REPORTS OF CASES

ARGUED AND ADJUDGED

IN THE

COURT OF APPEALS

OF

VIRGINIA.

BY DANIEL CALL.

IN SIX VOLUMES.

VOL. II.

THIRD EDITION.

TO WHICH, (THROUGH THE FIRST THREE VOLUMES,) BESIDES THE NOTES OF THE LATE JOSEPH TATE, ESQ., ARE ADDED COPIOUS REFERENCES TO STATUTES AND SUBSEQUENT ADJUDICATIONS ON THE SAME SUBJECTS.

BY LUCIAN MINOR,

COUNSELLOR AT LAW.

RICHMOND:
PUBLISHED BY A. MORRIS.
1854.

RICHMOND: CHAS. H. WYNNE, PRINTER.

Browne and others *v.* Turberville and others.

Friday, October 24th, 1800.

Construction of the 7th section of the act of descents of 1792.*

W. of full age, died intestate, without issue and unmarried, seised and possessed of an estate partly derived by devise, from his father, and partly by descent from his brother, leaving an uncle and three cousins, children of a deceased uncle of the whole blood on the mother's side, and an uncle of the half blood likewise on the mother's side, and leaving, also, two relations on the father's side. Held the estates should be divided into two moieties: of which, one was to be divided between the two relations on the father's side, and the other was to be allotted to those on the mother's side, to wit: two-fifths to the uncle of the whole blood; two-fifths to the three cousins; and one-fifth to the uncle of the half-blood.

In dividing the lands of an intestate under the 7th section of the act of 1792, it was immaterial from which parent or in what way he had derived his title unless he was an infant.

This was an appeal from a decree of the High Court of Chancery, where Jno. Turberville, Gowen C. Turberville, Richd. C. L. Turberville, Hannah L. Turberville and Geo. Fitzhugh, brought a bill against Browne and wife, and Morton and wife, stating, that in 1796, George Waugh, of full age, died intestate, without issue, and unmarried. That he was seised and possessed of a considerable real and personal estate, part thereof derived to him by devise from his father, Gowry Waugh, who died in the year 17—; and the residue, by descent, from his brother Robert Waugh, who died unmarried, and without issue, in 1795. That the plaintiffs are the next of kin, on the part of his mother to the said George Waugh; that is to say, the plaintiff John Turberville, and George Turberville, deceased, (the father of the plaintiffs, Gowen, Richard and Hannah Turberville,) were the uncles of the whole blood to the said George Waugh on

*What is here spoken of as the 7th section, is the 5th section of the act of descents in the 1 R. C. of 1819, p. 355-'6. In the act of 1785, modified by that of 1792, the 5th and 6th sections answered to the 11th and 12th in the R. C. of 1819, relating to infants, who died entitled to land. The 7th section, which is the subject of the above case, was as follows:

"If there be no mother, nor brother, nor sister, nor their descendants, *and the estate shall not have been derived either by purchase or descent from either the father or the mother*, then the inheritance shall be divided into moieties, of which one shall go to the paternal, the other to the maternal kindred, in the following course:" &c.

The lines in *italics* were struck out in the revisal of 1819.

The Court, in this case, treats those words as inoperative here; because intended to apply only to lands descended from infants: and G. W. was of full age.

Under the act of 1792, a deceased infant's mother was entitled to no part of his personal (any more than of his real) estate derived from his father. And *vice versa*. *Tomlinson* v. *Dillard*, 3 Call, 105. Accordant, 1 Mun. 183 and 339; 2 Mun. 279.

the mother's side, and the plaintiff George Fitzhugh was half brother to the mother of the said intestate. That the wife of the defendant John Browne, and Hannah, the wife of George Morton, are next of kin to the said George Waugh on his father's side. That the plaintiff John Turberville and the said John Browne have taken administration upon George Waugh's estate. That the plaintiffs have applied to the said John Browne and George Morton and their wives, for a divis-
[391] ion of the property of George Waugh, but as the plaintiffs and defendants differ in opinion as to the portions to be allotted, nothing has been done. The bill, therefore, prays for a division according to law, and for general relief.

The answer of Browne and wife admits the facts stated in the bill; except that they know not in what manner Robert Waugh's supposed share of his father, Gowry Waugh's estate, is to be traced and derived from the said Gowry Waugh; but reserving to themselves a future right to investigate that point, they, at present, admit the fact as to Robert Waugh's estate as stated in the bill.

