The giving a clear account of the Feudal Rights, Tenures, &c. in Scotland, will not only be useful on account of the great intricateness of that form of Government, but also because it will enable us to see what parts in our present happy Constitution bear still any resemblance to it.

Many of the Northern Nations before they left their native Countrys were unacquainted even with the Name of King, those among them that had introduced that title, were not Slaves to the Will of their Sovereign, on the Contrary in time of Peace the had but a Slender Share of Power, & in War tho' his Jurisdiction was extensive, yet it was no greater than what every Leader of an Army had ever possess'd, „his „Corps were not compos'd of Vir'ligs (as is now

„the Custom) but of Freemen who had Shares in „whatever was conquer'd, & preserv'd their antient „Liberty's even in their new acquisitions„; after having seiz'd the greater part of the Lands in their new Dominions for their own Use, they took the old Inhabitants under their protection; Least new Invaders should attack them, they establish'd a Military Government, yet it bore a great likeness to that of their Native Country.

„Their General remain'd their Chief, & a part „of the Lands was bestow'd upon him, the rest „was divided among his principal Officers „under the Name of <u>beneficia</u> or <u>Fiefs</u>„, who „on receiving them bound themselves when summon'd „to bring a certain number of Men according to the „extent of their lands; these great officers parcell'd „out their territorys among their followers with the

same proviso; thus a Government was form'd upon Military Ideas, & therefore the possessions were only during pleasure, & the Kings Elective.

Long before the XIV.th Century the Kings became Hereditary & also Fiefs descended from Father to Son; but as both the Sovereign & Nobles were equaly benifited by this, the feudal Constitution receiv'd no change; & the Kings from the scanty revenues allow'd them, & the the smallness of their Jurisdiction made still a very mean appearance.

The only Taxes the Feudal Law obliged Vassals to pay their King were on the making his Eldest Son a Knight, upon the Marriage of his Daughter, or to ransom Him if He should be taken Prisoner. He receiv'd some casualtys from his own Vassals such as the Wards & Marriages &c. & sometimes an Aid from them call'd a Benevolence this was so nam'd to show it was a Voluntary gift

not occasion'd by any right of his.

The Kings had no mercenary Armys, every one of his Vassals & the Subvassals of the Barons being oblig'd to bear Arms when necessary; this kept up in them their Warlike disposition, & strengthen'd their love of independency, it was many ages before They had any Soldiers about their persons, their only Guards were the hearts of their Vassals; happy were it if Princes would ever look upon these as their only defence particularly in a Free Country.

In the earliest days the Kings us'd themselves to determine all controversys among their People, but Causes daily Multiplying, it was necessary to appoint Judges to decide them; but on the irruption of the Barbarians into Europe, who destroy'd most of the great Citys, Justice was for a long time not administer'd, & every sort of Murder, Rapine &c. prevail'd throughout

Europe; every Offender us'd to throw himself under the protection of some Chief, & thus escape his due deserts; to remedy these disorders, many Nobles were permitted to administer Justice over their own Vassals, time & the incroaching spirits of these Men made their Jurisdictions hereditary, & their Fiefs were erected either into Baronys or Regalitys; the rights of the former were very great, & those of the latter unbounded; a Lord of a Regality could appoint Judges to try Civil, as well as Criminal Causes, & if any of his Vassals were summon'd into the King's Courts, he had the priviledge of repledging, that is of removing the trial into his own Court; thus the Dependants of these Barons scarcely seem to have been subjects of the Crown; a Feudal Kingdom therefore was little more than a number of small states kept together by a

feeble bond call'd a King.

All these various alterations gradualy weaken'd the power of the Crown, & consequently encrease'd that of the Nobles, & in the end render'd them independant; for they not contented with having their Fiefs hereditary in their families, at length obtain'd the power of entailing them, so that their Estates being unalienable, they could encrease them, tho' never diminish them; titles of honour became also hereditary, & what is more extraordinary many of the Offices of State, & even some of business.

The Historys of most European Nations in these early days are full of the ambition & haughtiness of the Nobles, this was chiefly owing to the number of their Vassals who were ever ready to obey their Orders, so that they despis'd the commands of their Sovereigns, & often deposed them.

Tho the Barons were every where audacious, the Scotch one's carry'd it to the greatest excess, this was owing to the Wildness of their Country which afforded them Secure retreats, to the Scarcenes of Towns, for where numbers of People settle, due orders must be establish'd, & proper obedience to the Magistrates, for without these no man's life would be safe; but the Barons Vassals laying detach'd, they paid no deference except to their Chieftains.

The dividing the country into Clans also greatly encrease'd the power of the Nobles, to trace the origin of these we must just look back to the first beginnings of Feudal Governments.

The Nations that overran Europe consisted of various Small tribes, when they were to divide their conquer'd Lands, the General or King, us'd to give a certain portion to his own Tribe or family,

as the safety of each individual consisted in a general Union, these little Societys used to stick firmly together, & therefore were distinguish'd by some Common Name; this was long before either Surnames or Coats of Arms were introduc'd; when they grew in vogue the descendants & relations of every Chieftain took his Name & Arms, the other Vassals in time did the same; thus Clanships was form'd, & in a couple of Generations all believ'd to be sprung from the same Ancestors, & therefore with the greater alacrity follow'd their Chief whom they at the same time look'd upon as the head of their family, & consequently these associations could be overcome but never broke; in some parts of the Kingdom the change of Manners, & difference of Government has never yet been able to root out what at first was only immaginary; in other Feudal Kingdoms these unions have been form'd, but not to the degree they have in Scotland.

