

A continuation of the doctrine of Somers in pag. 108.

* For by other such Forfeitures were easily disposed with, and pecuniary compositions, such possibly as might barely enable the Lords to have others to do their services of their Tenures more commonly were commonly accepted, in so much that most Tenants chose rather to let go to satisfy their Lord, than to do their service in person or to provide another to do them. our Kings anciently taking advantage of this perhaps com-
plying with the humour of their Barons, which had made these actual services doubt full and precarious did sometimes upon occasions of war, after a moderate sum. upon such Knights Fees as Scutage or Escuage by means whereof they might be enabled in all respects to provide both for themselves to do the service of their Tenants. But this general Escuage or Commutation or Equivalency for service and also other service for particular defors of service were afterwards in the time of King John thought fit to be imposed and assented to commanding' Constatn Regni by the great Council, and not at the Kings will; or by any other; which (says his Lord Coke, Inst. 72 a) was by the common law. But Littleton (Inst. 97) who never went beyond himself speaks more doubtfully of the matter, this was equably extended to all inferior Lords and their Tenants, so as to oblige them likewise to pay, except Escuage at the rate of 1d Litt. Sect. 100. 101. Escuage, being to be affeit'd going now the only penalty for defect of service, many Lords by their own commandment and their Tenants, fixed this uncertain Escuage to a certain sum that shouldest be paid as often as Escuage shouldest be granted, without regard to the rate that shouldest be fixed or affeit'd by the parliament. Escuage thus affeit'd was called Escuage certain, and because it did in effect discharge the Tenant from all Military service, the persons who held by such Escuage, were looked upon as hereditary tenants and were no longer called as Tenants by Knight service. Litt. Sect. 98. 120. Inst. 87 a.

Sect. 3.

* Tenures by Knight service are now abolished by the Stat. 12 Car. 2 cap. 24 and turned into common fiefdoms so that I shall not distinctly consider the feudal government kinds and distinctions of Tenures, deal'd of by our English Lawyers under this Head, but shall briefly inquire how far our Tenures or fiefs may be disposed of in this day, to obtain the Nature of fiefs.

* Tenures in fiefs are holdings by any certain conventional service that are not military Litt. Sect. 117 the word holding fiefdom according to the opinion of our common Lawyers (Litt. Sect. 119 Flot. L. 3. cap. 1. coh. 1. Inst. 86. b.) derived from some plough from the name or nature of the service commonly reported upon such Tenures, by which a Tenant held their lands to plough the land of their Lord without own ploughing, and do other inferior offices of the stewardship at their own charge.

* And all our English Fiefs or Holdings whether they be frank or Empfeidary, burgage or habot, land, burgage & habot kind like many qualities different from common fiefs, do not exceed the nature of fiefs, which, so they vary in point of service, service and the charges impreme fiefs, do not exceed certain kinds of fiefs, in as much as they are held of some Lord or governor by fealty, and usually by son or certain service or by other equipment, and in as much as they yet and they shall be held may be held of our Lawyer, Inst. 97. 100. 101. according to their duration, or what they call the quality of fiefs, as fiefs in fief, for life, for years, and at will; but, I would divide them into fiefs in fief and fiefs in fee only, fiefs in fief being large enough for my purpose. fiefs in fief are either fiefs simple, or fiefs tail. If fiefs simple is not so called, because it imports an estate specially allotted, or free from all bonds; but is so called in respect of the fiefs conditional at common law, and fiefs tail since the statute of Westminster 2. 26 Edw. 3, as imposing a simple inheritance or a fief in fief in honor of a particular man, to any particular heirs, and descendable to the heirs general, whether male or female, and so collateral.

* By the Feudal rules and course of succession, a father cannot succeed to his fief and is debarred from any possibility of returning to the sons inheritance of such fief. L. P. 2 Tit. 50. 84 for this reason, because the father could not succeed to the fief in aliquum aut postremum, because it must have pass'd him before it could come to his son, Inst. 97. 100. 101. Inst. 97. 100. 101. Exempt fiefs, Inst. 16. 2. 2. 3. 4. 3 fiefs in fief, Inst. 97. cap. 8. fo. 16. and fiefdom nobum, or a fief newly conferre upon the son or put into his hands only descend to his children Inst. 97. 100. 101. Inst. 97. 100. 101. Exempt fiefs, Inst. 97. cap. 16. 2. 4. 5. and if he had no children, it return'd to the Lord of fief.

