents and Profits of the Fee, may pursue Mails and Duties, remove and put in Tenants, holding the Relour for the Rent as in Nonentry; and may do other Deeds of Property. He may continue constant cutting of a Wood divided in so many

Flags

Flags, as the first may be ready to cut again how soon the last is cut; or the working of Coalheughs after the Manner the last Vassal used to work them: But he cannot cut more than the usual Flags of Wood, or put in more Coalheughs than the Vassal had at or ordinarily before his Death Craig Feud. §. 9. Hair Feud. §. 35. For the Superior or his Donatary cannot by the Nature of the Fee waste or destroy it, or any Part or Pertinent thereof, and must find Caution for that Effect to the Sheriff of the Shire, or Bailie, that he shall keep the Biddings Brackens Woods Parks Meadows or Dovecoats in such Order as he finds them. This Casualty may be enjoyed either by the Superior himself or by his Donatary claiming under him, who may do what ever was competent to the Superior himself. Gifts of Ward and Nonentry used in old Time to pass together in Exchequer bearing Right to Bygones and in Time coming during the Entry of the right Heir, which still continues. But by Acts and Custom of Exchequer, Ward and Nonentry are distinct Casualties pass'd by different Writs. A Gift of Ward and Nonentry reacheth only the Time of the War and three Terms thereafter if the Lands continue in Nonentry that is three Terms full Rent where the Superior or his Donatary was in Possession by the Ward; and only three Years Feu-Duty where he was excluded from Possession by one who had in effectual Feu from the Ward Vassal 2 Decemb. 1660 L. Dun contra Lord Asbathnot Hair Feud. §. 36. in fin. Lib. 4. Tit. 8. §. 9. But a Gift of Ward bearing up and while ~~upon~~ the Entry of the lawful Heir, granted by a Subject would be extended according to its Tenor Hair Feud. Albeit a Gift of Ward express'd in Exchequer contain Relief, yet that Casualty being only a small Duty of the returned Mail, as a Gratuity to the Superior at the Vassal's Entry is as Hope observes (always craved by the Exchequer and counted for by the Sheriff. Nor is tax'd Ward comprehended under Gift of simple Ward, tax'd Ward being considered as a Feu Duty, and the King's ordinary Revenue rather than a Casualty Hair Lib. 2. Tit. 4. §. 36. in fin. A Superior having a Gift of his own Ward in his own, or in a Trustees Name to his Heir cannot distress his Vassals to whom he is bound in absolute Ward-Rendice against Ward, farther than for a proportionable Part of the Composition and Expences is Feb. 1665 Boyd contra Tenants of Carslith's Decemb. 1676 L. Lindsay contra Grierison, upon Payment whereof the Gift accrueh to the Vassal. The Reason whereof is not, because the Lands being disposed by the Vassal ut optima maxima, all Rights supervenient to the former, accrue to the latter. For the Brocard jus superveniens accretat, is understood only of a Right of Property Annual Rent Service or Casualty fallen before the Right granted to the Subvassal, and not of Casualties arising thereafter ex natura rei. But the true Reason is, because a Gift of Ward