COURT OF ERRORS AND APPEALS.

Between
ANN MARIA BRAY, Plaintiff in Error,

vs.

WILLIAM S. TAYLOR, Defendant in Error.

In Error to the Monmouth County Circuit Court.

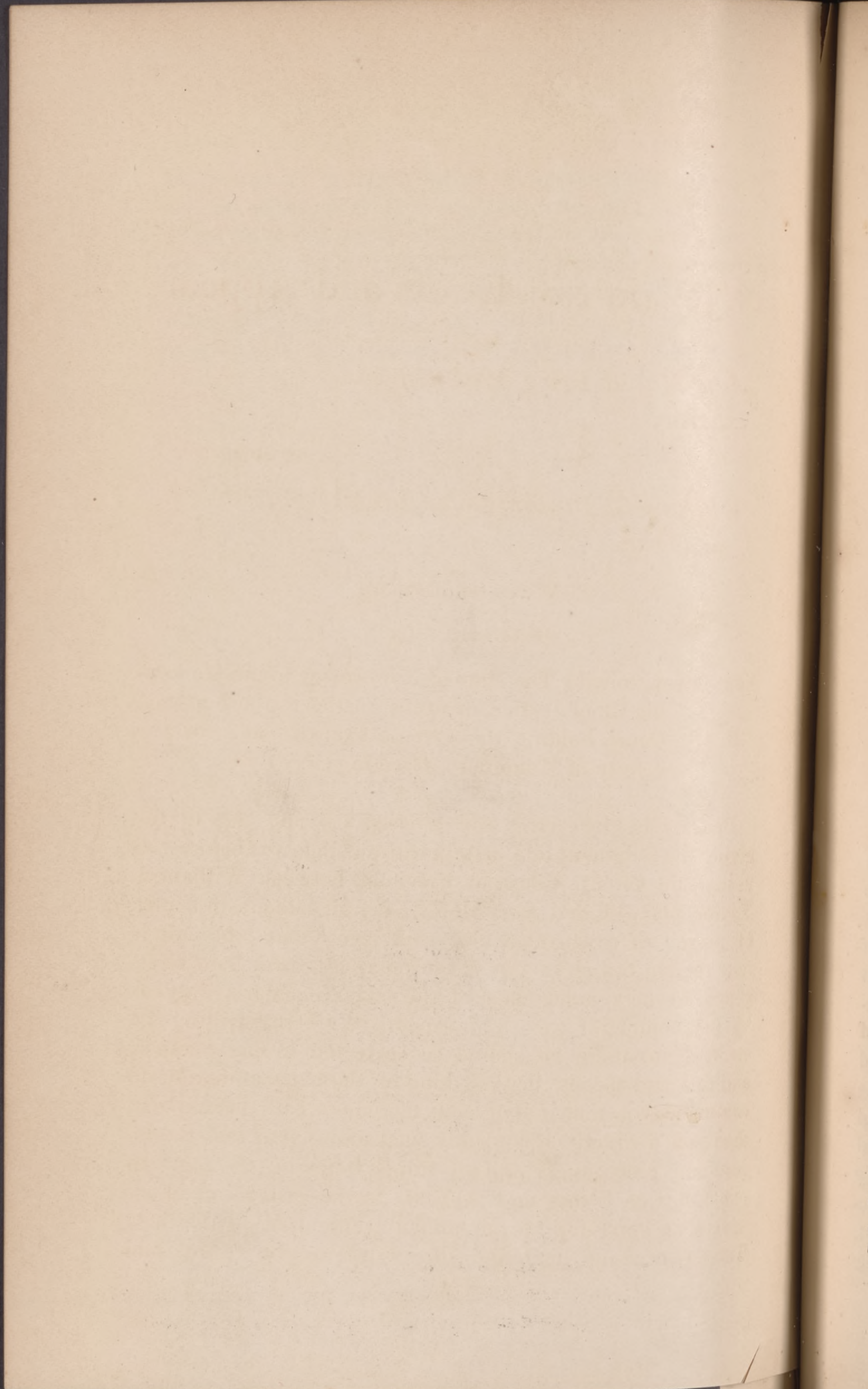
Points of Plaintiff in Error.

