

of Scotland hath indulg'd upon such an occasion to the heirs of baggals holding of any superior whatsoever Act 3 par. 2 J. 2. Act 5 par. 3 L. M. act 42 par. 2 J. 6. privileged the facts of persons happening to be slain or deadly wounded in the Kings forbes, for the space of five years after the slaughter or wounding to death in favour of their wives and children. Grassum fess Act 4 par. 2 J. 2. act 6 par. 3 L. M. act 43 par. 2 J. 6. and appointed by officers of Church men slain or hurt to death or dying of sickness contracted in the Kings Host, to be consord on the nearest of kin most fitted for the same act 4 par. 3 L. M. act 47 par. 2 J. 6. And usually acts of parliament of this Nature were made when the Kings Army was in procein going out to Battol.

For Henry Spelman (posthume Treatise of Feuds 4. 6. 9) says that those feodal conditions of Feuds had their feodal denominations; that is to say, while they were precarous, they were called Allodria, afterwards when temporary and for life they were called Beneficia, for what reason the Livings of Clergy men are so called at this day; and that they were first called Feoda, Feods from the fidelity, and obedience due by the Recipients as vassals to the Grantors when they began to be given in perpetuity, and not before. And agreeably to this Mr Somers calls Beneficium Feodum's Elder Brother, and says that Feodum was a word not known till they saw 1000 Treatise of Gabelkind 102. vid. Schilt. de Nat. Success. cap. 3 Sect. 3.

Feuds being thus established, and all feodal possession being at that time military obligation, and in the hands of military persons, who, being under frequent incursions to cultivate and manure their own lands, found it necessary to commit part of them to such persons as having no feodal possession of their own, were glad to possess them upon any Terms: To such persons therefore they gave some small proportions of their lands obliging them to such Returns of Service, Corn, Cattle, or Money, Craig Feud. Lib. 1 Tit. 9 § 10 in fin. Loissan Traits des Seigneuries 15. as might enable them to attend the feodal duties without interruption from Affairs of a lower Nature, and of more private concern: By means whereof the feodal policy was considerably extended, in regard that all persons accepting any kind of Interest in a Feud, did not only implicitly engage not to do any Thing to the prejudice of it, but were under an express or implied Feodally oblig'd to answer the stipulated Returns, and to promote the peace and welfare of the feodal Society, those and such like Interests being considered as Feuds, Feud. Lib. 2 Tit. 48. Strik. Exam. Jur. Feud. cap. 3. L. 2. Ravenna in Consul. Feud. 64. 2. § 10 in usus Feud. 117, 121 The ancient feodal simplicity branched out into great variety and gave way to so many devices, that it became a necessary Rule or Direction of the Feodal Law, that in the consideration of a Feud, Feud Inobshlura est inspicendus, qui dat legem Feudo, Craig Feud. Lib. 1 Tit. 9 § 18. Lib. 2 Tit. 2 § 11.

There were no written Laws concerning Feods before Conrad the Salick. They were regulated according to the usages and customs of places. And as the customs of places were various and different, so Feods in one place were regulated one way, and in another in a different manner.

The Feudists therefore, in order to preserve the genuine notion of a pure or original Feud, and to digest as far as possible the various new invented Feods, or Terms of Donation, have drawn up several systems of Feods. The first of them is to be found at the end of the corpus Juris civilis, supposed to have been written by Gerardus Niger and Oboerus de orlo, both advocates in the Court of Allilain and Consuls of that City about the year 1170 at the command of the Emperor Frederick Barbarossa. to whom these two Lawyers were sent Embassadors by the Inhabitants of Allilain to pacify that Emperor who was then mightily incensed against them.

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But Craig (Feud. Lib. 1 Tit. 6 § 4) takes them to have been only humilitaries conscripts, or Adversariis suo Schodis Gerhards & Oboerus quibus ab alijs quam ipis collectis et in libros sine doctis sine modo redactis.

Lawyers upon the Authority of Odofredo (in Auth. Cassa C. 29 ff. Enclis) assert that the Emperor Frederick 2 caused the professors of Law of Bologna adjust the feodal customs with his own and other Imperial constitutions relating to Feods under proper Titles. But Pietro Giannone (Hist. of Naples vol. 1 Lib. 13 cap. 3 Sect. 1) believes them to have mistaken the meaning of Odofredo in the place quoted, importing only that Frederick sent the Imperial Constitutions to the doctors of Bologna to be added by them to the Code sent to the Feodal Books under such Titles as should best suit them.

Arguing one of these professors placed the Books after Justinians Novels in the Body of the Civil Law with which they have pass'd into universities and Courts of Juridicals, as a New Body of Law, regulating Succession, acquisitions Inobshlura and other matters relating to Feods, and deserv'ing to be put on a Level with the Roman Civil Law.

This collection of the Feodal customs hath had several Editions, whereof some consist of fewer and some of more Books, variously digested and distinguished into Titles.

The vulgar Edition is divided into two Books, whereof the Authors are much controverted. Carolus Molinarius (Consul. Paris. Tit. 1 de Feods ad Rub. n. 100.) thinks that Oboerus de orlo, called Orlonius, wrote both those Books. Hottoman, Rithorschius, and Caspar Bithinius, will have them to be compiled by many Hands and chiefly by Bulgarus, Martinus, Jacobus, & regalmus consules to the Emperor Frederick 1. But Cujacius (praef. in Comm. ad Lib. Feud.) followed by Boerchellon (

) John Voet (Digress. de Feud. n. 2) and our own Craig (Feud. Lib. 1 Tit. 6 § 3) makes Gerardus Niger Cappragius Author of the first Book, and Oboerus de orlo author of the first 24 Titles of the second Book which opinion is most probable. The 25 and subsequent Titles of the second Book are a patch'd up composition by an uncertain hand of the opinions of Lawyers at that Time.

An Edition of the Feodal customs published by James Albarola a Lawyer of padua divides them into three Books, whereof the third begins from the 23 Titles of the vulgar Edition.

James Cujacius distinguished the whole Feodal Law into five Books. The first whereof is the same with that of the vulgar Edition, but otherwise distinguished; for it comprehends 31 Titles, whereas there are only 28 in the vulgar Edition. His second Book contains only the first 22 Titles of the vulgar Edition. The third Book begins with Title 23 and extends to Title 25, which is the first of his fourth Book, comprehending 109 Titles, in the feodal second Title whereof the vulgar Edition otherwise also distinguished terminals. The rest of those Titles contain extraordinary Heads or points collected out of Albarola and Adizon. His first Book consists of several feodal constitutions of Emperors.

An Edition of the Feodal customs published by Julius pacius, and another by Dionysius Gothofredus are the same with the vulgar as to the first two Books: But have after the 58 Titles of the second Book, where the vulgar Edition ends, many Titles out of Cujacius Edition, and his whole fifth Book.