

a Suspensory a Disposition of the Debtors Estate should be assigned because the Suspender cannot find Caution or if in a bonorum one should make a Disposition of his heritable Estate in Favour of his Creditors; or if a Man should dispose his Estate to a confident Person with the Burden of his Debts: in these and the like Cases, the Debt continues still movable notwithstanding of such accessory extrinsic Security; because the Creditor doth not intend to have his Money lie as an heritable Debt, but on the contrary had done and is about to do all possible Diligence to recover Payment of it Direct. Decis. 342. And Sums ab initio heritable, may be secured by an accessory movable Right, as a Gift of the Debtors Escheat, or a movable Bond of Corroboration, without altering their Nature: 17 January 1603. Wishart contra 3. Northesk 15 June 1669 E. Mar contra Hamiltons Mc Kenzie Jns. Because the Gift of Escheat or movable Bonds of Corroboration being only accessory to the principal heritable Security; the Creditor's Design, which is the great Test in this Case is more to be considered than the supervening Right. Sir James Stewart (Jns. Sit. Heir and Exor) is of Opinion, that the Bond of Corroboration might be thought only accessory, and the Sum still remain heritable if the Bond were granted with a Cautioner or additional Security, but that it should be look'd upon as an Innovation, the accumulating Sums, if it contain no additional Security, in which Case posteriora derogant prioribus.

By the common Law of England, Things are divided into Freeholds and Chattels.

A Freehold or frank Tenement is that Land or Tenement which one holdeth of the King or of a Subject either in Fee simple, to him and his Heirs in general; or Fee tail, to him and certain Heirs; or holdeth at least for Term of Life.

Under Chattels (in Latin cattalla) among the Normans from whom the English have this Term, all movable Goods are comprehended, whereof Craig (Feud Lib. 1. Tit. 11. §. ) imagines, the Reason to be, for that the northern people's Goods consisted in Flocks and Cattel. But the English distinguish Chattels into personal and real.

By Chattels personal, they understand Things that belong immediately to the Person of a Man, or which being injuriously withheld from the Owner, are recoverable only by personal Action.

Chattels real are such as do not appertain to the Person, but depend upon some other Thing, or such as are necessary Issues and Profits of Immovables, and in short all Goods which a Man holdeth not in Fee or Freehold to himself or his Heir, or to himself for Term of Life.

Sir John Nisbet (Doubts of the Law ec. Tit. Comprising) says, that such a Right in England as our Apprehending within the legal, is considered as a Chattel.

Of absolute and limited Property.

Absolute Property, is when the Property and full (profits thereof are in the same Person, and enjoyed by him independently, without his being liable to pay any Acknowledgment for it to a superior Lord; called *dominium plenum* or *alodium*, *allodial* or *free Property*, or Property in the highest Degree. The Origin of this Word *alodium* is much controverted. One says it is obscure as the Head of *Ale*. According to some, it is so termed from the privative Particle *a* of *laude*: because *nullo laudato et recognito alio domino*, it belongs to the Proprietor *plene et integre jure*. Others will have it to be an original Saxon Word. Which Opinion is most plausible.

Before the feudal Law obtained in Scotland, all Property, whether heritable or movable was *alodial*. But now we have little *alodial* heritable Property, most of the *alodial* Lands being at this Day converted into Fees. The present *alodial* heritable Rights in Scotland are 10 Superiorities vested in the Sovereigns the same Princes hold their Kingdoms Feud of their Superiors 20 Churches and Churchyards, for which no Acknowledgment is due to any Superior. For these being destined to pious Uses, are ordinarie to be upheld and repaired Act 70 Par. 9. 2. N. Act 232. Par. 15. Act 5. Par. 3. 9. 6. Act 10. Feb. 1. Par. 9. 2. <sup>By the Law of England they have not properly Alodium, as they say the Prince having all the Rights of God and the King</sup> That which in the civil Law bears the nearest Resemblance to *alodial* Lands, is what particular persons possess fully in their own Right without any Burden, called *solum immune*. L. 9. §. 7. ff. de Confibus. *Alodial* movable Property consists in Rights to Movables, and Sums in personal Bonds belonging to Men and their Heirs or Executors.

Limited Property is 10 When one called Superior, has the direct Property of Lands or other Kind of Hereditage, without the Profit, called the Superiority (and in England, Signiory) and another called Vassal in England Tenant) hath the Profit only, without the direct Property, called the *useful Property* for Payment of some Acknowledgment to the Superior or direct Proprietor. Such limited Property called *feudum* or *feudal Property* a Fief or Fee which some derive from *foedus*, as arising from Treaty or Alliance made betwixt the Parties, and hence perhaps it is called *feodum* others fetch it from *foes*, on Account of the Truth and Fidelity one of them bears to the other; others again take it to be an Abbreviation of this ancient formula of Fealty and Homage, *foelias ero ubique dominus vero meo*, where of the initial Letters are *F. e. u. d. v. m.* And there are those who yet otherwise derive it. *Dutroffine* *gloss. ad verb. feudum*. Somner Treatise of Feud. 104. Strype Exam. p. 10. *feud. cap. 2. §. 1.* But our own Craig (Feud Lib. 1. Tit. 9. §. 3.) thinks it a primitive Word used by the Northern Nations for Hire Wages or Pensions in the Law of England, such *feudal* Property is not only termed a Fee, but also a *tenement* or *tenancy* and *held* or *holden* in Fee. A Fee signifies either the Right of Fee *feud. lib. 1. Tit. 7* or the Thing affected with that Right and sworn in *Fee* *feud. lib. 2. Tit.*