had become trustees of the charity since the date of the mortgage deed, and had nothing to do with the mortgage. Messrs. Stockley & Wrigley never communicated to the defendants the fact of the transfer of the mortgage, or to the plaintiffs the payment of the mortgage money or the execution of the last-mentioned deed, and continued to pay interest on the mortgage debt to the plaintiff till the 3rd of August, 1867.

At the close of the year 1867, Mr. William Stockley, one of the partners in the firm of Stockley & Wrigley, absconded, and Mr. Wrigley, who was the only other partner at the time of the repayment of the mortgage debt, afterwards became bankrupt.

The plaintiff then first heard of the repayment by the defendants, and, after ascertaining from Messrs. Nixon & Thew that they did not know of it till after Mr. Stockley absconded, filed the bill in the present suit, which was in the ordinary form of a foreclosure bill.

Southgate, Q.C., and *Robinson*, for the plaintiff, said that there had been no payment to the person entitled to receive the mortgage money. The plaintiff was in possession of the legal estate, and entitled either to be paid off or to foreclosure.

Sir R. Baggallay, S.G., and *Bagshawe*, contended that where there is a transfer of a mortgage and no notice of the transfer given to the mortgagor, a payment to the transferror is a valid discharge. The plaintiff by his acts had allowed Messrs. Stockley & Wrigley to be treated as his agents for the receipt of the purchase money. They referred to *Williams* v. *Sorrell*, 4 Ves. 389; *Matthews* v. *Wallwyne*, 4 Ves. 118; *Norrish* v. *Marshall*, 5 Madd. 475; *Stocks* v. *Dobson*, 4 D. M. G. 11.

Southgate, in reply.

Lord Romilly, M.R.—I think this is a very clear case. A mortgagee assigns his mortgage to a stranger for value, and the transferee gives no notice to the mortgagor. That does not prevent him from filing his bill for foreclosure The only effect of his not giving notice is to prejudice him in respect to any question of priority. If the answer to this bill had been that the defendants had paid the mortgagees and got a reconveyance from them, that might have been a good defence. But that is not the present defence. Here the mortgagor goes to the solicitor of the mortgagee and transferee, and gives six months' notice to pay off the mortgage debt. At the expiration of the six months he goes and pays the principal to the solicitor, and gets a receipt from him. There is no receipt from the plaintiff, who never received anything. The deed cannot affect him; it could only affect the mortgagee by estoppel, and that would not effect the plaintiff. For estoppel is where one is prevented by something he has done from stating the truth, and can only affect the person who is estopped. In this case if the deed operated by estoppel it could only prevent Messrs. Nixon & Thew from denying that the money was paid. But in this court it is never considered that a deed is evidence of money having been paid without an endorsed receipt. The deed really amounts only to an appointment to new trustees, and vests the property in them. The plaintiff has the legal estate, and all I can do is to make the ordinary foreclosure decree, and it may be remarked that this question would have come properly for determination on taking the account, because nothing can come into the account except what has been duly paid to the mortgagee or transferee, or to some person by his order.

CHANCERY.

Holt v. Sindrey.

Will—Gift to children begotten or to be begotten—Illegitimacy unknown to testator—Description—Provision for future illegitimate children.

A testator bequeathed trust funds to M., whom he believed to be the lawful wife of L., for life, with remainder to all her children *begotten or to be begotten equally.*

M. had by L. four children born or *in esse* at the date of the will, and three born afterwards, all illegitimate.

Held, that the children begotten at the date of the will were sufficiently described, and took the fund; but as to those born afterwards, the gift was a provision for future illegitimate children, and therefore failed.

[V. C. S. 17 W. R. 249.]

William Holt, the testator in this petition, by his will, dated in the year 1827, directed his trustees, after the decease or second marriage of his wife, to stand possessed of so much of certain funds as would produce the sum of £35 a year upon trust during the life of his daughter Mary, the wife of John Lattimer, for her sole use, exclusive of her then present or future busband, and after the death of his said daughter, to pay the same unto all and every the child or children of his said daughter begotten or to be begotten, in equal shares, if more than one, and if there should be but one such child then the whole to be in trust for such one child, and to be vested in the same children when they attained the age of twenty-one years or died under that age leaving issue; and in case there should not be any such child of his said daughter Mary Lattimer, or in case all such children, if any, should die under the age of twenty-one years without leaving issue, then the testator gave the trust fund in trust for other persons.

The testator died in the year 1828, and his widow in the year 1831.

The chief clerk's certificate upon a decree for the administration of the testator's estate had certified that Mary Lattimer, then Mary Holt, spinster, was on the 4th of May, 1817, married to J. C. Flenly, but there was not any issue of the marriage, as the parties had separated immediately after the ceremony, and they never met again; also that J. C. Flenly died in July, 1850; also that on the 31st of January, 1818, Mary Flenly, as Mary Holt, was married to John Lattimer, and that of that marriage seven children were the issue, all of whom were born before the death of J. C. Flenly. John Lattimer died on the 23rd of October, 1850.

By an order of the Court made in the year 1858 the trust fund, which was then represented by a sum of Bank Annuities, was carried over to the account of "the legacy of Mary Lattimer, her children, and their incumbrances," and the dividends were ordered to be paid to Mary Lattimer during her life.

Mary Lattimer died on the 29th of August, 1868, without having had any lawful issue, and a petition was presented by some of the parties entitled under the testator's will to the trust