

go to the relatives on the part of the mother (who are the exceptants), to the exclusion of the father, according to the provisions of the first section of the Act of 1820, ch. 191. It can only be, by considering the deed valid, and that the child takes as a purchaser under it, that the father can claim, the child upon that hypothesis constituting a new root or stock of inheritance, and the father, under the circumstances of the case, by the terms of the same Act, taking as heir to his child.

These exceptants are privies in blood to the mother and the child, and standing in that relation, they seem to have the clear right to set aside the deed in question, the rule being, that the infant himself, or his representatives, privies in blood, can avoid a voidable conveyance made by the infant. *Whittingham's Case*, 8 Rep., 42. If the infant does not live to confirm or adopt at full age the feoffment which he made during his minority, it may be set aside by persons who are privy to him in blood, but not by a person who is privy in estate only. *McPherson on Infants*, 465.

My opinion, therefore, is that, viewing this settlement as one of those voidable acts which must be disaffirmed in order to set it aside, that these exceptants, who are privy in blood, are competent to do so, and that, having availed themselves of that privilege, the deed is to be disregarded, and the estate then descending to the heirs on the part of the mother, the father can take no more than his curtesy interest, and that it appears from the proceedings he has already received.

And I am further of opinion, that upon the true construction of the Act of Assembly, and upon the authority of the case of *Porter vs. Askew*, 11 G. & J., 346, the residue of the proceeds of these sales resulting from that portion of the real estate sold which belonged to Mrs. Stephenson, must be distributed among the uncles and aunts of her infant child, to the exclusion of the children of uncles and aunts, if any there be. The case will be sent to the Auditor, to state an account accordingly.

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LATROBE, for the Husband.

MCMAHON, for Exceptants.