

of doing so ; and if these parties are not permitted to avoid it, then it follows that the settlement must stand, and all the consequences resulting from regarding it as a valid instrument must ensue.

These parties, by their exceptions filed on the 15th November, 1839, contest the validity of the settlement, and by their petition, filed on the 30th September, 1846, the fund being still under the control of the court, expressly disaffirm the deed, and claim the fund in opposition to it. And it is and must be conceded, that George B. Stephenson, the surviving husband of Augusta, and father of her infant child, can have no right to the money now in controversy, unless the deed in question is to be regarded as a valid and operative instrument. If it be not, then, as this estate descended to this infant child on the part of the mother, it must, upon her death, go to the relations on the part of the mother, (who are the exceptants,) to the exclusion of the father, according to the provisions of the first section of the act of 1820, ch. 191.

It can only be by considering the deed valid, and that the child takes as a purchaser under it, that the father can claim—the child, upon that hypothesis, constituting a new root or stock of inheritance, and the father, under the circumstances of the case, by the terms of the same act, taking as heir to his child.

These exceptants are privies in blood to the mother and the child ; and standing in that relation they seem to have a clear right to set aside the deed in question—the rule being that the infant himself, or his representatives, privies in blood, can avoid a voidable conveyance made by the infant. *Whittington's Case*, 8 Rep., 84.

If the infant does not live to confirm or adopt, at full age, the feoffment which he made during his minority, it may be set aside by persons who are privy to him in blood, but not by a person who is privy in estate only. *McPherson on Infants*, 465.

My opinion, therefore, is, that viewing this settlement as one of those voidable acts, which must be disaffirmed in order to