Gardner Vs. Collins

Gardner Vs. Collins

SooperKanoon Citation : sooperkanoon.com/79184

Court : US Supreme Court

Decided On : 1829

Appeal No. : 27 U.S. 58

Appellant : Gardner

Respondent : Collins

Judgement :

Gardner v. Collins - 27 U.S. 58 (1829)
U.S. Supreme Court Gardner v. Collins, 27 U.S. 2 Pet. 58 58 (1829)

Gardner v. Collins

27 U.S. (2 Pet.) 58

SYLLABUS

Where the question upon the construction of the statute of a state relative to real property has been settled by any judicial decision in the state where the land lies, this Court, upon the uniform principles adopted by it, would recognize that decision as a part of the local law.

The statute of descents of Rhode Island of 1822 enacts

"That when any person having title to any real estate of inheritance shall die intestate as to such estate, it shall descend and pass in equal portions to his or her kindred in the following course."

It then provides "if there be no father, then to the mother, brother, and sister of such intestate and their descendants or such of them as there be" and then declares, in the nature of a proviso, that

"when the title to any estate of inheritance as to which the person having such title shall die intestate came by descent, gift, or devise from the parent or other kindred of the intestate, and such intestate die without children, such estate shall go to the kin next to the intestate of the blood of the person from whom such estate came or descended, if any there be."

An estate situated in Rhode Island was devised by John Collins to his daughter, Mary Collins, in fee; Mary Collins intermarried with Caleb Gardner, and upon her death in 1806 the estate descended to her three children, John, George, and Mary C. Gardner. John and George Gardner died intestate and without issue, and Mary C. Gardner, as heir to her brothers, became seized of the whole estate and died in 1822. *Held* that under the provisions of the law of descents of Rhode Island, two-thirds of the estate of Mary C. Gardner descended to Samuel F. Gardner, Eliza Phillips, formerly Eliza Gardner, and Mary Clarke, formerly Mary Gardner, children of Caleb Gardner by a former marriage, they being brothers and sisters of the half-blood of Mary C. Gardner, it being admitted that the remaining one-third, which Mary C. Gardner took by immediate descent from her mother belongs to the heirs of the whole blood of John Collins.

The phrase "of the blood" in the statute includes the half-blood. This is the natural meaning of the word "blood," standing alone and unexplained by any context. A half-brother or sister is of the blood of the intestate, for each of them has some of the blood of a common parent in his or her veins. A person is with the most strict propriety of language affirmed to be of the blood of another who has any, however small a portion, of the same blood derived from a common ancestor. In the common law, the word "blood" is used in the same sense. Whenever it is intended

to express any qualification, the word "whole" or "half-blood" is generally used to designate it, or the qualification is implied from the context or known principles of law.

A descent from a parent to a child cannot be construed to mean a descent through, and not from, a parent. So a gift or devise from a parent must be construed to mean a gift or devise by the act of that parent, and not by that of some other ancestor more remote passing through the parent.

It is true that in a sense an estate may be said to come by descent from a remote ancestor to a person upon whom it has devolved through many intermediate descents. But this, if not loose language, is not that sense which is ordinarily annexed to the terms. When an estate is said to have descended from A.

Page 27 U. S. 59

to B., the natural and obvious meaning of the words is that it is an immediate descent from A. to B.

At the common law, a man might sometimes inherit who was of the whole blood of the intestate who could not have inherited from the first purchaser. As in the case of a purchase by a son who dies with issue, and his uncle inherits the same and dies without issue, the father may inherit the same from the uncle although he could not inherit from his own son.

In the Circuit Court of the United States for the District of Rhode Island, the plaintiff, William C. Collins, instituted an action of ejectment for the recovery of two-thirds of certain real estate in the State of Rhode Island of which Mary C. Gardner died seized and intestate.

