

escaped the attention of the legislature in passing the law. From which it appears that had not the words of the Act been so strong, the law of nature and of good morals would have controlled the interpretation of it, and hence perhaps may be drawn an additional argument in favor of the exclusion of adulterine bastards under sec. 29 of the Code cited above. It was also decided in *Earle v. Dawes*, 3 Md. Ch. Dec. 230, that an illegitimate child was entitled under the same Act to share equally with the legitimate children in the property of the mother dying intestate, such a case being equally within its letter and spirit. The object of the Act was, no doubt, to entitle the illegitimates to be provided for out of such property as their mother might leave at her death undisposed of, or which would have vested in her as heir or distributee had she lived to take as such, see *Stevenson v. Sullivant*, 5 Wheat. 207.

But now the Act of 1868, ch. 199,<sup>7</sup> allows the mother to inherit in default of descendants or brothers or sisters or the descendants of brothers or sisters of the illegitimate, and if she be dead then her heirs at law may inherit. The relaxation of the common law therefore is no longer made for the exclusive benefit of the bastard. While the Act does not recognize the relation of fraternity between such a bastard and the children of the same mother born in wedlock, it virtually does in some cases admit a reciprocity between them in inheriting from each other, through the mother, if it be the law that illegitimates may take property from their mother, which never actually vested in her, but to which she would have been entitled by descent or in course of distribution if she had lived. It is observable that the Act permits the heirs of the mother if she be dead to inherit directly from the bastard. The descent therefore is direct but mediate. For a legitimate child of a deceased mother takes the property of her illegitimate child as her heir, whereas amongst legitimates the descent from brother to brother is immediate. The Act is somewhat inartificial in speaking of the *brothers and sisters* of an illegitimate, as an illegitimate cannot, strictly speaking, have brothers and sisters. However the meaning is clear, but it will follow from *Brewer's Lessee v. Blougher supra*, that all illegitimate children of a woman, whether by one man or many, are under this law of Maryland brothers and sisters.

In the case of *Pratt's Lessee v. Flamer*, 5 H. & J. 10, it was held that a devise to an unborn illegitimate child where the mother is described is valid.<sup>8</sup> In the same case it was determined that where there were devises to two illegitimate children, and in case either shall die without heirs then her part shall go to the survivor, the word *heirs* means issue, and

<sup>7</sup> And the fact that this act is placed in the Code under the title "Inheritances" (Code 1911, Art. 46, sec. 30) does not limit its application to real estate only. *Reese v. Starner*, 106 Md. 50.

<sup>8</sup> The will of a spinster left property in trust for all the children which might belong to her at the date of her death. An illegitimate child was born to her and survived her. It was held that the child took under the will. But whether a gift by deed or will made by a *man* in favor of an unborn illegitimate child is valid, *quære?* *Estate of Frogley*, (1905) P. 137. See also *Ebborn v. Fowler*, (1909) 1 Ch. 578 and cases cited.