

M. R. **BARNETT V. TUGWELL.***Will—Construction—Gift to a class of children legitimate or legitimate*

A bequest of property, on the happening of certain events, equally between the children "legitimate or illegitimate" of A. A had five illegitimate children, all of whom were alive at the date of the will. A afterwards married and had nine legitimate children.

Held, that both classes of children took under the bequest, the illegitimate children who were living at the date of the will, being considered as the object designated to take under the gift to the class of "illegitimate children."

The union in one gift to a class of children, of legitimate and illegitimate children, does not invalidate the gift, although the members of each class of children have to be determined upon different principles.

V. C. R.

WILKINSON V. DYSON.*Will—Construction—Condition not to interfere.*

A testator by his will, gives a legacy to his son W. M. W., upon condition that he does not interfere or intermeddle in the management of the estate, either individually or as solicitor, and he also declares with regard to another son G. B. W., who is abroad, that he shall personally receive his share, not by attorney, or if not personally, by certain means pointed out. W. M. W. is the general attorney under a power for G. B. W. in this country, and after various communications a bill is filed to administer the testator's estates, G. B. W. being plaintiff, and W. M. W. one of the defendants, but there is no actual proof that W. M. W. authorised the suit, the question on his examination not being directly put to him, but he admitting that the suit arose in consequence of the communications.

Held, that there was no proof of a breach of the condition, and therefore, that W. M. W. was entitled to the legacy.

Scilicet, the onus of proving a breach lies on the party alleging it, and the other side cannot be called on to prove a general negative. A case of suspicion is not sufficient, there must be actual proof of the breach.

V. C. R.

CURLING V. AUSTIN.*Specific performance—Identity—Wage—Compensation—Costs—Evidence in chambers—Objections abandoned and again raised.*

Possession by a purchaser, given or permitted by a vendor, without receipt of rents and profits by the purchaser, does not render the purchaser liable to pay the purchase money into court, but he will be ordered to give up possession or to pay the purchase money. If the common decree of specific performance and for an inquiry for title be made, the purchaser may raise objections which he abandoned before the suit, and the court will not add any inquiry on the subject to the decree or direct the chief clerk to state special circumstances. On further consideration, the court will not, on the question of costs or interest, look at any evidence but that in the cause, and not at the proceedings and evidence in Chambers on an interlocutory motion.

A clause in an agreement for purchase, that the purchaser is not to require any further proof of identity than given by the title deeds exempts the vendor from producing further evidence, but he cannot force the title on the purchaser, unless the evidence is complete.

On the sale of a house or stables in an *encl de sac*, the vendor is not bound to show a title to the roadway.

M. R.

DAVIS V. ANGEL.*Will—Construction—Condition precedent—Bill by person having a contingent interest.*

A devise in trust for A. (in case he should marry the testator's niece Esther) for life, subject to the proviso after mentioned, and after his decease in trust for the eldest son of A, who should be living at his death, and have attained twenty-one, or who should live to attain twenty-one, in fee. Proviso that in case A should not marry Esther, the bequest to him should not take effect, but that such share should fall into the residue.

A., in the testator's lifetime and with his assent, married Isabella, who was still alive, by whom he had a son, the plaintiff in this suit, Esther was also still alive and unmarried. The present suit was instituted to ascertain and secure the plaintiff's interest.

Held, that the marriage of A. with Esther was a condition precedent to the vesting of the bequest, and that the assent of the testator to A.'s marrying a lady other than Esther did not remove it.

Held also, that the plaintiff's interest was a contingent interest, a bill would not lie by him or on his behalf to secure the property.

REVIEWS.

