

wife provided; and it must be shew'd twice in a Month, till it is 3 Months old and afterwards once monthly till it is 6 Months old, and once in 2 Months till it is a Year old; and from thence once in 6 Months till it can speak. And if any thing is done or not suffered to be done contrary to the Promises, the upon Proof thereof, the Child is not to be admitted to Possession of the Estate. *l. j. §. 10. ff. de inopie. ventre. &c.* In the Law of England there is a Writ ^{of Inspection} issued out of the Chancery, whereby the Sheriff is commanded that in Presence of 12 Knights and so many Women, *tractari faciat per ubi et ventrem* whether the Woman is with Child or not, and if with Child then at what time it would be born, and that he certifye the same to the justices of the size or at Westminster under his Seal, and under the Seals of two of the Justices present. Upon the Sheriff's certifying that the Woman is with Child, a Writ is issued out of the Court to which the Return was made, directing the Sheriff to keep her safe in his Custody, to be viewed every Day by certain Women named in the Writ, so that some of them must be present at her Delivery, Instances of this kind have been rare in Scotland, but probably the Lords of Session would ex nobili officio, for preventing such a monstrous Cheat, as the passing supposititious Child or Hair upon a Family, order the like cautious Circumstances to be used, when they see it needfull. As was done by the Privy Council of Scotland in a Process *de inspiciendo ventre* at the Instance of

contra the Lady Drum.
Stillborn Children or those born dead, are considered as if they had never been born or conceived *l. 12. §. ff. de verb. signif.* So that any thing which would have belonged to them had they come alive into the World, will go to those it would have belonged to if these Children had never been conceived. Monsters who have not humane Shape, are not reputed in the Number of Persons, nor reckoned as Children to their Parents; but such as have what is essential to humane Shape, and have some Excess or Defect in the Conformation of their Members, are ranked with the other Children.

By the Law and Custom of England, he who marries a single Woman, who is with Child whether it be by himself or any other Person, makes her Child legitimate altho it be born immediately after the Marriage, for in this Case the Marriage demonstrates ^{or points out} whose the Child is. But it is to be distinguished in the Case of him who marries a Widow with Child, whether she be apparently with Child, at the Time of her second Marriage, or whether it be doubtful. For in the first Case, it shall be reputed the Issue of the former Husband; and in the other Case of the latter Husband *Fleta lib. 1. cap. 14. Coke inst. 244. a. Covel inst. jur. anglie lib. 1. tit. 9. sect. 7. i. Col. Br. 358.* Yea a Husband if he be not beyond the four Seas which environ the King's Dominions of Britain and Ireland, that is if he be within his Majesty's Jurisdiction, he must own a Child

