

RECENT ENGLISH DECISIONS.

577, viz., that the word "children" in a will means legitimate children, unless when the facts are ascertained and applied to the words of the will, some repugnancy or inconsistency (and not merely some violation of a moral obligation or of a probable intention) would result from so interpreting them, and that there was no repugnancy or inconsistency in confining the word "children" to legitimate children; but Bowen and Fry, L.JJ., considered that the surrounding circumstances pointed to the conclusion that the word "children" in the will and codicil was meant to include illegitimate children, and that the will would be insensible unless so construed. They also considered this construction of the will applied also to the codicil.

APPOINTMENT OF NEW TRUSTEE—DISPENSING WITH SERVICE ON CESTUI QUE TRUST.

In re Wilson, 31 Chy. D. 522, was an application by the persons entitled to the residuary estate of a testator to appoint new trustees of his will in place of the original trustees, one of whom had died, and the other had become a lunatic. The petition was served on three of the four persons who were entitled to the proceeds of certain real estate devised on trusts for persons who took no interest in the residue; but the fourth was resident in Australia and was not served, and service on him was dispensed with.

HUSBAND AND WIFE—SEPARATION AGREEMENT—RECONCILIATION.

In the case of *Nicol v. Nicol*, 31 Chy. D. 524, the Court of Appeal affirmed the decision of North, J., noted *ante*, vol. 21, p. 411. In this case it may be remembered husband and wife had agreed to a separation, and one part of the agreement was that the wife should be permitted the use of certain furniture. Subsequently the parties returned to cohabitation. Subsequently the wife met with a severe accident which rendered it necessary for her to be placed under medical treatment at a distance from home, and after that never returned to her husband. The present action was brought by the wife against her husband to recover possession of the furniture; but the court held that the reconciliation had put an end to the agreement, and therefore that the plaintiff could not recover.

MARRIED WOMAN—COSTS—RESTRAINT ON ANTICIPATION.

In re Glanville, Ellis v. Johnson, 31 Chy. D. 532, is a case in which the plaintiff, a married woman, sued by her next friend for administration of a trust fund. Upon the case coming on for further consideration it was held that the action was unnecessary, and the next friend was ordered to pay the defendant's costs. The next friend could not be found, and an application was then made by the trustees for an order authorizing them to retain such part of the costs as they could not recover from the next friend out of the income of the trust fund to which the married woman was entitled for her separate use, but without power of anticipation. Bacon, V.C., granted the application, but on appeal the Lords Justices reversed the order, holding that the effect of it was to defeat the clause against anticipation, which could not be done; but the order on appeal was, without prejudice to the trustees, applying to be paid the costs in question out of the *corpus* of the fund.

WILL—CONSTRUCTION—ILLEGITIMATE CHILD.

The hardship which occasionally results to individuals from the stringent rule of construction which prevents gifts to children being construed as gifts to those who are illegitimate, unless there is something in the will to alter the meaning of the word, is pretty well illustrated in *In re Bolton, Brown v. Bolton*, 31 Chy. D. 542. In that case the testator went through the form of marriage with J. A. C., whose husband had deserted her, and gone abroad many years before and was believed to be dead, but the testator was aware that there was no certain information of his death. By his will the testator gave to his "dear wife, J. A. B., formerly J. A. C.," certain property during her widowhood, and after her decease or re-marriage he gave the *corpus* to "all and every my child or children," and in default of children to his nephews and nieces. The testator continued to cohabit with J. A. C. for more than a year and a half after the date of his will, and died leaving her *eniente* of her only child. She enjoyed the income of the property in question until her death, upon which event the nephews and nieces claimed it under the gift over, and proved that J. A. C.'s child was illegitimate, her former husband having been