

*præsumitur semper ementis, nisi sit filius in familia*; and so found the Lords in Posso's case, in February, 1668. See this in some cursory Observes out of Faber's Codex, *alibi*. But *dubatur*, if the money wherewith the land is bought be the price of lands lying in another kingdom and sold, and brought from that place, *ex. gr.* from England, where, if it had continued, they could not have reached it.

*Advocates' MS. No. 471, § 6, folio 244.*

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ANENT THE MARRIAGE OF APPARENT HEIRS, IN WARDHOLDINGS.

THE Lords found, in the case of my Lord Colvill, in February, 1667, that an apparent heir's precipitation of his marriage when his predecessor is upon death-bed, to frustrate the Exchequer, or other superior of ward-lands, of the benefit of their marriage, is unwarrantable; and therefore found them liable in the casualty, as if they had been married after; as may be seen at the forecited place, where they went upon Balfour's authority. (Skeen, in his learned notes on *Quoniam Attachiamenta*, cap. 91. in Latin, tells sundry decisions of the same.) Yet it may be argued, that an apparent heir should be permitted to marry *in articulo mortis* of his predecessor, as well as the law allows a man to marry his concubine *in articulo mortis, ad effectum legitimandi bastardos ex ea genitos*, whereof Craig gives an instance in the Lord Semple, p. 230; for both equally prejudices the fisk. Yet there seems to be some disparity; for the marriage of the apparent heir, (if it had not been precipitated,) were a certain and uncontroverted casualty befalling to the superior. That of bastardry is not so: because the bastard may dispoise, in *liege poustie*, his means to whom he will; and if he have lawful children, they succeed to him without any right *ab intestato*; and so nothing would fall due to the King, or lord of regality, if it be within one; and they have right to bastardies and last heirs, which is doubted. *2do*, Marriage is most favourable, and therefore allowed at any time; and yet its principal end, which is *procreatio prolis*, cannot then be obtained; *et cessante causa, cessare debet effectum*; and this reason is common to both cases, only in the last there is the favour of legitimation superadded. *Vide supra*, July, 1671, No. 235.

If an heir of ward lands be infeft in his father's lifetime, his marriage is not due to the superior; and if he has got one marriage, he will not get the second when he falls a widower. *Alias* in an heiress of ward-lands.—See Skeen and Stairs on the Casualty of Marriage.

*Advocates' MS. No. 471, § 7, folio 244.*

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1676. *February.* SIR WALTER SETON of Abercorne *against* the EARL of WINTON.

SIR WALTER SETON of Abercorne having been the Earl of Winton's tacksmen for three years, as to his casual rent of coal and salt in East Lothian, for which he was to pay him 24,000 merks of tack-duty; and when they came to count and reckon, he gave up exorbitant debursements waired out upon the putting down of