E. B Watt Esq

Carmi

White county

Ills

2

In the Supreme Court of Penna.,

For the Middle District.

—

MAY TERM, 1856.

—

In the matter of the appeals of George W. Webb and Geo. Taylor Lane, James B. Lane and Elliott E. Lane from the decree of the Orphans' Court of Lancaster County, awarding the right of choice at the valuation made by the inquest on the real estate of JOHN N. LANE, deceased, to the parties in the order therein mentioned.

IN THE ORPHANS' COURT OF LANCASTER COUNTY.

JOHN N. LANE, deceased.

The inquisition of partition, on the estate of John N. Lane, dec'd, by order of the Orphans' Court of Lancaster County having been confirmed,

George Taylor Lane appears in Court, and claims to have the first right of choice in accepting a purpart thereof, he being the eldest son of William N. Lane, the eldest deceased brother of the intestate.

This is objected to by James B. Lane, who claims to have the first right of choice, he being the oldest living son of any of the deceased brothers of the intestate; to wit, of Elliott T. Lane, dec'd.

George W. Webb objects to both these claims, and claims to have the first right of choice, he being the oldest living nephew of the intestate.

The second choice is claimed by Mary Ann Kennedy, she being the eldest daughter of Willoughby W. Lane, dec'd, who was the second brother of the intestate.

This claim is resisted by all the nephews of the intestate, who all claim priority of choice before the nieces.

George W. Webb, jr., a minor son of John S. Webb, dec'd, who

was a son of Martha C. Webb, a deceased sister of the intestate, appears by his guardian, Henry E. Leman, and claims to have the third right of choice.

This claim is resisted by all the nephews and nieces of the intestate, who claim that the said George W. Webb, jr., has no right to or interest in any share or portion of the estate.

The brothers and sisters of the intestate, who died before him, leaving issue, are set forth in the following table, in the order of their priority of birth, and the names of their children, with their ages :

1st. William N. Lane, dec'd.
His children are Clarissa N. Ritchie—50 years.
Alice Taylor, intermarried with Hubbard B. Taylor—40 years.
George Taylor Lane—39 years.
William N. Lane—37 years.
James S. Lane—35 years.

2d. Martha C. Webb, dec'd.
Her children are George W. Webb—55 years.
Edwin B. Webb—53 years.
Willoughby L. Webb—50 years.
The children of John S. Webb, dec'd, son of Martha C.
Susan Webb, } who are minors.
George W. Webb. }

3d. Willoughby W. Lane, dec'd.
His children are Mary Ann married to Andrew Kennedy—56 years.
Rebecca Hunter—54 years.

4th. Sarah N. Carter, dec'd.
Her children are Isaac N. Carter—50 years.
Mary F. Martin married to John Martin—48 years.

5th. George S. Lane, dec'd.
His only child is Mary Ann Nicklin—48 years.

6th. Elliott E. Lane, dec'd.
His children are James B. Lane—42 years.
Elliott E. Lane—34 years.
Harriet R. Lane—youngest heir.

TOLE

May 7th, 1856. The Court order and decree that George Taylor Lane, the oldest son of the oldest deceased brother of the intestate is entitled to the first choice; that Mary Ann Kennedy, oldest daughter of the next oldest deceased brother of the intestate is entitled to the second choice; and that the remaining heirs are entitled on the principle that the representatives of the brothers are to be entitled to choice in the order of the age of the brothers, preferring males to females in order of choice; and then the descendants of the

sisters in the order of their birth; still preferring males to females among their descendants; and that the grand-nephew and grand-niece are entitled to choice in the same manner as their father would have been if living.

Attest, J. D. CLINTON, for C. O. Court.

May 7th, 1856. George W. Webb appeals from so much of the above decree as awards the first choice to George Taylor Lane, the second choice to Mary Ann Kennedy, and the remaining rights of choice on the principle set forth in the said decree.

THOS. E. FRANKLIN,
Att'y for Appellant.