7. J. Williams Reports vol. 2. case 189.

Child born of his Wife, tho' he were absent from her when the Child believed to have been gotten *(see ibid. Col. ibid.)* Because by Intendment of Law he may come to his Wife. In which Case no Proof is to be admitted of the Illegitimacy of the Child, except where there is an apparant Impossibility, that the Husband should be the Father of it, as if he is but 8 Years old, or is gelt, or hath lost his Genitals. Then only such Issue born within Marriage is Bastard. *Quod sane in iur. est, cum tam duri sint in iis qui ante matrimonium nati sunt, et matrimonio subsequenti legitimi, quos ab hereditate rejiciunt* *Craig feud. lib. 2. tit. 9. §. 13.* According to the civil Law a Child is presumed to be the Husband's if born in the 7 Month after the Marriage *l. 12. ff. de statu hom.* Or in the 8, 9, or 10 Month after his Death *l. 29. pr. ff. de lib. et posthum. l. 3. §. per. ff. de suis et legit. hered. l. ult. C. de posthum. hered. inst. Nov. 39. cap. 2.* But Physicians not being agreed, upon the precise Time how long a Woman may go with Child, and seeing the shortest Time which is marked for a forward Birth, and the longest Time for a backward Birth, may be joined with such Circumstances as may make no doubt of the Certainty of a Rule concerning the Time necessary for a lawful Birth, such as a Fright or sudden Commotion of the Mind, which frequently may occasion a Woman to bring forth before the Time, and on the other Hand, grief, Infirmity, want of Nourishment or the like, may not improbably retard the Birth: it is not reasonable to fix the Time of the Operations of Nature, and especially of those which the Combination of different Causes does diversify, and where it is not possible to point out the precise Bounds of what Nature is able, or not able to do. Therefore it seems most advisable to leave the Determination of this Matter of so great Consequence (in which the Honour of a Mother, the State of a Child, and the Quiet of Families are equally concerned) to the Arbitriment of the Judge, who after taking Advice of skillfull Physicians, weighing Circumstances and the Character or Reputation of the Woman may be allowed to vary a little as to the Time in his Determination *Jo. Voet Comm. ad tit. ff. de his qui sui vel alieni jur. n. 9. l. 1. §. 1. l. 2. §. 1. l. 3. §. 1. l. 4. §. 1. l. 5. §. 1. l. 6. §. 1. l. 7. §. 1. l. 8. §. 1. l. 9. §. 1. l. 10. §. 1. l. 11. §. 1. l. 12. §. 1. l. 13. §. 1. l. 14. §. 1. l. 15. §. 1. l. 16. §. 1. l. 17. §. 1. l. 18. §. 1. l. 19. §. 1. l. 20. §. 1. l. 21. §. 1. l. 22. §. 1. l. 23. §. 1. l. 24. §. 1. l. 25. §. 1. l. 26. §. 1. l. 27. §. 1. l. 28. §. 1. l. 29. §. 1. l. 30. §. 1. l. 31. §. 1. l. 32. §. 1. l. 33. §. 1. l. 34. §. 1. l. 35. §. 1. l. 36. §. 1. l. 37. §. 1. l. 38. §. 1. l. 39. §. 1. l. 40. §. 1. l. 41. §. 1. l. 42. §. 1. l. 43. §. 1. l. 44. §. 1. l. 45. §. 1. l. 46. §. 1. l. 47. §. 1. l. 48. §. 1. l. 49. §. 1. l. 50. §. 1. l. 51. §. 1. l. 52. §. 1. l. 53. §. 1. l. 54. §. 1. l. 55. §. 1. l. 56. §. 1. l. 57. §. 1. l. 58. §. 1. l. 59. §. 1. l. 60. §. 1. l. 61. §. 1. l. 62. §. 1. l. 63. §. 1. l. 64. §. 1. l. 65. §. 1. l. 66. §. 1. l. 67. §. 1. l. 68. §. 1. l. 69. §. 1. l. 70. §. 1. l. 71. §. 1. l. 72. §. 1. l. 73. §. 1. l. 74. §. 1. l. 75. §. 1. l. 76. §. 1. l. 77. §. 1. l. 78. §. 1. l. 79. §. 1. l. 80. §. 1. l. 81. §. 1. l. 82. §. 1. l. 83. §. 1. l. 84. §. 1. l. 85. §. 1. l. 86. §. 1. l. 87. §. 1. l. 88. §. 1. l. 89. §. 1. l. 90. §. 1. l. 91. §. 1. l. 92. §. 1. l. 93. §. 1. l. 94. §. 1. l. 95. §. 1. l. 96. §. 1. l. 97. §. 1. l. 98. §. 1. l. 99. §. 1. l. 100. §. 1.* *Les Loix Civiles ec. tom. 1. part. 2. l. 2. tit. 1. sect. 1. art. 5. This is the law in France, where the Child is brought forth before the marriage, and is reputed legitimate, unless the Husband did own upon Oath any Antenuptial Copulation with his Wife *Arg. l. 12. ff. de statu hom. Jo. Voet ibid. n. 5.* But with us no Man can be forced to own a Child born of his Wife, if their Marriage was not so long before the Birth, as that the Child might have been begotten in that Time. And tho' 9 Months be reckoned the ordinary Time, that a Woman is supposed to go with Child, yet if Immaturity or Retardment in the Birth, that the Child is brought forth before or after the ordinary Time, doth appear in the Opinion of known Physicians, the Child may be held legitimate tho' born in the 8 or 7 or in the Beginning of the 6 Month after the Marriage, or in the 9, 10 or 11 Month after the Husband's Death. *Stair lib. 3. tit. 3. §. 42. vers. it will not be sufficient &c.**