will, whereby he devised to his son N. the said eighty acres, "excepting so much thereof as I may have sold and conveyed." Thereafter, and shortly before his death, he again acquired the part which he had sold.

Held, that although the will spoke from his death, the after-acquired property did not pass, for the testator had specified the subject matter of his devise, within which the property in question was not included. *Vansickle et al.* v. *Vansickle et al.*, 107.

3. *Devise to attesting witness —Election by heir*—26 *Geo.* II., *ch.* 6, *sec.* 1.—Where, by a will, land is devised to an attesting witness, there is an intestacy as to this devise by virtue of the 26 Geo. II. ch. 6, sec. 1, and the heir is not bound to elect as between this land and a legacy bequeathed to him by the will. *Munsie* v. *Lindsay*, 164.

4. *Vesting—Gift over—Contingency —Parties—R. S. O. ch.* 49. *sec.* 9.] —A testator by his will gave his homestead and certain personality to his wife, while unmarried, for the maintenance and support of the family surviving him, until the members of his said family should respectively attain twenty-one, and afterwards for the maintenance of his wife for life. He then proceeded to give and bequeath all his other real and personal estate, not thereinbefore mentioned, to his executors in trust to dispose of and invest, and "upon my son Thomas attaining the age of twenty-one years, should he be my only child, in trust to pay to him and put him in possession of the said residue;" but if there were more children, he directed that it should be divided amongst all, in the proportion of one part to a daughter and two parts to a son, to be paid to them when they should respectively attain twenty-one. He then proceeded to devise to his son Thomas the homestead, together with the household goods, &c., on the decease or second marriage of his said wife, should he have attained his twenty-first year. And in case his son Thomas should not survive him, or attain the age of twenty-one, or in case he (the testator) should have no other surviving child who should attain the age of twenty-one, or in case he should have no grandchild, his real and personal estate was to be divided in certain proportions among his brothers and sisters.

Thomas, the only child surviving the testator, attained twenty-two, and died without issue, leaving him surviving his mother who had not married again.

Held, Thomas took a vested estate, for that it did not appear that the testator intended it to be contingent either on his attaining twenty-one, or surviving his mother.

Held, also, the testator's intention was, that the gift over should not take effect unless Thomas died under twenty-one, without leaving a child. *Gairdner* v. *Gairdner*, 184.

5. *Vesting* — "*Worldly Estate.*"] — A testator, by his will, "as touching his worldly estate," gave to his wife the use of all his personal property and of his farm and buildings for her support and the bringing up of his children,—"and at her decease the whole of the personal and real property to be equally divided between my six children:"

Held, that the shares of the children vested on the death of the testator.

Baird v. *Baird*, 26 Gr. 367, explained and reconciled.