

Interpreters Expounded Conformably to the Norman Acception and Notion of Feud, G. Spelman Great of Feud 45. So as to introduce and Establish not only the Norman Wardship, but all the Feudal and Norman fruits and Dependancies of fee and Tenures, considered as a positive feud, that is to say, as an Estate or Interest in the lands derived from the more bounty of the Lord. In respect whereof the Tenant was obliged to make as large Returns of Service and Gratuities, as if subsisted by such bounty for the sole use and service of the Lord.

Wardship and Marriage were of Norman Original, and came from Normandy as a branch of the law of Feud or Tenures, Custom of Normandy cap. 33 fol. 52. Cambd. Introd. to his Brits 147 Spelm. Great of Feud 29 & 30 Gloss ad Verb. Warda: tho' they were then a Non servitus peculiar to Normandy, and all together unknown to other Countries that were governed by the Feudal law, Spelm. Great of Feud 46. Wardship of the land, that is to say the Custody of the Feud it self was committed or rather retained by the Lord, that he might out of the issues and profits thereof provide a fit person to supply the Infant heir's Defect of service, until he should be of Age to do it himself Spelm. Gloss ad Verb. Warda-Crag. Feud 289. Tho' tenures Gt. Genis per service de Chevaler litta. fol. 103. Just. 7. s. b. But there is no clear Feudal Reason to be given for the Custody or Wardship of the body, and therefore we may suppose that the Normans might think it reasonable, rather in regard to the Infant heir, than with respect to the Lord himself, that he who had the Custody of the Estate and lively hood of the heir, should likewise have the Care of his body, and the Charge of his Maintenance: besides the Lord was no Doubt the properest person to have the care of his Education; because he was most likely to qualify him for the services of the Feud, in which he was supposed to be most immediately interested. Gt. Portese de Land. leg. Angl. cap. 44. Bloom Notes on

on Gt. Portese. 46. Smith de Republ. Angl. 269. 265. Bond Just. Jurist. Angl. lib. 1. tit. 17. fol. 2. Coke 1. Just. 75. b. Bacon Hist. of the Engl. Gov. 148. 149.

The Lords of English fees. Might possibly take the hint of Marriage from Normandy, Spelman Great of Feud 29. 30. Tho' I must Confess that in the face of the English law in which it belongeth the Interest of the Guardian in bestowing a Ward in Marriage Coke 1. Just. 76. a. and was understood to be a beneficial purchase of Tenures, I can find no Express Notices of it earlier than the Statute of Merton cap. 6. 7. By the Custom of Normandy indeed a female Ward was to be Married with the Licence of the Lord and the Joint Consent of him her parents and Friends, Custom Norm. cap. 35. fol. 53. but the Lord had not the Absolute Disposal of her, nor had he any thing to do with the Marriage of Male Wards, or any Interest in the Marriage of females, but a bare Disproportion of the person who was to be his feudatory. And by the Charter of King Henry 1. (L. L. ff. 1. cap. 1) which says Nothing of the Marriage of Males, a Daughter of any of the King's Tenants was not soon in the life time of her father to be Married without the King's priority, but when the King was to take nothing for his Consent, and after the death of her father the King declared he would marry her with the Advice of his Barons. Which plainly shows, that the Ward was then had to the Marriage of females only, as to a Matter of Publick Concern, and Not of Private advantage. Tho' the English Lords however by an extraordinary Construction of Magna Charta, took upon them that only the Absolute Marriage of female Wards because they might marry Enemies to the publick, Bracton lib. 2. cap. 37. but of Males too. But as to Males, there is no Feudal Reason for the Lord's Consent as to the Marriage of them, Bracton lib. 2. cap. 38. fol. 1. Nor is there indeed any Reason, unless that, as it was a part of the paternal care, the English Lords who had the Care of their persons, might think themselves under an Obligation to take care of their Marriage. But how it should come to pass that