

RECENT ENGLISH DECISIONS.

pay the annuity out of the rental "to the surviving children of B. in equal shares and proportions," and after payment of the annuity the surplus income was to be accumulated as therein mentioned. The question was whether B.'s children took the annuity for life or in perpetuity, or for the duration of the leases of the said hereditaments, which were still continuing. Fry, J., held (a) that notwithstanding *Evans v. Walker*, L. R. 3 Ch. D. 211, the mere want of limitation in the last gift of the annuity does not import that the annuitant is to take anything, for "the duration of the life of the first taker is expressed not for the purpose of limiting the gift to the first taker, but of limiting the commencement of the gift to the second or successive takers, and therefore the principle of *expressio unius est exclusio alterius* does not apply;" (b) the present case did not come within the rule of those in which the Court had come to the conclusion that the gift was not really that of an annuitant, but the gift to a person of the income arising from a particular fund without limit, and when the Court, therefore, held that the unlimited gift of the income was a gift of the *corpus* from which the income arose. For, said he, "What I understand by the appropriation of a fund for the purpose of the rule in question is the setting aside a sum of money or property to meet the particular gift, and to meet nothing more. *There being a complete application of the residue in this case*, it seems to me impossible to say that this is an appropriation of the fund." (c.) Although the testatrix spoke of "the said annuity," she spoke of it as a thing which it was necessary for her to direct to be continued after the life of each taker—words which rather imported that she considered the annuity only for life unless she expressed the contrary. (ii.) The point decided with reference to perpetuities was, in the words of the learned Judge, as follows: "The rule against perpetuities requires, in my view, the ascertainment within the period not only of the

extreme limits of the class of persons who may take, but of the very persons who are to take, and that because the rule is aimed at the practical object of telling who can deal with the property, and if you cannot tell who are entitled to the property, but only who may become entitled to the property, the property is practically tied up." (iii.) The point decided with reference to appointments is an interesting one. A power of appointment was given in the will among certain persons living after the happening of a certain event. The donee of the power assumed to exercise the power before the happening of the event in question. Fry, J., held the appointment invalid. "I think," he says, "that where a power of appointment, amongst a class of people, is given, the appointor must know the class—must be able to ascertain the class amongst whom he or she is to divide the property. It is a discretionary power to be exercised with reference to the respective circumstances and merits of the persons who are to take, and that cannot be exercised where the persons are not known."

PARTITION ACTION—CONVERSION.

In *Mordaunt v. Benwell*, p. 303, the question arose whether one who succeeds as heir-at-law to a share of the proceeds in Court of real estate sold under a decree in a partition action, takes it as money or real estate. Fry, J., held that, though by the Imperial Acts (cf. R. S. O. c. 40, sect. 82) the share of the proceeds in Court remained real estate for the purpose of succession, yet the heir-at-law took it as money, and as between *his* real and personal representatives it must go as money.

MAINTENANCE BEYOND PROVISION IN WILL.

Of the last case in this number, *in re Colgan*, p. 305, it seems only necessary to say that on somewhat the same principle as that followed in *Havelock v. Havelock*, L. R. 17 Ch. D. 807, noted 17 C.L.J. 425, Fry, J., ordered an allowance for the maintenance and education of certain infant beneficiaries under a will, in excess of the provision made therefor by