

Sect. 2

Of publick, and private or base Fees.

A publick Fee, is that which is held of the Giver's Superior, whether the Sovereign, the Church, or a royal Burgh, who are not his Majesty's Ministers, or some other of his private Ministers, but Lib. 2. tit. 3 §. 27. It is called Fee from the supposed Nobility thereof: It is also termed a Right a me, because it is held a me (the Disposer) de superioris meo.

A private or base Fee, is that which is granted by a Vassal to be holden of himself, his so called, because latent or lower, and at a further Remove from the real Right held of the Sovereign the highest Superior, than a Fee held of the Disposer's Superior is. It carries also the Name of a Right a me, because it is held (the Disposer) de successoribus meis. The Constitution of Fees in this private Way, without the Grantor and Receiver, inconsulto superiori, which contradicts the Principles of the feudal Law, is allowed with us for the Benefit of Creditors getting real Rights for Security of their Debts, are often unwilling to be at the Expence of entering themselves Vassals to the Debtor's Superior. It took Rise more by Accident than Design from a Law (Act 1605 Cap. 7. §. 5) calculated rather to suppress simulate Conveyances than to strengthen base or private Rights. By the Letter whereof publick Infeftments of Lands or Annual Rents are only preferred to private anterior Infeftments, when the publick Rights were got by Sale or Dispofition, or by Labouring the Ground and uplifting Mails and Dutys. A Fee held of the Disposer got not the Denomination of a base Fee from the Manner of holding. Because in respect of the Sovereign's immediate Vassals, called vassalli ligij (whose holding only is noble) all the Vassals of other Superiors go under the Denomination of base. If the Manner of holding were the Reason why any Fee is called base, the base Fee might easily be made publick by a base Vassal's Resignation in Favour of his own Subvassal: And it were strange to think such a subvassal's Right more noble or publick, than that of his base Superior, Nam Jbid.

Because base Infeftments were clandestinely transacted betwixt conjunct and confident persons, to the Ruin of lawful Creditors, who could not (when there was no Register of Seisings) know the same, Possession was formerly required to complete such Infeftments for preventing latent simulate and collusive Rights. Not as if a base Infeftment without Possession had been simply null, for it was a just Title to pursue Mails and Dutys, of removing, and to reduce all other Infeftments it excluded posterior Arrestments, and the Force of the Grantor's Relict, the not his own life rent Cheat: But the want of Possession upon a base Infeftment, was only a Ground to prefer more solemn Rights to it, as a posterior publick Infeftment without, or base Infeftment with Possession; Possession being to an Infeftment to be holden of the Disposer, the same Thing that confirms it to an Infeftment to be holden of the Superior. The Reason of this Preference

was, because Infeftments retenta possessione by the Grantor, were presumed simulate and fraudulent presumptio juris et of a iure: As retaining Possession by a Disposer of Movables, or by a Person who is not what is styled this contract, is a pregnant Ground to infer the Infeftment is or will be in Favour to the Disposer or Relict's own Relict, Nam Jbid. 11 Junij post. tit. 2. Tit. 2. §. 3. idem observ. on d. lib. 105. But because Possession of Property was probable by Discharges to Tenants which the Infeftment required in 17th Dec. and Possession of an Infeftment might be proved by holograph Infeftment granted to the Relict, and both made up in past facts and rule taking and never answered by a Competition with posterior publick Infeftments, whereby the Infeftment was very uncertain: To obviate which Inconveniencies, Infeftments are now declared preferable according to the Priority of the Registration of the Relict's, Act 10. Sept. 4. Cap. 10. W. But about base Infeftments we not now hold to be simulate or latent merely in Favour of Possessor. They may still be quashed as simulate in the Mouth of the Disposer, or some third Party, which may be proved by the Date of the Decision in Feud, Nam Jbid. Appendix §. 2. in fin. But not by Presumptions, Act 25. Sept. 6. Cap. 10. W. Tit. 2. ~~Fees of Lands and real Rights distinguished with Respect to the Vassal; and Fees of Movables and personal Rights, called pecunie vel nominum, differenced with Respect to the Proprietor and Creditor.~~

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Such Fees are 1<sup>o</sup> simple and tailzied Fees. 2<sup>o</sup> Fees granted to one person and his Heirs, and those conceived in Favour of more Persons and their Heirs.

Sect. 1.

Of simple and Tailzied or entail'd Fees.

A simple Fee, is that which is conceived in Favour of one and his Heirs whatsoever; that is, his Heirs of Line who succeed by Law.