

UNBORN PERSONS AS LITIGANTS.

Cases sometimes arise where persons who may hereafter come into existence would be interested in questions brought before the Court for decision, and it is desirable that they should be bound by the result of the litigation, and as they are not in existence it is obvious they cannot be made parties, so the *Rules* provide for the appointment of some person to represent them: see *Rules* 76, 77. An application was recently made for the appointment of such a representative to be added as a defendant: see *Lang v. Toronto General Trusts Cor.*, 16 O.W.N. 193, but according to the reporter the Judge ordered the unborn persons to be made parties; we are afraid the reporter must have misrepresented the learned Judge, and probably the order actually made was as asked, viz., for the addition of the Official Guardian as a defendant appointed to represent the unborn issue; for, although Parliament is said to be able to do anything except turn a man into a woman, we doubt very much if it could empower the Court to make a nonentity a defendant; at all events the *Rules*, which have the force of a statute, do not at present appear to authorize that proceeding.

THE PRESUMPTION OF PATERNITY.

The maxim of the common law is that marriage is the proof of paternity, and this is really only a translation of the passage in the Digest (24.5), *Pater vero is est quem nuptiae demonstrant*. The civil law, however, differed from the common law in permitting the presumption of paternity which was afforded by the existence of the marriage to be more easily rebutted. When the question of legitimacy comes up for decision at the present day in jurisdictions where English law is administered—as in peerage cases, affiliation cases, etc.—the most difficult points to determine are usually the limits within which the presumption of paternity afforded by marriage is allowed to be rebutted, and the strength of the evidence necessary to successfully rebut the presumption.