The Court of Chancery was of opinion, "That the statute passed in the year 1792, [Dec. 8th, c. 93, R. C. ed. 1803,] *directing the Course of Descents*, ought to be understood in the following sense: First. When any person, having title to any real estate of inheritance, shall die intestate, as to such estate, it shall descend and pass in parcenary, to his kindred male and female, in the following course, that is to say: Second to his children, or their descendants, if any there be, third and sixth, if there be no children, nor their descendants, then to his father, unless the intestate, who had derived the estate by purchase or descent from his mother, die an infant, without issue, in which case, the father or his issue, by any other woman than the mother, shall not succeed, if any brother or sister of the infant, on the part of the mother, or any brother or sister of the mother or any lineal descendant of either of them be living: Fourth and fifth, if there be no father, then to his mother, brothers and sisters and their descendants, or such of them as there be; unless the intestate, who had derived the estate by purchase or descent from his father, die an infant, without issue, in which case the mother or her issue, by any other man than the father, shall not succeed with the intestate's brothers and sisters, if any brother or
[392] sister of the infant, on the part of the father, or any brother or sister of the father, or any lineal descendant of either of them be living: Seventh, if there be no mother nor brother, nor sister, nor their descendants, then the inheritance

shall be divided into two moieties, (unless the intestate, who had derived the inheritance, either by purchase or descent, from either the father or the mother, die an infant, in which cases the paternal kindred shall not participate of the estate, derived from the mother, and *vice versa*, the maternal kindred shall not participate of the estate derived from the father, by the fifth and sixth sections preceding,) one of which moieties shall go to the paternal, the other to the maternal kindred, in the following course, that is to say: Eighth, first to the grand-father: Ninth, if there be no grand-father, then to the grand-mother, uncles and aunts on the same side, or such of them as there be: Tenth, if there be no grand-mother, uncle nor aunt, nor their descendants, then to the great grand-fathers, or great grand-father, if there be but one, and so on, making the fifth and sixth sections, and that part of the seventh section relative to the parent from whom the estate had been derived, to an infant dying intestate, independent of all the subsequent sections until the fourteenth: Fourteenth, and where for want of issue of the intestate, and of father, mother, brothers and sisters, and their descendants, the inheritance is before directed to go by moieties to the paternal and maternal kindred on the one part, or, if the kindred, on the one part, shall be excluded from succession by the fifth and sixth sections preceding, the whole shall go to the other part: That by the statute interpreted in the sense, which this paraphrase thereof exhibiteth, and by the twenty-seventh section of the statute passed in the same year, *concerning Wills and the Distribution of Intestates' Estates*, [Dec. 13, 1792, c. 92, R. C. ed. 1803,] all the estate of George Waugh, who was of full age, had no issue, and was not married at the time of his death, derived to him, as well from his father Gowry Waugh, as from his brother Robert Waugh, must be divided into two moieties, to one of which his paternal, and to the other his maternal kindred will succeed; that the only plausible objection to this interpretation is, that these words, in the seventh section, *and the estate shall not have been derived, either by purchase or descent, from either the father or the mother*, are taken out of their place, and expounded in a sense not agreeing exactly, if agreeing at all, with their true meaning; and these words in the interpretation, "*or if the kindred on the one part shall be excluded from succession by the fifth and sixth sections preceding*," are arbitrarily supplied in the fourteenth section of the statute directing the course of descents; that, in answer to this objection, the transposition and exposition of those words in the seventh, and the supple- [393]

ment of those in the fourteenth section, may be justified by these considerations: First: the Legislature, forming the general system of succession to real estates of inheritance, manifestly supposed the canons ordained for regulating it, to be dictated by the natural affection which would have moved the owner, in disposing his estate, whether of original or derivative acquisition, if he had appointed testamentary successors, in case he had no children, to appoint his kindred on both sides: but, the Legislature, in a single instance only, which was the case of an infant, who, deriving an estate from father or mother, died, without issue, and unmarried, thought proper, for some cause or other, to interrupt and divert the succession: And, the interpretation proposed in the paraphrase will confine the operation of the fifth, sixth and seventh sections to that instance, and renders the supplement to the fourteenth section a necessary consequence, leaving the operation of the other parts of the statute undisturbed, in every other instance. Second: the words transposed, otherwise expounded, will not only be inconsistent with the supposition and design of the Legislature, but will so derange the whole system, that the greater part of it will be, if not unintelligible, ineffec- [394] tual, in numberless instances; for the seventh section, unconnected with the two which immediately precede it, may, without violating any rule of sound criticism, be connected with all the subsequent parts of the statute, and influence them in such a manner that they will not operate in any other case but that in which the intestate derived the inheritance from one who was not his father or mother." That Court, therefore, appointed commissioners to divide the estates into two moieties; "and allot one half of one of the said moieties to the defendants George Morton and Hannah his wife, and the other half of that moiety to the defendants John Browne* and his wife, and to divide the other moiety into five equal parts, and allot of those five parts, two to the plaintiff John Turberville, two others to the plaintiffs Gowin Turberville, Richard C. L. Turberville, and Hannah L. Turberville, and the remaining part to the plaintiff George Fitzhugh." From which decree, Browne and his wife appealed to this Court.

