

dies, and he marries the woman by whom he had the natural child, it seems to be the better opinion that the child legitimated by the subsequent marriage does not acquire the rights of primogeniture over the sons of the first marriage, Co. Litt. 245, n. 1. The point was discussed but not determined in *Kerr v. Martin supra*. But from *Spedden v. Patrick supra*, it appears that under the law of Scotland legitimation *per subsequens matrimonium* operates only from the time of marriage and not from the time of the birth. The eldest son has still some rights under our descent laws, and the point may be of some importance.

What law governs in determining illegitimacy.—It was determined in England in the case of *Doe v. Vardill*, 5 B. & C. 438; S. C. 2 Cl. & F. 571; 7 Cl. & F. 853, that a child born in Scotland of parents domiciled there but who at the time of its birth were not married, but afterwards intermarried in England, could not inherit lands in England as heir of the father.⁵

34 *In *Wright's Trusts supra*, it was held that, though as to the validity of the marriage the law of the country where it takes place is to be followed, yet as to the effect of the marriage the law of the parents' domicile obtains, and that the legitimacy of a child is determined by the law of the country where its parents are domiciled at the time of the conception and birth of the child, and not by the law of the country where the child was born, and so in the latter case, where a domiciled Englishman became the father of a child by a French woman, and afterwards having, as the Vice-Chancellor took it, gained a domicile in France, married the mother, and acknowledged the child, it was yet held illegitimate. Here the mother did not unite in the acknowledgment, the French law requiring both parents to acknowledge it.

The inclination of Judge Story's opinion, *Conf. of Laws*, sec. 93, *et seq.* seems to be, however, that the question of legitimacy or illegitimacy ought to be decided exclusively by the law of domicile of origin. Thus if by the law of the country a man born in Scotland a bastard becomes legitimate by subsequent marriage, he ought to be held legitimate every where. And *e converso*. In the French case of *de Conti* about 1668, cited and followed in *Rose or Munro v. Ross*, 4 Wils. & Shaw, 289, it was decided that a bastard child born in France, where the law of legitimation by subsequent marriage is admitted, becomes legitimate by the subsequent marriage of his parents though it take place in England where such law of legitimation is

⁵ But the rule laid down in *Doe v. Vardil supra*, relates only to the case of a descent upon an intestacy and does not affect the case of a devise of real estate to "children." *In re Grey's Trusts*, (1892) 3 Ch. 88.

With regard to personalty, the English courts, after conflicting decisions, seem to have adopted a contrary rule. In the case of *In re Andros*, 24 Ch. D. 637, it is held that a bequest of personalty in an English will to the children of a foreigner must be construed to mean his legitimate children, and by international law as recognized in England those children are legitimate whose legitimacy is established by the law of the father's domicile,—as by the subsequent marriage of the parents, where that law so provides. The opinion in this case reviews the earlier decisions and is itself followed in *In re Grey's Trusts supra*.