

7. Altho' Brightness of parts and a valiant disposition be not qualities to be insisted on judicially as Arguments for precedency, because it is easy to deceive in those, and a preference given upon such Accounts might occasion Jealousies, or Enmities, and other bad consequences, yet there is no Reason why upright Judges who are to determine the precedency may not take them into consideration, if other Qualities decide not the matter, *Los Lois citatos* &c. *Ibid. Art. 41.*

8. As may be seen as a last Rule in this matter of precedency, the usages of places, if there be any, such without Abuse in *ff de Aed. Lib. 1. § 11 ff de Humil. Lib. in fin. ff de Decret. Los Lois citatos* &c. *Ibid. Art. 42.*

9. Since it may happen that one may have several of the aforesaid Qualities in one matter, has only one of them, and these qualities may be such as that one of them singly may be of more Advantage than two of the others; It is by having regard to the several combinations, and to the Circumstances, that we ought to Judge of the precedency founded on those Qualities, *Los Lois citatos* &c. *Ibid. Art. 43.*

Members of Court generally take place among themselves according to the precedency of the Courts where they serve, and from whom they derive their power, as the Clerks of the great Council look place of the Clerks of Session; the Lordes of Session at *supra* page 327 look place of Gentleman or peerly counsellors.

Women before their marriage have precedency by their Fathers, or are of the same order and Rank to which their Fathers belong *l. d. ff de Senator. with this difference between them and the male Children, that the same precedency is due to all the daughters, that belongs to the eldest, upon the Estates and honours, were provided to her; but it is not so among Sons.*

By the civil Law a Wife participates of the Rank and condition of her Husband, which ought to equalize that of the Wife *l. 13 C. de dignit. l. ult. C. de Incol. Nob. 105. cap. 2. pr. l. d. ff de Senat. l. 10. C. de Nupt. unless it be in the case of princesses, who marry below their ~~rank~~ Quality.*

In France the wives dignified by their offices enjoy the same precedency with their Husbands together with a Communicator of their prerogatives, as Madam la Chanceliere, Madam la president, and in Scotland a Wife shares of the Husband's Title and precedency in some temporary dignities, such as that of Knights Bachelors. But with us officers being thought to be bestowed on Men upon a personal Account, no Honour thereby is communicated to their Wives.

As wives follow the conditions of their Husbands, so it is ^{with} widows who follow the condition of their last Husbands *l. 10 C. de Nupt.*

Quere If the Apperancy of blood, called by the doctors, Spes & Expectantia Successionis; the immediate Hope of Succession, gives precedency while the predecessor lives, v. g. If the Son of an eldest Brother will be preferred to his Uncle while the elder Brother lives? To which it is answered, That if neither the Uncle nor the Nephew have any Special Dignity, the Son of the elder Brother will be preferred. For a Man and his apparent Heir being looked upon in the Law, as one and the same person in many Things disadvantageous to the latter, as if the predecessor were dead, in so far as an Apperancy or the judgement upon a Man's Estate acquired by his eldest Son in the Father's Lifetime is redemptible from him an apparent Heir by the Father's creditors &c. It is just that he have the Advantages of an apparent Heir, *M. Konz. precedency. chap. 9. Quest. 12.*

Children before their Father attained to any dignity, do partake of his dignity in all cases, as if they had been born after it was acquired, *M. Konz. Ibid. Quest. 13.*

A Son who is in a judicial employment ought to prefer his Father ^{who} not because in such a case the Representers the Prince or Commonwealth. But when a Son is dignified only with a private Title of Honour, not the Commonwealth, the Law of Nature ought to prevail above the Law of Honour, if none more dignified than the Father, be represented with the Father and so. As where a third person having precedency of the Father and not of the Son is in the Company, the Son must take place of the Father, because it is a general Rule, I must preferre you, if I preferre him who preferres you, according to the analogical Maxim *Qui maior saltem me, bene me, et honoris ibid. quest. 14.*

It is commonly received in England, That the daughter of a peer's eldest son, who is not a Peer, has the same Rank as her Father, dying before him, should not after her Grandfather's death, take place of the daughter of a younger Peer.

But Sir *Spencer* & *J. Bid. Quest. 14.* maintains to think that she should take place of a younger Honour going by Succession, she came by her descent; and the Right of Representation, after the Grandfather's death, to be the daughter of an older Peer, it being a disadvantage to think, that her Elder Brother (if she had one) might take place as a Peer's Grandson, and she act claim Rank as an Earl's Grand daughter, when her Father's Family comes by Representation in place of the Grandfather, and partakes of all the Honours thereof. Consequently as the Earl's Brother becomes an Earl, because his Father had if he had also been an Earl, for the same Reason, his sister may challenge the same as an Earl's daughter.

The Dignity of these two orders Honours equalizes the precedency, *calores paribus*. In persons knighted by a King are preferred to those made Knights by a Commonwealth; and those ennobled by a great Commonwealth are preferred to those of the same degree nobilitated by a lesser Commonwealth. But Knights created by the Kings Commissioners are not preferred to those made by his Majesty himself: because *qui facti pro alium, facti pro se*, *M. Konz. Ibid. Quest. 23.*

A Prince may not dilate any of his own Subjects in the Territories of another Prince, because a Prince may without his own dominions exercise any voluntary Jurisdiction in Relation to his own Subjects. But no Prince can in another's Territories confer Honours upon the Subjects of another Prince, *M. Konz. Ibid. Quest. 24.*

M. Domat *Los Lois citatos* &c. *Tom. 2. Liv. 1. Tit. 3. art. 46 & seq.* gives the Clergy Ranks among them selves according to their Characters, and the Dignity of their Functions, in a Composition of Clergy men with in all cases where the Clergy exercise the Spiritual Functions of their Ministry, he ranks all the Clergy below all the Laity, without distinction of Degree. But on occasions where Clergy men and Laymen happen to meet in one and the same Body to perform therein the same functions, he assigns in all equal Rank thereto; and where Clergy and Laymen happen to be in company together in which the Ecclesiastical Ministry has nothing to do, ranks the Clergy men diversally according to their own Qualities, and the Qualities of the Laymen with whom they Chance to meet.

According to the Rules of precedency established in England among the Clergy, the great officers, Nobility and others of this Kingdom, the two Arch Bishops of Cantebury & York have place above all the great officers and Nobility in Parliament, Councils and Commissions, having in some particular cases where the precedency is referred to the Lord Chancellor or Lord Keeper; all the other Bishops have place above all the Barons of the Realm, but they give place to Bishops, Earls, Marquesses, and Dukes. If a Bishop of this Realm had in former days been made a Cardinal, he did not take any place of precedency in Parliament as a Cardinal, but took his place in Right of his Bishoprick, in his seat in Parliament *31 H. 8. Cap. 10. Coke 4 Inst. 361.*