

shown, is due to those who would have been alimented by the deceased if they had needed such aid, and not to those who, in like circumstances of necessity, would have alimented the deceased himself.

The person whom the deceased would have alimented would not be the father alone, but the mother and the brothers and sisters. The love is equal, and the natural proximity is the same.

But the father's claim to the whole of his son's estate is otherwise a clear fallacy. When the son had no legal right to property, the father might logically take all that the son possessed, as the English husband does in case of his wife, and as the American slave-owner does in case of his slave. But, it being granted that the son can have a separate estate, the father's claim to it is no better than those of the mother and the brothers and sisters. For, as it is no longer supported by the *patria potestas*, it can only have such force as reason can give to it, and the just and well-understood policy of the law is to distribute, and not to favor or compel accumulation in the hands of any single person. But, assuming that the father is nearer (artificially speaking) than a brother or sister, that proximity is not of itself conclusive to entitle him to the son's entire succession; for, in other points, our law has unhesitatingly disregarded mere conventional symmetry, where equity and natural considerations have not applied also. The mother, being nearest of kin, does not oust the brothers and sisters, though they are a degree more remote than herself. The brothers and sisters do oust the grandfather, though their calculated kindred is supposed to be equal. In both cases the admission and the exclusion are founded on principles of nature and equity, not of mere artificial and conventional symmetry.

We have said enough, we think, to show the shortcoming of our scheme of distribution on one point, and that it needs such an illustration as shall bring us within the European family in respect of private law. But there is another and a graver point upon which we have even less hesitation in avowing our distaste of English law. It is one in which England stands alone in Europe, we mean the law which allows every testator, under all circumstances, without regard to nature or justice, to