

without a license, in violation of Gen. Laws, c. 119, and Laws of 1879, c. 34. The defendant is set up in the indictment as of South Berwick in the state of Maine. The defendant demurred.

*John Kivel*, solicitor, for the state.

*William S. Pierce*, for the defendant.

BINGHAM, J. Chapter 119, section 9, Gen. Laws, relates to granting license for the sale of lightning-rods. The material part of it, as amended by c. 34, Laws of 1879, is, "The treasurer of the state may grant such license for the term of one year, upon receiving from any applicant the sum of five hundred dollars, and from any applicant who has for the five years last past been a citizen of this state the sum of one hundred dollars." Citizens of other states cannot take a license unless they pay five hundred dollars, while a person who has been five years a citizen of this state may take one for one hundred dollars; and in this respect the citizens of other states are not given the privileges and immunities of citizens of this state. *State v. Lancaster*, 63 N. H. 267; *Bliss's Petition*, 63 N. H. 135.

*Demurrer sustained.*

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BELKNAP.

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CLOUGH & a. v. CLOUGH.

M., by will, gave certain land to C. "if she should have living issue," if not, then over. C. had a living daughter whom she survived. After the death of C. the remainder-men claimed the land against the grantee of C.'s devisee. *Held*, that the fee vested in C. upon the death of M., which occurred after the birth of the daughter to C.

WRIT OF ENTRY, for land in Sanbornton. Facts agreed upon by the parties for the opinion of the court. Joseph G. March died in 1854, leaving a will by which he gave to Mary S. Clough, her heirs and assigns, the demanded premises "if she should have living issue, if she should have no issue then to have the use and occupation of said premises during her natural life," remainder over. Mary S. Clough had one daughter, born in 1851, who died without issue in 1874. In 1880, Mary S. Clough died, leaving a will whereby she gave the premises to her husband, David C. Clough, and his heirs. By deed dated December 30, 1881, David C. Clough conveyed the premises to the defendant, whom he afterwards married. The plaintiffs claim under the will of Joseph G.

March; and the question is upon the construction and effect of the above clause in that will.

*Jewell & Stone*, for the plaintiffs.

*W. B. Fellows* and *E. A. & C. B. Hibbard*, for the defendant.

DOE, C. J. The devise is "to my niece Mary S. Clough . . . to her heirs and assigns if she should have living issue, if she should have no issue then to have the use and occupancy of said premises during her natural life." There is no express condition making the devise of a fee to Mary depend upon her issue continuing to live as long as Mary, or as long as the testator; and the will does not show that the testator used the terms "have living issue" in any other than their literal sense, or with an implied qualification that Mary's issue must survive her or the testator. His apparent intention was that the birth of living issue would determine whether Mary took a fee or a life estate.

*Judgment for the defendant.*

ALLEN, J., did not sit: the others concurred.

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BEEDE v. LAMPREY.

In trover for trees carelessly but not wilfully cut by the defendant on the plaintiff's land, the measure of damages is the value of the trees immediately after they are severed from the realty.

TROVER, for two hundred spruce logs. The defendant was defaulted, with the right to be heard as to the assessment of damages. Facts found by the court. The parties own adjoining timber lots in Moultonborough. The defendant, while engaged in an operation on his own lot, negligently, but without malice, cut over the line dividing the lots, and cut down, trimmed, hauled to and deposited in the lake at Melvin Village in Tufonborough, and thence towed to his saw-mill the trees in question, which facts constitute the cause of action. The question whether the measure of damages is the value of the stumpage, or the value of the logs when cut and trimmed, or when deposited in the lake, or when delivered at the mill, was reserved.

*E. A. & C. B. Hibbard*, for the plaintiff.

*Jewell & Stone*, for the defendant.