SIMPLE CONTRACTS & AFFAIRS OF EVERY DAY LIFE.

NOTES OF NEW DECISIONS AND LEADING CASES.

GIFTS, FATHER TO SON.—A gift can only be upheld if clearly proved; and where evidence of loose, casual, and inconsistent admissions and statements was offered to prove a gift of all the donor's means, the evidence was held insufficient.

There is, ordinarily, no presumption of undue influence in the case of a gift from a father to a son, unless it is proved that the son occupied towards the father, at the time, a relation of confidence and influence; but if that is proved, the gift may need for its support the same evidence of due deliberation, explanation, and advice, as a gift to any other person occupying such relation of confidence and influence.

Where there is no proof of *mala fides* or of an unfair exercise of influence, a gift of a trifling sum, as compared with the donor's property, does not stand in the same position as a gift of his whole property.

If the donee is a son who occupied to his father (the donor) a relation of confidence and influence, though a gift of the whole of his father's means, if large, may not be upheld without the evidence, required in other cases, of due deliberation, explanation, and advice, the gift of more than a trifling proportion may be sustainable without such evidence.—*McConnell* v. *McConnell*, 15 U. C. C. R. 20.

FI. FA. AGAINST EXECUTOR BEFORE PROBATE—INJUNCTION.—The title of an executor being derived from the will and not from the probate, the Court refused to restrain execution against the lands of a deceased debtor on a judgment recovered against the executor before probate.—*Stump* v. *Bradley*, 15 Chan. R. 30.

WILL—PROVISION IN LIEU OF DOWER.—*Quære*, whether a provision for the maintenance of the testator's widow, charged on the real estate, is by implication in lieu of dower.

A testator devised his farm to his eldest son in tail, upon condition, amongst other things, that he should support the testator's widow during her life; that she should be mistress and have the control of the dwelling-house on the farm, and should have the proceeds of one-half the cows and sheep kept on the premises; that the farm should be a home for the testator's son John, so long as it might be necessary for him to remain, and for another son, Donald, should any misfortune happen to him.

Held, that the widow was not entitled to dower in addition to the provision made for her by the will.—*McLennan* v. *Grant*, 15 Chan. R. 65.

WILL, CONSTRUCTION OF—UNDISPOSED OF RESIDUE.—Where a will does not dispose of the whole personalty, the executors are trustees for the next of kin, unless the will expressly shews that the testator intended they should take the residue beneficially.

Where money, mortgages, and promissory notes, were bequeathed to a legatee for life, it was held, that she was not entitled to the possession and disposition of the same, but to the income only; though of farming stock and implements given for life by the same clause she was to have the use in specie.—*Thorpe* v. *Shillington*, 15 Chan. R. 85.

---

27 AND 28 VIC. CH. 18, SEC. 40.—DEATH BY "ACCIDENT."—MEANING OF.—DAMAGES.—The Statute 27–28 Vic. ch. 18, sec. 40, makes a tavern-keeper liable in case any person, while in a state of intoxication from excessive drinking in his tavern, has come to his death, "by suicide or drowning, or perishing from cold, or other accident caused by such intoxication."

The deceased in this case being intoxicated fell off a bench in the bar-room, and was placed upon the floor in a small room adjoining, with nothing under his head. While there he died from apoplexy, or congestion of the brain, brought on, as the plaintiff alleged, by placing him in an improper position while intoxicated.

Held, not a case of death by "accident" within the Statute, but of death from natural causes induced by intoxication.

Whether under this Act proof of some pecuniary damage must be given, or whether, without it, the damages are fixed by the Act at not less than $100, was a question raised, but not decided.—*Bobier, Administrator of Henry Bobier* v. *Bobier*, 27 U. C. Q. B. 438.

DEPOSIT-RECEIPT FOR MONEY—DONATIO MORTIS CAUSA.—GIFT INTER VIVOS.—Plaintiff's wife held a Bank deposit receipt for $1,000. Shortly before her death she directed the trunk containing this receipt to be sent for, or sent for it herself, at the same time expressing her intention of giving the receipt to the wife of defendant, and also delivering to her the key of the trunk. The trunk did not, however, arrive until after her death:

Held, assuming that plaintiff's wife could dispose of the money as if she were sole, that the