The facts of the case agreed upon were as follows:

"The estate in question, two-thirds of which is demanded by the plaintiff in his said writ, was the estate in fee simple of the late John Collins, Esq., deceased, the father of the defendant and the purchaser of said estate. That the said late John Collins died in 1817, leaving lawful issue, *viz.,* John A. Collins, Abigail Warren,

and Mary Collins, and leaving a last will and testament wherein and whereby he devised the estate in question to his daughter, the said Mary Collins, in fee simple, who became seized and possessed thereof accordingly and continued so seized and possessed thereof to the time of her death, *viz.,* 2 October, 1806, and died intestate. That the said Mary Collins intermarried with Caleb Gardner on or about the ___ day of _____, and at her death left lawful issue, *viz.,* John Collins Gardner, George Gardner, and Mary C. Gardner. The said John Collins Gardner died 17 November, 1806, aged about __, of course intestate and without issue. The said George Gardner died 18 September, 1811, aged about __ years, of course intestate, and without issue. The said Mary C. Gardner died 31 December, 1822, aged about __, intestate and without issue. That at the death of their mother, the said John Collins Gardner, George Gardner, and Mary C. Gardner, took from their said mother the said estate as her heirs at law in equal parts, and become seized and possessed of the same accordingly in fee simple, and continued so seized and possessed till the death of the said John Collins Gardner, *viz.,*

Page 27 U. S. 60

till 17 November, 1806. *That thereupon his part of the said estate descended to and vested in his surviving brother and sister, viz., George Gardner and Mary C. Gardner, in fee simple in equal moieties, and thereupon the said George Gardner and Mary C. Gardner became seized and possessed of the estate in question in equal and undivided moieties and fee simple,* and so continued seized and possessed till the death of the said George Gardner, 18 September, 1811. That thereupon his part of said estate descended to and vested in his sister the said Mary C. Gardner in fee simple, and she became seized and possessed of the same accordingly, and thereby became seized and possessed of the whole estate in question in fee simple, and so continued seized and possessed to the time of her death, *viz.,* to 31 December, 1822. That at the death of the said Mary C. Gardner, the defendants, *viz.,* the said John A. Collins and Abigail Warren went into possession of the estate in question, claiming to be the heirs of the said Mary C. Gardner, and the defendants have continued possessed thereof, claiming it as

their inheritance without interruption or adverse claim till the plaintiff's suit as aforesaid."

That the plaintiff, by deeds duly executed, became seized and possessed of all the right and title of the said Samuel F. Gardner, Eliza Phillips, and Mary Clarke, in and to the demanded premises. The plaintiff and Samuel F. Gardner and Eliza Phillips are children of the said Caleb Gardner by a former marriage. That the said Mary Clarke is also a child of said Caleb Gardner by a former marriage, and are brother and sister of the half-blood to the said Mary C. Gardner. That the said plaintiff and Samuel F. Gardner, Eliza Phillips, and Mary Clarke are not of kin to the said late John Collins, Esq., deceased, and have not any of his blood in their veins. And if, upon the foregoing facts, the court shall be of opinion that the plaintiff, and those under whom he claims, are heirs at law of the said Mary C. Gardner, and entitled to said estate, then judgment to be given for the plaintiff, but, if not, then judgment to be rendered for the said defendant.

The statute of Rhode Island upon which the plaintiffs in

the ejectment claimed to recover, was passed in January, 1822, and is entitled,

" *An act directing the descent of intestate estates, and the settlement thereof, and for other purposes therein mentioned.* "

"SECTION 1. *Be it enacted by the general assembly, and by the authority thereof it is enacted,* that henceforth when any person having title to any real estate of inheritance shall die intestate as to such estate, it shall descend and pass, in equal portions, to his or her kindred in the following course: "

"To his or her children, or their descendants, if any there be: "

"If there be no children nor their descendants, then to the father of such intestate;"

"If there be no father, then to the mother, brothers and sisters of such intestate, and their descendants or such of them as there be;"

"If there be no mother, nor brother, nor sister nor their descendants, the inheritance shall go in equal moieties to the paternal and maternal kindred, each in the following course;"

"First to the grandfather;"

"If there be no grandfather, then to the grandmother, uncles, and aunts on the same side and their descendants, or such of them as there be;"

"If there be no grandmother, uncle nor aunt, nor their descendants, then to the great-grandfathers, or great-grandfather if there be but one;"

"If there be no great-grandfather, then to the great-grandmothers, or great-grandmother if there be but one, and the brothers and sisters of the grandfathers and grandmothers and their descendants or such of them as there be, and so on in other cases without end; passing to the nearest lineal male ancestors, and for want of them, to the lineal female ancestors, in the same degree, and the descendants of such male and female lineal ancestors, or such of them as there be."

