

EARLE AND McNIER

VS.

DAWES ET AL.

JULY TERM, 1849.

[ILLEGITIMATE CHILDREN—CONSTRUCTION OF DEEDS—CONDITION PRECEDENT.]

A WOMAN died intestate, leaving an illegitimate son and other children born in lawful wedlock. *Held*, that by the Act of 1825, ch. 156, the illegitimate son was entitled to share equally with the other children in the mother's estate.

A deed recited that the grantor was anxious to secure to the grantee his undivided interest in certain land, upon condition that he was to retain the use and enjoyment of it during his life, and in consideration of these premises, and of natural love and affection, conveyed the property to the grantee upon condition that the grantor died before the grantee, and not otherwise, with *habendum* to the grantee and her heirs, subject to the condition aforesaid. The grantor survived the grantee. *HELD*—that this was clearly a condition *precedent*, and not being fulfilled, nothing passed by the deed.

Whether a condition be precedent or subsequent is always a question of intent, and it is immaterial where the clause creating the condition be placed in the deed.

Conditions precedent must be punctually and literally performed before the estate can vest.

A Court of Equity will never vest an estate where, by reason of a condition precedent, it will not vest at law.

[The facts of the case necessary for an understanding of the Chancellor's opinion are sufficiently set out therein.]

THE CHANCELLOR:

This case, which is submitted upon arguments, in writing, of the solicitors of the parties, presents two questions.

The first depends upon the construction of the Act of 1825, ch. 156, relating to illegitimate children. It appears that the defendant, B. M. Dawes, son of Mrs. Dawes, is an illegitimate child, and that his mother, Elizabeth Dawes, died intestate, leaving this son and other children born in lawful wedlock, and the question now raised is, whether this illegitimate son is entitled to participate in the estate of his mother as co-heir with the other children.