

by virtue of a particular provision in a second or third Contract of Marriage or other Disposition as heir to his parents in which there are Divers persons or lines substituted. Such heirs of provision whether male or female, will succeed; and daughters will Exclude sons of another Marriage.

The heir substitute in a bond, is he to whom the bond is payable expressly in case of the Creditors death, or after his death. The above Ancient Decisions allowed such an heir substitute to claim the right to the bond, unless the substitute or original Creditor happen to die before the term of payment: for if he survived the term it went to his heirs, tho he never allowed the substitution. 23 Feb. 1623 Litch contract, tho he never allowed the substitution. But by a tract and series of later Decisions, this is altered, and the person substitute is now admitted to the bond as truly, altered, and the person substitute if he survive the term, if he do not expressly alter the substitution: partly, for that heirs are not admitted simply and but in Discharge & chiefly, because parents by their Estates ordinarily intend that their Childrens names should succeed to Estates at their death, whensoever the same should happen. 18 Jan. 1625 Wal contra Dobie 26 June 1634 Litch contra Jones 4 Feb. 1680 Robertson contra Preston. Starb. lib. 3 Feb. 5 1681

ver. ad to the second Question. Stuart answers to Duble. doublet Feb. Heirs of provision & substitute.

Of Heirs at Law.

An heir at Law, is one to whom Law gives the Inheritance on account of his proximity of blood. He is ~~the~~ termed heir of Law, because he succeeds finally by right of blood. He bears also the name of heir generally, not because he may succeed to many things (as a General Service, for all heirs may, and sometimes must be generally served: but partly, because he generally Represents the Deceased, and is obliged to fulfill all his debts, not granted on death bed, in respect of whom heirs substitute are reckoned as Strangers: partly, for that heirs of law are absolutely heirs without limitation, and succeed to every thing not specially provided to other heirs, whence they are called heirs whatsoever. Craig Feud. lib. 2. Fet. 1. § 2 p. 10.

Heirs of law are divided into those properly so called, and heirs of conquest. The heir of law in a proper sense, is one who succeeds to a person deceased in heretage, i.e. lands and other heretable rights devised to him by Descent or Succession as heir to his predecessor. Sometimes one person and sometimes more, are proper heirs of law. One person is heir of law, when the Deceased hath made one or more, or one female for his nearest of Line. More persons

are heirs of law jointly, when several females or their issue succeed, who divide the estate among themselves equally so far as it is divisible, and because they succeed not in Solidum, but in equal portions, are called by us heirs portions, and in English Law, *parce non, quod recedat.* The heirs portions is one who succeeds to a person deceased in heretage, i.e. lands or other heretable rights of his own purchase.

Substantive of Lineal Succession, I shall first explain, some Rules concerning it, and then describe the order of it.

In order to know who may be heirs, it is necessary to know who are the persons Incapable of this Quality; for these being excluded others are Capable of it. Still born Children are not counted in the number of Children who succeed: for they are considered in the same manner as if they had never been born. But the Children who are not yet born when their fathers die, called Posthumous Children, and as yet born when their fathers die, called Nephews Children, and the like wife those who are taken out of their Mothers wombs & are being dead before she was brought to bed, are reckoned in the number of Children who succeed Craig Feud. lib. 2. Fet. 13 § 6 Ver.

Posthumous Children. A Monster or Mass of flesh without humane shape, born of a woman cannot, altho it have life, succeed to her husband: because it is not counted in the number of persons. 14 Feb. Mal. Hornine Craig Feud. Ver. 1. Quarta autem postea sed

Loia Civiles &c. Com. 1 part. Liv. 2. Fet. 1. Sect. 1. Art. 8. Which is agreeable to the Law of England, Bracton d. c. 10. Ang. lib. 2. c. 20.

no. 10. Coles Inst. 7. b. 2. Miers in France and England are not Capable of Inheriting lands there, vide supra pag. 1390. But Craig Feud. lib. 1. Fet. 1. § 3 is of opinion, that the such severity is used in Scotland towards Strangers: This tells us, that he did not Remember that ever land or heretage was with held from any person here because he was a foreigner. And Sir George Mackenzie (Coler. on act 7. Part. 2. Fet. 1. Fet. 2) says he finds it Decided that Strangers may succeed with us, 3. Adoptive Children or Bastards have no right to succeed to the adopter, or their natural father; but only natural Children born in lawful wedlock Craig Feud. Ver. Fet. 1. autem § 10. Starb. lib. 3. Fet. 4. § 3. Liv. 2. Civiles &c. Com. 1 part. 2. Liv. 1. Fet. 1. Sect. 2. Art. 8. Liv. 2. Fet. 1. Sect. 2. Art. 1.

The next Question in the number of own lawful Children those who are born in the short time after the Marriage of their Mother (that the husband had just Reason to say that he is not their father) and likewise those that are born so long time after the death of the husband, that it is reasonable to say