May 7th, 1856. George Taylor Lane, James B. Lane and Elliott E. Lane appeal from so much of the above decree as awards to George W. Webb, jr., and Susan Webb, grand nephew and grand niece of deceased, any right of choice, or share or portion of or in the said estate.

THADDEUS STEVENS,
Att'y for G. Taylor Lane.
WM. B. FORDNEY,
Att'y for James B. and E. E. Lane.

ARGUMENT ON THE PART OF GEORGE W. WEBB, APPELLANT IN WEBB'S APPEAL.

The estate of Mr. Lane is distributable under the 2d clause of the 4th section of the Act of 8th April, 1833, relating to the descent and distribution of the estates of intestates; which provides that in case the intestate leaves neither brother nor sister, but nephews and nieces, being the children of deceased brothers and sisters, the real estate shall descend to and vest in such nephews and nieces. The Act of 29th March, 1832, relating to Orphans' Courts, (pamph. p. 190) after directing the order of choice in partition among lineal descendants, provides in the 46th section that when the descendant leaves no lineal descendants, the like proceedings shall be had in all respects on the application of the persons in whom the estate shall vest in possession; but gives no further directions in regard to priority of choice in such cases. It is contended on behalf of the appellant that the analogy between the two cases does not extend beyond the preference given to priority of birth, and to males over females; and that as the nephews and nieces take *per capita*, and not by representation, priority of choice is to be awarded to the oldest nephew, without reference to the relative ages of the parents of those in whom the estate vests. This rule seems to be the most simple and natural one, and that which tends most to preserve the symmetry of the whole system of distribution.

THOS. E. FRANKLIN,
Attorney for Appellant.

GEORGE TAYLOR LANE sustains the decree of the Orphans' Court

so far as the right of choice is concerned.

When collaterals inherit, "the like proceedings shall be had in all respects on the application of the persons in whom the estate shall vest in possession," as in the case of lineal descendants, Act of 20 March, 1832. No other rule as to the right of selection is indicated. By the same act it is provided that when the sons of the intestate are dead, the children of such sons shall choose in the order of the birth of their deceased parents, (preferring males to females,) not according to the age of the children of such deceased sons. Neither the daughter nor the male descendants of a daughter, in case of her death, shall take in preference to a younger son or *his* descendants. The grand children representing the male children in the order of their birth exclude the representatives of older female children. It is immaterial whether the fathers of such grand children were ever entitled to inherit. If the son die before the father,—yet his children choose before a surviving uncle or aunt. Their right of choice is governed by the right which the father would have had, had he survived the intestate. So with collaterals. I suppose, then, had all the brothers and sisters of the intestate been living at his death, they would have been entitled to election according to age, males being preferred to females. And if some had been dead and others survived, their children would have been elected in their stead.

I can see no reason why the same rule should not prevail in case all the parents of the nephews and nieces were deceased. In Hersha vs. Brenneman 6 Serg. & R. 3., it was decided that the right of choice was not personal, but would follow the right which the parent would have had, were he living. That decision took place under the act of 1794, which did not in express terms give the right of election to the grand children, like the act of 1832. The act of 1794 allowed the sons to choose in succession ; but the Court, by the equity of the statute, extended the right to the children of the sons. The same rule being applied to collaterals, will sustain the decree of the Court below.

ARGUMENT FOR APPELLANTS IN LANE'S APPEAL.

We think grand-nephews and nieces are not entitled to inherit where there are living nephews and nieces. It is not denied that such is the law unless it be altered by the Act of 27th April, 1855. That act, we think, has not extended the right of inheritance. Before that law was passed, all grand nephews and nieces, (there being none nearer of kin) inherited the grand uncle's estate equally. So also the children of uncles and aunts, they all being dead. The act of 1855 was intended to change that, and let them inherit *per stirpes, and not per capita*. And apt words are used for that purpose. It says "that among collaterals, *when by* EXISTING *laws entitled to inherit*, the real and personal estate shall descend and be distributed among the grand children of brothers and sisters, and the children of uncles

and aunts by representation, such descendants taking equally among them such share as their parents would have taken, if living." None were to partake of such distribution, except those "entitled by existing laws." It is precisely the same as if it had said "among collaterals who are entitled to inherit by existing laws," et cætera. Here was an evil to be remedied, and here is a remedy provided in appropriate language, without perverting it, to bring in a wider circle of heirs.