GODET'S LADY'S BOOK: Philadelphia. The number for October is received, and it contains no less than seven colored figures in the Fashion plate, and ten engravings in wood. It contains also several entertaining stories, such as "Aunt Sophia's Visit," "The Vortical Railways," "The Village with One Gentleman," "The Modern Cinderella," "The Sisters' School," and "The Pursuit of Wealth under Difficulties." A new story by Marion Harland, entitled "Leah Moore's Trial," also appears in this number. A Christmas Story, for the December number, also from the pen of Marion Harland, is promised. The terms of the magazine, considering its great utility, are very moderate, viz.: one copy, one year, \$3; two copies, one year, \$5; three copies, one year, \$6; four copies, one year, \$7; five copies, one year, and extra copy to the person getting up the club, making six copies, \$10; eight copies, one year, and an extra copy to the person getting up the club, making nine copies, \$15; eleven copies, one year, and an extra copy to the person getting up the club, making twelve copies, \$20.

APPOINTMENTS TO OFFICE, &C.

COUNTY CROWN ATTORNEY.

FRANCIS R. BALL, Esquire, Barrister-at-Law, to be Clerk of the Peace, in and for the County of Oxford, in the room and stead of W. Lapenotiere, Esquire, removed. (Gazetted Oct. 10, 1863.)

CHARLES LESTER COLEMAN, of the Town of Bellefille, Esquire, Barrister-at-Law, to be Clerk of the Peace, and County Crown Attorney, for the County of Hastings, in the room of John O'Hare, superseded. (Gazetted Oct. 17, 1863.)

CORONERS.

WILLIAM HUMR, Esquire, M.D. and **WILLIAM CASE WRIGHT**, Esquire, Associate Coroners, County of Halton. (Gazetted September 26, 1863.)

PETER STUART, Esquire, and **ELPHIALET W. GUSTIN**, Esquire, M.D., Associate Coroners, County of Elgin. (Gazetted Oct. 3, 1863.)

JOSEPH CARRBERT, Esquire, M.D., Associate Coroner, United Counties of York and Peel. (Gazetted Oct. 10, 1863.)

ANGUS BELL, Esquire, Associate Coroner, County of Grey. (Gazetted Oct. 10, 1863.)

ANGUS BELL, Esquire, Associate Coroner, County Simcoe (Gazetted Oct. 10, 1863.)

AARON WALTER GAMBLE, Esquire, M.D., Associate Coroner, County of Lambton (Gazetted Oct. 10, 1863.)

JAMES HENRY, of the Village of Mono Mills, Esquire, M.D. to be an Associate Coroner for the United Counties of York and Peel. (Gazetted Oct. 24, 1863.)

DE WITT MARYN, of the Village of Kincardine, Esquire, M.D. to be an Associate Coroner for the United Counties of Huron and Bruce. (Gazetted Oct. 24, 1863.)

FRANCIS McCANDLESS, of the Town of London, Esquire, M.D. to be an Associate Coroner for the County of Middlesex. (Gazetted Oct. 24, 1863.)

GEORGE ALVA CARSON, of the Town of Whitby, Esquire, to be an Associate Coroner for the County of Ontario. (Gazetted Oct. 24, 1863.)

NOTARIES PUBLIC.

EDWARD BURTON HAYCOCK, of Ottawa, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada. (Gazetted September 26, 1863.)

STAFFORD LIGHTHURN, of Hastings, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada. (Gazetted Oct. 3, 1863.)

EDGAR BARKER, of Dunville, Esquire, Attorney-at-Law, to be a Notary Public in Upper Canada. (Gazetted Oct. 3, 1863.)

J. SAURIN McMURRAY, of Toronto, Esquire, Barrister-at-Law, to be a Notary Public in Upper Canada. (Gazetted Oct. 3, 1863.)

CHARLES SAMUEL JONES, of the Village of St. Mary's, Esquire, Attorney at-Law, to be a Notary Public for Upper Canada. (Gazetted October 17, 1863.)

DUNOUGH O'BRIEN, Esquire, to be a Notary Public for Upper Canada. (Gazetted Oct. 24, 1863.)

THOMAS McLEAN, Esquire, to be a Notary Public for Upper Canada. (Gazetted Oct. 24, 1863.)

WILLIAM RASTALL, of Kincardine, Esquire, to be a Notary Public for Upper Canada. (Gazetted Oct. 24, 1863.)

TO CORRESPONDENTS.

"E. L."—Under "Division Courts."

"L. C."—Under "General Correspondence."