I. By the 6th section of the act respecting descent of real estate, passed January 29, 1817, and under the state of facts agreed on by the parties in this cause in the state of the case, the plaintiff in error was seized of the land and premises in question on the first day of March, 1855, the date of deed given by her to the defendant in error as set forth in said state of the case.

II. That by virtue of the said 6th section of the act of 1817 respecting the descent of real property in New Jersey, the said plaintiff in error inherited the premises in question 10 solely to herself, there being no other heir or person nearer or of "equal degree of consanguinity" to the said Joseph Campbell, who died seized of said premises as set forth in the state of the case agreed on by the parties in this suit.

III. That by the general scope of the statute passed in this state on the subject of the descent of real property since the revolution of 1776, as well as by the words, phrases and general language used therein, it was the manifest intent and meaning of the legislature to abrogate, and in point of fact did abrogate, the common law rule which prevented 20 real estate from ascending or going to any person or persons

the nearest or in equal degree of consanguinity to the person last seized, in whatever relation such person or persons might be to the person dying seized, whether such relation should be lineal or collateral, or be reckoned downward or upward, and that the plaintiff in error inherited the premises in question as the only person next of kin or consanguinity to her grandson, Joseph Campbell, deceased.



Nicholson, printer, Trenton, N. J.

N. J. Court of Errors and Appeals.

Ann Maria Bray, Plaintiff in Error,
vs.
William S. Taylor, Defendant in Error.
} In Covenant,

Writ of Error.

[Filed June 23, 1870.]

New Jersey, to wit: The state of New Jersey to the Honorable Chief Justice, or to the Justice of the Supreme Court, holding the Circuit Court in and for the county of Monmouth, Greeting:

[L. S.]

Because in the record and proceedings, and also in the giving the judgment in a certain cause which was before you in our said Circuit Court, at Freehold, between William S. Taylor, plaintiff, and Ann Maria Bray, defendant, in a plea 10 of breach of covenant, which said record and proceedings now remain before you, as is said, manifest error hath intervened, to the great damage of the said Ann Maria Bray, as by her complaint we are informed. We being willing the error, if any there be, should be corrected in due manner, and full and speedy justice done to the party aforesaid, do command you that if judgment thereupon hath been given, then you distinctly and openly send under your seal the record and proceedings and all things touching the same to our Court of Errors and Appeals in the last resort in all 20 causes, as heretofore, to be holden at Trenton, on the third Tuesday of June next, and this writ, that the record and

proceedings aforesaid being inspected, we may further cause to be done thereupon for correcting that error what of right and according to the laws of New Jersey ought to be done.

Witness the Honorable Abraham O. Zabriskie, president of our said Court of Errors and Appeals in the last resort, at Trenton, the twenty-sixth day of April, in the year of our Lord one thousand eight hundred and seventy.

H. N. CONGAR, *Clerk.*

JOS. F. RANDOLPH, jun., *Att'y.*

10 [Endorsed.]

Court of Errors and Appeals. Ann Maria Bray, plaintiff in error, *vs.* William S. Taylor, defendant in error. In covenant. Writ of error to the Monmouth county Circuit Court.

Returnable June Term, 1870.

JOS. F. RANDOLPH, jun., *Att'y.*

Pleas before the Circuit Court, holden at Freehold, in and for the county of Monmouth, of the Term of April, A. D. eighteen hundred and seventy.

THOS. V. ARROWSMITH, *Clerk.*

20 Monmouth County Circuit Court, of the Term of April, in the year of our Lord eighteen hundred and sixty-six.

Monmouth County, *ss.:* Ann Maria Bray, the defendant in this suit, was summoned to answer William S. Taylor, the plaintiff therein, of a plea of breach of covenant. For that whereas, by a certain indenture made on the first day of March, in the year of our Lord one thousand eight hundred and fifty-five, at Freehold, in the county of Monmouth, between the said plaintiff and the said defendant, which said indenture, sealed with the seal of the said defendant, the said

