WILLS, CONSTRUCTION OF.—*Continued.*

same in part," and then bequeathed the "rents, issues, and profits," of a certain house and lot, immediately after his death, to his two surviving children, "the same to be applied towards their support and education." HELD—

That the intent of the testator, manifest upon the face of the will (construing the will and codicil as one instrument,) was simply to revoke the bequest to his wife, so far as the house was concerned, and to give the rents and profits of it for her life to his two surviving children, leaving the will after her death to operate upon it as upon the residue of his estate. *Boyle* vs. *Parker*, 42.

6. The will and codicil are to be construed together as one instrument, and are to be reconciled, as far as possible; but if irreconcilable, the codicil, as the last indication of the testator's mind, must prevail. *Ib.*
7. The devise of the profits of land does not, *ex vi termini*, pass the land, but only furnishes evidence of the intention of the testator that it shall pass, subject to be rebutted, of course, by the manifestation on the face of the will of a contrary intention. *Ib.*
8. In this case, nothing is said in the codicil about disturbing the limitation over to the children and grandchildren, and the will and codicil are easily reconciled by making the latter apply only to, and operate upon, that part of the will which relates to the wife. *Ib.*
9. The devise in this case being not of lands, but of their rents and profits, and the intent of the testator being manifest upon the face of the will that the land should not pass, the Act of 1825, ch. 119, does not apply. *Ib.*
10. That Act applies to devises of lands or real property in general terms, without words of perpetuity, or limitation, and gives the entire estate and interest of the testator, unless by devise over, or by words of limitation or otherwise, a contrary intention is indicated. *Ib.*
11. A testator devised lands to his son and his heirs, "provided, nevertheless, that if" his said son "should die without heirs lawfully begotten of his body," then over. HELD—

That the son took an estate in fee in the land devised to him, and which upon his dying intestate and without issue, descended to his surviving brothers and sisters, and the children of such as were deceased, as his heirs-at-law. *Roser* vs. *Slade*, 91.

12. A testatrix devised certain real estate to her daughter for life, remainder in fee to her three grandsons, naming them, "provided, nevertheless, that if either or any of my said grandsons *should die without issue*, then" the property "to descend to, and become the estate of the *survivor or survivors*." One of the devisees in remainder died without issue. HELD—

That the limitation over to the survivors is too remote, being after an indefinite failure of issue. *Jackson* vs. *Dashiel & Colston*, 257.

13. The words "*without issue*," in a will, when applied to depositions of real estate, mean *ex vi termini*, an indefinite failure of issue, if there is nothing in the will restricting their operation; and the circumstance that the limitation over is to a survivor in fee for life, will not have the effect to restrain the established legal meaning of the words.

See CHARGES UPON LANDS DEVISED, 1, 7, 8.
TRUSTS, 1 to 5.