

tors); the other a distribution among all persons entitled including creditors; having regard to the punctuation and particularly the semi-colon after the words "payment of his debts," it would seem extremely probable that the legislature meant that the concluding clause should apply not merely to the distribution among the heirs, but the distribution of the fund among all who are entitled to participate whether as creditors or heirs.

The former construction would naturally find favour with those who think that the former distinction between land and personalty ought to be preserved; whereas those who think that the Legislature intended to put both classes of property on the same footing would find ample justification in the statute for adopting the other construction. If the land in question in *Re McGarry* were in fact personal property how would it be distributed? clearly as between that part of the personal property disposed of by will, it (as undisposed of personalty) would be first applied in payment of the debts of the deceased; and yet that is what the decision in question determines is not to be done. So that although the statute says it is to be distributed as personalty the courts say it is not to be distributed as personalty so far as the payment of debts is concerned, but in the same way that realty was previously distributed; which some people may regard as importing into the statute something which is not to be found therein.

The learned Chancellor who delivered the judgment of the court admits that in arriving at that decision it was contrary to his first impression; but seems to have felt himself overborne by previous decisions. We are disposed to think that his first impression was more in accordance with the wording of the statute, and in the case in hand would very probably have had the additional merit of effectuating the real intention of the testator.

We may remark that the English Land Transfer Act of 1897 does not contain any words requiring land to be administered or distributed as personal estate. On the contrary it provides that the personal representatives are to hold the land as trustees "for the persons by law beneficially entitled thereto." Moreover,