

conditions (or trusts or charges) embraced in the deed are that after the death of both grantors the grantees are to pay the following legacies—these are the words of the instrument—to the other children of W. D. Balcom and wife as follows:—

1. To Jessie Lavinia, \$1,000 and organ one year from his decease.
2. To Maria, \$1,000 two years after his decease.
3. To Bertha Sophia, \$1,000 three years after his decease.
4. To Rupert D., \$1,000 four years after his decease.
5. To Annie E., \$1,000 five years after his decease.

In 1887, Edgar Balcom, one of the grantees, died, leaving his wife and one son, then a minor, his heirs. Mrs. W. D. Balcom died in 1888 and W. D. himself died in 1902. Charles Balcom, who had been living with his father up to his death, took possession of all the property and has been in the enjoyment of it ever since. He has paid none of the legacies or amounts provided in the trusts to any of the brothers and sisters therein mentioned. On the 31st day of August, 1907, the widow and only son of Edgar Balcom, then being of age, at the request of Charles gave a deed to Charles of all the interest of Edgar in the deed of W. D. Balcom and wife to Charles and Edgar, subject to the carrying out of the conditions, and Charles accepted and recorded this deed before action was brought.

Jessie Lavinia Balcom, who, since the deed of 1884 was given, has married one Pratt, now brings action against Charles Balcom claiming a declaration that the lands conveyed to said Charles Balcom and Edgar, now vested entirely in Charles, are chargeable with the payment to her of the said sum of \$1,000 or payment of said \$1,000 by Charles Balcom.

The chief defence is that the deed of W. D. Balcom and wife to defendant and brothers was not a deed but a testamentary instrument having no effect until after W. D. Balcom's death, conveying nothing in his lifetime and only operating as a disposition of his property by will. Of course, if I held that, as the document was not attested in accordance with the Act respecting wills, it would be equivalent to declaring the estate intestate.