RANDOLPH, for the appellants,

After stating, that the whole depended on the construction of the 7th section of the act of 1792, contended that the

*It appears by an entry at the foot of the decree of the Court of Chancery, that the defendants, John Browne and his wife, were mistaken, for Rawleigh Travers Browne and Million his wife. The decree was, therefore, to be amended, in that respect, by consent of the parties.

Chancellor's exposition of the statute could not be supported. For, the Court cannot substitute words merely because the Legislature have not made any provision for the case. Indeed, from the various alterations which the law had undergone since the act of 1785, [c. 60, 12, Stat. Larg. 138,] it was fair to infer a change in the Legislative will upon the subject. So that the Court would rather view it, as a *casus omissus*, and resort to the principles of the common law, than adopt the exposition of the Chancellor.

WARDEN, contra. [395]

The common law, upon the subject, cannot be revived, because it was repealed by the act of 1785, and has not been expressly revived by any statute since. There is no controversy, as to the moiety which he claimed from his brother, but the question merely is, as to that derived from his father. Which depends upon the sound exposition of the act of 1792: and the Chancellor's decree contains a just construction of it. But in addition to that, it may be observed, that the act of 1792 only repeals so much of all other laws, as comes within its own purview. Consequently, no part of the act of 1785 is repealed, but what comes within the express provisions of the act of 1792. But, if the present case is not within the act of 1792, then, it will be governed by the act of 1785, which, so far as respects the present case, is not repealed by the act of 1792; because it is not within its purview.

WICKHAM, in reply.

The Legislature, by the act of 1792, intended to provide for all cases of intestacy. The interpolation, in the seventh clause, was not in the revisal prepared for the Legislature, but it was made by the Assembly themselves; which looks as if it was designed; and the Court cannot correct the oversights and omissions of the Legislature. The whole of the act of 1785, is incorporated into that of 1792. So that it is the same law, with the alteration; which the Legislature might make, if they thought proper. The circumstances argue an intention to do so; which intention ought to prevail. Had the 7th section been wholly omitted, there might have been some grounds for Mr. Warden's argument on the act of 1785; but, as it is, there can be no pretext for the construction he contends for.

Cur. adv. vult.

WICKHAM and RANDOLPH, for the appellants.

The seventh section is to be taken independently; and then, no provision having been made for it by the act, it devolves upon the heir at common law: Which regarding the [396] blood of the first purchaser, is consistent with the views of the Legislature, manifested by the amendments and alterations, in the act of 1785. These were introduced into the acts of 1790, and 1792, for the express purpose of restoring the estate to the family of the original purchaser. The statute of 1785, therefore, having been repealed by the act of 1792, (the title and object of which is to reduce all the acts upon the subject into one,) and the latter not having provided for the case, it must descend according to the rules of the common law; which, as to cases of this kind, are restored by the repeal of the act of 1785. For the Chancellor's interpretation, which goes to supply words in a law, cannot be admitted; because, that is beyond the power of the Court.

WARDEN and CALL, contra.

The estate must either go to the heir at common law, escheat to the Commonwealth, or descend according to the act of 1785, which, as in cases of this kind, we contend, stands unrepealed.

It cannot descend to the heir at the common law; because the common law, as to descents, was repealed by the act of 1785; and therefore, if the latter was repealed by the act of 1792, yet, as the common law was not expressly revived by the last statute, it remains repealed; according to the express directions of the act of 1789, c. 9, [13 Stat. Larg. 8:] which enacts, "that whensoever one *law*, which shall have repealed another, shall be itself repealed, the former *law* shall not be itself revived, without express words to that effect." This applies as well to the common law, as to the statute law, and makes a revival absolutely necessary in both cases.

