

cannot charge the inheritance with them. *Re J. T. Smith's Trusts*, 518.

6. *Will — Construction — Gift of maintenance* "while donee remains at home."]—A testator devised certain lands to his two sons, declaring that the legacies thereafter mentioned should be a charge thereon. He then bequeathed certain pecuniary legacies to his daughters, adding, "I give and devise also unto (his said daughters) their support and maintenance so long as they, or either of them, remain at home with (his two sons);" and he gave his personal property to his two sons in equal shares.

*Held*, that the support and maintenance of the plaintiffs was, by the will, made a charge upon the lands; and they might for sufficient reasons, cease to live at home, and yet still be entitled to such support and maintenance. *Swainson v. Bentley*, 572.

7. *Will — Construction — Mixed fund for payment of legacies—Interest on legacies—Charitable bequests — Mortmain* ]—A testator, after directing payment of his debts out of his personal property, or if that should prove insufficient, then, that so much of his real estate as would supply the deficiency might be sold for that purpose, went on to direct that his land should be sold, and the income of the capital arising from the sale

be paid yearly to his wife, for her maintenance during her natural life, after which he gave a number of charitable bequests and pecuniary legacies, but made no residuary gift:

*Held*, that the testator had created a mixed fund to answer the purposes of his will, and if the personalty was not sufficient for the payment of the debts, the legacies were payable out of the land; if it was sufficient, they were payable out of the mixed fund; but so far as the charitable bequests were payable out of the land they were void.

*Held*, also, that interest was payable on the legacies from a year after the testator's death, in accordance with the general rule, in any event; and this, although, as the whole interest of the proceeds of the land was given to the wife for life, the capital had to be kept invested by the executors, and, consequently, there was no fund for the payment of legacies until her death. *Toomey v. Tracey*, 708.

*Devise to two as tenants in common — Subsequent partition — Way of necessity.*]—See *WAT*, 1.

#### WORDS.

"Heirs" — "Children"] — See *WILL*, 3.