"But no right in the inheritance shall accrue to any persons whatsoever, other than to the children of the intestate unless such persons be in being, and capable in law to take, as heirs, at the time of the intestate's death."

"And when herein the inheritance is directed to go by moieties

to the paternal and maternal kindred, if there be no such kindred on the one part, the whole shall go to the other part, and if there be no kindred, either on the one part or the other, the whole shall go to the husband or wife of the intestate; and if the wife or husband be dead, it shall go to his or her kindred in the like course as if such husband or wife had survived the intestate, and then died entitled to the estate"

"The descendants of any person deceased shall inherit the estate which such person would have inherited, had such person survived the intestate."

" *When the title to any real estate of inheritance as to which the person having such title shall die intestate, came by descent, gift or devise, from the parent or other kindred of the intestate, and such intestate die without children, such estate shall go to the kin next to the intestate, of the blood of the person from whom such estate came or descended, if any there be.* "

For some time prior to the passage of this act, the law of descents of Rhode Island was regulated by an act of 1798, the first section of which nearly resembles the clause in the statute of 1822. It was as follows:

"When the title of any real estate of inheritance, as to which the person having such title, shall die intestate, came by descent, gift, or devise, from the parent or other kindred of the intestate, and such intestate die without children, such estate shall go to the next of kin of the intestate of the blood of the person from whom such estate came or descended."

The judges of the circuit Court of Rhode Island, having divided in opinion upon the case, the decision was certified to this Court for its decision.

Page 27 U. S. 84

MR. JUSTICE STORY delivered the opinion of the Court.

This case comes before us from the Circuit Court of Rhode Island upon a certified division of opinion of the judges of that court upon the question whether the plaintiff was entitled to recover upon a statement of facts incorporated into the record. The action was an ejectment for two-third parts of certain land described in the writ, and the title of the parties being by descent, depends altogether upon the true construction of the statute of descents of Rhode Island, of 1822. Accordingly as that statute shall be construed, the land now in controversy belongs to the plaintiff or the defendants.

The material facts are that the estate (two-thirds of which are demanded in the writ) was devised by John Collins to his daughter Mary Collins in fee. Upon her death in 1806, the same descended to her three children, *viz.,* John C. Gardner, George Gardner, and Mary C. Gardner. The two

brothers died intestate and without issue, and Mary C. Gardner, as heir to her brothers, became seized of the whole estate, and died intestate and without issue, in December, 1822. The defendants are the uncle and aunt of Mary C. Gardner, the intestate, of the whole blood, being children of John Collins, the devisor, and brother and sister of her mother, Mary Collins. The plaintiff is the brother of Mary C. Gardner, the intestate of the half-blood, and he holds a conveyance of their shares from her other brothers and sisters of the half-blood, they being children of her father by a former marriage. The plaintiff and his brothers and sisters of the half-blood claim the two-thirds of the estate now in question, as her heirs of the half-blood, and the defendants claim the same as her heirs of the whole blood. It is admitted on all sides, that the one-third which Mary C. Collins took by immediate descent from her mother, belongs to the heirs of the whole blood. But the other two-thirds, being taken by immediate descent from her brothers, it is contended that by the statute of 1822, it passes to her heirs of the half-blood.

If this question had been settled by any judicial decision in the states where the land lies, we should, upon the uniform principles adopted by this Court, recognize that decision as a part of the local law. But it is admitted that no such decision has ever been made. If this had been an ancient statute, and a uniform course of professional opinion and practice had long prevailed in the interpretation of it, that would be respected as almost of equal authority. But no such opinion or practice has been known to prevail, and indeed the statute itself is but of very recent origin. Even the statute of 1798, of which, in respect to this point, that of 1822 is almost a transcript is not of a date so remote as to enable us to presume that many cases could have arisen in that state, on which to found a practical construction, without some unequivocal evidence.

