

Court of Errors and Appeals of New Jersey.

Between Lawrence V. Davis et al, *Appellants*,
and
John Lindsley, surviving administrator of Dr. Henry Van Derveer, deceased, *Respondant*, } POINTS.

Points made on behalf of Dr. John F. Schenk, appellee, one of the five persons to whom distribution has been made :

1.

Among collaterals more remote than the children of the brothers and sisters of the intestate, proximity of blood alone gives a right to a distributive share of personal estate.

2.

No representation is admitted in the distribution of personal estate among collaterals more remote than the children of the brothers and sisters of the intestate, but each of the next of kin takes *per capita* in his own right, and not as representative of any relative between himself and the intestate.

3.

The appellants are in law strangers to the intestate's blood and estate, and therefore are not aggrieved by any order or decree which has been made respecting the intestate's estate, and have no right to challenge, question or contest any such order or decree here or elsewhere.

A. WURTS,

A. V. VAN FLEET,

Of counsel with DR. JOHN F. SCHENK.

Prerogative Court of New Jersey.

Between

Lawrence V. Davis, Mary E. Steele
and William G. Steele, her hus-
band, Apollas G. Schenck, John
I. Schenck, et al.,

Appellants,

and

Sam'l S. Hartwell and John Linds-
ley, Administrators of Dr. Henry
Vanderveer, deceased,
Appellees.

On Decree.

Petition of
Appeal.

PETITION OF APPEAL.

[Filed April 25, 1872.]

To the Prerogative Court of the State of New Jersey :

The humble petition of Lawrence V. Davis, Mary E. Steele
and William G. Steele, her husband, Apollas G. Schenck, John
I. Schenck, Henry V. Schenck, Caleb D. Schenck, Isaac R.
Schenck, Theodore Frelinghuysen, Frederick J. Frelinghuysen,
P. Dumont Frelinghuysen, Elizabeth L. Martinez, Margaret
Smith, George W. Davis, John H. Schenck, Gertrude E. Mercer
and William T. Mercer, her husband, A. Voorhees Schenck, 10
Theodore F. Cornell, Peter Studdiford and Samuel Lewis, cer-
tain of the second and third cousins of Dr. Henry Vanderveer,
deceased, and the appellants in the above stated cause, respect-

fully shows that your petitioners find themselves aggrieved by a final decree made in the Somerset county Orphans Court, by Samuel Corles, John C. Garretson and Abraham S. Williamson, judges of said court, bearing date the eighteenth day of March, last past, wherein the said Samuel S. Hartwell and John Lindsley, administrators of Dr. Henry Vanderveer, deceased, were accountants, in this respect, to wit: that the said decree adjudges that Dr. John F. Schenck, of Flemington, Gertrude Griffen, of Somerville, Israel Schenck, of Branchburg township,
10 Henry S. Harris, of Belvidere, and Dr. Henry Vanderveer, of the township of Bridgewater, as the five only surviving first cousins of Dr. Henry Vanderveer, deceased, are entitled to the whole surplusage of the personal estate of said intestate, and also orders and adjudges in and by said decree, that the said administrators should pay and distribute the sum of two hundred and twenty-five thousand dollars in manner following, to wit: the one-fifth part thereof to the said Dr. John F. Schenck, the one-fifth part thereof to the said Gertrude Griffin, the one-fifth part thereof to the said Israel Schenck, the one-fifth part
20 thereof to the said Henry S. Harris, and the remaining one-fifth part thereof to the said Dr. Henry Vanderveer, of the township of Bridgewater aforesaid.

And your petitioners humbly appeal from that part of the said decree of the said Orphans Court which decrees as aforesaid, upon the ground that the same is erroneous, for that the said Dr. Henry Vanderveer, deceased, left him surviving not only the said Dr. John F. Schenck, Gertrude Griffen, Henry S. Harris, Israel Schenck and Dr. Henry Vanderveer, five first cousins, but
30 first cousins deceased, who are equally entitled to such share or portion of said personal estate, with said first cousins, as their parents would have been entitled to if living, and that the said surplusage of the said personal estate of the said intestate should not be distributed among the said five first cousins, as in and by the said decree adjudged and decreed, but among the said first cousins and children, representatives of deceased first cousins, surviving, giving to such representatives of deceased first cousins the part, share or portion of such personal estate to which their
deceased parents would have been entitled, if living.