De rur. F. o. Lib. 2. cap. 5. p. 164. 3. cap. in fief fiefdom cap. 8. fol. 46. Thus stand their ^{III.}
Feudal Law, because who fiefor would succeed to a fief must habe intitled himself to
the succession in a regular course of descent from the first Feudatory, Craig. 53. or particula-
rly for

* But being now sufficient by the Law of England that the person who claims a fief by descent,
make it appear that he is Heire him who was last actually fiefed. Inst. 11 b. 15 ab. 3 cap.
41. 42. It is strange that the Father who is next in blood shouldest not be thine to his
son, but that the Uncle or Father Brother shouldest be preferred to him; and yet that is
certainly included without issue the Father shouldest be preferred to the Uncle
to succeed to the Sons Inheritance Litt. Sect. 3. Craig. fiefdom. Lib. 2. Tit. 13 § 15 b. cap.
generalis. Inst. 97. cap. 10. It thus may be observed, that this is not properly a feudal
descent but of Et. Domes. established the old Feudal law, succession, and calculated
to make that good as far as possible; for it becoming in many cases impossible, by
length of time and a long course of descent to deduce a Title from the first fiefholder
lately or your reather proof of being Heire to the fief was necessarily allowed as his next
proof that could be expected of Title from the first. Hence it is that the
Father who is stand's upon his title as to the fief, yet he may inherit the
feudal rules of succession, succeed to the Uncle as his brother, and as to the
brother who cum servitum cum omnibus stipulacionib. fief. fiefdom. L. 2. cap. 1. fol. 2.
2.) make Title from to his Sons Uncle, having this title, and as to his brother
above mentioned looking no further back than to his Uncle, inasmuch as he is
actually fiefed. The person who would intend himself to a fief by descent will be
Heire of the next in blood to him who was fiefed. Inst. 3. d. Litt. Sect. 6. 7. 8. 9. Inst. 15.
The half blood is extoll'd contrary to the custom of Normandy and to the Laws of Scotland
Customs of Norm. cap. 25 fol. 41. Hals Hist. fiefdom. Inst. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32.

* A Free Tail, as distinguished from a fief simple, is a fief and retained by some such
as have overlords of others, as to the Heire male of the body of the donor or fiefholder
or fiefes of females and collaterals; or to the Heire of the body or wife of collat-
erals only. It was first called a Free Tail from the French word Taille to cut. Inst. 18 b. 8.
Plinian. Glymol. Eng. Ang. upon account of the particular limitation or restriction by
which the Heire general was often, and collateral or female Heires were always cut off
Spain. Glouc. ad herib. T. 2. 2. 2. But a fief thus limited was at common law known by
the name of a fief conditional, so called from the condition expressed or implied in
the gift or constitution of the fief, that in case the donor died without such particular
Heire, the land or fief should revert to the donor.

* Estates for life are either conventional or legal, of the first sort as such Estates are
are in their creation expressly given or conferred for the life of the Tenant only; of
the second sort are Tenancies in tail after possibility of issue exhort, Tenancies in
dower, and by the Curtesy; which are particular Estates not created or limited by
any particular Act or provision of the parishes, but by the disposition & order of
the Customary or common law of England.

