

contra Douglas and Lands. Nor was a poor Father as Tutor to his Daughter allowed to uplift a Sum belonging to her, without findin Law- tion to make it for her coming: in Respect it was feared he might spend the Money to the Childs Prejudice 12 Feb. 1633 Govan contra Mithford for A. Falck may on Deathbed name Tutors to his Children to oversee the Persons and Estates after his Death s. 3. inst. de tutel. l. 3. ff. de testam. l. 1. And may in Leige poustie name both Tutors and Corators to them with this Quality, that they shall not be liable for Omissions, or insolent Act s. l. 6. Par. H. W. A Mother also may appoint Tutors to manage what she gives to her Children.

The paternal Authority reacheth over all Children, whether begotten in lawfull Marriage, or not; so be, they are truly known to be such a Children: because the Tie of Birth, which is the Foundation thereof, is the same in both; tho they have not the same Interest in the Fathers Goods, as the Issue of a lawfull Marriage, to whom these Goods are derived by Reason of that Community of Goods betwixt Man and Wife in the conjugal Society. Stat. ibid. s. 6.

During the Parents Life, Children have no <sup>real</sup> Right ~~in~~ Dominion of Property in the Parents Goods. For the Parents be naturally obliged to maintain and educate their Children out of their Estates, that is but a personal Obligation, which gives no Title to Children to meddle at their own Hand with what is their Parents. For as Solomon says (Prov. 20. 29) whose robbeth his Father or his Mother and sayeth it is no Transgression, the same is the Companion of a Destroyer. That is, an untoward Child that lays Hands upon all he can rap and rend from his Father or Mother, by threatening them, or wheedling them, or by wasting what they have and running into Debt, and leaving them to pay it, and makes Light of it, or thinks it no great Sin (pretending it will be his own share, his Parents can well enough spare it; he hath Occasion for it, and can live as a Gentleman upon their strait Allowance) not only keeps the Company of Spendthrifts, but is wicked enough to be a Robber on the Highway, and murders others to feed his own Luxury. The Right Children have to the Estate of their Parents after their Death, shall be handled in its proper Place.

By the civil Law, a Father could not <sup>irregulariter</sup> grant an Obligation to his Son in familia, nor could the one sue the other at Law; because they were held for one Person l. ult. C. de impub. et al. sub. But Children in Scotland are not supposed to be one Person with their Father; for a Father here may contract with his Child if Major, and the Child with his Father; and either may sue for Performance against the other. So Bonds of Provision granted by Fathers to their Children in familia, are not, if delivered <sup>irregulariter</sup> revocable

revocable either directly or indirectly. Not directly: for ~~a~~ a Father having taken an Obligation in the Name of his Daughter or his Family, from the Creditor therein, he has not Power to discharge the Debt; in respect the Obligation was intimated and did not appear to have remained in the Father's Hand 20. Novemb. 1667 Executors of Trotter contra Trotter. Nor can a Father recall such Deeds of Provision indirectly, by contracting Debts thereafter. For albeit when these are not delivered before the Father's contracting other Debt, Diligence upon a Debt even of a posterior Date failing due, while the Bond of Provision remained in his Custody, and might have been cancelled by him, will be preferred to Diligence for the Provision 22 July 1668 Johnston of Shiens contra Arnold. And a Bond of Provision to younger Children, was found not obligatory till Delivery or Death of the Father, and revoked indirectly by the Father's disposing before Delivery his whole Estate to his eldest Son with Warrantice from his own Deeds done or to be done 10 Jan. 1668 L. Glencorse contra his Brethren and Sisters. Yet Bonds of Provision delivered, are preferable to posterior Creditors 14. Novemb. 1676 Johnston contra Children of Roswal 17 Decemb. 1679 Creditors contra Children of Monwal. Unless they can be quarrelled upon the Head of Fraud, or a Design to disappoint the Payment of Debts the Grantor resolved to contract 12 Feb. 1669 Jot contra Dolloch. But a general Provision of a Sum by Contract of Marriage to younger Children before they were born, was found to be only a Substitution to the Father in that Sum; and not like a Bond of Provision to Children nominatim, so that the Father's Creditors posterior to the Contract and Inhibition thereon were preferred to the Children, who were considered only as Heirs of Provision to the Father in such a Sum, who might after discharging the other Heirs be pursued by Creditors in valorem seeing the Provision and Inhibition would hinder the Father only to do gratuitous Deeds in Prejudice thereof, and not to borrow Money 24 January 1677 Grahame contra Raine 21 Novemb. 1682 Creditors and Child of Marjoribanks competing. And one-rous Creditors were preferred to the Debtors Children who had Provisions by Bond anterior to the contracting of the Creditors Debt; in respect the Father was First of the Sums in the Bonds of Provision 23 Decemb. 1709 Creditors of Maschal contra his Children. Bonds of Provision are effectual from Delivery, whether the Delivery was made to the Children themselves or to some other Person for their Behoof. Delivery of such Bonds to a third Person, is presumed to be for the Children's Behoof; unless the Father declare at the Time that he had deposited these Writes upon Terms or would have them returned to himself