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AND
NORTH-CAROLINA GAZETTE

"Our are the plans of fair, delightful Peace,
"Unwarp'd by party rage, to live like Brothers."

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NORTH-CAROLINA.

SUPREME COURT OF N. CAROLINA.

The following important cause was decided at the late term of the Supreme Court, and is published for general information.

Ballard & Wife vs. *Hill & others.*

The Plaintiff's claim arises on a descent from a maternal half brother, of lands which descended from his father, or of lands descending from the paternal side; and whether they are entitled to recover, depends upon the true construction of the Acts of April and October, 1784. The third section of the first act, without the provisoes, is in these words: "That if any person dying intestate, should, at the time of his or her death, be seised or possessed of, or have any right, title or interest, in or to any estate or inheritance in lands, or other real estate in fee simple, and without issue, such estate or inheritance shall descend to his or her brothers, and for want of brothers, to his or her sisters, as well those of half blood as those of whole blood, to be divided amongst them equally, share and share alike, as tenants in common, and not as joint tenants, and each and every of them shall have, hold and enjoy, in their respective parts or portions, such estate or inheritance, as the intestate died seised or possessed of, or entitled unto."

Were the case to depend on this enacting clause, the Plaintiff's right to the inheritance would be beyond controversy; for the words extend to *every person* dying seised of *any inheritance*, whether acquired by descent or purchase, whether it descend from the paternal or maternal line, and embrace both sorts of half blood, as well the maternal, as the paternal.—The clause must, necessarily continue to govern every case that is not withdrawn from its operation by some proviso; and therefore it must direct the descent in this case, unless it is prevented by the proviso. The words of the proviso are, "that when the estate shall have descended on the part of the father, and the issue to whom such inheritance shall have descended, shall die without issue male or female, but having brothers or sisters of the paternal side of the half blood, and brothers or sisters of the maternal line, also of half blood, such brothers and sisters respectively of the paternal line shall inherit in the same manner as brothers and sisters of the whole blood, until such paternal line is exhausted of the half blood; and the same rule of descent and inheritance shall prevail amongst the half blood of the maternal line under similar circumstances, to the exclusion of the paternal line."

The proviso, then, gives a preference to the half blood of the line from which the estate descended, where the competitors for the inheritance are the half blood of that line, and the half blood of the line from which the estate did not descend; but there are no words in it which are exclusive of the latter half blood, where there is none other in equal degree, and recommended by the reason given for the preference, to claim it from them. On the contrary, the words "until such line is exhausted of the half blood," carry with them a strong implication that when such an event shall occur, the other line of half blood shall be taken into the inheritance. The word "until," which signifies the same as "to the time that," seems to import, that when the half blood of the favored line gives out, the other half blood shall inherit. The enacting clause has viewed with undistinguishing regard and favor the half blood of both lines; the proviso has selected a particular case, wherein the preference shall be given to one set; in all other cases, therefore, as well where the reasons of the preference have ceased to operate, as where they have never existed, the other set of half blood must be entitled. If a man having issue, and having also brothers and sisters of the half blood on the father's side, and brothers and sisters of the half blood on the mother's side, for peculiar reasons, thinks proper to devise his estate to all his brothers and sisters, as well the half blood on one side as on the other; but annexes a condition to the devise that the paternal half blood shall enjoy the estate until that line be exhaused: of the intention of the testator in such a case, it does not seem possible to doubt, the legality of the devise is another question. The other proviso is, "that if any brother or sister of the intestate shall have died in the life time of the intestate, leaving issue, male or female, such issue shall represent their deceased parent, and stand in the same place he or she would have done if living, &c." There is nothing in this proviso, which can have any tendency to impair the right of the Plaintiffs, the only object of it being to provide for collateral descents as far as brothers & sisters' children. The provisoes of the second section had made provision for lineal descents as far as grandchildren, and in order to complete the system, the words of the fourth section are, "that the same rules of descent shall be observed in lineal descendants and collaterals respectively, when the lineal descendants shall be further removed from their ancestor than grandchildren, and when the collaterals shall be further removed than the children of brothers and sisters."—What is meant by the same rules of descent? Clearly, the rules established by the preceding sections: one of which is, that where there are two sets of half blood, the set of that line from which the estate descended, shall be preferred to the line from which it did not descend; consequently, uncles and aunts, great uncles and great aunts, &c. of the line from which the estate descended, shall exclude uncles and aunts, great uncles and great ants of the line from which it did not descend. In other words, where those who claim the inheritance are in equal degree, or represent those who were, the acquiring line shall be preferred. Where the claimants are not in equal degree, then proximity of degree shall decide the right to inheritance. This appears to the Court to be the true interpretation of these sections of the act of 1784, and to arise naturally from the words, as well as being consonant to the views of the legislature, and to the spirit in which the act was framed. To exclude the maternal half blood for the sake of a remote collateral, or to suffer the land to escheat rather than permit the half blood to inherit, does not seem to accord with the sentiment expressed in the preamble to the third section. "And whereas it is almost peculiar to the law of Great-Britain, and founded in principles of the feudal system, which no longer apply in that government and never can in this State, that the half blood should be excluded from the inheritance."