Therefore, unless the act of 1785 is in force, as to these cases, there is no heir or other representative who can take the estate; but it must escheat to the Commonwealth [397] for defect of heirs: Which would be a very harsh construction, when there are so many blood relations of the decedent living; and, therefore, the Court will adopt it with great reluctance.

Nor is it necessary to make that construction; since the act of 1785 is in force, as to cases of this kind: For, cases of this sort are, in terms, provided for, by that act; and are alto-

gether omitted in the act of 1792. But the act of 1792 only repeals so much of every other act, as comes within its own purview and provisions. Therefore, as cases, like the present, do not come within the purview or provisions of the last act, but are embraced, expressly, in that of 1785, it follows, necessarily, that the act of 1785, as to cases of this nature, is not repealed.

This interpretation will be the rather made, because, by this means, the intention of the makers of the law, to distribute the estate amongst the next of kindred, will be preserved; and, there will be a canon of descent, for every case, which can happen, while the rule of primogeniture will not be suffered to revive, against the positive will of the Legislature; who have anxiously sought to destroy it, as repugnant to the genius of the Government, and the principles of justice.

Cur. adv. vult.

FLEMING, Judge. There seems to be considerable difficulty in construing the acts of Assembly, concerning the course of descents and the distribution of intestates' estates, as they now stand in our statute books; and, therefore, it may not be improper to take a retrospective view of the whole of them.

The Legislature conceiving, that the rule of descents by the common law, was not well adapted to the genius of the people; and the form of our Government totally changed it, by the act of [Oct.] 1785, [c. 60, 12 Stat. Larg. 138;] which appears to have provided for every possible case. But, in 1792, an alteration was made, in the case of infants dying [398] without issue; excluding the mother, when the inheritance was derived from the father, if there was living any brother, or sister of such infant, or any brother or sister of the father, or any lineal descendant of either of them. And *vice versa*, where the inheritance was derived from the mother.

These provisions are preserved in the 5th and 6th sections of the act of 1792: which exclude any issue, which either the father or mother may have by any other person, than the deceased parent of such infant, where the inheritance was derived from such deceased parent.

So far, the act is clear enough; but, the difficulty arises from the words of the next section, which are: "If there be no mother, nor brother, nor sister, nor their descendants, and the estate shall not have been derived, either by purchase or descent, from either the father or the mother, then the estate shall be divided into two moieties, one of which shall go to the paternal, and the other to the maternal kindred."

This clause would have embraced the present case precisely, were it not for the words, *and the estate shall not have been derived, either by purchase or descent, from either the father or the mother;* which, in strictness, except the present case, and being words of important signification, I do not think myself at liberty to reject them. For, I do not think it proper, in the construction of statutes, to supply, reject, or transpose significant words, as is sometimes done in cases on wills; because, in removing one difficulty, others may arise, and greater inconveniences, perhaps, be introduced. Thus, to add the words *in case of an infant*, after the word *not*, might remove the difficulty in the present case, as it would then run in this manner: "And the estate shall not, *in case of an infant*, have been derived, either by purchase or descent, from either
[399] the father or the mother." By which interpolation the present case would not be within the exception, as George Waugh was of full age; but, had he been an infant, the same difficulty would still have existed; and the practice might, perhaps, be sometimes extended beyond the intention of the Legislature, and cases might, by the aid of supplement, be frequently brought within the meaning of a law, which were never contemplated by those who made it. So, that, besides the impropriety of the Court's undertaking to make the Legislature speak a different language from that to be found in the statute book, the addition would not be co-extensive with the difficulties: and a new interpolation might become necessary, in each case that might arise. Some other more safe and effectual mode of interpretation is therefore to be sought for; and, I think, it is to be found, by a careful perusal of the acts upon the subject.

To me, it appears that it has been entirely owing to the mere inattention of the Legislature, and the unskilfulness of the person who drew the act of 1792, that cases like the present have been left unprovided for; and that the Legislature did not intend that so important a provision should have been altogether omitted. It is, therefore, proper to consider, whether there be not a construction of the acts that will support the intention of the Legislature; which evidently was to provide rules of descent for every possible case. And, I think there is a plain natural interpretation which will effect this important object without any violence to the text.

