

Church accepteth such for legitimate. And all the Earls and Barons with one voice answered, that they would not change the Laws of the Realm, which hitherto have been used and approved.

& barones una voce responderunt, quod nolunt leges Angliæ mutare, quæ hucusque usitatæ sunt & approbatæ.

Fitz. Bastardy, 21, 22, 25, 27, 28, 30, 33. 1 H. 6. 3. 11 H. 4. 84. 39 Ed. 3. 14. 44 Ed. 3. 12. 12 Co. 72. 2 Inst. 96.

Subsequent marriage of parents and acknowledgment by father.—*But **32** now by the Code, Art. 47, sec. 29,¹ which re-enacts the Acts of 1786, ch. 45, sec. 7, and 1820, ch. 191, sec. 7, it is provided that if any man shall have a child or children by any woman whom he shall afterwards marry, such child or children, if acknowledged by the man, shall in virtue of such marriage and acknowledgment be legitimated and capable in law to inherit and transmit inheritance as if born in wedlock. And by the Act of 1868, ch. 199, repealing and re-enacting sec. 30 of the same Article,² (1825 ch. 156,) with amendments, it is provided that the illegitimate children of any female and their issue may take and inherit real and personal property from their mother or each other or the descendants of each other, and where such illegitimate children may die leaving no descendants, or brothers or sisters or descendants of such brothers or sisters, the mother if living may inherit, or if she be dead her heirs at law may inherit both the real and personal estate of such illegitimates as if they had been born in lawful wedlock.

In countries where the law prevails that a subsequent marriage legitimates bastard children of the same parents, an exception is made of such children as were conceived at a time when their parents were under some impediment to marry. Such are adulterine or incestuous bastards. The legitimation of bastards by a subsequent marriage was formerly said to rest upon a presumption or fiction, that at the time the child was begotten there was a consent to a matrimonial union interposed, though the union itself was not to be completed or avowed until afterwards. It seems, however, that this ancient fiction is not sanctioned by the law of Scotland, *Shedden v. Patrick*, 1 Macq. H. L. Cas. 535.

The rule is said to be recommended by the consideration that it tends to encourage the conversion of what was irregular and sinful into the honorable relation of marriage. *Fictio autem juris nunquam admittitur contra naturam et bonos mores*. Hence the operation of the law will be excluded by anything which renders it impossible to apply the presumption, Co. Litt. 244 b, n. 2; see *Munro v. Munro*, 16 Dunlop, Bell & Murray, 30; 1 *Robinson App. Ca.* 492; Bac. Abr. Bastardy, A.

¹ Code 1911, Art. 46, sec. 29.

² Code 1911, Art. 46, sec. 30; Art. 93, sec. 134.