

No 538. bastard cohabited together by the space of ten years as married folks, and were reputed to be married folks. Which exception was sustained, notwithstanding of a reply, bearing, that the person whose bastardy he sought, was reputed and esteemed by all the persons in the whole country, where the parents of the bastard and also himself dwelt and conversed, a bastard, which being *pro fisco*, he ought to be preferred. This reply was repelled, and the exception sustained. See BASTARDY.

Fol. Dic. v. 2. p. 262. Durie, p. 210.

1642. February 25. CRAWFURD against PURCELS.

No 539.

Status defunctorum not to be enquired into after a long tract of time.

MALCOLM CRAWFURD having by gift under the Great Seal, the right of a tenement of land in Edinburgh, pertaining to the King as *ultimus hares*, by the decease of umquhile Hugh Crawford, last infest therein, who was bastard, and who died without lawful bairns, and Helen and Bessie Purcels, who were possessors of this land; and these defenders *alleging*, That this action ought not to be sustained, because it is 30 years since the time of the decease of the said umquhile Hugh, who is alleged to be bastard, and at the time of his decease he was betwixt 40 and 50 years of age, so that before that time there can be none living to prove the marriage of the said umquhile Hugh's parents; or that they cohabited together as married folks, for this is *ultra hominum memoriam*, and his lawfulness was never drawn in question all this time while now; likewise, while he lived, he was ever reputed lawful; the LORDS, in this case, (which was a case of such antiquity) found it a matter of dangerous preparative to give way to such actions, and to sustain and draw in question *statum defunctorum post lapsum tanti temporis*, which may concern the subjects of all qualities, who are of any years; and therefore, found no process on that gift, this allegiance being proved.

Fol. Dic. v. 2. p. 263. Durie, p. 894.

* * * Kerse reports a similar case, 10th January 1618, Hirpet against Scot, No 42. p. 2197. *voce* CITATION.

1667. February 25. LADY MILTON against LD MILTON.

No 540.

ADULTERY was found proved, though not any two of the witnesses concurred in the same individual act; for in such crimes which allow of reiteration of acts, all proceeding from the same *animus*, like so many links of a chain, the *semiplena probatio* of every one fortifies the whole, and makes it equivalent to the full proof of two concurring witnesses to one specific act; which