

(11) In the article above referred to Lord Davey says: "With regard to real estate the case is different. Ever since *Birtwhistle v. Vardill*, 7 Cl. & F. 895, it must be taken to be the law of England that, in order to establish a title to real estate by descent, the claimant must predicate of himself that he is the legitimate issue of a marriage which would have been valid if made between domiciled Englishmen. As Chief Justice Tindal said, this rule of descent is a rule of positive law annexed to the land itself, and must prevail even if it be at variance with the ordinary rule of international law."

(12) Lord Justice James has said: "*Doe v. Vardill* decides that the heir to English land must be born in lawful wedlock. That English heirship, the descent of English land, required not only that the man should be legitimate, but as it were porphyrogenitus, born legitimate within the narrowest pale of English legitimacy:" *Re Goodman's Trusts* (1881) 17 Ch. D. 266, p. 269.

This was a case of legitimacy per subsequens matrimonium, but the same principle applies to the case under discussion.

3. Anomalies of the Present Law.

This cannot be better put than in the language of Lord Davey: "The question may well occur to many minds whether it is worth while maintaining these fine distinctions, and whether any object is gained by doing so? The people who are affected by this state of the law are, it must be remembered, our own sons, daughters, brothers, sisters, nephews and nieces. It is not an uncommon case for a younger son of a great family to emigrate, and by unexpected deaths without issue, find himself entitled to the family honours and estate. If he has contracted one of these marriages he cannot transmit them to his son, or, if he is dead when the succession would have opened to him, his son cannot succeed in his place. Again, a returned colonist buys an estate 'at home,' and dies suddenly without having made a will, as any man may. A collateral relation steps into the estate in exclusion of his children. On the other hand, leaseholds of whatever length of term, are personal estate, and may be taken by the children. A humorous illustration of the anomalies of the law was given in the course of the debate on second reading. A man, it was said, may have a leasehold house for a long term and a freehold