

WILL—CONSTRUCTION—BEQUEST TO "CHILDREN"—ILLEGITIMATE CHILDREN—"REPRESENTATIVES."

In re Horner, Eagleton v. Horner, 37 Chy. D. 695, is an illustration of the exception to the general rule that, under a bequest to children, illegitimate children are not entitled to take. In this case the testator bequeathed a fund "to my sister Charlotte, the wife of Thomas H.," during her life, and after her death to divide the share among all her "children" who should be living at her death, and the "representatives" of such of them as should have died in her lifetime, having attained twenty-one. Charlotte never was the wife of Thomas H., but for twenty-three years prior to the will she had, to the testator's knowledge, cohabited with him, and had had issue four children by him, two of whom were living at the date of the will, and at that date she was presumably past child-bearing. Thomas H., during all that time, and up to his death, had a lawful wife who survived him. The testator recognized the illegitimate children of his sister Charlotte as his nephews and nieces. Stirling, J. held that the testator in describing his sister Charlotte as the "wife" of Thomas H., when he knew she was not so, and in using correlatively with that expression the term "children" to describe the offspring of a woman whom he knew not to be lawfully married, had shown that he did not use the word "children" in its strict legal sense, and that the illegitimate children were entitled to the gift. He also held that the word "representatives" in the gift must be construed to mean either "the next of kin," or "descendants" of the deceased children, and not their "executors or administrators."

DEED OF ONE PARTNER, WHEN IT BINDS THE FIRM.

- I. General Rule Requiring Special Authority.
- II. Parol or Verbal Authority, when Sufficient.
- III. Previous Assent or Subsequent Ratification.
- IV. Instrument Equally Operative Without a Seal.
- V. Partners who Executed Bound, though Others not.
- VI. The Scope and Extent of the General Rule.
- VII. Cases Exhibiting its Limits and Exceptions.

I. General Rule Requiring Special Authority.—It is a well settled, though technical, rule of the common law, that one partner cannot bind his copartner by the execution of a deed,* unless his authority to do so is itself under seal.† In one case,‡ it was thought that if the terms of the partnership agreement

* *Anthony v. Butler*, 13 Pet. (U. S.) 423.

† *Donaldson v. Kendall*, 2 Ga. Dec. 227; *Trimble v. Coons*, 2 A. K. Marsh. (Ky.) 375; *Snyder v. May*, 19 Pa. St. 235; *Napier v.*

Cairon, 2 Humph. (Tenn.) 534; *Lambden v. Sharp*, 9 Id. 224; *Morris v. Jones*, 4 Harr. (Del.) 428.

‡ *Blackburn v. McCallister, Peck* (Tenn.) 371.