30 plaintiff brings here into court, the date whereof is the same day and year. It is testified that the said defendant, for and in consideration of the sum of one thousand dollars lawful money of the United States, to her in hand well and truly paid, the receipt whereof the said defendant did thereby acknowledge and discharge the plaintiff therefrom, did grant, bargain, sell, alien, enfeoff, convey, and confirm unto the

said plaintiff, a certain tract or parcel of land, situate, lying, and being, in the township of Middletown, county of Monmouth, and state of New Jersey, containing fourteen acres and seventy hundredths of an acre, together with all and singular the appurtenances thereunto belonging, and also all the estate, right, title, and interest, and all the reversions and remainders to the same belonging: to have and to hold the said fourteen acres and seventy hundredths of an acre of land and premises, with their and every of their, appurtenances, unto the said plaintiff, his heirs and assigns, forever; and the said 10 defendant did, by the said indenture, for herself, her heirs, executors, and administrators, covenant, promise, grant, and agree to and with him, the said plaintiff, his heirs and assigns, that the said defendant was seized in her own right of an absolute and indefeasible estate of inheritance, in fee simple, of the premises described in said deed, and had good right, full power, and authority in the law to convey the same to said plaintiff; and the said plaintiff further in fact saith, that the said defendant, at the time of delivering the said recited indenture, was not seized of the said fourteen 20 acres and seventy hundredths of an acre of land and premises, with the appurtenances, in her demesne as of fee; and the said plaintiff further in fact saith, that the said defendant, at the time of the sealing and delivery of the said indenture, had not in herself good right, full power, and lawful authority to grant, bargain, and sell the said fourteen acres and seventy hundredths of an acre of land, and all and singular the premises, with the appurtenances, unto the said plaintiff, his heirs and assigns, in manner aforesaid; and so the said plaintiff saith, that the aforesaid defendant, her covenant aforesaid 30 with the aforesaid plaintiff in form aforesaid made, hath not kept, but the same hath broken, and the same covenant to him, the said plaintiff, she, the said defendant, although often requested to keep, hath altogether refused, and the same covenant to him the said plaintiff to keep still refuses, to the damage of the said plaintiff of five thousand dollars, and therefore he brings suit, &c.

And the said defendant, by her attorney, comes and defends the wrong and injury where, &c., and saith, that she hath not broken her said covenant in the said declaration 40

mentioned, or either of them, in manner and form as the said plaintiff hath above thereof complained against her, and of this she puts herself upon the country, and the said plaintiff doth the like.

Therefore, let there come a jury before the court aforesaid, at Freehold aforesaid, on the first Tuesday of September, A. D. eighteen hundred and sixty-six, by whom, &c., and who neither, &c., to recognize, &c., because as well, &c., the same day is given to the parties aforesaid at the same time and
10 place.

At which day, before the court aforesaid, at Freehold aforesaid, come the parties aforesaid by their attorneys aforesaid, and by consent of the parties aforesaid the case is tried by the court without a jury.

And because the court here are not yet advised what judgment to give of and upon the premises, a case is certified to the Supreme Court for its advisory opinion, as follows:

Opinion.

BEASLEY, C. J. This case comes before us on a certificate
20 from the Circuit Court of the county of Monmouth, asking the advisory opinion of this court. The single point thus presented is, whether a grandmother can take land of which her grandson died seized, by force of the sixth section of the statute of descents. *Nix Dig.* 214. The grandson died intestate, without issue, and without leaving a brother or sister of the whole or half blood, or the issue of any such brother or sister, and without leaving a father or mother. The insistment is, that the defendant, being the grandmother, and thus the next of kin to the decedent, is entitled
30 to the inheritance, by virtue of the clause of the statute above indicated. The language of the section thus appealed to is as follows: "When any person shall die seized of any lands, &c., without devising the same in due form of law, and without leaving lawful issue, and without leaving a brother or sister of the whole blood or half blood, or the issue

of any such brother or sister, and without leaving a father or mother capable of inheriting, by this act, the said lands, &c., and shall leave several persons, all of equal degree of consanguinity to the person so seized, the said lands, &c., shall descend and go to the said several persons, of equal degree of consanguinity, to the person so seized; as tenants in common, in equal parts, however remote from the person so seized the common degree of consanguinity my be, unless," &c.

