which had been and were up to the time of the devise used by the owner of the entirety for the benefit of such parts. *Briggs* v. *Semmens et al.*, 522.

WIFE.

See HUSBAND AND WIFE.

WILL.

1. *Validity of—Instructions for—Mental and physical capacity of testator—Donatio mortis causa—Sufficiency of.*]—The testator when nearly eighty years of age executed a will devising the whole of his estate to a son and daughter by his first marriage to the exclusion of his wife and other children of the second marriage. At the time of its execution he was on his death-bed, staying with his daughter in the United States, having shortly before left his farm in Ontario without any notice to his wife and other children. For some time before he had been afflicted with a complication of diseases rendering him incapable of managing his farm, and which resulted in his death shortly after the execution of the will in question. A will was prepared by an attorney practising in the place the testator was staying, leaving everything to the daughter, solely on the instructions of her husband. On this being read over to the testator, who was lying in bed and unable to rise, suffering great physical and mental prostration, he remarked that it was not right, that he wanted the son's name in it too. The will in question was then prepared, and after being read over to him, without explanation as to the effect of the language used, was executed by him, with assistance, with great difficulty. The attorney and medical man in attendance were of opinion that he had sufficient mental capacity to make a will. The same attorney had sometime before induced him to refrain from making a similar will. Shortly before the execution of the will he had handed to his daughter a bank deposit receipt which she had transferred to her name, and partly used, he stating that he wanted her to take care of him, and that he was going to have a will drawn. From the evidence it appeared that the testator, as well as his daughter, were under the impression that the will had reference to the deposit receipt only :—

Held, (varying the judgment of the trial Judge) that the will was invalid, its execution under the circumstances of the testator's condition, and the absence of any explanation to him of the effect of his testamentary act, being a fraud on the part of those concerned in procuring its execution :—

Held, also, that the gift of the deposit receipt was a valid *donatio mortis causa*. *Freeman* v. *Freeman*, 141.

2. *Rule in Shelley's Case — Trust—Restraint on alienation by sale but not by mortgage — Rule against perpetuities.*]—A testator by his will devised certain lands to his son N. M., for life, and after his decease to his heirs and assigns forever, but subject to the payment within three years out of the rents and income of a sum of money charged upon the lands therein specified ; after his death the land was to be sold provided N. M.'s youngest child then living was of the age of twenty-one years, the proceeds thereof to be equally divided between N. M.'s children at the time of the sale :—