

Case ought to follow him, whom the other did willingly suffer to usurp and use the Title of firstborn: and that where neither of the two can pretend to sui quasi Possession, the Right of the Privilege should be decided by Lot. Jo. Voet Comm. ad ff. lib. 30. tit. 17. digress. de feud. n. 81. Zoes. de feud. c. 11. n. 16. 11 Ant. Matth. par. 8. n. 32. as was done by Romulus and Remus also Twins not distinguished in point of Age, for determining their Precedence and who should give the Name to their new City.

If a Man have Children by different Marriages, the eldest of the first Marriage only can claim the Privilege of Primogeniture, because one Father can have but one firstborn; and diversity of Mothers does not alter the Right of Primogeniture as to the Father, to whom they are all equally Children. Tho' at the same Time it cannot be denied, but that the firstborn of a Second or third Marriage, may challenge the Prerogative in any Estate flowing from his own Mother. D. Jean. a Somorin de jure. nov. c. 10. sect. 1. n. 2. Jo. Voet ibid. Primogeniture is transmitted by the eldest Son to his eldest Son who in the Right thereof will be preferred to his Uncle the Father's second Brother l. 177. l. 59. l. 62. ff. de seq. jur. It may also be renounced, as appears from the famous Instance of Esau's selling his Birthright to his Brother Jacob Genes. 25. 31.

The learned Grotius handles at large this important Question, whether all men's Children capable of succeeding we ought to reckon those who being born before the Time cannot live, and are born for no other End but to die? And so down the Arguments on both Sides, from which he seems to conclude, that one Child that does one Moment after its Birth, is capable of inheriting whether it was born at its full Time or before Les Loix Civiles Sec. Com. l. 2. l. 1. tit. 1. sect. 2. art. 5. But the Discussion of this Point is of more Use in France, where the dead Man gives Sesin to the living his next Heir of Blood who is capable of succeeding to him, and the Succession of one dying intestate is acquired to the Heir or Executor at the Moment of the Death of the Person to whom he succeeds, without any Act on his Part, then it is of Use in Scotland, where Heirs must be inest upon a Service or Actour or a Precept of Clave, and the next of Kin confirmed as Executor in Order to establish in their Person, any Estate or Goods belonging to the deceased.

Children are either of the whole Blood, having one common Father and Mother, called german Brothers and Sisters; or of the half blood, who have either the same Father and not the same Mother called consanguinian or have one Mother, but different Fathers, called uterin Brothers and Sisters.

Legitimated Children, are natural Children made lawful. The Roman Law allowed Children to be legitimated 1^o per oblationem curiae by offering and entering them in the Ward-Meetings. 2^o By a subsequent Marriage of the Father and Mother ff. 13. inst. de nupt. l. 10. l. 11. C. de natu. lib. Nov. 12. cap.

cap. 4. Nov. 19. Nov. 74. in pref. et cap. 1. Nov. 89. cap. 8. 3^o By Rescript of the Prince Nov. 74. cap. 2. Nov. 89. cap. 9. 10. Nothing like that Legitimation per oblationem curiae is any where in Use. Nor doth any of the other two Kinds obtain in England. For as to that by Marriage of the natural Parents, if a Man there have a Son by a Woman, and they marry

after he is born, that Son is an unlawful Child, and the Inheritance will go to the lawful Issue after Marriage 20 Henr. 3. cap. 8. Coke 2. inst. 96 5 Rep. 416. 417. Which Son after Marriage is called mulier, as some think by Corruption from the Latin melior, or the French meilleur, because he is preferred to the elder Brother born out of Matrimony Smith. de repub. ang. lib. 3. cap. 6. Skinner Etymol. verb. mulier; or as others will have it, because he is gotten ex muliere of a Wife l. 93. s. 1. ff. de legat. 3. Item of a Concubine Glandvil lib. 7. cap. 1. In a Parliament held at Mellor the twentieth of Henry the third. It was attempted by the Bishops of England to have enacted by a general Law that all such as were born before Matrimony should be legitimated and made capable of succeeding to Inheritances, as well as the Children born after Matrimony, in Conformity to the civil and canon Law in this Particular. But all the Earls and Barons with one Voice answered, that they would not change the Laws of the Realm which to that Time had been used and approved. And so the Law of England remains to this Day. Nor in England doth the King legitimate Bastards. But the Power of legitimating such hath been exercised there, tho' rarely, by the Parliament: as in the twentieth year of the Reign of Richard the second, the Parliament legitimated the Issue which John of Gaunt Duke of Lancaster had by Katherine Swinford before he married her. Seldin ad Fletam cap. 9.

But in Scotland, a Child born out of Marriage is reckoned to be lawful, either by subsequent Marriage of the natural Parents, or by a Letter of Legitimation from the King. Legitimation of a Bastard by the subsequent Marriage of the Father with the Mother, makes him capable of Succession, and has the same Effect, as if he had been born in lawful Wedlock. Craig feud. lib. 2. tit. 13. s. 6. vers. liberi autem. Spotswood Pract. tit. Bastardy. So that our Law in this Matter is wrong described by the Author of Regium majestatem lib. 2. cap. 51. Year where a Man after begetting Children with a Woman marries another and hath Children by her, the natural Children will be legitimated by his marrying their Mother after Dissolution of the former Marriage by his ~~Wife's~~ Wife's Death. So, as the firstborn natural Child will be intitled to the Right of Primogeniture, and succeed to the Father's Estate before the eldest Child of the first Marriage finde-
-lin de jure feud. part. 3. cap. 5. n. 9. Jo. Voet Comm. ad tit. ff. de concubinis n.