

In regard to the import of the language, so far as extends to the specification of cases in which lands shall or shall not be deemed absolutely escheat, the two provisions certainly concur in saying that, if a person dying seized of lands in Maryland leaves an heir or relation near enough in blood to inherit, according to the received law of descents, and who is prevented from the succession only by his being politically incapable of holding lands in the state, the right under an escheat warrant shall not be conclusive; and, that if the person dying leaves neither an heir, as near as the second degree of half blood politically capable of inheriting, nor an heir barred as aforesaid, but otherwise entitled at law to the inheritance, the escheat *shall* be good and absolute, but, in the first case, a conditional right is allowed to be acquired, which the state engages to make an absolute and effectual one upon the performance of the condition stipulated, for such it will presently be seen, was the meaning of the warranty, and not the repayment of money to the parties who had acquired the contingent right.

This being the apparent meaning of those two acts, it becomes a point of enquiry what was the consideration, view, or motive of the legislature in thus suspending a title by escheat where there was nothing to operate against it but the *existence* of a claim absolutely void, that is to say, the claim of a person who might in other circumstances have been an heir, but who was actually incapable of inheriting; for by the law of England an alien cannot inherit land, and although British subjects were not aliens in Maryland before the revolution, they assuredly became such by the declaration of independence. Was there any doubt of this fact? Was it a doubt concerning the issue of the war or the terms of a peace, that prompted this reference to heirs barred only by their actual position in respect to this country, or was it supposed that there might be cases in which it would be proper to make some compensation to the heirs thus deprived of their right of succession? Whatever was the particular consideration that led to this provision, the intended effect of it was to obtain a greater price for the land that might eventually be found to belong to the state *only* because the heirs were British subjects than for such as was escheat for want of heirs either in America or elsewhere, or, in other words, such as would have been escheat independent of the revolution; for, the latter was to be conclusively disposed of for two thirds of its real value; whereas, to obtain a secure title to the other, the party purchasing by escheat, that is, taking a warrant, returning a certificate of survey, and paying the two thirds of the value, was obliged to pay as much more, unless he had waved the general privilege of obtaining a patent on paying the said two thirds, and, to avowed further question, had on the return of his certificate, paid the full