In Dubio, he is presumed to be Father, quem nuptiæ demonstrant L. 5. ff. de in just: voc. That is, he who the Time of the Conception was married to the Mother, whither solemnly or privately, expressly or tacitly by Cohabitation, is presumed to be Father of the Child, and it is held for legitimate, unless the contrary is proved Stair ibid. For Children are understood to be born in law-full Wedlock, tho they cannot prove that their Parents were really married: so be, they were held and reputed Man and Wife by the Neighbourhood and did cohabite as such at Bed and Board. Ten Years Cohabitation of Parents was sustained to infer the Legitimacy of their Child; tho it was offered to be proven that the Child was generally reputed a Bastard 7 July 1626 Somervel contra L. Pilrow. And wherein a mutual Proof by Witnesses hinc inde severals deponed, that the Person in Question was esteemed and looked on as a Bastard, others deponed that his Mother made publick Repentence as a Fornicatrice: with his Father; he was found to be no Bastard, but a lawfull Child: in Respect other Witnesses deponed that they saw his Father and Mother cohabite together as Man and Wife, tho they mentioned not how long the Parents had so cohabited 15 January 1676 Swinton contra Cairns. Nor will it hurt a Child's Pleas of Legitimacy, that the pretended Father refuses him to be his, tho born of his Wife, without further Evidence; or that the Wife was convicted of Adultery committed by her even at a Time answering to the Conception of the Child seeing the Mother may be an Adulteress, and yet the Husband Father of the Child L. 11. §. 9. ff. ad L. Jul. de adulter. As if she should after the Example of Julia, non nisi plena nave vectorem admittere. And when it is not clear whether a Thing took its Rise from a lawful or unlawful Act; the Presumption is for the lawful Act Jo. Voet ibid. n. 7 & 8. Craig Feud. lib. 2. Tit. 18. §. 13. Stair lib. 3. Tit. 3. §. 42. vers. it will not be sufficient, and vers. but because who are. Where a Woman who had brought forth a Child to a Man upon Promise of Marriage instructed by his Bond, had afterwards born another Child before he solemnized Marriage with her, that other Child was not presumed to be the same Man's who got the first; but she behoved to instruct that it was his, and that there was carnal Familiarity betwixt them since the Bond in Order to oblige him to marry her. Because as the Woman's Unchastness after Marriage solemnized would affect it much more should it hinder the Solemnization, if that she had carnal Dealing with another 31 January 1665 Baptie contra Barclay. And the legal Presumption for the Legitimacy of a Child whose Parents are married, may be taken off by contrary Proof: such as that the Husband was impotent, tho conversant all the Time in the same House; or absent at the Time when the Child behoved to have been gotten L. 10. ff. de his qui sui vel alien. jur. Gail 2. Observ. 97. n. 16. so as he could not be then with his Wife, thro his Confinement to Prison, or being at a very great Distance from the Place where she was. The eldest Son in Right of his Birth, hath the Privilege of Primogeniture whereby he being prior tempore is potior jure. By the Law of Moses the eldest Son had a Claim to Superiority over his Brethren Genes. 4. v. 7. 49. v. 3. & a double Portion of the Father's Estate Deut. 21. 17. And

one to be Priest of the Family after the Father's Death before that Office was intailed upon Aaron and his Sons Levit. 20. 1. In Scotland the eldest Son in Right of his Birth is intitled to the sole Succession in his Parents Heretage &c. And albeit Daughters failing Sons succeed equally, the eldest only, gets all indivisible Rights such as Titles of Honour, Superiorities and the Casualties therof and the principal Messuage if a Tower and Fortalice. This Prerogative of Birth given to the eldest Child was in former Times called Eneia from the French Aine the first born, and in the Law of England Æneria Glanvil. Lib. 2 c. 3 Esneey, jus Æneæ enitia pars hereditatis Stat. Marlb. c. 9. Skene de verb. Signif. verb. Eneia, vid Coke on Littlet. fol. 166. b. The Right of Primogeniture is expedient, partly upon a publick, partly upon a private Account. It is expedient for the publick, because the eldest by succeeding in the whole Inheritance, is better able to defend the Nation against any sudden Invasion. And in Britain France Poland and elsewhere great Families having Estates to support themselves their Vassals and Followers for some Time against the common Enemie, without standing Forces under the Government pay are Bulwarks to their Country. The Right of Primogeniture is also privately expedient for preserving the Memory and Dignity of Families, which by frequent Division of the Inheritance, would turn despicable and dwindle into nothing Craig Feud. lib. 2. tit. 13. §. 12. pr.

He is understood to be the first-born Exod. 13. 2. for we call him first not only who is before another, but also whom no other precedes L. 34. pr. ff. de vulg. et pup. substit. L. g. in fin. pr. ff. de reb. dub. So our Saviour is called Mary's first-born Matth. 1. 25. Tho it is piously believed, the blessed Virgin had no other Child but him: of whom the Ancients say, that as he lay in a Tomb in which none lay before himself; so he lodged in a Womb in which none ever lay ather before or after himself. Therefore if a Legacy be left to one's first-born, it will be due to his only Child, Harprecht ad pr. instit. de hæred. quæ ab intest. n. 116. Of Twins or twa born at a Birth, he who comes first out, tho the other follow immediatly is intitled to the Primogeniture Genes. 25. 25. 33. For a Moment or the least Point of Time, sufficeth in Law to distinguish first and second. Albeit it be impossible that two or more Children should come out of the Mother's Womb together at one Instant L. 15. ff. de statu hom. Yet it may happen thro Inadvertance of the Midwife or otherwise, that it doth not certainly appear which is the first-born. In which Case, if the Children be of different Sexes, the Primogeniture is ascribed to the Male Arg. L. 10. §. 1. ff. de reb. dub. But where they are both of one Sex, the Learned are mightily divided in their Opinion, which to reckon the first-born. Some favour the Stronger, some the fairer, a third Sort account both as first-born, others will have neither of them considered as such. Others again, leave it to the Father to determine which of the two shall have the Prerogative. The most solid Opinion seems to be theirs who hold, that the Right of Primogeniture in so doubtful a

case