Our act plainly looks to the case of persons who may intermarry, and the offspring of an incestuous intercourse, or of those prohibited by our law from intermarrying, cannot of course be legitimated by subsequent marriage and acknowledgment of their parents.[3] As the Act is in derogation of the common law it is to be strictly construed, and the sounder construction of it might perhaps be that a child begotten when its parents were under some impediment to marry, as if either or both of them were at that time married, is incapable of legitimation. It was determined in the case of Brewer's lessee v. Blougher, 14 Peters, 178, that the words "as if born in lawful wedlock," (which would otherwise strengthen the conclusion,) used in the Act of 1825, ch. 156, in a similar connection, are employed only to denote the shares and proportions in which such children are to take. From the same case it might seem, that the Court thought that the Act we are now considering applied to cases where, in the opinion of the Legislature, the parents *might probably marry.* Such would be the case of parties under no present impediment to marry begetting a child. But such would not be the case of a man who had a wife begetting a child by the wife of another man. On the other hand, if lands be given to a man who has a wife and to a woman who has a husband and the heirs of their two bodies, they have presently an estate-tail for the possibility that they may marry, Co. Litt. 25 b; so that it is contrary to none of the analogies or presumptions of the law that such man and woman may thereafter marry. The words, too, are quite extensive, see Brewer's lessee v. Blougher *supra,* and in the case of Hyde v. Rundles, in the Circuit Court of Baltimore City, **33** No. 107, 1864, it was held, that *a child begotten while the father was living in adulterous intercourse with a married woman, who was afterwards divorced from her then husband, was legitimated by the father's subsequent marriage with the mother and his acknowledgment of the child as his own in his will, though the will itself was held to be revoked by the marriage and the birth of another child. The strong argument against such a case is, no doubt, the policy of all civilized nations amongst whom the practice of legitimation by subsequent intermarriage obtains, and which must have been present in the minds of the legislature when the law was passed.[4]

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[3] This seems doubtful. A marriage invalid on account of the relationship of the parties by consanguinity or affinity is, in Maryland, not void but voidable. It is valid until duly avoided by decree of a competent court passed in proceedings instituted for that purpose by one of the parties. If not thus avoided during the joint lives of the parties, it is valid. Harrison v. State, 22 Md. 468. No reason is perceived why such a marriage, if not avoided during the lives of the parties, should not make legitimate a child of the parties born before the marriage, but acknowledged by the father.

[4] This argument was strongly pressed in the case of Hawbecker v. Hawbecker, 43 Md. 516, but the court held, in a very clear opinion by Judge Miller, that the Act was not limited to the children of those capable of contracting a valid marriage, but extended to the children of an adulterous intercourse.

In Scanlon v. Walshe, 81 Md. 118, it was held that the mere fact of marriage and acknowledgment could not in all cases be received as proper