The 5th section of the act of 1785, fully embraces the case; and as the act of 1792, only repeals so much of other laws as comes within its own purview, and as the present case is not within the purview of the act of 1792, which has made no man-

ner of provision for it, it follows, necessarily, that the act of 1785, is still in force, as to the present case: And thus a complete system of descents is established, agreeable to the view of the Legislature, without recurring to the danger of interpolation, which might, perhaps, produce more mischiefs than it would remedy. [400]

With respect to the personal estate of George Waugh, the act of 1792, *concerning Wills and the Distribution of Intestates' Estates*, directs, that the goods and chattels of an intestate, if there be neither wife nor child, shall be distributed in the same proportions and to the same persons as lands are directed to descend, in and by the act to reduce into one the several acts directing the course of descents, passed the same session, and is the one now under consideration. Both these laws have the same repealing clause. So that the act concerning wills, like that of descents, only repeals so much of other laws as comes within its own purview.

But, the act of 1785, *concerning Wills and the Distribution of Intestates' Estates*, refers to the acts of descents of the same session, in the same manner as that of 1792, concerning wills, refers to that of descents. Therefore, as for the reasons already given, I consider the 5th section of the act of descents, passed in 1785, to be still in force. I think so much of the 24th clause of the act of distributions, made in the year 1785, as refers to that section, is also still in force; because, it does not come within the purview of the act of 1792. My opinion consequently is, that the act of 1785, concerning the distribution of intestates' estates, must give the rule for the distribution of the personal estate of George Waugh.

This way of considering the case, obviates the objection made concerning the rule of the common law, which certainly has nothing to do with the question.

Upon the whole, I am of opinion that the decree, although founded on principles differing from those I have assumed, is substantially right, and ought to be affirmed.

CARRINGTON, Judge. Upon the statement made of this family, the question is, who are entitled to the estates of the deceased?

The Legislature have passed three acts, relative to the course of descents. But the last, which passed in 1792, professes to reduce all laws upon that subject, into one; and by it, every possible case of intestacy was meant to be provided for: At the same time, that all prior acts were intended to be repealed, as embraced within the provisions of [104]

the last. It becomes necessary, therefore, to examine the meaning of the Legislature, in the clause in question, and to carry it into effect, if we can.

The act of 1792 proceeds to establish the different grades of descent for four sections; and then it makes an exception, in the case of infants dying entitled to property derived from one parent, declaring that the other, and the relations on that side, shall not succeed to that property; after which, comes the seventh clause, which is in these words: "If there be no mother, nor brother, nor sister, nor their descendants, and the estate shall not have been derived, either by purchase or descent, from either the father or the mother, then the inheritance shall be divided into two moieties, one of which shall go to the paternal, the other to the maternal kindred, in the following course; that is to say, &c.," going on in the next clause to state the rules.

Upon this clause, the question in the present case arises.

If it be taken literally, the plain meaning of the Legislature, throughout the subsequent parts of the law, will be defeated; and the intended course will be frustrated. But it is obvious, that an interpretation, tending to produce that effect, ought to be rejected, and the intent of the makers of the act observed, if possible: And I think it may be done without any great violation of the text, or overturning any rule of construction. [402]

The difficulty has evidently arisen from the omission of a few words in the sentence. The exception, *and the estate shall not have been derived either by purchase or descent from either the father or the mother*, ought to be understood relatively only; that is to say, it relates to the two preceding sections, respecting infants, and was not intended to apply to any other cases; for, the first and latter parts of the section, refer generally to all intestacies, which proves, that the intermediate words were intended to operate as an exception. The meaning, then, of the Legislature, is obvious; and to express it in more intelligible terms, I think, we should add after the word *not*, in the second line of the section, the words, *in case of an infant:* After which, the clause will read thus "If there be no mother, nor brother, nor sister, nor their descendants, and the estate shall not, *in the case of an infant*, have been derived either by purchase or descent, from either the father or the mother, then the inheritance shall be divided, &c."

This supplement, which according to the rules of expounding statutes, I think we have a right to make, should also be applied to the 14th section of the act. By this means, the

whole act will be rendered consistent, and all cases of intestacy will be provided for, agreeable to the meaning and intention of the Legislature: which is certainly better than by adhering to the literal expression, to disappoint the will of the Legislature, and defeat the intention of the law altogether.

