posthumus pro nato habetur to all intents and purposes, Thellusson
643 *v. Woodford, 4 Ves. Jun. 227; Roe v. Quarterly, 1 T. R. 630, so that a limitation over, contingent upon the event of a child *en ventre sa mere* outliving its parents and dying without issue, is not bad for remoteness, as being a limitation to take effect after the death of a person without issue who was not in being at the time of its creation, and see Long v. Blackall, 7 T. R. 100; 3 Ves. Jun. 486. An infant *en ventre sa mere* is also admitted in the term of suspense of real property, and the time of gestation may, in executory devises, be claimed both at the beginning and at the end of the period, Thellusson v. Woodford, 11 Ves. Jun. 149, 150; Cadell v. Palmer, 1 Cl. & F. 372; S. C. 7 Bligh. N. S. 202. A variety of other cases are to be found in the books where an infant *en ventre sa mere* is considered as absolutely born for his benefit, as that such a child is entitled to a share under the Statute of Distributions, Wallis v. Hodson *supra*, where A. died intestate and left a son who died within a week after his father, and leaving his wife *enceinte* of the plaintiff, who was held entitled, for though a distributory share vests at the death of the intestate, it does not so as to exclude a posthumous child, either in lineals or collaterals, (Edwards v. Freeman, 1 P. Wms. 446), but the Code, Art. 93, sec. 134,[4] as before observed, now provides that no posthumous relation other than children of the intestate shall be entitled to distribution in his or her own right; and Lord Hardwicke remarked that the civil law made a difference between a child *en ventre sa mere, in esse* at the father's death, and only conceived, the latter is not considered as having any relation to the intestate, being, according to a term made use of there, not *animax*. So a devise to such a child is good, *vide supra;* and if the devise is immediate, without any preceding freehold, it shall take by way of executory devise, and whether the devise never take effect or whether it do, it is the same thing, Gulliver v. Wickett, 1 Wils. 105.

In the case of *Curius v. Coponius*, mentioned by *Cicero, Orat. pro Cæcina, cap.* 18, and cited in Warren v. Rudall, 4 Kay & J. 603, a testator, believing that his wife was *enceinte*, devised his estate to the child *en ventre sa mere*, and if such child should die within age, then over. The wife had never been *enceinte*. It was argued to be a bequest on condition, on the happening of the particular event of the child dying within age. But the Prætor held that the gift over took effect, the prior gift having failed, though not in the manner contemplated by the testator. It is indeed a general principle, that where the testator has a primary object of his bounty, and has in view another object secondary only to the first and intended to be preferred by him to his heir or next of kin, in such case, if the first disposition fails in effect, the second shall take place, although the failure of the first was occasioned by some other accident than the contingency on which by the letter of the will it was limited, and which is not the exact alternative expressed. The cases on this subject are collected and reviewed in Warren v. Rudall.

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[4] Code 1911, Art. 93, sec. 133.