

An. Code, sec. 124. 1904, sec. 123. 1888, sec. 124. 1798, ch. 101, sub-ch. 11, sec. 5.

**129.** If there be children and no other descendants, the surplus shall be divided equally amongst them.

This section applied. *Schaub v. Griffin*, 84 Md. 563.

An. Code, sec. 125. 1904, sec. 124. 1888, sec. 125. 1798, ch. 101, sub-ch. 11, sec. 6.

**130.** If there be a child or children, and a child or children of a deceased child, the child or children of such deceased child shall take such share as his, her or their deceased parent would (if alive) be entitled to; and every other descendant or other descendants in existence at the death of the intestate shall stand in the place of his or their deceased ancestor; provided, that if any child or descendant shall have been advanced by the intestate by settlement, or portion, the same shall be reckoned in the surplus; and if it be equal or superior to a share, such child or descendant shall be excluded, but the widow shall have no advantage by bringing such advancement into reckoning; and maintenance or education, or money given without a view to a portion or settlement in life shall not be deemed advancement; and in all cases those in equal degree claiming in the place of an ancestor shall take equal shares.

Advancement defined. Where advancement is brought into hotchpot, its value must be estimated as of time it was received. *Clark v. Willson*, 27 Md. 703.

The courts construe this section liberally to enforce maxim that "equality is equity." A gift to a daughter or her husband is presumed to be an advancement in absence of proof to contrary. Proof held to show advancement. *McCabe v. Brosenne*, 107 Md. 494; *Dilley v. Love*, 61 Md. 604; *Graves v. Spedden*, 46 Md. 527; *Parks v. Parks*, 19 Md. 323; *Stewart v. Pattison*, 8 Gill, 54. *Cf.* *Justis v. Justis*, 99 Md. 80; *Pole v. Simmons*, 45 Md. 250; *Cecil v. Cecil*, 20 Md. 156; *Cecil v. Cecil*, 19 Md. 80.

Where advancement is created by a written instrument, the character and design of advancement may be shown by parol evidence. *Stewart v. State*, 2 H. & G. 119.

To a full defense of an action at law against an administrator by a child to whom advances were made, it is necessary to show that amount of advancements was equal to or exceeded plaintiff's share in estate. *State v. Jameson*, 3 G. & J. 449.

This section applies only to personalty, and to cases of intestacy. *Hayden v. Burch*, 9 Gill, 83.

This section referred to in construing sec. 133—see notes thereto. *McComas v. Amos*, 29 Md. 131.

An. Code, sec. 126. 1904, sec. 125. 1888, sec. 126. 1798, ch. 101, sub-ch. 11, sec. 7. 1916, ch. 224, sec. 126.

**131.** If there be a father and mother and no children or descendants, the whole shall be divided equally between the father and mother.

Where a testatrix gives her husband a life estate in property, and from and immediately after his death, to her daughter absolutely if she be living at time of her husband's death, and if not then to her children or descendants, and in default of children or descendants then to daughter's next of kin, no estate vests in daughter until after death of the husband. An ultimate limitation in favor of next of kin or heirs does not include husband unless such intention appears. *Safe Deposit & Trust Co. of Balto. v. Carey*, 127 Md. 595.

This section applied. *Schaub v. Griffin*, 84 Md. 563. And see *Chester Hospital v. Hayden*, 83 Md. 115.

An. Code, sec. 127. 1904, sec. 126. 1888, sec. 127. 1798, ch. 101, sub-ch. 11, sec. 8. 1916, ch. 224, sec. 127.

**132.** If there be either father or mother living, the other parent having died, and no child or descendants, the father or mother, as the case may be, shall have the whole.