

Relative or Civil Capacities. 2^o As ~~being~~ undid in Communities and Corporations: And as having Right of Providence in Companies either for sitting or walking.

Book. 1.

Of Persons in their Natural Capacities

Persons in their Natural Capacities are distinguished 1^o By their Sex. 2^o By their Age. 3^o By some natural Infirmary or Incapacity of Mind or Body.

Chap. 1.

Persons distinguished by their Sex.

Sex is the Difference of the genital parts in Male and Female employed in the Affair of Generation. This distinguishing Character is called Sex (in Latine *Sexus*) as some think from the Greek *Sex* habitus Nature: others felch it from *sexum*, because the Sex ~~are~~ differentiated by those parts which are hid in sitting; and a third Sort will have it to come from *Sexus* otherwise, for that it is otherwise with Males than with Females.

Law takes Notice of the Male Sex whether frigid or castrated; and of Female whether impotent or barren; of which there will be Occasion to speak in the proper place. One who is both Male and Female ~~is~~ called an Hermaphrodite is reckoned to be of that Sex which is most prevailing in the Person, l. 10 ff. de Statu Hom.

In some Cases, the Condition of Men is in Law better than that of Women. l. 9. ff. de Statu Hom. In so far as the latter are removed from the publick Offices of Judge, Magistrate, Advocate &c. l. 2. ff. de Reg. jur. l. 12. s. 2. ff. de iudic. and cannot be Witnesses in Civil Causes except where they are necessary Witnesses. They cannot be served Jurors of Law tho they may be Jurors nominate or Jathive, or Curators. They are under the power of their Husbands, by whom they must be authorized in Processes ~~at~~ their Instance and against them. The Civil Law allows not a Woman to be Juror for another, by reason of the Velleian Decree of the Senate l. 3. ff. de hoc ius. But both in Scotland and England unmarried Women may be Jurors; tho Wives cannot. Married Women with us cannot effectually oblige themselves even with Consent and Authority of their Husbands otherwise than in Relation to their Lands or heritable Rights or Mement. A Mother by marrying a second Husband forfeits the Tutorship of her Children by the first Marriage. In France Widows who having Children by a former Marriage, marry again with Persons beneath their Quality are put under an Interdiction as to the Disposal of their Estates, which they can neither sell nor alienate; that the same may be proved to the Children Les Loix Civiles &c. Tom. 1. part 1. Liv. 2. Tit. 2. Sect. 1. Art. 9.

In

In other Cases Women have Advantage by Law, and their Condition is better than that of Men. For a Woman can sooner make a Testament, marry, or go out of Supplicity than a Man. She is not obliged to attend the King's Host, when Males between 60 and 16 are called out. When a Woman with Child is condemned for a Capital Crime, her punishment is deferred till she be delivered.

Chap. 2.

Persons distinguished by their Age.

Age distinguishes among Persons, those who have not Reason or Experience enough to govern themselves, from those to whom Age has given such a Maturity of Reason as to enable them to be Masters of their own Conduct.

Male and Female have Divers Ages to several purposes, in which they have more or less Power given them, viz. Impuberty or Impillarity, Puberty or Minority, and Majority or ripe and perfect Age.

Pupilarity in Males continues till 14, and in Females till 12 Years of Age: During which Time they bear the Name of Pupils, and cannot dispose of their Persons or Estates; and are exempted from personal Execution by Caption or Waring for Debt, or any Civil Cause Act. 41. Feb. 6. Stat. H. 8. But yet a Decree was obtained against an Infant 4 years old as charged to enter Heir to his Father superseding Execution till his Impillarity were past; in respect he had no Tutor 31 January 1677 contra Murray. And Pupils tho they have neither

velle nor nolle, may be charged, and perhaps denounced Stewart's Answers to Dilect. Doublet's Pupils. No Person under 12 years of Age can be convicted as Keeper of Writs: because such are not reckoned capable of Intromission January 1620. Within contra Stewart. For managing the Estates of Pupils not having Tutor the Lords of the Session upon Application to them, appoint Factors Act of Seder. 14 February 1730.

Puberty or Minority, is that Period of years between pupilarity and Majority. It is called Puberty, because then Hair grows on as Pubis, the Mark of Ripe-ness for Marriage. After the Years of Pupilarity are run out, those before called Pupils get the Name of Minors, and therewith a free Disposal of their own Persons. They may contract Marriage l. 8. C. de Nuptijs make latter Wills l. 5. ff. qui Testam. fac. pos. l. 20. s. 1. ff. de Liber. leg. 30 Novemb. 1620. Steynson contra Allan. may pursue for Delivery of their Writs without Consent of their Curators 20 June 1629. L. Haddo contra Mowat. They are obliged to give their Oaths in Actions against them when required, and if they appear not after Citation, may be held as confessed 19 June 1620. E. Marr contra his Pupils.

A Minor may give his Oath, tho his Curators be not present, for tho they were present and should confess what the Minor denies, he could not be thereby hurt 1 July 1620. Forbes of Gash contra L. Piteligo. Again Minors are understood to be Doli capax, and therefore are punishable for Crimes and Trespasses, but yet Law allows them the Assistance of Curators to balance their Levity and want of Experience in Civil Affairs, till they are of perfect Age.

The