Therefore, although I do not exactly agree with the Chancellor, in regard to the manner of expounding the law, yet I agree with him in the conclusion; and consequently, am for affirming the decree. [403]

LYONS, Judge. It is a rule in the construction of statutes, that the intention, when it can be discovered, must be followed with reason and discretion, although the interpretation may seem contrary to the letter of the statute. 11 Mod. 161; 1 Show. 491; 10 Co. 101; 10 Mod. 281; 4 Com. Dig. 338; [6 Bac. Abr. 384, Gwil. ed.]

Now, it is evident, that when the Legislature were reducing the several acts of Assembly, concerning the course of descents, into one act, they did not mean to leave any case unprovided for; but, through oversight, or too great anxiety to express their intention with caution, a difficulty has intervened; which, if taken literally, would frustrate the object of the Legislature, and leave many cases without a provision. To avoid which inconvenience, it becomes necessary to give a reasonable construction to the act, so as to effectuate the intent and meaning of the Legislature, expressed in other parts of the statute. This will be effected, by taking the whole act, and all other acts made on the same subject, into one view; moulding them according to the rule laid down, in [*Sheffield* v. *Ratcliffe*,] Hob. 346, to the truest and best use; and, rejecting what shall appear to be inconsistent or absurd, and tending to defeat the intention of the Legislature. Thus, giving to the law such a construction as will make it answer, fully, the purposes for which it was enacted.

With these principles in view, I am disposed to affirm the decree of the Court of Chancery, upon different grounds than those given by the Chancellor; which, I do not entirely concur with him in. Because, by his mode of correcting the 7th section, he makes it necessary to alter the 14th section; which might be going too far, and doing what the Legislature did not intend to do.

My own opinion is, that either the whole interpolation in the 7th section, ought to be rejected, as a saving repugnant to the body of the act, according to 1 Co. 47; [Plowd. 565;] or, that the act of 1785 is to be considered as not re- [404]

pealed, so far as respects such estates, as are not disposed of by the act of 1792. By either of which constructions, the estate derived from the father will be disposed of, and will descend agreeable to the decree.

This interpretation puts all right; reconciles the whole course of legislation upon the subject; gives complete effect to the statute; and fulfils the object of those who made it.

For these reasons, and not those given by the Chancellor, I am for affirming his decree.

PENDLETON, President. To enquire from what source the force of the Common Law of England, in this State, is derived, would, at present, be a useless speculation; since all agree, that it is the general law of the land, where it is not taken away by our statutes.

That the act of 1785 has totally done away that common law, as to the course of descents, has not been, nor can be doubted.

The rights of primogeniture are wholly abolished; and wherever there are more persons than one, of equal degree of kindred to the intestate, they share equally in the succession. The succession, in the right line ascending, excluded by the common law, is here permitted. The objection to the half blood is removed; and the enquiry, through what blood the lands had descended to the intestate, is abolished. The intestate is, in all cases, considered as the unrestrained proprietor; and his supposed preference, from natural affection, pursued.

Under this act, it must be acknowledged, that no possible case, not provided for, can happen, so as to let in the rule of the common law.

Although this new system was generally approved, yet there were citizens who might wish, that, in case of their not having [405] children, their lands should return to the family they came from. This, adult persons could provide for by their wills; but, infants could neither make us of, nor exercise the power; for which reason, I suppose, and probably because the infant might not generally have other estate than what was so derived, the Legislature, in 1790, [c. 13, 13 Stat. Larg. 122,] passed an act, which declares, amongst other things, that an infant, dying intestate, and without issue, having lands derived by descent or purchase from father or mother, the other parent and relations, on that side, should be excluded from the succession; but, this is confined to *infant* intestates, and, no otherwise alters the general law. Then comes the act of 1792.

We are told, by the counsel, that we are confined in construction, to the literal force of the words in the 7th clause; and no power on earth, but the Legislature, could change it, was his emphatical expression. I will leave it to that gentleman to reconcile this to his observations on the act of 1789, when he read the title, preamble, and all the clauses of the law, for the purpose of confining the general term *law*, to statute law.

And was he not right in the latter case?

Among the rules laid down, for the construction of statutes, as collected by Bacon, are the following:

1. That in the construction of one part of a statute, every other part ought to be taken into consideration, for that will best discover the meaning of the makers. 6 Bac. Abr. 380, Gwil. ed.

2. A statute ought, upon the whole, to be so considered, that if it can be prevented, no clause, sentence or word, shall be superfluous, void or insignificant. 6 Bac. Abr. 380, Gwil. ed.

