

believe that one of the two children of the wife was illegitimate, as the Court could not enter into that question, the settlement was made upon the wife and both the children. *Millet v. Rowse*, 7 Ves. 420; *Ball v. Coultis*, 1 Ves. & Bea. 301.

The English books, in reference to this subject, must be understood, however, as always speaking of legitimate children, who are capable of taking by descent. According to the law of England a bastard is, in many respects, considered as the son of no one; and particularly as to the right to take by descent or distribution. He is reckoned as a *terminus a quo*; the first of his family; he can, therefore, for most civil purposes, have no heir or next of kin but the legitimate issue of his own body. But, in some other respects, and for all moral purposes his consanguine relations are regarded; for it has been held, that in the Court of Chancery a more liberal allowance for the maintenance of an infant may be approved, in consideration of the circumstances of an illegitimate brother born of the same father and mother who was unprovided for. *Harvey v. Harvey*, 2 P. Will. 21; *Bradshaw v. Bradshaw*, 1 Jac. & Walk. 627. And so too a bastard cannot marry his mother or illegitimate sister. *The Queen v. Chafin*, 3 Salk. 66; *Haines v. Jescott*, 5 Mod. 168; *S. C. Ld. Raym.* 68. By the civil law, spurious children are allowed to take as heirs and next of kin of their mother equally with those who are legitimate; and, claiming under the mother, they are, in general, entitled to the same rights as legitimate children. *Stevenson v. Sullivant*, 5 Wheat. 207, 262, note; *Just. Inst. by Coop.* 568. These principles of the civil law have been sanctioned and adopted as a part of our Code by an Act of Assembly which declares that the illegitimate children of a female shall be capable of taking and inheriting both real and personal estate from their mother, or from each other, or from the descendants of each other in like manner as if they had been born in lawful wedlock. 1825, ch. 156.

Whence it is clear, that on the death of the plaintiff Anna intestate, while sole, her illegitimate son Frederick would take as if he had been born in lawful wedlock; and therefore, upon those principles by which this subject is governed, I am of opinion, that he, as the inheritable, though bastard child of the plaintiff Anna, ought to be allowed to participate in the benefit of the settlement about * to be made upon his mother. Because it is evident, **583** from the general spirit of the cases in relation to this subject, that the fortune of the wife is settled upon her and her children, looking to her blood, and confining the descent or distribution to those who would lawfully take from her as her immediate descendants. This bastard son Frederick is a child who, upon those principles, would take according to our law; and consequently the settlement upon the plaintiff Anna must be extended