40 Your petitioners therefore pray that the said decree of the

said Orphans Court may be, in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioners may have such other and further relief in the premises as to this honorable court shall seem meet.

Dated April 18th, 1872.

CLARK & HONEYMAN,
Proctors for Appellants.

R. ALLEN,
Of counsel with Appellants.

ANSWER.

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[Filed May 2, 1872.]

The answer of Dr. John F. Schenck to the petition of appeal of Lawrence V. Davis and others, appellants.

Dr. John F. Schenck, one of the persons to whom distribution of the personal estate of Dr. Henry Vanderveer, deceased, has been decreed to be made by the Orphans Court of the county of Somerset, in and by the decree appealed from in this case, for answer to the petition of appeal of said appellants, says, that the said appellants are not, nor is any, or either of them aggrieved by the decree appealed from, or by any part or portion thereof, and that they are strangers and aliens to all the matters and rights settled, adjudged and decreed thereby. 20

And this respondent further says, that he, the said Dr. John F. Schenck, of Flemington, Gertrude Griffen, of Somerville, Israel Schenck, of Branchburgh township, Henry S. Harris, of Belvidere, and Dr. Henry Vanderveer, of the township of Bridgewater, the five persons to whom the Orphans Court of the county of Somerset, in and by the decree appealed from ordered distribution of the personal estate of the said Dr. Henry Vanderveer, deceased, to be made, were at the time of the death of the said Dr. Henry Vanderveer, and are now his nearest living relations, and his only next of kindred who are in equal degree to the intestate, and by the law of the land are entitled to the whole surplusage of his personal estate to the exclusion of any other person or persons. 30

And this respondent further says, that it appears by said petition of appeal, and the fact is, that said appellants were more remotely related to the said Dr. Henry Vanderveer, deceased, than were the five persons to whom distribution has been decreed, who were and are his only next of kindred who are in equal degree to him, and that by the law of the land the said appellants have not, nor has any or either of them any right to, or interest in any part or portion of the personal estate of the said Dr. Henry Vanderveer, deceased, but stand by law
10 as strangers to his blood in the distribution thereof.

And this respondent further says, that that part of said decree appealed from as well as the whole thereof, is legal and valid; he therefore prays that the same may be affirmed by the decree of this honorable court, with costs against said appellants.

A. V. VAN FLEET,

Proctor and of counsel with the respondent, Dr. John F. Schenck.

OPINION.

THE ORDINARY. The motion to dismiss is on the ground that the appellants, by their own showing on the facts set forth
20 in the petition of appeal, have no interest in the matter, and therefore no right to appeal.

The distribution ordered was to the first cousins of the intestate, who survived him. The appellants are children of other first cousins, who died before the intestate.

The proviso in the 13th section of the act concerning executors and administrators, "that no representation shall be admitted among collaterals after brothers' and sisters' children," is taken from the English statute of distributions. That this applies to the descendants of all other collaterals as to the issue
30 of brothers and sisters beyond their children, has been held in repeated decisions in England, and has been adopted by the courts of this state and by the bar, as the settled law. It ought not now to be questioned in any court here below that of the last resort.

It is desired to have the decision of the Court of Errors. An appeal can as well be taken from the order to dismiss as from a decree on the hearing.

The appeal must be dismissed.

PETITION OF APPEAL.

[Filed June 4, 1872.]

To the Honorable the Court of Errors and Appeals in the last resort in all causes of law.