It will be at once observed, that the foregoing clause applies, in terms, to the juncture of the existence of "several persons, all of equal degree of consanguinity to the ancestor;" and, consequently, it was argued, that the case of the survivorship of a single grandparent could not be embraced within the operation of the act. The notion was, that the inheritance would go to a class, but not to an individual. But I am not willing to adopt this theory. Such a construction would be much too narrow and inflexible, for it would so restrict the scope of the act as to defeat, in other respects, what I consider the clear statutory intent. Such a close adherence to the letter of the law would also lead to this result: that while it would exclude from the inheritance a single grandparent, it would admit two or more grandparents, for if we are to rely implicitly on the phraseology, then, incontestably, a grandfather and grandmother, surviving a grandchild, would, on failure of the enumerated kindred, be entitled to the estate; they obviously answer to the description of "several persons, of equal degree of consanguinity to the person" dying seized; but the letter of the act must not be permitted to defeat the spirit. The admission to the inheritance of two grandparents, and the exclusion of one, on the same contingency, would be a result which we can scarcely suppose was contemplated when this act was framed. But, besides this, on this sheer verbal construction, a single collateral heir, as an aunt or an uncle, although the nearest in blood, would be debarred from the inheritance equally with a single grandparent. Thus, for example, if there were but a single uncle surviving, and the children of deceased aunts and uncles, as such an event would not be comprehended in the very words which we find in this law—unless

we are prepared to pass the uncle by, and go to the cousins, who are more remote—the consequence would be, the estate would descend as at common law, that is, by the rule of primogeniture, and the preference of the male line; but this, I think, has never been understood to be the true reading of this section. The language which is used is, unfortunately, inapt and ambiguous, and a strict interpretation involves many absurdities; as we cannot, therefore, be guided by the words, we must look mainly to the reason and design of the law.
10 It appears to me, the evident policy pervading this section is, to give the estate equally to the nearest collateral kindred. That it was the design to transfer the estate to those collaterals who were next in degree of consanguinity to the person dying seized, I think is perfectly evident; for, let, us suppose the case of several surviving aunts and uncles, and several surviving cousins: in such event, it will be perceived, we have two classes of persons, precisely fulfilling the statutory designation; but it is presumed that no one will contend that it was the purpose to pass by the aunts and
20 uncles, and give the estate, by way of preference, to their issue. In the entire scheme of our laws upon this subject, there is a clear recognition of the natural right inherent in propinquity in blood, and there is no example of such right being disregarded. We have no difficulty, therefore, in concluding that it was the purpose to prefer those who stand in the nearer generation, to those who are embraced in one more distant. Surviving uncles and aunts will take, as a class, before, and in exclusion of surviving cousins. The design, to this extent, appears to be so clear, that it excludes
30 all reasonable doubt. And, by a similar train of reasoning, we reach the further conclusion, that the section in question not only bestows the estate on the class of relatives next to the person dying seized, but also gives it to a unit of such class, that is to say, for example, if a single uncle or aunt survives, he or she will inherit, rather than cousins, the children of deceased uncles or aunts. This latter inference is drawn from the reflection, that it cannot rationally be supposed, that if an uncle or aunt should survive, having two or more children, it was the purpose that such children
40 should have the estate, for the sole reason that they belong

to a class comprehending several persons, while their parent is excluded on account of his or her unity. The received, and, as it seems to me, the proper construction of this sixth clause is, that it gives the estate to the nearest collateral kindred; if there be more than one survivor in that class, then to such survivors equally; if but one survivor, to that one wholly. This result, however, can only be attained by enlarging, through implication growing out of the evident legislative design, the language which has been employed. I do not think, therefore, that the claim of the defendant in 10 this case should be rejected, on the plea that the case of a single grandparent surviving does not constitute the event on which the clause in question becomes operative, provided, as in the instance of a single collateral, an intention to vest the estate in such single grandparent is apparent; for, under such circumstances, upon the plainest rules of construction, the intention thus manifest, however incompatible with the mere verbal expression of the act, should be effectuated by the court. The substantial question, therefore, is, does such an intention appear? 20

No person can approach the examination of the subject to which this interrogatory relates, without at once perceiving, that in order to place themselves in a position to claim the benefits of this sixth section, grandparents, and all others in the direct upward line, have an obstacle to surmount, which does not lie in the way of the collateral kindred. It was one of the well known rules of the common law, regulating the descent of lands, that the inheritance should never lineally ascend; before we can yield, therefore, to the claim of the defendant, we must be satisfied that this legal maxim 30 has been abrogated in this state. And, as it cannot be pretended that this result has been effected by any express enactment, the consequence is, if any such repeal exist, it must be found in the implications necessarily arising out of the laws appertaining to this subject, considered in connection with the ancient rules which regulated the succession to lands.