It is true that the law of England gives a preference to the male stock; and there is a partial recognition of the same principle in the 7th section of the act of April 1784, amended by the act of October, 1784, which provides "that in case of the death of any person intestate leaving any real estate actually purchased or otherwise acquired, and not having any heirs of his body nor any brother or sister, or the lawful issue of such; then such estate shall be vested in the father of the intestate, if living, but if dead, then in the mother for life, then in the heirs of such intestate on the part of the father, and for want of heirs on the part of the father, then in the heirs of the intestate on the part of the mother forever."

It is to be observed on this section, that the father is called in only upon the sons dying without lineal heirs, and without brothers or sisters or the issue of such.—The preference of the male stock has been confined strictly to the cases enumerated in the 7th section and its amendment, viz. "to cases of estates purchased by the intestate." And on this point the decisions have been uniform, allowing the half-blood to inherit where the land was purchased, and giving them the preference to the father and the male stock.

A section, inserted for the purpose of giving a preference to the male line amended to prevent that preference from being interrupted by the accident of death, is yet so restricted in its terms, and so modified by judicial exposition, admitted to be just, that the favored stock is called to the inheritance only after the failure of issue in the intestate, and the failure of brothers and sisters of every description, maternal as well as paternal half-blood. It appears to the Court, that every reason for thus confining and limiting the preference of the male line under this clause applies with increased strength to prove that the preference ought to be strictly confined under the third section to the half blood of the acquiring line—that they, and they only, shall exclude the half-blood of the non-acquiring line. A consistant meaning will be thus given to the third clause, to the proviso, and its extension by the fourth section, which would then read "where any persons shall die intestate, without issue and without brother or sister, or the issue of such, leaving uncles or aunts of the line from which the estate descended, and uncles or aunts of the line from which the estate did not descend, the former uncles or aunts shall exclude the latter."

There is also a declaration in the 3rd section of the act of October 1784, "that the paternal line is favored in all other instances," and it proceeds to guard against the estate being transferred to the maternal line by the death of the father before the mother and the intestate, which would have happened in consequence of the phraseology of the 7th section. It is apprehended that this declaration relates only to the instances in which the paternal line is favored in the 7th section, viz that in purchased estates it shall ascend to the father, if living, but if he be dead and the mother likewise, that it shall descend to the paternal heirs, and continue in that line as long as there are any heirs; so that it is favored in all cases of purchased estates, except where the father is dead and the mother is alive, in which case the heritable line was diverted from the paternal. When the legislature were about to remedy this only case, in which the paternal line was not favored in the 7th section, with respect to purchased estates, it was natural to advert to the other cases where it was favored, and in relation to this provision, it was favored "in all other instances." In no other sense can the declaration be considered correct, for no preference is given to it in any other part of the act, except in entitling males before females—it is not preferred in descents—it is not preferred where the estate descends from the maternal line—it cannot be preferred by force of the seventh canon of descents, for that plainly comes within the purviews of the seventh section and the amendatory law, and as such "is repealed and made void."

