

given in like manner, which is to be equally divided amongst them, Godolph. Orph. Leg. 102. So also the law considers an infant *en ventre sa mere* as in being in cases where it may suffer a prejudice, as it is trite law that it may be vouched in a recovery, Wallis v. Hodson *supra*; Thellusson v. Woodford *supra*; Blackburn v. Stables, 2 Ves. & Bea. 367. But although an infant *en ventre sa mere* is treated as living, when the word "born," &c., is used in the description of the objects of a gift, it is not so, when it is used merely for the purpose of ascertaining a period of time. Thus the distribution of a fund, when the youngest child of A., &c., who should have been born at the time of the testator's decease, shall attain the age of twenty-one years, will not be postponed until the youngest child *en ventre sa mere* at the death of the testator attains that age, Blasson v. Blasson, 2 De G. J. & S. 665, recognizing in other respects Trower v. Butts *supra*. And in Conn v. Conn, 1 Md. Ch. Dec. 212, the Chancellor, after observing that a court of equity would use all possible ingenuity in construing testamentary expressions in such manner as to include all children in existence at the testator's death, and that a child *en ventre sa mere* is considered as living at that time, held, that where a testator had described children by name, amongst whom an estate was to be divided upon the happening of a contingency, a posthumous child could not be brought within the description.

It may be conveniently noticed here, that where a testator stands in the relation of parent,⁷ a gift to children generally, or as a class, will be presumed, in legal construction, to embrace all who answer that description at the period of his death; and a Court of Equity is always **645** solicitous to adopt and enforce such a construction. *But where it appears from express declaration or clear inference upon the will, that the testator intended to confine his gift to those only who answered the description at the date of the will, such intention must be carried into effect, Chase v. Lockerman, 11 G. & J. 185; and see Conn v. Conn, *supra*.⁸ And so a general devise to grandchildren, as a class, has been held to comprehend all persons answering the description at the time of the testator's death, notwithstanding the expressions used, "my dear grandchildren," might not unreasonably be limited to grand-children alive at the time of the execution of the will. If the devise to such a class is immediate those only who answer to the description at the time of the testator's death can take; but if the property is not to vest immediately after the death of the testator, but the vesting of it in possession is postponed, then such children, as are born before the property does vest in possession, may also take, Looekerman v. McBlair, 6 Gill, 177.⁹ And there

⁷ "A person *in loco parentis* to a child is one who means to put himself in the situation of the lawful father of the child with reference to the father's office and duty of making provision for the child." The mere fact that a grandfather gives legacies to his grandchildren does not create the relation. Von der Horst v. Von der Horst, 88 Md. 127, 130.

⁸ See also Taylor v. Watson, 35 Md. 524; Dulany v. Middleton, 72 Md. 76; Slingsluff v. Johns, 87 Md. 278.

⁹ Shotts v. Poe, 47 Md. 519; Cox v. Handy, 78 Md. 122; Schapiro v. Howard, 113 Md. 360. Cf. Demill v. Reid, 71 Md. 190.