The humble petition of Lawrence V. Davis and others, the appellants in the above stated cause, respectfully shows—that 10
 your petitioners find themselves aggrieved by a final decree made in the Prerogative Court by his Honor, the Ordinary and Surrogate-General of the State of New Jersey, bearing date the fourteenth day of May last, wherein the said Lawrence V. Davis and others were appellants, and said John Lindsley, surviving administrator of Dr. Henry Vanderveer, deceased, was respondent, in this respect, to wit, that the said decree adjudges that the said appellants have no right in law to appeal to the Prerogative Court from the decree of the Orphans Court of the county of Somerset, wherein Samuel S. Hartwell and John 20
 Lindsley, administrators of Dr. Henry Vanderveer, deceased, were accountants; which last mentioned decree adjudges that Dr. John F. Schenck, of Flemington, Gertrude Griffin, of Somerville, Israel Schenck, of Branchburg township, Henry S. Harris, of Belvidere, and Dr. Henry Vanderveer, of the township of Bridgewater, as the five only surviving first cousins of Dr. Henry Vanderveer, deceased, are entitled to the whole surplusage of the personal estate of said intestate, and also orders and adjudges in and by said decree, that the said administrators should pay and distribute the sum of two hundred and 30
 twenty-five thousand dollars in manner following, to wit, the one-fifth part thereof to the said Dr. John F. Schenck, the one-fifth part thereof to the said Gertrude Griffin, the one-fifth part

thereof to the said Israel Schenck, the one-fifth part thereof to the said Henry S. Harris, and the remaining one-fifth part thereof to the said Dr. Henry Vanderveer, of the township of Bridgewater aforesaid, and from which decree of said Orphans Court your petitioners appealed to the Prerogative Court, upon the ground that the same was erroneous in that the said Dr. Henry Vanderveer, deceased, left him surviving not only the said Dr. John F. Schenck, Gertrude Griffin, Henry S. Harris, Israel Schenck, and Dr. Henry Vanderveer, five first cousins,
10 but also your petitioners and other children and representatives of first cousins deceased, who are equally entitled to such share or portion of said personal estate with said first cousins, as their parents would have been entitled to if living; and that the said surplusage of the said personal estate of the said intestate should not be distributed among the said five first cousins, as in and by the said decree of the said Orphans Court adjudged, but among the said first cousins, and the children, representatives of deceased first cousins surviving, giving to such representatives
20 of deceased first cousins the part, share, or portion of such personal estate to which their deceased parents would have been entitled if living; and also to such part of said decree of the Ordinary as adjudges said appellants not aggrieved by said decree of the said Orphans Court of the county of Somerset, and which dismisses the appeal therefrom to said Prerogative Court, with costs, to be taxed against said appellants.

Your petitioners therefore pray that the said decree of the said Ordinary of the Prerogative Court may be in the particulars aforesaid, reversed, set aside, and for nothing holden, and that your petitioner may have such other and further relief in
30 the premises as to this honorable court shall seem meet.

CLARK & HONEYMAN,
Proctors of appellant.

ANSWER.

[Filed June 13, 1872.]

The answer of Dr. John F. Schenck, one of the five persons to whom distribution of the personal estate of Dr. Henry Vanderveer, deceased, has been decreed, and one of the persons upon whose application the appeal of said appellants was dismissed by the Prerogative Court, to the petition of appeal of Lawrence V. Davis and others, appellants in the above stated cause.

This appellee, Dr. John F. Schenck, not admitting all or any 10
of the matters or things to be true, as in and by the said petition
of appeal are mentioned and set forth, for answer thereunto says,
that he believes it to be true that an order was made in the Pre-
rogative Court by his Honor, the Ordinary and Surrogate Gen-
eral of the State of New Jersey, dismissing the appeal of the
said appellants from the decree of the Orphans Court of the
county of Somerset, as in the said petition of appeal is mentioned
and set forth; but as to the date, substance, purport and extent
thereof, this appellee humbly craves leave to refer thereunto
when the same shall be produced. 20

And this appellee humbly conceives and is advised that the
said order, in the matters complained of in said petition of ap-
peal, is correct, just and according to law, and therefore humbly
prays that the said order may be affirmed, and the said appeal
dismissed with costs.

A V. VAN FLEET,

Precitor and of counsel with said Appellee.