The 6th canon of descent excluding the half blood, was unquestionably repealed by the third section of the act of April 1784, for the same reason; from which time, the half blood became entitled.—In October 1784, the Legislature say that doubts have been entertained whether brothers of the half blood shall be entitled to succeed to the inheritance in the same manner as sisters do where there is no brother, nor the issue of any such; and they proceed to declare that it was their intention in the 3d section of the act of April 1784, to let in brothers of the half blood equally with brothers of the whole blood, &c. This act was passed from abundant caution, and to guard against a construction in opposition to the declared will of the legislature, and one which it is believed would not be recognised by a court of justice, since the rule of law is, that relation shall be had to the last antecedent, unless it obstructs the sense.—The preamble to the 3d section, expresses the intention to be to admit the half blood, and the construction of the words, unless much refined upon, conveys that intention. The Legislature say that doubts have been suggested; to prevent them in future, they declare what their original intention was, and change the language of the third section.

So far as the Legislature have declared a preference for the line of the purchasing ancestor or the male stock, the Court is bound to execute their will; but it does not feel bound by any considerations of expediency or justice to preserve a preference where it is not clearly to be collected from the law. The principles are peculiar to the law of England & others derived from the feudal system, & were unknown to the enlightened republics of antiquity. The system is purely artificial, and in some respects repugnant to our notions of justice and the obligations of duty. So far as natural reason suggests any thing on the subject, a law regulating the descent of estates should be founded on the presumed will of the deceased, and regulate the succession in such a manner as he probably would have done, under the united dictates of duty and inclination. The strongest affection is between parents and children; and the next, the love between brethren, arising from their relation to the same common stock, heightened by youthful association, and the likeness of years and education.

The last owner of an estate is as completely so as any former one, and it is quite as reasonable to consult his presumed inclination as that of a remote ancestor; it is not probable that he would prefer a distant collateral, because of the male stock, to his maternal brothers; nor is it certain that duty would require him to do it, because the remote relation was of the acquiring blood. The law relative to the distribution of personal property has excluded all these principles, and its justice is generally approved.

For these reasons, it is the unanimous opinion of the Court that the demurrer be over-ruled and the bill be sustained.*

* Judge Henderson had been of counsel in this case, and gave no opinion in relation to the judgment. His opinion had formerly been adverse to the claim of the half blood; but after the judgment was rendered in this case, he declared that, upon mature consideration, his opinion had changed, and that he concurred in thinking the half blood were entitled.

Taylor, Hall and Murphey were the Court.

ADDRESS

Of the Philadelphia Society for the Promotion of National Industry, to the Citizens of the United States.

No 7.

Continued.

Philadelphia, May 20, 1819.

It is, we trust, needless to pursue the calculations any further. You can readily, fellow-citizens, perceive that the contest must soon come to a close. The Spanish manufacturers, oppressed, impoverished, and dispirited, would be soon driven from the market, which would be monopolized by the more sagacious nation, which we repeat, had the good sense to "*regulate trade.*" Their immense gains would be at the expense, and to the destruction of the nation, which was deluded by the specious maxim, to "*let trade regulate itself.*" The successful rivals would soon indemnify themselves for the temporary reduction of price, by a proportionate advance in future.

Let us compare the result of the four years operations on the two nations:—

France.	
First year's profit	$3,380,000
Goods sold in Spain	2,600,000
Second year's profit	3,510,000
Goods sold in Spain	5,00,000
Third year's profit	3,640,000
Goods sold in Spain	7,800,000
Fourth year's profit	3,770,000
Goods sold in Spain	10,300,000
	$40,400,000

Six hundred thousand people industriously employed, supporting themselves in comfort and happiness, and adding to the wealth and strength of the nation.*

Spain.	
First year's profit	$1,170,000
Second year's	1,040,000
Third year's	910,000
Fourth year's	780,000
	$3,900,000

Four hundred thousand people gradually thrown idle—dragging on a wretched existence in mendicity, or looking in vain for those "*collateral branches*" which sound so harmoniously in Adam Smith, but which are no where to be found.