The most that has been urged is that there has been some general understanding among the people that such was the meaning of the statute, but even this, though very respectably attested, is encountered by equally respectable statements on the other side. We are driven, therefore, to

Page 27 U. S. 86

consider the question as entirely new and unsettled, and to be decided not upon the mistakes of parties relative to their rights in one or two unadjudicated cases, even if they existed, but by the true construction of the statute itself.

The statute of 1822 enacts that

"When any person having title to any real estate of inheritance shall die intestate as to such estate, it shall descend and pass in equal portions to his or her kindred in the following course,"

&c.; Among other clauses is the following, "if there be no father, then to the mother, brothers, and sisters of such intestate, and their descendants, or such of them as there be." In the present case, there was no father or mother of Mary C. Gardner, the intestate, living at the time of her decease, and as her brothers and sisters of the half-blood are her brothers and sisters within the meaning of the statute, they would be entitled to the estate in question beyond all controversy, if there were no other disqualifying clause. But in a subsequent clause of the statute in the nature of a proviso, it is declared that

"When the title to any estate of inheritance as to which the person having such title shall die intestate came by descent, gift, or devise from the parent or other kindred of the intestate, and such intestate die without children, such estate shall go to the kin next to the intestate of the blood of the person from whom such estate came or descended, if any there be."

The most material differences between the statute of 1798 and that of 1822 so far as regards this question is that the words "if any there be" are omitted in the former, which also uses the words "next of kin to," instead of "kin next to." Both of

these circumstances have been relied on at the bar as indicating a probable change of intention. It is said that both acts admit of two readings, *viz.,* "to such of the next of kin of the intestate as are of the blood, &c.;," or "to the nearest of such of the kin of the intestate as are of the blood," &c.; The latter reading will give the estate to a remote relation of the intestate of the blood, although he be not of the next of kin of the intestate. The former reading requires that the party should be of the next of kin (that being the primary intention), as well as of the blood, and therefore if a person be not of the next of kin of

Page 27 U. S. 87

the intestate, although he be of the blood, he cannot take, and the words of the act of 1822, "if any there be," are relied on to fortify the construction.

We think the legislative intention in both acts was the same, and that the transposition of the words "next of kin" to "kin next," was accidental, and not introductory of any new object. The true construction of the statute of 1822 is that it gives the estate to the next of kin of the intestate who are of the blood, excluding all others though of a nearer degree who are not of the blood, &c.;

In this view of the clause, two questions have been argued at the bar.

1. Whether the words "of the blood" include the half-blood or exclusively apply to the whole blood.

2. Whether the words "came by descent, gift, or devise from the parent and other kindred of the intestate" are limited to a proximate and immediate descent, gift, or devise from such parent, &c.;, to the intestate, or include a descent, gift, or devise which can be deduced mediately from or through any ancestor, however remote, who was the first purchaser to the intestate.

The first question has not been seriously pressed in this Court by the counsel for the defendants, though it constituted in the court below a main ground of argument. We think that the phrase "of the blood" in the statute includes the half-blood. This is the natural meaning of the word "blood" standing alone and

unexplained by any context. A half-brother or sister is of the blood of the intestate, for each of them has some of the blood of a common parent in his or her veins. A person is with the most strict propriety of language affirmed to be of the blood of another who has any, however small a portion, of the same blood derived from a common ancestor. In the common law, the word "blood" is used in the same sense. Whenever it is intended to express any qualification, the word whole or half-blood, is generally used to designate it, or the qualification is implied from the context on known principles of law. Thus, Littleton in his sixth section says that none shall inherit

"as heir to any man, unless he be his heir of the whole blood, for if a man hath issue two sons by divers

Page 27 U. S. 88

ventres, and the eldest purchase lands, &c.;, the younger brother shall not have the land, &c.;, because the younger brother is but of the half-blood to the elder."