3. And, in the case relied on, that where words are express, plain and clear, they shall be understood according to the general and natural meaning and import, it is added, [406] "Unless by such exposition, a contradiction or inconsistency would arise in the statute, by reason of some subsequent clause, from whence it might be inferred that the intention of the Legislature was otherwise." 6 Bac. Abr. 380, Gwil. ed.

The construction labored, of the words of the 7th section, would render superfluous and insignificant the very important word *infant*, in the fifth and sixth sections; since it would put them and adults on one and the same footing.

4. General words, in one clause of a statute, may be restrained by a subsequent clause. 6 Bac. Abr. 381, Gwil. ed.

This applies directly, as I suppose there is no difference whether the restraint be in a prior or subsequent clause: especially here, where the general words are used by way of reference to the prior clause.

5. A remedial statute ought to be construed liberally, so as to suppress the mischief intended to be remedied. 6 Bac. Abr. 389, Gwil. ed.

The mischief was, the enquiry, when a man died intestate, perhaps at fourscore, how he came by his land; and this was done away, except in the single case of an infant dying intestate.

I will now proceed to the law of 1792, [c. 93, R. C. ed. 1803.] The title is, "*An Act to reduce into one, the several Acts directing the Course of Descents,*" which comprehended the two acts before stated, (for I discover no other law;) and we find no change is made in these laws, except in the case of infant intestates, extending the exclusion in the October session of 1792, of one parent, where the estate came from the other, to the issue which the excluded parent may have by another husband or wife.

The act then proceeds to direct the descent in the several
[407] cases, as they may happen one after another, repeating, in each provision, that the prior case, provided for, has not happened: To his children or their descendants, if any be; if there be no children or descendants, then to his father; if there be no father, then to his mother, brothers and sisters and their descendants, or such of them as there be. Then comes the exception in the case of infants, from the act of 1792, with the extension of the exclusion to their issue; and then we come to the 7th section, supposed to be so powerful as to overturn the general system, placing adult intestates on the same footing with infants, as to the enquiry from which parent the estate came; and to let in the common law as to them, as well as to infants.

That this was the intention of the Legislature, was admitted by the counsel; and, indeed, is so plain, that he who runs may read; and we come to the question, whether we are compelled by force of the words to violate that intention.

The purpose of the clause was to proceed and make provision for the succession, if none of the cases before provided for should occur. It takes it up after the fourth, which provides for the mother, brothers and sisters, in case there be no children or father, and provides, if there be no mother, brother or sister, and the estate shall not have been derived by purchase or descent from either father or mother; plainly intending to take in the exception as to infants, but omitting to use the term *infant.*

I observed, that if this was to be understood as a substantive enacting clause, and taken strictly, the case of the children and father not being put, the division of the estate between the paternal and maternal kindred, must take place, in exclusion of the children and father.

The answer was, that these cases were before provided for,
[408] prior to the claim of the mother, brothers and sisters: And the answer was, to me, perfectly satisfactory; because this clause did not intend to affect any of the former

provisions, but to state those which had not occurred, and, in such events, to provide for the new cases. In this statement, it was necessary to notice the excepted case, of an infant intestate; but in doing this, there is an omission in the description of the case, provided for in the fifth and sixth sections, from their leaving out the words, "in the case of an infant as aforesaid."

Is it not, then, consistent with the rules for construction of statutes, that the Court shall supply those words to make the clause conformable to other parts of the law, and to its general system? I have no doubt but it is.

The same observations apply to the 14th section, where the case of the infant is omitted, but yet not affected; since that clause proceeds upon a supposition, that, under the former parts of the law, there is no impediment to the partition between the paternal and maternal kindred, and only provides for the case of there being but one or neither of those heirs.

If I had any doubt upon this point, I should be of opinion that, in every case, if there could be one, in which the act of 1792 makes no provision, the act of 1785 would not, in that case, be repealed, but would control the common law. However, I am satisfied, notwithstanding the 7th section, that the enquiry from whom the estate descended, is confined merely to infants, and does not extend to the case of other intestates.

As the Court differ in their reasons, the decree is to be affirmed without alteration.

Decree affirmed.*

[See *Liggon* v. *Fuqua et ux.* 6 Munf. 281, and the act of Mar. 10, 1819, c. 96, ¿5, R. C. ed. 1819.]