

fund in the event of there being no children to take under the bequest.

The evidence showed that the marriage between J. C. Flenly and Mary Holt was never consummated, and that the marriage took place without the knowledge of, and was never made known to, the parents of Mary Holt; also that four of the children of Mary Lattimer by John Lattimer were born or *in esse* at the date of the testator's will; the other three children were born after that date. The testator knew that his daughter had no other children except those by Lattimer.

Hinde Palmer, Q. C., for the children of Mary Lattimer, claimed the fund for the four elder, though he admitted though the three younger could not take. The children illegitimate, were sufficiently described.

Greene, Q. C., and *Renshaw*, for the parties entitled under the gift over, contended that the gift over had taken effect.

Bagshawe, *Fischer*, and *Langley*, for parties in the same interest.

The following cases were referred to:—*Howarth v. Mills*, L. R. 2 Eq. 389; *Warner v. Warner*, 15 Jur. 141, 1 Sm. & Giff. 126; *Pratt v. Mathew*, 4 W. R. 418, 22 Beav. 340; *Re Herbert's Trusts*, 8 W. R. 660, 1 J. & H. 121, 8 W. R. 660; *Godfrey v. Davis*, 6 Ves. 43; *Kenebil v. Scrafton*, 2 East, 530; *Harris v. Lloyd*, T. & R. 310; *Re Overhill's Trusts*, 1 W. R. 208, 1 Sm. & Giff. 362; *Re Well's estate*, 16, W. R. 784, L. R. 6 Eq. 599.

STUART, V. C.—In order that any legatees may take, whether as a class or individuals, it is necessary that they should be clearly described. When there is a gift to a child or children as a class, legitimate children are understood, but if the object is clearly defined, it matters nothing whether the object be legitimate or illegitimate. In the construction of wills, however, the primary and proper signification of every word must be attended to. It is contended in the present case that the gifts to the child or children of the testator's daughter begotten must altogether fail. I think that the testator understood and thought that his daughter was the wife of Lattimer, and his lawful wife. In his will he refers to children begotten, so he knew that children were born, and the fact that were illegitimate seems to have nothing to do with the question whether they are sufficiently described when it is certain that there are none other than the children by the marriage with Lattimer. The words of the will are clearly intelligible, and I know that the testator intended children begotten of the marriage with Lattimer. In cases of this description fallacies are occasioned by the use of two words which require very accurate definition, namely, "children" and "class." If children are properly described as a class there is no rule to say that illegitimate children shall not take; this runs through every case except *Beachcroft v. Beachcroft*, 1 Mad. 430, and *Fraser v. Pigott*, 1 Yo. 354. The cases relied upon by the parties objecting to this gift are clear authorities in favour of gifts to persons clearly described. In *Godfrey v. Davis* (*supra*) it was decided that if there were no other children than illegitimate children to answer the description they must take, although in point of law they do not stand as children. This shows that there can be a valid gift to ille-

gitimate children under the description as children begotten during the testator's lifetime. *Pratt v. Mathews* (*supra*) and *Cowden v. Parke* (*supra*) were cases in which the gift was to children to be begotten, and it is against the policy of the law to allow such a gift, but a gift to a child begotten but unborn is valid although the child be illegitimate. There is, however, one point in this case which might raise a doubt, namely, the use of the word "such" in a subsequent part of the will, where it directs the interest to be vested when the children arrive at the age of 21, and makes further provisions in case there should not be any such children. I do not entertain any doubt upon the construction of the will as to the children begotten or the one *en ventre sa mere* at the time of the testator's death.

DIGEST.

DIGEST OF ENGLISH LAW REPORTS.

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LACHES

A continual claim, without any active steps in support of it, will not keep alive a right which would otherwise be barred by laches.—*Lehmann v. McArthur*, Law Rep. 3 Ch. 496.

LANDLORD AND TENANT.

1. It is not necessary to the validity of a notice to quit, given by the general agent of a landlord to a tenant, that the agency should appear on the face of the notice.—*Jones v. Phipps*, Law Rep. 3 Q. B. 567.

2. M being yearly tenant to the plaintiff, under a written agreement, the defendant in consideration of the plaintiff's continuing M as such tenant, gave to the plaintiff a guaranty for "the rent of the L farm, in the occupation of M." The plaintiff afterwards gave M notice to quit, but withdrew it before the expiration of the current year. Next year the rent was in arrear, and the plaintiff brought suit on the guaranty. *Held*, that the old tenancy was determined by the notice to quit; that the guaranty applied only to the tenancy in existence when it was given; and that the defendant was not liable.—*Taylor v. Wilden*, Law Rep. 3 Ex. 303.

3. By a lease of a house and grounds, the landlord undertook to keep the premises in repair, and to pay all taxes and charges payable in respect to the premises. In the grounds was a piece of ornamental water, in which, during the tenancy, an accumulation of mud caused a nuisance to the tenant and to the public. The tenant being summoned under the Nuisances Removal Act, 1855, employed a con-