We have hitherto confined our calculations of the effects of this plausible but destructive system to the manufacturers alone. The pernicious consequences of it, if extended no farther than to this class of citizens, would be sufficient to induce liberal minded men—those worthy to legislate for this rising empire, to abandon the maxim. But those consequences, how deplorable soever, are but as "*mere dust in the balance*" compared with its general effects on the wealth, strength, resources, power, and happiness of any devoted nation which enlists itself under the banners of Adam Smith. We will slightly sketch a few of them.

In the first year France sells to the amount of	$2,600,000
In the second	5,200,000
In the third	7,800,000
In the fourth	10,400,000
	$26,000,000

This is a debt which, in the first place, drains all the metalic medium, as far as the merchants can collect it; and next all the evidence of public debt, or whatever valuable articles can be had. And still a heavy and oppressive debt is accruing from year to year afterwards!

The result is easily seen. A prosperous nation by this simple process is in four years reduced to a most abject, impoverished, and dependant state. Its wealth is drained away to support a foreign nation. Every species of industry is paralized. Ships rot at the wharves. Trade languishes. Merchants and traders, as well as manufacturers, become bankrupts. Artisans, mechanics and laboring people who had largely contributed to the welfare of the state, are transformed into mendicants, or driven to desperate courses to prolong their existence; and desolation extends itself over the face of the land.

This, fellow citizens, is very nearly our present case. It is true, we have not absolutely let "*trade regulate itself,*" by a total absence of all duties. The necessities of the treasury, which by many members of Congress were freely admitted to be the leading, and by some to be the only object of a tariff, forbade the adoption of the maxim in its fullest extent; and therefore our imported merchandize pays duty. But it is obvious that where the tariff of one nation is so wholly inefficient; that she can be completely undersold in her own nations, by another as the people of the United States are at present, the ultimate effect is actually the same, as if "*trade were allowed to regulate itself.*" The duties imposed by our tariff have merely delayed, not averted, the work of destruction. But that it is as sure in its operation, is placed beyond the reach of doubt by the desolation and ruin that pervade so many invaluable manufacturing establishments throughout the union, on which millions of dollars have been expended, and whose fall, as we have often repeated, and must re-echo in the ears of those who alone have the power of applying a remedy, involved the ruin of the citizens engaged in them.

The most cursory reader must perceive, and no one possessed of candor can deny, that we have given the advocates of the maxim, "*let trade regulate itself,*" far more advantage in the argument than was necessary, or proper. When we stated the reduction of price at seven and a half per cent. and a gradual increase of exportation from France to Spain, of only ten per cent. of the amount originally manufactured there, we did our cause manifest injustice. We might have assumed at once a reduction of price not of seven and a half per cent.—but of ten or more—and an exportation of double the amount, which, combined, would produce the immediate ruin of the Spanish manufacturers, of whose fabrics a large proportion would remain on hand, and the residue be sold at or below cost.—This is and has ever been the uniform operation of the system of letting "*trade regulate itself.*"

A physician who found his patient in a raging fever, and let the disorder take its course or "*regulate itself,*" would be deservedly reprobated as unworthy of his profession. But his conduct would not be more irrational than that of a statesman, who saw the agriculture, manufactures, trade and commerce of his country going to decay, and let them "*regulate themselves.*" Government is instituted to guard the interests of the nation confided to its care: and by whatever name it may be called, is no longer estimable than as it fulfils this sacred duty. It was painful to us to state in a former address—it is equally painful to us to repeat—but we must repeat the appalling truth in the ears of the nation, that our manufacturers, a large and important class embracing some of the most valuable members of the community, must, with mixed sensations of regret and envy, regard the situation of the manufacturers of France, Russia, Prussia and most other countries in Europe who enjoy that protection from despotic governments, which the former sought in vain from their fellow citizens and representatives who are now themselves involved in the general distress resulting from the want of that protection.

