

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 secs. 13 of Con. Stat. U. C. cap. 82. Mr. Leith, in his work on Real Property Statutes, vol. 1, p. 290, recites the provisions of section 5 of Statute of Frauds (29 Car. II. cap. 3), which enacts as follows :

"All devises and bequests of any lands and tenements, devisable either by force of the Statute of Wills, or by this statute, or by force of the custom of Kent, or the custom of any borough, or of any particular custom, shall be in writing, and signed by the party so devising the same, or by some other person in his presence, and by his express directions, and shall be attested and subscribed in the presence of the said devisor by three or four credible witnesses, or else shall be utterly void and of none effect."

"Mr. Leith then goes on to say—

"The variance between the statute of Charles and of William is this : that by the former the will must be attested and subscribed, in