

WIFE'S CHOSE IN ACTION.

See "Husband and Wife,"

WIFE, UNDERTAKING TO RECEIVE.

See "Marriage," 5.

WILL, CONSTRUCTION OF.

By his will and codicil a testator devised to his son *J.* on the death of his mother, certain land in consideration for which he was to pay the sum of £150 to the executors in four years. In the event of his dying without heirs the land was to be sold and the amount received therefor over and above £150 "to be equally divided amongst my surviving children."

*Held*, (1) that *J.* took a fee-tail in remainder after an implied life-estate in favour of the mother, as the "dying without heirs" must be taken to mean heirs of the body, not heirs general, he having brothers and sisters still living:

*J.* died during the lifetime of his mother.

*Held*, (2) that the period of division should be the death of the tenant for life, and the survivors at the time of such death were to take the whole amount realized by the sale of the lands upon which, however, the £150 was to form a charge.

*Tyrwhitt v. Dewson*, 112.

2. The testator was seized of certain lands which were subject to incumbrances, and by his will directed the same to be sold if his sons in succession should not redeem. One of the sons, *R.*, to whom the first privilege of redeeming was given, availed himself thereof, and redeemed the property, which was subject to certain charges imposed by the will, in addition to the incumbrances.

*Held*, that the right to redeem was in effect a right to purchase, as the mortgages and charges created by the will amounted to about as much as the land was worth; and that *R.* had acquired a good title free from any claim of his brothers; and his brothers having instituted proceedings against him claiming an interest in the estate that he was entitled to recover his costs, not out of the estate of the testator but from the plaintiffs personally.

*Stevenson v. Stevenson*, 232.

3. The testator gave £1,500 by will to his widow, and in the event of her marrying again or dying intestate, the sum was at her death to be divided share and share alike among "my heirs (my brothers' children)." The widow did marry again, and a daughter of *W.*, a brother of the testator, died after the marriage but before the death of the widow, and so before the time for distribution.