

the Roman Law. Where Persons within the Years of Puberality do marrie, either may at that Age dissent. Yea, tho one of the Partys be marriageable, if the other be under the Age of Marriage, the Person marriageable may afterwards retract and marrie another Stewart. *ibid* tit. Marriage. Error in a substantial Point hinders Consent of Marriage, unless a new Consent be given after Discovery of the Mistake, as was done by Jacob to Leah, whom he mistook for Rachel. But Marriage will subsist, notwithstanding of certain accidental Mistakes, as when one marries a Strumpet thinking her a Virgin, or a poor Woman, from an Opinion that she was rich. For in such a Case, the Man mistaken has himself to blame, that he made not better Inquirie. Some Laws require not only Consent of Parties, but also the previous or concurrent Consent of their Parents. Thus Marriage of a Child without the Parents Consent, is contrary to the judicial Law of Moses Exo. 22, 17. Deuter. 7, 3. By the civil Law if a Child in familia paterna is married without Consent of the Father, the Marriage is null, and the Children procreated in such a Marriage are reputed illegitimate. *l. 2. ff. de rit. nupt. l. 11. ff. de stat. hom. l. 13. s. 6. ff. ad L. jul. de mar. et iud. In Holland if Minors marrie against Inhibition of their Parents, appealing and giving sufficient Reasons for their Dissent, the Marriage is void. Vinn. Comm. ad tit. Inst. de nupt. In Voet. Comm. ad tit. ff. de ritu nupt. n. 11. In France Marriages of Sons under 30 years of Age, and of Daughters before 25, without Consent of the Parents, are null, Les Loix Civiles &c. tom. 1. part. 1. Liv. 1. tit. 9. sec. 2. art. 1. By a Canon of the Church of England, a Minister marrying Infants i. e. Children under Age without their Parents Consent, testified by themselves in Person, or by sufficient credible Witnesses should be ipso facto suspended for three Years, tho the Bans were published Can. 100. & Can. 62. And by the Narrative of our Acts of Parliament (Act 34. Jac. 1. Sep. 1. Ch. 2. Act 12. Sep. 5. Jas. 2. 8. Mar. 2. 16. Act 34.) thinks that the Mother's Consent ought to be had after the Father's Death: because she hath an equal Natural Relation as the Father. Which is agreeable to the Dutch Law In Voet. Comm. *ibid*. n. 13. But tho by humane Constitutions, the Offence of such Marriages may be reputed unlawful, and excluded from Succession or any Claim of Civil Right arising therefrom; the Marriage is not annulled. For the parental Consent is necessary only necessitate precepti, and not necessitate medi; it nulla impediment matrimonium contrahendum, quae contractum non derimunt. Upon which Account, by the later pontifical Law C. 6. x. de raptor. C. 12. in fin. X. de regular. And also by the Laws of Scotland and England Consent of the Parents is not necessary to make the Marriage effectual. And by our Custom Children of Age marrying without Consent of their Parents, are not in the Case of clandestine Marriage, if the Marriage was regular otherwise, *McKerrie* *ibid*. Nor is the Consent of Curators to a Minor's Marriage required either by our Law 3 July 1622. French and L. *Hermodides contra Grandson* *Stair* lib. 2. tit. 4. s. 60. Or by the Law of Holland In Voet. *ibid* n. 16.*

By the Roman Law, Slaves could not marrie, because these were *alieni juris* *pr. inst. de nupt. l. 3. C. de incest. nupt.* According to our Law *Colver* & *Salters*, who in some Manner resemble Slaves, cannot marrie without their Masters Consent; for by marrying they become emancipate and free from their Service. But

But if, after Marriage, they recorter to their Work, they become Slaves for ever.

Marriage is forbidden between those who are too near allied, ^{or related} to one another. ~~Because~~ Because thro such Marriages Love goodwill and Societie are confined or cramped and pent up within Families which ought to be diffused and propagated in the World by the Cement of foreign Alliances. The Institution of Marriage was designed to unite those who before were not united: therefore such as before are in a Sense one Flesh by Nature, cannot ~~be~~ without the greatest Absurdity become one Flesh by Institution. Alliance or Relation is either that of Kinship or Affinity. Kinship or Consanguinity or Proximity, is the Bond of Relation by Blood or Birth, between all the Descendants from the same common Stock or Parent, called Kindred. Kin-folke Kindred by the Father's Side are termed Agnats. Those by the Mother's Side, Cognats. Affinity is a relative Tie betwixt one of two married Persons, and the Kindred of the other: who are called affines, because the two Families are brought ad finem to a point. The Foundation of this Relation, ~~is~~ is the Union between the Husband and the Wife, which is so close and intimate, that those who are allied by Consanguinity to one of the two, are consequently related to the other. This Affinity makes the Husband look on the Wife's Father and Mother, as being in Stead of a Father and Mother to himself; and the Wife upon the same Account looks after the like Manner upon the Father and Mother and all the Kindred of her Husband. Kinship and Affinity are distinguished by Degrees and Lines. A Degree is nothing but the Distance between Relations. It is so called by a Metaphor taken from Ladders or Steps: because in computing Degrees, we pass or step from one to the next in the Order of Generation *l. 10. s. 10. ff. de grad. et affin.* A Line, is a Series or Succession of Degrees between one Person and another. And as there are three Orders of Proximity, that of Ascendants, that of Descendants and that of Collaterals; so there are three Orders of Lines, tho the Ascendants and Descendants making properly one Line between them, a Line is said to be two-fold, viz: the right or direct, and the collateral or transversal Line. The Right Line consists of Parents or other Ascendants, Names frequently used to signify indifferently all the Persons from whom every one derives his Birth; and Children, or other Descendants. The collateral Line, consists of Brothers, Sisters, Uncles, Nephews and other remote Kindred that are on the Side one of another, every one in his own Line, under the Ascendants common to them. It is called the collateral Line because it is at the Side of the direct Line of Ascendants and Descendants, and in Order to know the Degree of Kindred between two collateral Relations, it is necessary to find in the direct Line the first of the Ascendants that is common to them, that is the first of whom both the one and the other are descended or sprung, and then to count the Degrees which ascend from one of them to that common Parent or Fountain of the Kindred, and those which from that Ascendant descend to the other, whose Relation is in Dispute. Whereas there is only one Line of Ascendants and Descendants, there are as many Lines of Collaterals as there are Places of Issues