* Power called by Craig. Fiefdom. 1st. fiefdom. 2d. fiefdom. 3d. fiefdom. 4d. fiefdom.
Biferial names (vid. Hutton. d. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100. 101. 102. 103. 104. 105. 106. 107. 108. 109. 110. 111. 112. 113. 114. 115. 116. 117. 118. 119. 120. 121. 122. 123. 124. 125. 126. 127. 128. 129. 130. 131. 132. 133. 134. 135. 136. 137. 138. 139. 140. 141. 142. 143. 144. 145. 146. 147. 148. 149. 150. 151. 152. 153. 154. 155. 156. 157. 158. 159. 160. 161. 162. 163. 164. 165. 166. 167. 168. 169. 170. 171. 172. 173. 174. 175. 176. 177. 178. 179. 180. 181. 182. 183. 184. 185. 186. 187. 188. 189. 190. 191. 192. 193. 194. 195. 196. 197. 198. 199. 200. 201. 202. 203. 204. 205. 206. 207. 208. 209. 210. 211. 212. 213. 214. 215. 216. 217. 218. 219. 220. 221. 222. 223. 224. 225. 226. 227. 228. 229. 230. 231. 232. 233. 234. 235. 236. 237. 238. 239. 240. 241. 242. 243. 244. 245. 246. 247. 248. 249. 250. 251. 252. 253. 254. 255. 256. 257. 258. 259. 260. 261. 262. 263. 264. 265. 266. 267. 268. 269. 270. 271. 272. 273. 274. 275. 276. 277. 278. 279. 280. 281. 282. 283. 284. 285. 286. 287. 288. 289. 290. 291. 292. 293. 294. 295. 296. 297. 298. 299. 300. 301. 302. 303. 304. 305. 306. 307. 308. 309. 310. 311. 312. 313. 314. 315. 316. 317. 318. 319. 320. 321. 322. 323. 324. 325. 326. 327. 328. 329. 330. 331. 332. 333. 334. 335. 336. 337. 338. 339. 340. 341. 342. 343. 344. 345. 346. 347. 348. 349. 350. 351. 352. 353. 354. 355. 356. 357. 358. 359. 360. 361. 362. 363. 364. 365. 366. 367. 368. 369. 370. 371. 372. 373. 374. 375. 376. 377. 378. 379. 380. 381. 382. 383. 384. 385. 386. 387. 388. 389. 390. 391. 392. 393. 394. 395. 396. 397. 398. 399. 400. 401. 402. 403. 404. 405. 406. 407. 408. 409. 410. 411. 412. 413. 414. 415. 416. 417. 418. 419. 420. 421. 422. 423. 424. 425. 426. 427. 428. 429. 430. 431. 432. 433. 434. 435. 436. 437. 438. 439. 440. 441. 442. 443. 444. 445. 446. 447. 448. 449. 450. 451. 452. 453. 454. 455. 456. 457. 458. 459. 460. 461. 462. 463. 464. 465. 466. 467. 468. 469. 470. 471. 472. 473. 474. 475. 476. 477. 478. 479. 480. 481. 482. 483. 484. 485. 486. 487. 488. 489. 490. 491. 492. 493. 494. 495. 496. 497. 498. 499. 500. 501. 502. 503. 504. 505. 506. 507. 508. 509. 510. 511. 512. 513. 514. 515. 516. 517. 518. 519. 520. 521. 522. 523. 524. 525. 526. 527. 528. 529. 530. 531. 532. 533. 534. 535. 536. 537. 538. 539. 540. 541. 542. 543. 544. 545. 546. 547. 548. 549. 550. 551. 552. 553. 554. 555. 556. 557. 558. 559. 560. 561. 562. 563. 564. 565. 566. 567. 568. 569. 570. 571. 572. 573. 574. 575. 576. 577. 578. 579. 580. 581. 582. 583. 584. 585. 586. 587. 588. 589. 590. 591. 592. 593. 594. 595. 596. 597. 598. 599. 600. 601. 602. 603. 604. 605. 606. 607. 608. 609. 610. 611. 612. 613. 614. 615. 616. 617. 618. 619. 620. 621. 622. 623. 624. 625. 626. 627. 628. 629. 630. 631. 632. 633. 634. 635. 636. 637. 638. 639. 640. 641. 642. 643. 644. 645. 646. 647. 648. 649. 650. 651. 652. 653. 654. 655. 656. 657. 658. 659. 660. 661. 662. 663. 664. 665. 666. 667. 668. 669. 670. 671. 672. 673. 674. 675. 676. 677. 678. 679. 680. 681. 682. 683. 684. 685. 686. 687. 688. 689. 690. 691. 692. 693. 694. 695. 696. 697. 698. 699. 700. 701. 702. 703. 704. 705. 706. 707. 708. 709. 710. 711. 712. 713. 714. 715. 716. 717. 718. 719. 720. 721. 722. 723. 724. 725. 726. 727. 728. 729. 730. 731. 732. 733. 734. 735. 736. 737. 738. 739. 740. 741. 742. 743. 744. 745. 746. 747. 748. 749. 750. 751. 752. 753. 754. 755. 756. 757. 758. 759. 759. 760. 761. 762. 763. 764. 765. 766. 767. 768. 769. 770. 771. 772. 773. 774. 775. 776. 777. 778. 779. 779. 780. 781. 782. 783. 784. 785. 786. 787. 788. 789. 789. 790. 791. 792. 793. 794. 795. 796. 797. 798. 799. 799. 800. 801. 802. 803. 804. 805. 806. 807. 808. 809. 809. 810. 811. 812. 813. 814. 815. 816. 817. 818. 819. 819. 820. 821. 822. 823. 824. 825. 826. 827. 828. 829. 829. 830. 831. 832. 833. 834. 835. 836. 837. 838. 839. 839. 840. 841. 842. 843. 844. 845. 846. 847. 848. 849. 849. 850. 851. 852. 853. 854. 855. 856. 857. 858. 859. 859. 860. 861. 862. 863. 864. 865. 866. 867. 868. 869. 869. 870. 871. 872. 873. 874. 875. 876. 877. 878. 879. 879. 880. 881. 882. 883. 884. 885. 886. 887. 888. 889. 889. 890. 891. 892. 893. 894. 895. 896. 897. 898. 899. 899. 900. 901. 902. 903. 904. 905. 906. 907. 908. 909. 909. 910. 911. 912. 913. 914. 915. 916. 917. 918. 919. 919. 920. 921. 922. 923. 924. 925. 926. 927. 928. 929. 929. 930. 931. 932. 933. 934. 935. 936. 937. 938. 939. 939. 940. 941. 942. 943. 944. 945. 946. 947. 948. 949. 949. 950. 951. 952. 953. 954. 955. 956. 957. 958. 959. 959. 960. 961. 962. 963. 964. 965. 966. 967. 968. 969. 969. 970. 971. 972. 973. 974. 975. 976. 977. 978. 978. 979. 980. 981. 9