We refer you, fellow citizens, to the plain, but impressive lesson, afforded by the fable of the belly and the members. The latter starved the former to death—and perished victims of their own folly. We shall not pursue it in detail. It is on the mind of almost every individual in the country, young and old. We cannot refrain from expressing our fears, that posterity will pronounce our policy to be a full exemplification of the soundness of its moral, and of our destitution of those broad and liberal views that, regard with "equal eye" all descriptions of society.

It will probably be objected by those whose interests or prejudices enlist them in hostility to our views, that all we have here submitted to you fellow citizens is merely theory; that however plausible, it cannot be relied on in the regulation of the political economy of a great nation; that Adam Smith being the oracle of that science, no theory opposed to his should be received, at least without the support of strong, and well established fact.

Well, we meet them, and are fairly at issue on this ground—and are willing to stand or fall as we furnish this support to our theory. We offer an historical case which exemplifies the tremendous consequences of a system exactly similar to ours in its features and operation—which blighted and blasted the happiness of a prosperous nation—and which pronounces an eternal sentence of condemnation on the theory of Adam Smith.

In the year 1681 the Portuguese established the woollen manufacture on an extensive scale, and by absolute prohibitions, excluded the woollen cloths of all other nations. In consequence they enjoyed a high degree of prosperity for above twenty years, and had the balance of trade in the favor universally. Fatally for them, in 1703, the British minister, Mr. Methuem, induced them to enter into a treaty, called by his name, which stipulated that the king of Portugal should never prohibit British woollen manufactures, provided port wines were admitted into Great Britian at two thirds of the duty paid on those of France. The agricultures of Portugal deluded themselves into the opinion, that they should derive a double benefit from this regulation; secure a market for their wines, and buy their cloths at reduced prices; that is, according to the maxim of Adam Smith, buy where '*they could be had the cheapest.*" But they were soon awakened out of this "*day dream.*" The flourishing manufacture was destroyed—the circulating medium of the country drained away—and the nation precipitated from the most flourishing state of prosperity to that pitiable situation of poverty and debasement, which holds her up to other nations as a beacon to shun the rocks whereon she shipwrecked her resources and her happiness, and on which our political bark is at present striking with violence.*

* It is obvious that by the transfer of the manufactures from Spain to France, for every workman reduced to idleness in the former country, there would be one additional employed in the latter. We have, therefore, in the text assumed 600,000, as the average number in France.

† We have already stated that Colonel John Taylor, a popular writer in Virginia, has taken the broad ground, that every dollar imposed as duty on foreign merchandize, is a dollar robbed out of the pockets of the agriculturalists! This maxim, admirably calculated to excite the selfish passions of one class of citizens against another, has unfortunately had too many proselites in & out of Congress.

* These admonitory facts evince the unsoundness of the theory of col Taylor, as well as of many of the members of congress, who are his disciples and the zealous partizans of his doctrines. Regardless of the ruinous consequences to their fellow citizens who had embarked millions in manufacturing establishments, they fondly persuaded themselves that by reducing the duties as low as possible, consistently with the necessity of providing a revenue, we repeat, was their paramount object, they were consulting the interests of the agriculturists, who would thereby be enabled to purchase foreign merchandize at low prices, and whose produce they believed always certain of finding such an advantageous market and high prices in Europe, that they might disregard the home market! Fatal delusion! Miserable anticipations! Narrow, mole-eyed policy! Utter disregarded of the sound systems and experience of all wise nations, and of the warning example of all unwise ones! They are now broad awake from those deceptions "day dreams." Their flour, excluded from the European market, has fallen from 20 to 30 per cent their cotton suffered an equal depreciation, and their tobacco become a worthless drug, which in the English markets will hardly command any price! If virtue insures its own reward, illiberal policy never fails to carry its own punishment.