

paration for the offence, by marrying within a few months after, our law is so indulgent as not to bastardize the child, if it be born, though not begotten, in lawful wedlock: for this is an incident that can happen but once; since all future children will be begotten, as well as born, within the rules of honour and civil society. Upon reasons like these we may suppose the peers to have acted at the parliament of Merton, when they refused to enact that children born before marriage should be esteemed legitimate^k.

FROM what has been said it appears, that all children born before matrimony are bastards by our law: and so it is of all children born so long after the death of the husband, that, by the usual course of gestation, they could not be begotten by him. But, this being a matter of some uncertainty, the law is not exact as to a few days^l. And this gives occasion to a proceeding at common law, where a widow is suspected to feign herself with child, in order to produce a supposititious heir to the estate: an attempt which the rigor of the Gothic constitutions esteemed equivalent to the most atrocious theft, and therefore punished with death^m. In this case with us the heir presumptive may have a writ *de ventre inspiciendo*, to examine whether she be with child, or notⁿ; and, if she be, to keep her under proper restraint, till delivered; which is entirely conformable to the practice of the civil law^o: but, if the widow be upon due examination found not pregnant, the presumptive heir shall be admitted to the inheritance, though liable to lose it again, on the birth of a child within forty weeks from the death of the husband^p. But if a man dies, and his widow soon after marries again, and a child is born within such a time, as that by the course of nature it might have been the child of either husband; in this case he is said to be more

^k Rogaverunt omnes episcopi magnates, ut consentirent quod nati ante matrimonium essent legitimi, sicut illi qui nati sunt post matrimonium, quia ecclesia tales habet pro legitimis. Et omnes comites et barones una voce responderunt, quod nolunt leges Angliae mutare, quae hucusque usitatae sunt et approbatae. Stat. 20 Hen. III.

c. 9. See the introduction to the great charter, edit. Oxon. 1759. sub anno 1253.

^l Cro. Jac. 541.

^m Stiernhook *de jure Gothor.* l. 3. c. 5.

ⁿ Co. Litt. 8. Bract. l. 2. c. 32.

^o Ff. 25. tit. 4. per tot.

^p Britton. c. 66. pag. 166.

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