The small number of the Peerage & consequently the greatness of their possessions very much contributed to render them even Rivals to their Princes, add to this their frequent intermarriages which as it introduced consanguinity between them made numbers of them look upon the King's quarrelling with any particular Baron as a common cause; many who had no tyes of blood used also to take part on account of leagues of Mutual defence which they used to make even in times of peace.

The frequent Wars with England assisted to make the Nobles formidable, particularly those in the southern parts of the Kingdom, their Vassals being ever forced to fight, & consequently having obtained the knowledge of War, the King's found those Chiefs in particular very impracticable; whoever could secure these borderers in the domestic broils were sure of success.

Tho' the Barons had the right of Jurisdiction over their Vassals, yet they being Free Men, could not be tried but by Vassals, wherefore these were obliged to attend his Courts for to take a part in the passing & executing of the Sentences; they also then made such regulations as were deemed necessary for their small Society, & sometimes voluntarily granted Supplys to their Superior.

By altering only the name of Baron & placing in the room of it that of King, we see the first foundation of Parliaments; these in antient times were call'd <u>The King's Great Councils</u>, All the Barons, Bishops, Abbots & greater Ecclesiasticks were bound by the condition of their Fenures to attend these Councils; Parliaments did not long continue upon this footing, encreasing in wealth & being made free by the Kings

obtain'd leave to send two persons to represent them, property by various methods being split, gave rise to the distinction between Greater & lesser Barons, the former were those that kept their old extensive fiefs, the others the new & less powerful Vassals of the Crown, they both were bound to the same feudal services, & consequently to personal attendance in Parliament. Their is nothing more remarkable than the pains the lesser Barons took to decry their being force'd to assist in Parliament, & the Towns to obtain Charters excempting them from sending Representatives.

+anno 1427. In the Reign of James I. the Lesser Barons obtain'd a Statute excempting them from personal attendance in Parliament, on condition they sent a certain number of Representatives for each County, but they soon neglected even this, so that the Parliament was compos'd only of Lords Spiritual, & Temporal, of Knights of the Shires, & of Burgesses.

We must not expect to find that order & delicacy in these Parliaments that were in those of England, on the contrary both the Barons & Burgesses assembl'd in the same House; the Scotch being a very active & Military People could not bear the plague of regularly going through every Bill brought before them, they therefore established a Committee by the Name of Lords of Articles; these were to examine every Bill to be lay'd before Parliament, & had the right of rejecting them, so that they gave negatives before debate.

The Lords of Articles appear to have been at first appointed by the Kings, but afterwards were chosen by Parliament, they were composed of ch. Spiritual & ch. Temporal Lords, ch. Burgesses, & ch great Officers of the Crown, the ch. Ecclesiastics

he & Great Officers of the Crown being always ready to act according to the pleasure of the King, & it being hardly possible that the Temporal Peers & Burgesses should be so chosen or to vote against the Crown, therefore the King had the total direction of the Lords of Articles; & there being an equal number of Lay & Spiritual Lords, namely 55. the King was sure of the Majority, besides the Barons little cared what was determin'd in Parliament, they entirely relying upon their Swords.

James VI. had many disputes with the Clergy & depriv'd them of the right of setting in Parliament; but in 1598. an Act was pass'd by which those on whom the King confer'd the Vacant Bishoprieks & Abbeys were to have a Seat in Parliament; the General Assembly of Ecclesiasticks after several consultations agreed that Ministers might accept of Seats

in Parliament; & gave it as their opinion that it would be much for the interest of the Church if 51. Ministers were chosen from among the Clergy to attend Parliament, this is nearly the number of Ecclesiastics that us'd to attend in antient times.

James VI. in 1587. obtain'd a Statute by which the lesser Barons, or Freeholders were oblig'd to send Representatives for every County to Parliament, His reason for wishing this to pass was that He look'd upon it as the most effectual method of diminishing the Authority of the Nobility.

James's mounting the English Throne greatly alter'd the System of Government in Scotland, his having more Wealth, & opportunitys of assisting those attach'd to him, made the Nobles more obsequious to his commands, for they living much after the fashion of the English & having a less income, found it

necessary to have money to supply these additional expences; the Common People were great sufferers on account of this, for the King grew despotick, & the Nobles on their side lay'd heavier taxes on their Vassals than they had been accustom'd to; the great Feudal rights that were vested in the Nobles grew at this time to be instruments of oppression upon their Vassals, the Military Ideas on which they were founded being entirely lost.

After James's death Scotland was not look'd upon in the partial light it had been during his Reign; Charles t. little regarded that Nobility; they taking fire at some encroachments of his upon their order made complaints which were not redress'd, upon which they appear'd armd against him; Charles sent English Troops to quell this rising, but his unhappy quarrels with the English Nation check'd the Vigour of his Actions

& involv'd Scotland in his ruin; Charles II. at the Restoration regain'd possession of the Royal Prerogative in Scotland & during his Reign & that of his Brother James VII. the Sovereign's commands were receiv'd with the greatest submission; this was owing to the Estates & Spirits of the Nobility being wasted.

But on the happy Revolution, the interest of the Common People was secur'd; by the Claim of right their liberties were preserv'd, & the number of their Representatives in Parliament being encreas'd, they acquir'd weight in the Constitution, & then began to give themselves more up to Commerce & police.

The Union of the Two Kingdoms has entir'ly destroyed the power of the Nobility only sixteen representatives for that whole body are allow'd seats in Parliament, & 45 Representatives for the Commons; the Eldest Sons of Peers are not permitted to be Members for this Country, this Their & plainly enough shows that both the

English & Scotch Nations have been gainers by the Union, except the Nobility of the last, who are now looked upon when in the British Parliament as little more than the Tools of the King; it would be very happy if some method could be hit upon to alter this

Account of the
Scotch Government
taken from Robertson