

In further support of the rule that, as against the residuary legatee claiming a lapsed or void gift, it is necessary to find from the language used a plain and unequivocal intention to exclude the property from the residuary gift, see *In re Bagot*, *Paton v. Ormerod*, [1893] 3 Ch. 348, and *Blight v. Hartnoll* (1881), 23 Ch. D. 218.

The principle of construction is stated in *Jarman on Wills*, 6th ed., p. 453, to be that "conjecture is not permitted to supply what the testator has failed to indicate; for, as the law has provided a definite successor in the absence of disposition, it would be unjust to allow the right of this ascertained object to be superseded by the claim of any one not pointed out by the testator with equal distinctness."

It is to be hoped that, if the residuary legatees agree that the testatrix executed her will under a misapprehension of the law relating to lapsed legacies, they will do for their cousins what the testatrix would probably have done had she correctly understood the law.

The order will, therefore, be that the \$1,000 legacy lapsed and passes under the residuary clause of the will. The costs of all parties out of the estate.

PYNE V. PYNE—MASTER IN CHAMBERS—OCT. 20.

Pleading—Statement of Claim—Husband and Wife—Action for Alimony and Custody of Child—Facts Alleged to Shew Unfitness of Husband—Relevancy.—Motion by the defendant (before delivery of the statement of defence) to strike out certain paragraphs of the statement of claim. The action was for alimony and for the custody of the only child of the plaintiff's marriage with the defendant, a daughter born in 1900. The plaintiff alleged that the defendant was not a fit and proper person to have the custody of a girl of tender years, and in the paragraphs attacked set out facts on which she relied to establish this proposition. By paragraphs 7 and 11 she alleged that the defendant was constantly away from home, and that she, for three or four years, had had a companion living with her, but that on the 23rd April, 1911, the defendant dismissed the companion. Held, that this paragraph should be struck out: the facts alleged shewed, at most, cruelty. In paragraph 8 the plaintiff only repeated the substance of previous paragraphs, and stated the inability of the plaintiff to live with her husband.