court held that the child *en ventre* could not take, for being illegitimate; but this resolution appears to me wrong, because there were in fact no lawful children, and therefore other persons may be admitted to answer the description. The rule merely is that illegitimate children shall not *take with* lawful children; but if there be none whom the law accepts as children, the word "children" in a will gives rise to a "latent ambiguity" which must be explained by external evidence.

We are all looking forward with curiosity to the doings of the knights, citizens and burgesses in the Commons' House. We may expect a crop of crude laws which shall tax all ingenuity to construe; and some of the reformers, you will observe, have already brought in a bill to render it a misdemeanour for any man to hold more than 100 acres of land uncultivated; but the misdemeanant on conviction is not to be sent to prison, but merely ejected and deprived of the tenement.

Lincoln's Inn, 13th Feb., 1886.

## *LOST WILLS.*

In *Goodtitle* v. *Otway*, 2 H. Bl. 516 (1795), and cases cited, declarations by the testator as to testamentary intentions and as to the making of a will are held proper. So in *Davis* v. *Davis*, 2 Addams, 226 (1824), declarations of the testator down to the very evening of his death were admitted to rebut the presumption of a revocation. In *Patten* v. *Poulton*, 1 S. & T. 55; 27 L. J. Prob. 41, it was held by Sir C. Cresswell that the presumption that a will left in the keeping of the testator, if it cannot be found at his death, has been destroyed by him *animo revocationis*, is a presumption of fact which prevails only in the absence of circumstances to rebut it, and that among such circumstances are declarations by the testator of good will toward the person benefitted by it, adherence to the will as made, and the contents of the will itself. It is also said in this case that the strongest proof of adherence to the will, and of the improbability of its destruction, arises from the contents of the will itself. In *Whitely* v. *King*, 17 C. B. (N.S.) 756, in order to rebut the presumption arising from the absence of the will and codicil, that the testator had destroyed them, evidence was offered of repeated declarations made by the testator, down to a short time before his death, expressing his satisfaction at having settled his affairs, and telling one person that he had named him one of his executors, and another that his will was at Sutcliffe's, an attorney. The evidence was objected to, but admitted on the authority of *Patten* v. *Poulton*, *supra*. Erle, J., says: "Surely you may look at a man's words to see what his intentions are. The question here was whether the testator had the intention to destroy the will and codicil. Down to the last moment of his life almost he is found declaring his satisfaction that he has settled his affairs." "Evidence tending to prove a contrary intention was admissible. For this purpose the ordinary channels of information may be resorted to. The declarations of the testator are cogent evidence of his intentions. The repeated declarations of the testator, down to within a very few days of his death, were abundant evidence that the testator did not intend to cancel or destroy his will." Byles, J., says: "I see no reason why the declarations of the testator should not be admitted as part of his conduct to show his intentions as to the disposition of his property." Keating, J., says the rule admitting declarations is "well established." (See also *Sugden* v. *St. Leonard's*, 34 L. T. (N.S.) 372. I have now quoted authorities in seven States, the Supreme Court of the United States, and the Courts of England, all in favour of admitting declarations of the testator to rebut the presumption of revocation. The rule is so strongly fortified by the opinion of the ablest American and English Courts that its position must be deemed impregnable.

Admitting that the will is genuine and was duly executed, and was legally in existence at the death of the testator, it cannot be established as a lost will unless "its provisions are clearly and distinctly proved by at least two credible witnesses; a correct copy or draft being equivalent to one witness." Code, s. 1865.

The Court of Appeals held in *Harris* v. *Harris*, 26 N. Y. 433, that the statutory provision, requiring two witnesses to establish a