The same distinction is found in section eighth of the same author, and Lord Coke in his commentary on the text constantly takes it. So Robinson in his Treatise on Inheritances, 45, after laying down the rule, that the person who is to inherit must be of the whole blood to the person from whom he proximately and immediately inherits, adds that he must also be of the blood of the first purchaser; but that it is sufficient to satisfy this that he is of the half-blood of such purchaser. The legislation of Rhode Island leads to the same result as to the meaning of the word "blood." That colony was governed by the English law of descents from its first settlement until the year 1718, a period of more than half a century. By an act passed in 1718, the real estate of the intestate was divided among all his children, giving the eldest son a double share, &c.;, and in default of issue, the same was distributable among the next of kin of the intestate, within equal degree, &c.; This act was repealed in 1728, and the common law course of descents was revived and remained in force until 1770, when an act was passed providing substantially for the same distribution as the act of 1718. It contained, however, this remarkable proviso

"that no distribution of any real estate in consequence of this act shall extend or be made in the collateral line beyond the brothers and sisters of such intestate and their children and to those only of the whole blood."

In 1772, the act of 1770 was repealed in regard to the double share to the eldest son, but in other respects it remained in force until the revision in 1798, when the proviso that none should inherit in the collateral line except the whole blood was dropped, and there is not either in the act of 1798 or of 1822 any clause referring to the blood of any person as a stock of descent except the very clause upon which the present questions arise. When, therefore, the distinction between the whole and half-blood was well known in the colony, not only as a part of the common law, but as a part of its own legislation, and the proviso is

Page 27 U. S. 89

dropped in which the words "whole blood" were studiously used, and the words "of the blood" only. are found in any correspondent provision; it affords a strong presumption, that the whole blood were no longer deemed to be exclusively entitled to inherit, but that the half-blood should be let in. If the half-blood were not permitted to inherit in cases of this sort, this anomaly might occur; that a son might inherit from his parent the moiety of an estate directly, which he could not inherit from his brother of the half-blood, to whom it has passed by descent from the same parent, if such brother should die without issue. We see no reason, then, to doubt that the words "of the blood," include the half as well as the whole blood. The plaintiff, then, and those from whom he claims being the next of kin of the intestate, [Footnote 1] and of the blood of her two brothers, [Footnote 2] from whom she immediately derived that part of the estate which is now in controversy, is entitled to recover unless the statute in the other part of the clause defeats the descent.

This leads us to the second question. The estate originally came from John Collins by devise to his daughter Mary Collins and by descent from her to her three children, and mediately as to the two-thirds to the intestate through her brothers. The counsel for the plaintiff contends that the clause looks only to the proximate

and immediate descent; the counsel for the defendants that it looks to the origin of the title in the first purchaser, and requires that the party claiming as heir should be of the blood of the first purchaser, through whatever intermediate devolutions by descent, gift or devise it may have passed, and however remote may be the first ancestor. If the latter be the true construction of the clause, it goes far beyond the common law, for that stopped at the last purchaser in the ancestral line, and persons taking by devise or gift are deemed purchasers, and

ascended no higher than it could trace an uninterrupted course of descents. The common law, therefore, would have considered Mary Collins as the first purchaser for all its own purposes of descents. The words are,

"when the title to any real estate, &c.;, as to which the person having such title shall die intestate *came by descent, gift or devise from the parent,* or other kindred of the intestate,"

&c.; Now what reason is there to suppose that the legislature in this clause meant in favor "of *the blood* of the person *from whom such estate came or descended* " to extend its reach beyond that of the common law? No such intention is disclosed on the face of the provision, and every progressive enactment for the last fifty years in Rhode Island is a relaxation of the strict canons of descent of the common law. The words themselves certainly do not necessarily require such an interpretation. As to descents as well as gifts and devises from a parent, it is plain that the act looks only to the immediate descent or title. A descent from a parent to a child cannot be construed to mean a descent *through* and not *from* a parent. So a gift or devise from a parent must be construed to mean a gift or devise by the act of that parent, and not by that of some other ancestor more remote, passing through the parent. It has been urged in another quarter entitled to great respect that the words may be construed distributively; that a distinction may be taken between a descent, gift, or devise from a parent, and a descent, &c.;, from other kindred, and so also that the words "descent, gift, and devise" may be construed distributively, so that in cases of descents, the party who shall inherit is to be of the