The first statute relating to this subject is the act of the twenty-fourth of May, 1780. *Pamph. Laws* 43. Prior to that date, inheritances in this state devolved in accordance with 40

the artificial maxims and customs of the feudal system. By this act lands were distributed, on the death of an ancestor, leaving two or more sons or issue, both male and female, among such issue, male and female, in the proportion that each son took two shares, each of such shares being equal to the share of a daughter; and if a child died before the ancestor, leaving issue, such issue was to represent the parent. The second section provided, in the event of an ancestor dying without issue, for brothers and sisters and their issue, 10 who were to take in the manner and proportion between male and female, directed by the first section of the act. The third section related to the half blood.

The end in view, which led to the enactment of this law is too plain to admit of the least doubt. Its office was, so far as concerned the objects to which it extended, to do away altogether with the canon of primogenture, and to mitigate the severity of the rule which favored the male over the female stocks. Such was the manifest design, judging from the context, and the preamble also contains a clear 20 indication to the same effect; its language is: "Whereas, the law of descents, as it now stands, works injustice, by vesting the whole real estate of an ancestor in the heir-at-law, if a male, to the exclusion of the other issue or descendants, both male and female, of such ancestor, for remedy, whereof," &c. I think, therefore, that it may be assumed, that in this act there is no intimation of a design to dispense with that regulation of the common law, which prevented the inheritance from passing upwards in the direct line.

The statute next in the order of time, is that of the fifth of 30 February, 1816, *Pamph. Laws* 7; and this, extending the principle of the former act, abolishes altogether the preference of the male over the female stocks. Its provision is, "that from and after the fourth day of July next, whenever any person who is lawfully seized or possessed, or entitled to any real estate in his or her own right, in fee simple, within this state, shall die intestate, leaving two or more heirs lawfully entitled to the same, such real estate shall descend to, and be inherited by, his or her heirs, whether male or female, lineal or collateral, in equal shares or proportions."

40 This act, it is obvious, puts the males and females, as suc-

cessors to their ancestors, on a level; there is no exhibition of a purpose beyond this.

On the fifteenth of February, 1816, another act regulating the descent of lands was passed, which made further provision with regard to the half blood, but which throws no additional light on the present topic.

After these acts, followed the general statute to direct the descent of real estate, enacted the twenty-ninth of January, 1817, *R. L.* 608, and into this law was, for the first time, introduced a clause similar to the section which has given 10 rise to the present controversy. It has been before remarked, that in the legislation antecedent to this last enactment, we find no trace of a purpose to abolish, or, in any degree, to qualify the rule of the ancient law, which precluded the lineal ancestors from the inheritance. In this statute last cited, the general disposition made of the inheritance was as follows: first, it was given to the children equally, and to their issue; then, on failure of these, to brothers and sisters equally, and to their issue. Posthumous children were also provided for. And then the fourth, and, for the present 20 purpose, the important section, enacted as follows: "That when any person shall die seized of any lands, tenements, or hereditaments, as aforesasd, without devising the same in due form of law, and without leaving lawful issue, and without leaving a brother or sister of the whole blood, or any lawful issue of any such brother or sister, leaving a father, then the inheritance shall go to the father of the said person so seized, in fee simple, unless the said inheritance came to the person so seized from the part of his or her mother by descent, devise, or gift, in which case it shall descend as if 30 such person so seized had survived his or her father. In the next and fifth section, the half blood is provided for; and in the sixth section, we find the general provision before mentioned, which gives, as in the act now in force, the estate on failure of the enumerated kindred, to the several persons who are in equal degree of consanguinity to the person dying seized.

In view of the general scope and nature of the plan here exhibited, I think it is clear, that this law did not do away with the canon which was a bar to the lineal ascent of the 40

