

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. (q) 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, (r) and has also been allowed by the courts of this state; (s) 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 of action. (t) 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 forgery: and the fact of forgery may, when thus incidentally involved, be determined and relief given, founded upon a criminal fact, although it would be altogether improper for it *directly* to decide upon any such question upon a criminal charge. (u)

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(q) 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; Haydon v. Gould, 1 Salk. 119; Brownsword v. Edwards, 2 Ves. 245; Elliott v. Gurr, 2 Phill. 16.—(r) Alleyne v. Grey, 2 Salk. 437; Mace v. Cadell, Cowp. 233; Stark. Evi. 4 pt. 218, 931.—(s) Cheseldine v. Brewer, 1 H. & McH. 152; Ferlat v. Gojon, 1 Hop. 494.—(t) 1 Bac. Abr. 571. (u) Barnesly v. Powel, 1 Ves. 120, 287; Stace v. Mabbot, 2 Ves. 553; Duntze v. Levett, Fergusson's Rep. 63; Stark. Ev. 4 pt. 931; Peake v. Highfield, 1 Russ. 560.