

pose of declaring a marriage, which has been thus terminated by the death of either party, to have been null and void, for the purpose of bastardizing the issue of such marriage, or barring the husband of his courtesy, or the widow of her dower; nor can any one, by any judicial proceeding be bastardized after his death, who had carried the reputation of legitimate during his life; because wrongs, and personal defects die with the individual; and the peace of families and the nature of the testimony by which alone pedigrees are capable of being traced, in cases where a party makes title by *descent, require that there should be a limitation beyond which the institution of any judicial proceeding for the purpose of trying the validity of any marriage or the legitimacy of any person ought not to be allowed. *Co. Litt.* 33; 1 *Hall. Const. Hist. Eng.* 395; *Kenn's Case*, 7 *Co.* 142; *Hinks v. Harris*, 4 *Mod.* 182; *Hemming v. Price*, 12 *Mod.* 432; *Hayden v. Gould*, 1 *Salk.* 119; *Brownsword v. Edwards*, 2 *Ves.* 245; *Elliott v. Gurr*, 2 *Phill.* 16. If these principles be correct, and as entirely applicable here, under different forms of judicial proceeding, as in England, it follows, that there can now, after the death of Mary, be no judicial proceeding had to declare her second and third marriages, with Davidson and with Fulton, void for the purpose of bastardizing her issue by either of them.

But the issue of Mary by her second and third marriages, which were absolutely void, not merely voidable, are here claiming as parties to this suit; and found their title to recover materially and essentially upon the validity of those marriages, and their own legitimacy as the fruit of them. In all such cases, where a party claims as heir or next of kin, and his own legitimacy, or that of the deceased under whom he claims, is thus necessarily involved, and put in issue, it never has been questioned, that the Court might inquire into and decide upon the validity of the marriage, or the fact of legitimacy. This has been often done in England, *Alleyne v. Gray*, 2 *Salk.* 437; *Mace v. Cadell*, *Corp.* 233; *Stark. Evi.* pt. 218, 931, and has also been allowed by the Courts of this State; *Cheseldine v. Brewer*, 1 *H. & McH.* 152; *Ferlet v. Gojon*, 1 *Hop.* 494; because, wherever the validity of a marriage or the legitimacy of a party forms a component part of the matter in controversy, it becomes indispensably necessary, that the Court should inquire into and determine upon that fact, as well as every other part of the case; for otherwise it would be to suppose a suit brought before a Court, which had not a capacity to try the cause. 1 *Bac. Abr.* 571. And upon that ground, although it is perfectly well settled, that the Court of Chancery has no criminal jurisdiction whatever, and is in its institution and forms of procedure absolutely civil, yet if a bill be filed in it for the purpose of setting aside a deed or to be relieved against a will on the ground of fraud, the instrument complained of may be shewn to be a