blood of the first purchaser, from whom by *intermediate descents* it was passed to the intestate, and that in cases of gifts or devises, the donor or devisor shall alone be the person whose blood is to be inquired for. It may be admitted that the clause is susceptible of such a construction without any great violation of its terms. But we do not think that such is the natural construction of the terms, nor is any legislative intention disclosed which would justify us in adopting it. There does not seem any sound reason why the clause should be construed in the

Page 27 U. S. 91

case of a parent, differently from what it would be in the case of any "other kindred of the intestate." The latter words must be construed in the same manner as if each class of kindred had been enumerated in detail, such as uncles, brothers, grandparents, cousins, &c.;, and if they had been, the same rule from the specific enumeration must have been applied to them as is now sought to be applied to the case of parents. The general expression must be deemed to include all the particulars. Then as to the distinction between descents and gifts and devises.

It is true that in a sense an estate may be said to come by descent from a remote ancestor to a person upon whom it has devolved through many intermediate descents. But this, if not loose language, is not that sense which is ordinarily annexed to the term. When an estate is said to have descended from A. to B., the natural and obvious meaning of the words is that it is an immediate descent from A. to B. If other words of a statute should seem to require another and more enlarged meaning, there would be no absolute impropriety in adopting it; but if the true sense is to be sought from the very terms *per se,* that which is the usual sense would seem most proper to be followed. It is not for courts of justice to indulge in any latitude of construction where the words do not materially justify it and there is no express legislative intention to guide them. But we think that the connection in which the words stand justify us in adhering to the ordinary interpretation. If in cases of gifts and devises the blood of the proximate donor or devisor is alone to be regarded, there being no distinction pointed out in the words of the act between those cases and that of descents, the very juxtaposition of the words affords a strong presumption that the legislature intended to apply the same

rule as to all. If the object was to regard the blood of the party from whom the estate was derived, what reason is there to suppose that the legislature intended less regard to the blood of a devisor or donor than to that of an ancestor? The mischief might be as great in suffering the estate to pass into the hands of strangers, when there were next of kin of the blood in the one case, as in the

Page 27 U. S. 92

other. On the other hand, there might be solid reasons for confining the preference of blood to cases of immediate descents, which could be easily known and easily traced.

One of the known inconveniences of tracing back titles and relationship is the obscurity which at a small distance of time gathers over them. It would often be difficult to ascertain whether there were not relations of a very distant stock of the blood of a remote ancestor who might be entitled to the inheritance to the exclusion of the immediate next of kin of the intestate. And even the course of descents of his own title in a country where estates are universally partible for two or three generations might involve the estate of the intestate in inextricable difficulties, and disable the next of kin from ascertaining into what fragments it was to be subdivided with any reasonable certainty. It would be no want of wisdom, therefore, in a legislature to limit its provisions in favor of the blood to cases where the immediate title could be traced with almost absolute certainty. Certainty of title in a country where titles so rapidly change hands might furnish a far safer principle of legislation than any preference for the blood of persons remotely related to the intestate through some distant and perhaps unknown ancestor. We think, then, that in the case of a gift or devise, the statute stops at the immediate donor or devisor, and ascends no higher for any blood. What reason is there to suppose that in the case of a descent there was a different legislative intention? In the case of a parent, the parent is, by the very terms of the statute, made the sole stock of descent, whether he derived it by descent or by gift or devise from an ancestor or a stranger. In the case at bar, the mother of the intestate took the estate by devise from her father. She was in by purchase, and in the sense of the common law, as first purchaser, and of course the true stock of descent, holding the estate *ut*

feudum antiquum.

