THE LAW OF WILLS.

An article headed "Wills and Intestacy," over the signature "J. H. Gray," has appeared in the October number of *La Revue Critique de Législation et de Jurisprudence du Canada*, on which we think it proper to make some observations. It commences by stating that—

"The increased intercourse between the different Provinces of the Dominion, brought about by Confederation, renders desirable a more general knowledge of the differences between them in the laws regulating the ordinary transactions of life. The business man from Ontario would be very apt to suppose that what he could do and would do in Ontario, would, under similar circumstances, be a rule of conduct for him in Nova Scotia and New Brunswick. The same of the business man from Nova Scotia or New Brunswick in Ontario. Called by the pursuits of trade to take up his temporary or permanent residence in one of the Provinces other than that in which he had been previously living, it is important to know how the wealth he is accumulating may be disposed of by himself; or, if he failed to will it, how the law would do it for him. There are few things more ruinous to the peace of families than a disputed will; few more conducive to the well-being of a people than a judicious law of intestacy. It is proposed to examine the provisions made in Ontario, New Brunswick and Nova Scotia, in these respects."

Fully concurring as we do in these remarks, we think it advisable to point out some statements in the article in question, which are perhaps calculated to mislead as regards the law in Ontario.

From the general tenor of the essay, it appears that the author professes to show wherein the law on the subject differs in the various Provinces. If his remarks were confined to the *statutes merely*, they would not be so open to criticism; but, as we have seen, he does not confine himself to those alone. He commences by stating that—

"In *New Brunswick*, a testator may, by his will, dispose of all property, and rights of property, real and personal, in possession or expectancy, corporeal and incorporeal, contingent or otherwise, to which he is entitled, either in law or equity, at the time of the execution of his will, or to which he may expect to become at any time entitled, or be entitled to at the time of his death, whether such rights or property have accrued to him before or after the execution of his will. In *Nova Scotia*, the same."

It is further said that—

"In *Ontario*, there is no provision of this general character; but, by the Consolidated Statutes of Upper Canada, chapter 82, section 11, real estate, acquired subsequently to the execution of a will, would pass under a devise conveying such real estate as testator might die possessed of."

Now, the provisions of this section of the U. C. Con. Stat. are overridden, if not virtually repealed, by the Ontario Act of 32 Vic. cap. 8, sec. 1, which now governs, and under which after-acquired property passes: *Gibson* v. *Gibson*, 1 Drew, 62; Leith's Real Prop. Statutes, 293. The statute we have referred to reads as follows: "Every will shall be construed, with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will."

Contingent and executory interests were devisable under the Statute of Wills of Henry VIII. and 1 Jarman on Wills, p. 43; and consequently, by reason of the application of that statute here, such interests were also devisable in Ontario since 32 Geo. III. cap. 1, introducing the English law. Independently of this, it has generally been considered here that the Consolidated Statute referred to, authorized devises to fully as large an extent as is said to be the law in New Brunswick: (See secs. 14, 11, 12.)

Further on in the article it is said that "in New Brunswick and Nova Scotia a testator must be of age," but that "in Ontario there is no provision to this effect." Now, the Statute of Wills of Henry VIII. is, as above mentioned, the origin and source here of the right to devise, and governs unless varied by subsequent Acts. It expressly exempts infants from the right there given to devise, and we need hardly mention that at common law no one could devise a freehold.

It is further said, where speaking of the execution of wills, that in Ontario there is no general statute, as in Nova Scotia and New Brunswick, with reference to wills; and reference is made to Con. Stat. U. C. cap. 82, s. 13. The Statute of Frauds should also have been referred to as applying to the mode of execution of wills here. That statute was introduced here by the Act of 32 Geo. III. cap. 1, above referred to. It is in force, and cumulative in its provisions with sec. 13 of Con. Stat.