

Rockingham, }
May 3, 1921. }

JOHN J. MACE v. ROBERT T. BATCHELDER.

Upon the death of an adopted child under age or intestate his estate received by gift or inheritance from his natural kindred is to be distributed under P. S., c. 181, s. 5, as if there had been no adoption.

Upon the death of a minor leaving no mother or brothers or sisters or their descendants the father is entitled to his estate under P. S., c. 196, s. 1; Laws 1903, c. 74.

WRIT OF ENTRY. Elizabeth Mace, who died in 1894, devised the demanded premises to her two daughters, Loener and Nellie. Loener married Robert T. Batchelder and died intestate in 1914, leaving Robert and a son, Jabez, surviving her. Later, Nellie adopted Jabez and Robert conveyed his interest in the demanded premises to her.

Nellie died in 1919, leaving a will by which she gave the land in question to Jabez. Jabez died soon after, under age.

The plaintiff is Nellie's brother; the defendant is Robert, Jabez's father. The question whether the plaintiff or the defendant is entitled to the demanded premises was transferred without a ruling, from the October term, 1920, of the superior court by *Kivel*, C. J.

H. A. & R. E. Shute, for the plaintiff.

Scammon & Gardner, for the defendant.

YOUNG, J. The test to determine who is entitled to judgment is to inquire who would have been entitled if there had been no decree of adoption, for P. S., c. 181, s. 5, provides that if an adopted child "dies under age or intestate, leaving property received by gift or inheritance from his natural kindred, such property shall be distributed as if there had been no decree of adoption."

The demanded premises were given to Jabez by one of his natural kindred, and if there had been no decree of adoption, they would have vested in the defendant at Jabez's death. P. S., c. 196, s. 1; Laws 1903, c. 74.

Judgment for the defendant.

All concurred.