It has been said that the object was to preserve inheritances in the same family. To a limited extent this is true -- that is, as far as the legislature has provided for such cases. No general declaration is made by the legislature on the

Page 27 U. S. 93

subject, and no preamble which discloses any leading intention exists. What the legislative intention was can be derived only from the words they have used, and we cannot speculate beyond the reasonable import of these words. The spirit of the act must be extracted from the words of the act, and not from conjectures *aliunde.* The common law carries back in certain cases the descent to the heirs of the first purchaser. But the common law cannons of descents are overturned by the statute of descents of Rhode Island. How then can we resort to the common law to make up the supposed defects in the language of the statute? Here, there is not a *casus omissus,* but a complete scheme of descents, and the only question is how much the proviso carves out and saves from the operation of the general rule. No such words as "the first purchaser" are to be found in the statute, though it is sufficiently technical in other respects, and what right can this Court possess to exchange the words in this statute for the words "first purchaser" when they are not equipollent in meaning or extent? If the legislature intended to set up a new the rule of the common law as to descents, &c.;, from the first purchaser, it seems scarcely credible that it should have omitted the very phrase, considering that for a century at least it was a material ingredient in the law of descents of the colony. Then again, if the argument now urged at this bar for the defendants is well founded, it goes (as has been already stated) far beyond, and indeed to the overthrow of the common law on the very point of first purchasers. Indeed, at the common law, a man might sometimes inherit, who was of the whole blood of the intestate, who could not have inherited from the first purchaser. As in the case of a purchase by a son who dies without issue and his uncle inherits the same and dies without issue, the father may inherit the same from the uncle, although he could not inherit from his own son. [Footnote 3] The statute of Rhode Island imparts to parents a right to inherit the real estates of their children in cases where the latter

die without issue.

Page 27 U. S. 94

The statutes of descents of the different states in the union are so different in their provisions that it is not easy to apply any general rule of construction to them. The cases cited at the bar do, however, demonstrate that in those states where a similar language is used in their statutes of descents, the expression has been uniformly construed to mean immediate descents, gifts and devises, unless that construction has been overruled by the context. The statute of Connecticut of 1784, which has been supposed to be the model of that of Rhode Island as to this proviso, is understood to have received this construction. [Footnote 4] Under words nearly similar, in the Virginia statute of 1792 (the words being "that where an infant shall die without issue, having title to any real estate as inheritance derived by gift, devise or descent from the father, &c.;"), it has been held that an immediate descent from the father, and not an intermediate descent was intended. [Footnote 5]

Upon the whole, our opinion is that both points are in favor of the plaintiff. We all think that the words "of the blood" comprehend all persons of the blood, whether of the whole or half-blood, and that the words "come by descent, gift, or devise from the parent or other kindred, &c.;" mean immediate descent, gift, or devise, and make the immediate ancestor, donor, or devisor, the sole stock of descent.

A certificate will accordingly be sent to the circuit Court of Rhode Island in favor of the plaintiff.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the District of Rhode Island, and on the points on which the judges of the said circuit court were divided in opinion and which were certified to this Court for its opinion and was argued by counsel, on consideration whereof it is ordered and adjudged by this Court that it be certified to the said

Page 27 U. S. 95

Circuit Court of the United States for the District of Rhode Island that the plaintiff and those under whom he claims the estate in controversy are heirs at law of Mary C. Gardner, the intestate, and as such heirs are by the statute of descents of Rhode Island of 1822, entitled to the same estate upon the facts agreed in the case, and that judgment ought to be given for the plaintiff in this cause, all which is ordered to be certified to the said circuit court.

[Footnote 1]

See Smith v. Tracey, 2 Mod. 204; *Crook v. Watts,* 2 Vern. 124; *S.C.,* Shower Parl.Cases 108.

[Footnote 2]

See Cowner v. Cowper, 2 Pecre Will. 720, 735; *Collingwood v. Pace,* 1 Vent. 424; Watkins on Descents, 227, 228 note; Reeves on Descents 176.

[Footnote 3]

See Littleton, s. 3, and Co.Litt. 10b; Litt. s. 8; Co.Litt. 14b.

[Footnote 4]

See Reeves on Descents 160 &c.;

[Footnote 5]

1 Munf. 183; 3 Call. 120.