estate. The rule is evidently modified, but as evidently, it is not abolished, for it is impossible to construe the several sections rationally on any other hypothesis. From the above recital of the fourth section, it appears that on failure of the lineal issue, and brothers and sisters of the whole blood, and their issue, the estate was cast upon the father, provided it did not come from the side of the mother. The first observation which this regulation suggests is this: that if it had been contemplated to let in any of the other ancestors of the 10 deceased in the direct line, such design would probably have appeared in this clause. The section, intrinsically considered, seems to show that the rule was to be altered but in a single particular, that is, in favor of the father. But when we collate this clause with the sixth section, the inference above expressed, that the father is the only lineal ancestor who was qualified to inherit, becomes strengthened into demonstration, for unless this be the correct interpretation, then we have this anomalous consequence—that although the father, as the statutory heir to his child, was restricted to 20 inheritances not derived from the side of the mother; on the other hand, the mother would have taken, by force of this sixth clause, without any restriction whatever. Thus, if the person seized had died without the enumerated relatives, and without leaving a father capable of inheriting, then, on the assumption that the sixth section abolished the rule which disqualified the ancestors in the direct line from claiming the land, the consequence was, the mother, under the sixth clause, as the next of kin, would have taken the inheritance, even though such inheritance had descended from the side of 30 her husband, provided there had been none of the blood of the husband who could inherit. This result, so inconsistent with popular sentiments, and with the whole history of our legislation on this subject, no person skilled in the law, as it seems to me, will be willing to contend was ever designed. We reject, as we would anything inconsistent with a self-evident proposition, a construction which embodies as a part of the law of descents, a preference of the mother over the father as the successor to their child.

Nor does the supplement of the 29th of January, 1838, 40 (*Pamph. Laws* 85,) lend any support on the side of the ar-

gument in favor of the defendant. This act devolves the estate, in case of the failure of the enumerated heirs, and if no father survives, on the mother for life, and this also, I think, is a mere modification and not an abolition of the rule in question. For if the rule be abolished, then we have this state of affairs: by the supplement, to which reference is just made, the mother, by express provision, may acquire by descent, an estate for life in the land of which her son died seized, while under the sixth clause, after the expiration of this life estate, the grandmother, if the only surviving grand parent, will take the fee, and this too, although the inheritance came from the side of her husband, and not from any one related to her by blood, provided there is no one of the paternal blood capable of inheriting. So, upon the same assumption, an inheritance derived from the maternal line may pass in fee to the paternal grandfather. And, in fact, if this theory be correct, that the rule that the estate cannot ascend in the direct line, does not exist, then I do not perceive why, in some cases, the grandfather may not claim the estate, as the successor of his grandson, during the life of the father. For illustration, suppose the estate descends from the maternal line, and the son died seized without issue and without brothers or sisters, or the issue of such, and without any of the maternal blood capable of inheriting, but leaving a father and maternal grandfather, in this event, as the estate came from the side of the mother, by the express words of the act the father is excluded, but upon the hypothesis of the defendant in this case, what is to hinder the paternal grandfather from claiming as the next in degree of consanguinity? If the sixth section, as is contended, conveys the estate in this case to the defendant, then, in the instance supposed, the right of the paternal grandfather would appear to be indisputable. But this doctrine, which would exclude the father and admit in the same line the grandfather, could only be introduced into the law by the force of express enactment, couched in such clear terms as to leave no doubt as to the legislative will. My conclusion is, that the claim of the defendant to the premises in dispute as the next in consanguinity, by force of the clause of the statute above criticised, is unfounded, and must be rejected.

Until this case, I think it may be said that no person has ever heard of a grandparent claiming land in this state under an alleged right of inheritance from a grandchild. This contemporaneous exposition has certainly been opposed to such a theory, and, in a matter affecting the title to real estate, such exposition is entitled to great weight with this court. It is proper to remark, before leaving the subject, that the above construction of the sixth section of the statute of descents, with regard to the exclusion of grand-
10 parents, is supported by the authority of Chancellor Kent. 4 *Com.* 407, *note a.*

It will be observed, that in the course of the above observations it is assumed that in the application of the sixth section of the statute commented on, the degrees of consanguinity are to be reckoned by the rule of the civil, and not by that common law. I am aware that formerly there was some uncertainty on this subject but the opinion of the profession appears to have become settled in favor of the method just indicated. Such method has received the approval of
20 Chief Justice Green. *Nix. Dig.* 215. The opposite doctrine is attended with consequences which appear to forbid imperatively its adoption. If we were to assume the common law mode of calculating the degrees of consanguinity, this would be the result; in case of surviving aunts and uncles, and children and grandchildren of such aunts and uncles, we would go back to common ancestor, the grandfather, and thus these three generations would stand in the same degree—that is, they would all be related to the deceased grandson, who is supposed to have died seized, in the second
30 degree. So cousins, the children of deceased aunts and uncles, being by force of this rule as near of kin as living aunts and uncles, would be entitled to share the estate equally, *per capita*, with such aunts and uncles. This incongruity has occasioned, and, as it seems to me, rightly, the rejection of the common law method of computation, and the adoption of that of civil law.

