

tees, after the Decease of the Father, to preserve the contingent Remainder to such afterborn Son or Sons, Daughter or Daughters, until he, she, or they come *in esse*, or are born, to take the same; any Law or Usage to the contrary in any wise notwithstanding.

II. Provided always, That nothing in this Act shall extend or be construed to extend to divest any Estate in Remainder, that, by virtue of any Marriage or other Settlement, is already come to the Possession of any Person or Persons, or to whom any Right is accrued, thought not in actual Possession, by reason or means of any Afterborn Son or Sons, or Daughter or Daughters not happening to be born in the Life time of his, her, or their Father.

I. Estates limited in Remainder on the lawful Issue of the Body of any Person, Son or Daughter born after the Decease of the Father, may take such Estate as if born in his Life time, &c. although there be no Limitation to Trustees, &c.

By Art. 47, sec. 25,¹ of the Code, the Act to direct descents, it is provided, that no right in the inheritance shall accrue to or vest in any person other than to children *of the intestate, and their descendants, unless such person is in being, and capable in law to take as heir at the time of the intestate's death, but any child or descendant of the intestate, born after the death of the intestate, shall have the same right of inheritance, as if born before the death of the intestate. And by Art. 93, sec. 134,² (the testamentary law), posthumous children of intestates shall take in the same manner as if they had been born before the decease of the intestate, but no other posthumous relation shall be considered as entitled to distribution in his or her own right. Under these provisions, then, it would appear that where a posthumous child takes, he takes the intermediate property from the time of the intestate's death, which is the rule under the Statute of 10 & 11 W. 3, c. 16; as in *Basset v. Basset*,

¹ Code 1911, Art. 46, sec. 25. In *Thomas v. Higgins*, 47 Md. 439, one of two brothers who was seised of certain real property died before a sister was born. It was held under this section that the other brother took to the entire exclusion of the sister.

² Code 1911, Art. 93, sec. 133. A posthumous child of a brother of the intestate is not a "posthumous relation" of the intestate within the meaning of this section, unless born after the death of the intestate. The section means that children of an intestate born after his death shall take in the same manner as if born before his death but that no other relation born after his death shall be entitled to take as distributee in his own right. *Shriver v. State*, 65 Md. 283.