

except upon a person's dying seized in fee, *intestate*, as well as without heirs.

Having premised so much relative to the principle of escheats, I shall proceed to the examination of our acts of assembly upon that subject, in which, although the rules determining in what cases lands shall be deemed escheat appear clear enough in point of language, their design and practical application have been considered as involved in great difficulty. By the act of October 1780, ch 51, the rule of escheat is prescribed in the following words, viz. "that all lands within this state of which any person has.....or shall hereafter die, seized in fee simple without any heir of the whole blood who could have inherited if he had been a subject of this state, or without leaving any relation of the half blood, that is, first cousins, as the same are reckoned by the common law, such lands shall escheat to the state" &c. I do not in this place notice the dispositions made concerning the lands so described.

The act of 1781, ch. 20, apparently in explanation of the former provision, lays down the same rule negatively by saying that "no warrant of escheat shall be good unless where the owner hath died, or shall die, *intestate*, seized in fee simple, and without having any relation of the half blood within two degrees (that is, first cousins) as the same are reckoned by the common law, and without leaving any relation who might inherit if a subject of this or any of the United States:" it then goes on to say "but the public do engage to warrant and defend to the respective purchasers their title in fee simple to any lands escheated, on payment of a like sum of current money as was paid on the first purchase by escheat, in case where two thirds of the real value only is paid at the time of purchase, or without any additional sum being paid in case the full real value of the land is paid in current money at the time of escheating the same, if it should afterwards appear that there is any person who might claim as heir to such land, or who might claim the same under any testamentary disposition, if such person was a subject of this or any of the United States, but whose claim is or may be destroyed by being a British subject," by sundry subsequent acts provision is made for the benefit of creditors; of persons having equitable titles under contracts, or having liens on property otherwise escheatable, and also for the benefit of foreigners; which will presently be noticed; but I shall first endeavour to discover the intentions of the legislature in the provisions here recited. This is a matter of no small difficulty, nor can I pretend to offer more than mere conjectures upon a subject which, I am informed, has been variously interpreted by persons the most competent to unravel it.