State of Case.

The form of Action, Covenant.

Declaration on deed from Ann Maria Bray, the defendant, to William S. Taylor, the plaintiff, dated March 1st, A. D. 1855, which, among other things, covenants that Bray was seized in her own right of an absolute and indefeasible estate of inheritance in fee simple of the premises described in said deed, and had good right, full power and authority in the law to convey the same to said Taylor, and states breach of said covenant, that Bray had not such estate, &c., and had 10 not authority to convey, &c.

Plea negatives the breach stated in the declaration, and alleges that Bray had such estate, &c., and had authority to convey, &c.

It is agreed that the premises described in said deed (being 14 70-100 acres, in the township of Middletown, county of Monmouth, New Jersey,) were part of the real estate of which Daniel Bray died seized, being part of his farm on which he lived.

Daniel Bray executed his last will and testament in due 20 form of law, dated January 11th, A. D. 1841, and died in July, 1841, without having revoked said will.

Will of Daniel Bray soon after his death was admitted to probate by the surrogate of the county of Monmouth.

Among other desires, the will of Daniel Bray contains the following, *viz*: "I give and bequeath to my wife, Ann Maria Bray, the use and occupation of one-half of the farm on which I now live and of my wood lot near Old Woman's Hill, during her widowhood, jointly with my daughter, Ann Rebecca, to whom I bequeath the use and occupation of the 30 other half of the said farm and wood lot during her natural life, jointly with her mother during her widowhood, and from and after the decease or second marriage of my said wife, I give and bequeath the said farm and wood lot, with their appurtenances, to my said daughter, Ann Rebecca, her heirs and assigns forever, subject however, to the right of dower of my said wife therein."

Anna Maria Bray, since the death of her husband, Daniel Bray, the testator, has remained unmarried.

Ann Rebecca survived her father, Daniel Bray, the testator, and married Derrick C. Campbell.

Ann Rebecca died before 1855, leaving her surviving a son, Joseph Campbell, born during coverture.

Joseph Campbell, son of Ann Rebecca, died after his mother, and previous to 1855.

Derrick C. Campbell, the father of Joseph, and husband of
10 Ann Rebecca, is still living.

Joseph Campbell, son of Ann Rebecca and Derrick C. Campbell, had no brothers or sisters of the whole or half blood.

Ann Rebecca had no brothers or sisters of the whole blood, but left her surviving one brother of the half blood, and children of brothers and sisters of the half blood.

Derrick C. Campbell, previous to 1855, released to Ann Maria, his life estate in the premises, described in the deed given by defendant to plaintiff.

20 The Circuit Court of the county of Monmouth certify the case to the Supreme Court for its advisory opinion. And it is agreed that if upon the foregoing statement the court shall be of opinion that Ann Maria Bray, the defendant, was, at the date of said deed, March 1st, 1855, seized in fee of the premises described in the deed, the Circuit Court shall be advised to give judgment for the defendant, but if the court shall be of opinion that the said Ann Maria Bray, at the date of said deed was not seized of said premises, then the Circuit Court shall be advised to proceed to ascertain the plaintiff's
30 damages, for which judgment shall be given, either party to have writ of error.

B. WILLIAMSON,
Attorney of Plaintiff.

JOEL PARKER,
Attorney of Defendant.

After having the said case, His Honor, Peter Vredenburgh, then one of the Justices of the Supreme Court, who, at the said September Term of said Circuit Court, was the Judge of

the Circuit Court of the county of Monmouth, certified the said case to the Supreme Court, pursuant to the statute in such case made and provided, as follows, *viz.* "I, Peter Vredenburgh, Judge of the Circuit Court of the county of Monmouth, certify the case to the Supreme Court for its advisory opinion upon the questions hereinbefore stated."

September Term, 1866.

