

to adjudge her Estate thereupon, that it might as to those by such an indirect Method whom she could not legally prohibit directly pass it over to, would be void the an Adjudication for her true or lawfull Debts by Bond or other wife, where nothing is designed in fraudem legis cannot be quarrelled *M^r Kenze ibid.* But an Abrogation by a Woman of all goods belonging to her (which were moveable) to her son procreated by a Man, she, when soluta, had committed adultery with in his lawfull Wifes Time, was not annulled upon the Statute (d. Act. 117. Par. 12. f. 6) Because it voids only Dispositions and Gifts of her Estate, granted by a Woman divorced for Adultery from her lawfull Husband, and afterward married and keeping Company with the Adulterer at Bed and Board 7. March 1707 Dr. Irwin contra Phene of Halyards.

Tit. 2. of Parents, and Children.

Among the old Romans, Fathers had once Power of Life and Death over their Children in familia or under the paternal Power *L. ii. ff. de lib. et post. num. c. ult. c. de pat. potest.* From the Presumption that he would prove a very equitable Judge, which was afterwards restricted to the Power of moderate Correction and further Punishment left to the publick Magistrate *L. 3. c. cod. l. un. c. de emend. proping. Caun. c. de his qui parent. vel lib. occid.* But still a Father was allowed for his own Support in Time of Famine, to sell his Child into Bondage *L. 2. c. pat. qui fil. distrax.* He had Action *de exhibendis liberis* against any who detained his Children from him *L. 1. ff. de lib. exhib.* A Father had absolute Right to any Stock delivered by him to his Son to live upon or trade with, and to what the Son raised out of such Stock or gained by it, called *peculium profectivum* and was intitled to the Usufruct or Profits of the Son's proper Estate derived to him from his Mother by Succession or otherwise acquired than from the Father, called *peculium adventitium* while the Property thereof continued in the Son himself. But the Father had no Title to the Property or Profits of Money or Goods acquired by his Son with the Sword or in War-Service, called *peculium castrense*, or got by his gown, in the Profession of some liberal Art or Science, termed *peculium quasi castrense*: both which Sort of Goods the Son might as any other Person, freely call his own without his Father's Consent *L. 1. inst. per quas person. cum. acquir. l. 6. c. de bon. qui lib.* Children in patria potestate were not so under the Power of the Mother: for that she herself was under Authority of the Husband as her Head. And one who is subject to another's Power, cannot have others subjected to him as he is subjected to that other *L. 21. ff. ad L. Jul. de adulter.* So that a Roman Mother could challenge only Respect and Obedience as due to her from the Children. In Scotland, both Father and Mother are allowed a Power of moderate Correction of their Children *ut quos ad vitia decora non provocant domestica laudis exemplis, saltem mediocri medicina impellorot.* A Father hath no Power to sell his Children for Slaves, but he

hath Right to their Custody Education and Consent, may carry them whither he pleases; and if any Person conceal withhold or detain them from him, he has Action against such Person, for exhibiting and delivering them up. Which Children may till they marry, or set up a separate Employment for their Livelihood, be compelled even after Majority to remain with their Father, and employ their Service for his Use; unless the Father treat them unreasonably by harsh Usage; or unreasonably oppose their Settlement by a suitable Marriage or Calling in due Time. But, Fathers have no such Interest over the Estates of their Children, as the civil Law allows. And Papists are in some Measure abridged of the paternal Authority and Power. For they are not indulged to have the Education of their own Children; but that Trust is committed to the Children's protestant Relations, who may sue for it. In failing such protestant Relations, Action for having the Children's Education lies at the Instance of the King's Advocate or Solicitor; and the Lords of Session are empowered to modify an Allment for the Children out of their Means, or the Estate of their Parents, to be paid to the Person intrusted with the Children's Education Act 8. Par. 1. Sect. 1. Ch. 2. junct. Act. 3. Sect. 9. Par. 8. W.

By the civil Law a Father might dispose of his own Estate and that of his Children too, by substituting an Heir to them, if they died before, provided when they could not make a Will for themselves, which is called pupillary Substitution *pr. inst. de subst. l. 2. ff. cod.* A Son in familia could not borrow Money without the Father's Consent *L. 1. ff. ad senat. Maced.* Nor marry without such Consent, otherwise it was no Marriage, and the Child born begotten therein illegitimate *L. 2. ff. de rit. nupt. l. ii. ff. de stat. hom. l. 13. §. 6. ff. ad L. Jul. de adult.* But with us, the pupillary Substitution is unknown 13 July 1681 *Christy contra Christy.* A Child not under Age may borrow Money without the Father's Consent: nor doth the Want of such Consent annul a Child's Marriage.

By the civil Law a Father was Tutor or of Law to his emancipated Children *lit. instit. de legit. parent. tut.* With us a Father is lawfull Administrator both as Tutor and Curator *ipso jure* to his Children 14 July 1681 *Bartholomew contra Bartholomew*, without any Cognition or other Solemnity; and is not liable for Omissions or Misauthorizing. But he is not exclusive of other Curators, who with his Consent may be chosen by Appointment of the Judge *Stair lib. 1. tit. 5. §. 12.* And if he intromet with any Estate of his Children not derived from him, a Curator *ad litem* will be appointed for clearing his Accounts 14 July 1681 *Bartholomew contra Bartholomew.* A Father *lapsus bonis*, having set a Fack of his Son's Land for a Yearly Duty payable to the Father as Tutor to the Son, could not effectually assign the said Fack for Payment of his own Debt: albeit he the Father might yearly receive and discharge the Fack-Duty 29 January 1629 *Lands contra*