it was a case of condition, and not of limitation, they proceed to examine the question, whether a condition precedent or subsequent, with a view to the leading motive of the testator, little regarding any particular phraseology. *396] And certainly, with a view to induce T. T. to address *the daughter, the more beneficially the will operated in her behalf, the greater would be the inducement held out; and accordingly, they make it a condition subsequent. But a contrary reason operates here, for the leading motive is not the establishment of William King, but the formation and advancement of a particular family connection. It would then have comported best with this testator's views, to superadd the inducement of necessity, in order to incline William King to the proposed matrimonial connection. There could have been no reason for giving it to him, until the marriage took effect; it would have been better to let it accumulate in the hands of the executors; especially, considering his tender age at the date of the will.

Upon the whole, I am satisfied, that if this case is to be disposed of on the law of conditions, there is nothing in the will or the views of the testator that should make it a condition precedent; and nothing certainly has occurred since, to make it necessary to give it that character; for had he married, there would have been a resulting trust in favor of the heirs, if the marriage failed to produce issue, and that would only have left the heir-at-law where he is now, without owing anything to the aid of a trust. Whence it results, that it would have been useless and idle to have vested any interest in William at any time.

But I am perfectly satisfied, that the case is one to which the law of limitations and contingencies alone is applicable, and that according to the principles that govern that class of cases, the impossibility of the contingency does not confirm the estate in the first taker, but defeats it. I am, therefore, of opinion, that the judgment below should be reversed.

Judgment affirmed.

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*397] *Anonymous.

Copies of opinions.

Certified copies of the opinions of the court, delivered in cases decided by the court, are to be given by the reporter; and not by the clerk of the court.

Wirt, moved the court to order copies of the opinion of the court delivered at this term in the case of *Shanks* v. *Dupont* (*ante*, p. 242), to be certified with the judgment of the court, under the seal of the court. He stated, that he made the application on behalf of a gentleman who was interested in a case depending in England, upon similar principles with those decided in the case referred to; and the object was to lay the proceedings of this court, in an authenticated form, before the court in Great Britain, which was to decide the case depending there.

Marshall, Ch. J., said, that the reporter of the court is the proper person to give copies of the opinions delivered by the court. The opinions were delivered to him, after they were read, and not to the clerk, and they were not, therefore, in his office to be copied. Not being filed in the clerk's office, he could not certify copies of the opinions, under the seal of the court. If

an authenticated copy of the opinion of the court is desired, the reporter only could furnish it, certified ; and the clerk of the court may certify, under the seal of the court, that he is the reporter ; if this should also be required.

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*William Fowle, surviving partner, Plaintiff in error, *v.* Common Council of Alexandria. [*398

Municipal corporations.—Auctioneers.—Pleading.

The plaintiff placed goods in the hands of an auctioneer, in the city of Alexandria, who sold the same, and became insolvent, having neglected to pay over the proceeds of the sales to the plaintiff; the auctioneer was licensed by the corporation of Alexandria, and the corporation had omitted to take from him a bond, with surety, for the faithful performance of his duties as auctioneer; this suit was instituted to recover from the corporation of Alexandria, the amount of the sales of the plaintiff's goods, lost by the insolvency of the auctioneer, on an alleged liability, in consequence of the corporation having omitted to take a bond from the auctioneer.

The power to license auctioneers, and to take bond for their good behavior, not being one of the incidents to a corporation, must be conferred by an act of the legislature; and in executing it, the corporate body must conform to the act; the legislature of Virginia conferred this power on the mayor, aldermen and commonalty of the several corporate towns within that commonwealth, of which Alexandria was then one; "provided, that no such license should be granted, until the person or persons requesting the same, should enter into bond, with one or more sufficient sureties, payable to the mayor, aldermen and commonalty of such corporation:" This was a limitation of the power. p. 407.

Though the corporate name of Alexandria was "the mayor and commonalty," it is not doubted, that a bond taken in pursuance of the act would have been valid. p. 407.

The act of congress of 1804, "an act to amend the charter of Alexandria," does not transfer generally, to the common council, the powers of the mayor and commonalty; but the powers given to them are specially enumerated; there is no enumeration of the power to grant licenses to auctioneers. The act amending the charter changed the corporate body so entirely as to require a new provision to enable it to execute the powers conferred by the law of Virginia; an enabling clause, empowering the common council to act in the particular case, or some general clause which might embrace the particular case, is necessary, under the new organization of the corporate body. p. 408.

The common council granted a license to carry on the trade of an auctioneer, which the law did not empower that body to grant. Is the town responsible for the losses sustained by individuals from the fraudulent conduct of the auctioneer? He is not the officer or agent of the corporation, but is understood to act for himself, as entirely as a tavern-keeper, or any other person who may carry on any business, under a license from the corporate body. p. 409.

Is a municipal corporation, established for the general purposes of government, with limited legislative powers, liable for losses consequent on its having misconstrued the extent of its powers, in granting a license, which it had no authority to grant, without taking that security for the conduct of the person obtaining the license, which its own ordinances had been supposed to require, and which might protect those who transact business with the persons acting *under the clause? The court find no cause in which this principle has been affirmed p. 409. [*399

That corporations are bound by their contracts, is admitted; that moneyed corporations, or those carrying on business for themselves, are liable for torts, is well settled; but that a legislative corporation, established as a part of the government of the country, is liable for losses sustained by a nonfeasance, by an omission of the corporate body to observe a law of its own, in which no penalty is provided, is a principle for which we can find no precedent. p. 409.

The act of Virginia, passed in 1792, authorizes a defendant to plead and demur in the same case. p. 409.

Fowle *v.* Alexandria, 3 Cr. C. C. 70, affirmed.

Error to the Circuit Court of the District of Columbia, and county of Alexandria.