P. VREDENBURGH.

Whereupon the said Supreme Court having considered the said case, returned the same to the said Circuit Court, with 10 the opinion of said Supreme Court; the same being dated February 2d, 1870, as follows, *viz.*

"The court having read and examined the certified case in the above cause, sent up to this court from the Circuit Court of Monmouth county, and heard the allegations of counsel thereon, and being of opinion that by the facts set forth in the said certified case, the said Ann Maria Bray, the defendant in this cause, was not, at the date of the deed, March 1st, 1855, from said Ann Maria Bray to said William S. Taylor, seized in fee of the premises described in said deed: It 20 is thereupon ordered that the said Circuit Court be advised thereof, in order that the said Court may ascertain the plaintiff's damages, and render judgment accordingly."

And now, on this sixth day of April, eighteen hundred and seventy, at a Circuit Court, held at the court house in Freehold, in and for the county of Monmouth, the certified opinion of the Supreme Court, in the above case, having been presented to the said Circuit Court, and the court having heard the same read, and duly considered the same, on application in behalf of the plaintiff, render judgment inter- 30 locutory in favor of the plaintiff, against the defendant, for the breach of the covenant set forth in the pleadings and state of the case; whereupon the court assess the plaintiff's damages therefor at the sum of one dollar over and above his costs and charges by him about his suit in this behalf expended, and for those costs and charges the sum of thirty-four dollars and fifteen cents.

Therefore, it is considered that the said William S. Tay-

lor, the plaintiff, do recover against the said Ann Maria Bray, the defendant, the sum of one dollar, his damages assessed as aforesaid, and also thirty-four dollars and fifteen cents, for his costs and charges by him about his suit in that behalf expended; and the said defendant in mercy, &c.

Judgment signed, this sixth day of April, A. D. eighteen hundred and seventy.

E. W. SCUDDER.

10 State of New Jersey, county of Monmouth, *ss.:*

I, Thos. V. Arrowsmith, clerk of the Circuit Court of the county of Monmouth, do hereby certify that the above is a true copy of the judgment and proceedings in the case aforesaid of record in my office.

In testimony whereof, I have hereto set my hand and affixed the seal of said court, at Freehold, in said county, this 2d day of June, A. D. 1870.

[L. S.] THOS. V. ARROWSMITH, *Clerk.*

I hereby certify that the above are the record and pro-
20 ceedings duly exemplified, named in the annexed writ, and I hereby make return thereof to the Court of Errors and Appeals, in the last resort in all causes, as heretofore, as by the said writ I am commanded.

Dated, the sixteenth day of June, A. D. eighteen hundred and seventy.

EDWARD W. SCUDDER, *Judge.*

Assignment of Errors.

[Filed July 7, 1870.]

Afterwards, that is to say, on the third Tuesday of June,
30 in the year of our Lord, one thousand eight hundred and seventy, before our Court of Errors and Appeals in the last resort, at Trenton assembled, comes the said Ann Maria

Bray, by Joseph F. Randolph, jun., her attorney, and says in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this, that the declaration aforesaid, and the matters therein contained, are not sufficient in law for the said William S. Taylor, to have or maintain his aforesaid action thereof against her, the said Ann Maria Bray; and there is also manifest error in this, that by the certified opinion of the Supreme Court, to which court the case had been sent, and certified by the Monmouth County Circuit Court for their opinion, pursuant to the 10 statute in such case made and provided, it is alleged and set forth that upon the said certified case, the said Ann Maria Bray, the defendant, was not, at the date of the deed of March 1st, 1855, seized of the premises described in said deed; whereas, according to the laws of the state of New Jersey, upon the said certified case, the said Ann Maria Bray was, at the date of said deed, seized of the premises described in said deed; and also, there is error in this, that the judgment aforesaid, by the record aforesaid, appears to have been given for the said William S. Taylor, against the said Ann 20 Maria Bray; whereas, by the law of the land, the said judgment ought to have been given for the said Ann Maria Bray, against the said William S. Taylor.

And the said Ann Maria Bray prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record and proceedings being, may be reversed, annulled, and altogether holden for naught, and that she may be restored in all things which she hath lost by occasion of the said judgment, &c.

JOS. F. RANDOLPH,
Attorney for Plaintiff in Error. 30

Joinder in Error.

[Filed October 21, 1870.]

And hereupon, the said William S. Taylor, by Marcus B. Taylor, his attorney, comes and says that there is no error, either on the said record and proceedings aforesaid, or in

giving the judgment aforesaid, and he prays the Court of Errors and Appeals in the last resort, here may proceed to examine, as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

MARCUS B. TAYLOR,
Attorney of Defendant in Error.