imports something happening or returning to the Lord upon a determination of Tenures only; and in this sence all Escheats belong to the King, as properly Feudal, and such Lands or Tenements as are not held immediately of the King, and yet happen to him upon the commission of any Treason are not Escheats (The the Lord Bacon in his Treatise of the use of the Law Sect. 34 calls them Royal Escheats) but Forfeitures 25 Edw. 3 cap. 2. which were given to the King by the Common Law Hale's Annal. 110. and do not depend upon the Law of Feuds and Tenures, but upon the Saxon Laws, LL. Alfredi cap. 4. LL. Canuti cap. 54. apud Lambard. de priscis Anglorum Legibus. Salton. de Antiq. Brit. Leg. cap. 10. that were made long before the Introduction of Tenures, and which prevail above at this day; And then may seem strange upon the Mesne Lord in deserting his Seignory, yet as he had failed of that Caution and Regard that was due to the publick in the Choice of his Tenant he was not altogether blameless, for the Lords were anciently in many respects answerable for the Misbehaviour of their Tenants, Brit. LL. H. 1. cap. 8. 41. 59. 86 apud Lambard. And the Law hath inflicted a penalty much of the same kind upon the Mesne Lord when the Tenant is guilty of Felony only: For the Land Escheats as by the Feudal Law it ought to the immediate Lord; yet as the Crime affects the publick peace, and the Lord may be supposed, for want of due Care in the Choice of his Tenant, to be in some measure blameable, the King shall have the Land a year and day, Magna Charta cap. 22. 2 Inst. 36. 37. Stat. de prerog. Regis 17 Edw. 2. cap. 16. Standford's pleas of the Crown Lib. 3. cap. 30. to the prejudice of the Lord. But the general import of the word Escheat, as formed from the French word Escheoir to happen, and primarily signifying any Thing accidentally or by Chance, Spelm. Gloss. ad verb. Escheta; comprehends casual obventions and Forfeitures of all Kinds. In which general sense Sir H. Spelman (Treat. of Feuds 37) divides Escheat into Regal, and Feodal. Regal says he are those obventions and Forfeitures which belong generally to Kings by ancient Rights of their Crown and supreme Dignity, Feodal which accrue to every feudal Lord as well as to the King, by Reason of his Seignory.

This I have explained the Nature of wardship, Marriage, Relief, Aid, and Escheat, the Concomitants or Consequences of Tenures.

Tenures are principally, and generally divided into Tenures by Knight Service, and in Socage (1) Tenures by Knight Service were partly military. It was subject to Relief and Escheat, to wardship and Marriage, and to almost all the Conditions and Restrictions of an original Feud. It is probable that the Author of the old Tenures and Littleton do both of them in the disposition and order of their several Tenures consider Socage and Knight Service as several Services and under distinct Titles, and that Littleton doth notwithstanding compound and bring them together in such a manner that it is difficult to collect from him any real difference or distinction between them. Nor doth our Law writers so strictly distinguish them as might be wished or expected. But there appears to have been a considerable difference between them. For Socage was a Service, but was not as Littleton intimates (Sect. 95. 96.) a direct personal Service of Attendance upon the King in his Wars, nor was it due upon all military occasions as Knight Service was, but it was a pecuniary Aid or contribution reserved by particular Lords instead or in lieu of personal Service, Bract. Lib. 2. cap. 16 fol. 36 a. Littl. Sect. 158, Ibid. Cladd. Hist. of Exchq. 452 to bear the extraordinary Expences of their own Attendance and warfare when, and as often as the King should make war. In which sense Socage answers the Norman Aid, Post Custum. de Norm. cap. 44. fol. 66 b. This Aid, and the Fine or Satisfaction that the King from Time to Time received for and in lieu of the actual Service of such Tenants in capite as failed him in those Expeditions were both of them called Scutage, a Scuto quod assumitur ad servitium militare, Somn. Glost. ad X Scriptores Bract. Lib. 2. cap. 16 fol. 36 a. Fleta Lib. 3. fol. 198. the one in respect of the Scutum which the Lord actually bore, and the other in respect of the Scutum which every such Tenant might be obliged to bear to the wars. So that it is not likely in this view that Knight Service was as the Lord Coke imagines 2 Inst. 69 a, incident to Scutage, or that Scutage was as Mr. Madox supposes Hist. of the Exchq. 432 in Marg. incident to Knight Service, Scutage being a specific Service of a different kind, in respect whereof the Tenant on account of its subservience to the military policy of the Nation, was only Estimated as a Knight or military Tenant. 2. The Scutage considered as a species of Tenure, might be of the Nature already suggested, yet it must be allowed that it was anciently as well as at this day, more generally understood to denote a collective Fine for a military Tenant's defect of Service, by Madox Lib. d. 438. 439. 454. 457. 458. 462.

For tho' it is very certain that all Tenants by Knight Service were originally bound in all Events either by themselves, or by some other person actually to do the Services of their Tenure, and the non performance thereof was a forfeiture of the Fee or Tenure: yet as the Feudal Services abated, and Lords grew indifferent whether they were served by their own Tenants or by others &c. as

in pag. 110.

(1) Nobles usually answered the Norman Division of Tenures into Fief & Franc Aleu, Hotman Notes on the Jus. 119. and Fief to be Tenures, Aleu, the Gentlemen and Yeomen and Husbandmen or Plowmen of Kent. Lyttl. Tenures Sect. 95. Cowell's Interpr. Tenure. Tenant. 36. Ed. 3. 15. 1. 57. 6d.

1. There are two kinds of Error or Ignorance, viz. Error in Fact and Error in point of Law. Error of Fact consists in not knowing a Thing which is. As if one who is named Executor of a will, knows nothing of the will; or if he knows the will, is ignorant of the death of the Testator, L. 51 & ult. ff. de Jur. et Facti ignor. When it is by the Fraud of one of the contracting parties that the other has been deceived by an Error of Fact, as if one concealed a Title or Deed belonging to the other; the contract will be void, and he who has concealed this Title will be liable to make good all the Loss and damage that shall have ensued upon the fact. Fraud L. 19 C. de Transact. If the Error in Fact be such that it is evident, that he who has erred has consented to the contract only because he was ignorant of the Truth of a Fact supposed by him to be true, and afterwards appearing to be False; such an Error is sufficient to annul the Right Les Loix civiles &c. Tom. 1 Lib. 1. Tit. 18 Sect. 2 art. 7. But an Error in Fact which was not the only cause of the Right will not hinder the Right from having its full Effect. Les Loix civiles &c. ibid. Art. 8.

2. Seeing it often happens, that he who has occasion to prove a Fact that is concealed, has neither writing nor witnesses, nor presumptions that may be sufficient, one therefore in that case has recourse to draw from the Mouth of the party a confession of the Truth, and that is done two ways, and is without the Interposition of an oath, when the party summons the other and requires him to own the truth of a Fact, whether it be the same that is in dispute or some other that may serve to prove it. The other way of having the confession of a party is when he who cannot make proof of a Fact which he alledges refers the matter to the oath of his Adversary and consents that the declaration which he shall make after having been sworn, shall be held for Truth, and serve as a decision of the Matter in dispute, called a decisive oath.