

ASCENDANTS.—We cannot but smile, says Story, in the present times, at some of the reasoning and some of the fictions which spread themselves here and there in small veins in the common law system. We are gravely told, for instance, by Bracton, in which he is followed by Lord Coke, that the true reason why by the common law a father cannot inherit real estate by descent from his son, is, that inheritances are heavy, and descend, as it were, by the laws of gravitation and cannot reascend.* We are again told that when the title to an estate is suspended upon future contingencies, the inheritance is in the meantime in abeyance, that is (as we are taught by the accompanying explanations) the inheritance is in *gremio legis* or in nubibus in the bosom of the law or in the clouds, which seems to mend the matter exceedingly in point of plainness. And again, when an estate is conveyed to trustees to serve existing uses, and future contingent uses also, we are told, that though a seisin is necessary to feed them and it be now exhausted; yet, happily for us, there remains a possibility of seisin, a *scintilla juris*, which kindles at the very moment the new uses spring into being, and by its vital power executes at once the possession of the estate to those uses, by some sort of legal legerdemain. And Kent, the equally renowned author, has remarked that the very artificial nature and absurd results of the old English rule that real estate never ascends, are strikingly illustrated by the well-known case stated by Littleton, that though the father could not be heir to his son, for the inheritance never could ascend, and the uncle, or father's brother, though in a remoter degree, had the preference; yet, if the uncle died intestate without issue, the father, as heir to the uncle, might succeed to the inheritance of his son; for, says Littleton, "he cometh to the land by collateral descent and not by lineal ascent. So it has been held that if either parent stood in relation of cousin to the son, they would inherit in that character, though not as father or mother." (4 Kent Com. 396.) This is the actual law of New Brunswick, or rather was considered such until the decision in the case of Wood *vs.* De Forrest. (See New Brunswick).

* Descendit itaque jus, quasi ponderosum quid cadens deorsum recta lineâ, vel transversali et nunquam reascendit eâ viâ quâ descendit. Bracton, lib. 2, ch. 29, Co. Litt. 11.