

WILL, CONSTRUCTION OF.

1. A testator devised certain property to his son A., and to the heirs of his body lawfully to be begotten, with power to appoint any one or more of such heirs to take the same :

Held, that A. took an estate tail; that there was no trust in favor of his children; and that mortgages therefore executed by him took precedence of the claims of the children under an appointment which he afterwards executed in their favor.

The Trust and Loan Company of Canada v.
Fraser, 19.

2. A testator devised his farm to minor children, and directed that his executors should rent the same; that no timber should be cut except for the use of the premises; and that the executors should have full power to carry the will into effect:

Held, that it was the duty of the executors to prevent the executrix from cutting the timber for other purposes.

Stewart v. Fletcher, 21:

3. A testator (amongst other things) devised certain lands to each of his two younger children, and directed that the rents should be and remain to his widow or executors for the education and up-bringing of the devisees respectively until they were twenty-one, &c.; and he also left all his dividends and profits of his bank stock, &c., to his widow and executors for the same purpose. The residue of his estate was to be divided equally amongst all his children. The rents of the lands devised to one of the younger children were alone more than sufficient for his education and maintenance:

Held, notwithstanding, that he was entitled to a share of the dividends bequeathed; that the whole income derived from the stocks being given, the gift could not, in favor of the residuary legatees, be construed as conditional on being needed for the purpose specified.

Denison v. Denison, 41.

4. The testator, after devising a parcel of land to each of his three sons, directed his executors to collect the debts due to him, and out of the money so collected to pay his debts, funeral and testamentary expenses and legacies; and he charged the deficiency on two of the parcels which he had devised; by a subsequent part of his will, he gave his household furniture, and other personal chattels, to his wife for her own use, except the piano, which he gave to one of his daughters; there was no other residuary clause in the will.

Held, that the whole of the testator's residuary estate, except the debts due to him and the piano, went to the wife, exonerated from the debts which the testator owed.

Scott v. Scott, 66.