That part of the decree which gives the grand nephews and nieces a right to choose, should, we think, be reversed.

THADDEUS STEVENS,
Att'y for G. T. Lane.
WM. B. FORDNEY,
Att'y for J. B. and E. E. Lane.

ARGUMENT ON BEHALF OF GEORGE W. WEBB, JR., APPELLEE IN LANE'S APPEAL.

George W. Webb, jr., and Susan Webb are a grand nephew and grand niece of the intestate, being the children of John S. Webb, dec'd., who was a nephew of the intestate, and the grand children of Martha C. Webb, a deceased sister of the intestate. If their father John S. Webb had been living he would unquestionably have been entitled to a share of the estate; and it is contended on behalf of his children that under the 2d section of the Act of 27th April, 1855, entitled "an act to amend certain defects of the law for the more just and safe transmission and secure enjoyment of real and personal estate," (pamph. page 368) they take between them the share which their father would have taken if living. That section provides "that "among collaterals, when by existing laws entitled to inherit, the real "and personal estate shall descend and be distributed among the "grand-children of brothers and sisters, and the children of uncles "and aunts by representation; such descendants taking equally among "them such share as their parent would have taken if living." The phraseology of this section is somewhat obscure; but it is submitted that it sufficiently shows the intention of the Legislature, which was to bring the children of a deceased nephew or niece of an intestate into the same share of the estate which their parent would have taken if living, in a case where the inheriting class are nephews and nieces. This intention is obviously deducible from the context, from the occasion and necessity of the law, from the mischief felt, and the objects and the remedy in view. These are the rules by which the sages of the law, according to Plowden, have ever been guided in seeking for the intention of the Legislature—1st Kent's comment. 511. It is a remedial enactment, and must receive an equitable interpretation, so as more effectually to meet the beneficial end in view. Dwarris on Statutes, 726.

The title of the Act declares one of its objects to be for the more

just transmission of real and personal estate. What could be more just, because in accordance with nature, than that the estate of a decedent should be distributed on equal terms among all those who derive their being from the same common ancestor? What more unnatural than that the circumstance of the parent who would have inherited having died before the intestate, should deprive his children of all share or interest in the estate? If we regard the reason and spirit of the law, and the mischief for which it contemplated the application of a remedy, we can put but one interpretation upon it. By the 4th section of the Act of 8th April, 1833, (pamph. page 313) it was enacted that in the case of brothers and sisters being the inheriting class, and some living and some dead, the children of those deceased should take the share which their parent would have taken if living. But by the 8th section it is provided that there shall be no representation admitted among collaterals, after brothers and sisters children. The evil effect of this was that while the children of deceased brothers and sisters are brought in on equal terms with brothers and sisters living, their grand children whose parent was deceased, were not brought in with nephews and nieces living, and in the same way the children of uncles and aunts were excluded. This was inconsistent and unnatural; and there was no conceivable reason for the distinction. To remedy this evil, therefore, the section under consideration was passed: and it must be read with reference to it. By supplying the omitted elipsis, it will read to the effect that among collaterals, when by existing laws (such collaterals are) entitled to inherit, the real and personal estate shall descend and be distributed among the (children of deceased brothers and sisters, and the children of the deceased children of brothers and sisters; such) grand children of brothers and sisters taking by representation equally among them such share as their parent would have taken if living; and so with uncles and aunts and the children of deceased uncles and aunts.

THOS. E. FRANKLIN,
Attorney for Appellees.