

WILL—CONSTRUCTION—LIMITATION TO "EVERY OTHER SON AND SONS TO BE BEGOTTEN"—
ELDEST SON EXCLUDED.

In *Locke v. Dunlop*, 39 Chy. D. 387, Stirling, J., was called upon to construe a will whereby the testator devised real estate to his second son for life, with remainder to his first and other sons in tail male; with remainder to the third son for life, with remainder to his first and other sons in tail male; with remainder to the testator's fourth, fifth, and every other son and sons to be begotten, born, or *en ventre sa mere*, at the time of his decease successively in tail male, with remainder to the testator's daughters begotten, or to be begotten as tenants in common in tail; all the testator's sons, except the eldest, having died without issue male, the eldest son claimed the estate; but it was held by Stirling, J., and also by the Court of Appeal (Cotton, Fry & Lopes, L.J.J.) that having regard to the various limitations of the will, the eldest son was excluded from taking under the words "every other son," and although the words "to be begotten" do not in their primary legal sense point to futurity, yet they will be held to do so if such an intention can be gathered from the will.

PRACTICE—SERVICE OUT OF JURISDICTION—PETITION UNDER TRUSTEE RELIEF ACT FOR PAYMENT OF MONEY OUT OF COURT.

In *re Jellard*, 39 Chy. D. 424, North, J., held that the Court had no jurisdiction to allow service out of the jurisdiction of a petition under the *Trustee Relief Act*, for payment of money out of Court. But on appeal, if appearing that the order sought by the petition was one to carry into full effect an order which had been recently obtained by the respondent, the Court of Appeal, without deciding that leave was necessary, gave leave to serve the petition on the solicitors who had presented the former petition, and who were willing to accept service.

WILL—CONSTRUCTION—GIFT OVER ON DEATH WITHOUT LEAVING ANY CHILD OR CHILDREN SURVIVING.

In *re Hamlet Stephen v. Cunningham*, 39 Chy. D. 426, the Court of Appeal (Cotton, Fry & Lopes, L.J.J.) affirmed the decision of Kay, J., 38 Chy. D. 183, noted *ante*, vol. 24, p. 361. The Court holding that the rule laid down in *Howgrave v. Cartier*, 3 V. & B. 79, in favor of putting on a settlement or will making a provision for a family, such a construction as will give the children indefeasible interests on their attaining 21, is only a rule of construction to be applied in construing ambiguous words, and is not a positive rule which will modify the effect of plain and unambiguous words.