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; *Kenebel* 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 illegitimate children under the description as children begotten during the testators 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.

CORRESPONDENCE.

Division Court Garnishee Procedure.

TO THE EDITORS OF THE LOCAL COURTS GAZETTE.

GENTLEMEN,—After perusing the Amending Division Court Act, relating to garnishee process, passed at the recent Session of the Ontario Legislature, I have thought a few remarks might not be uninteresting to your numerous legal readers, especially those who take an interest in the Division Courts. It does not seem to me to be open to so much censure, as some indulge in, if indeed to any, under the circumstances of the country and the limited powers vested in Division Courts. I happen to know that the act was framed by one of the oldest and most experienced of our barristers, and a gentleman of large experience in Division Court law—having in fact once acted as a judge. I am pleased on the whole with the law, and only regret that the Division Court act, instead of being simply patched up (as it were) by detached acts, could not have been re-cast and carefully re-enacted with numerous other amendments consolidated in one act. At the same time there are undoubtedly some ambiguities in the act. The first clause of the new act was certainly required. It settles a debateable point as to the validity of judgments in those courts, when more than six years old. The second clause is one universally acknowledged heretofore as needed, and will save the costs of many cases, where in fact no real defence exists. If a defendant has no defence to a note or account when particulars are served, why put parties to the expense of a trial or witnesses? This clause is perhaps a little ambiguous in some things, and some questions may arise as to its future working. It is left somewhat uncertain whether execution may issue immediately on signing judgment. Is that the intention? It is left uncertain within what time the judge may set aside the judgment. Can he grant a new trial within fourteen days or at any time after? No time is limited as to his interference. The clause says: "*that final judgment may be entered on or at any time within one month after the return of summons.*"

It seems to me upon the whole, that the true meaning of the act is, that the clerk is to enter judgment on the court day, which is certainly the return day of the summons; or he may omit to do so at his discretion and let the matter lie over for a month, which would