

and there was no other gift of residue; and it was held by Malins, V.C., that all the real as well as personal estate passed under those general words; see also *Attree v. Attree*, 11 Eq. 280; *Milsome v. Long*, 3 Jur. N.S. 1073. The decision in *Smyth v. Smyth* was opposed to the earlier case of *Doe v. Dring*, 2 M. & S. 448, which Malins, V.C., refers to in his judgment as "the decision of a very eminent judge, Lord Ellenborough; but, like all other judges at that period, he felt himself bound by the peremptory rule of law that the heir shall not be disinherited unless by plain and cogent inferences arising from the words of the will"; and see per Boyd, C., in *Hammill v. Hammill*, 9 O.R., at p. 533.

*Smyth v. Smyth* was followed by the Divisional Court of the Chancery Division in *Hammill v. Hammill*, (1885) 9 O.R. 530, in which case a gift of the balance of personal property, consisting of notes and other securities for money . . . "also any effects possessed by me at the time of my decease," was held to pass land, acquired by the testatrix subsequent to the date of her will, to which she died entitled; the absence of any other residuary devise and the desire of the court to avoid a construction which would involve an intestacy furnishing the *ratio decidendi*; see also *Hall v. Hall*, (1892) 1 Ch. 361; 66 L.T.N.S. 206. In the same line as these cases is *Scott v. Scott*, (1871) 18 Gr. 66, where Mowat, V.C., held that a gift of "household furniture and other personal effects" passed the residuary personal estate, there being no other gift of the residue. We may note that the headnote of this case is not perfectly accurate, as it may lead to the impression that the clause was held to carry the residuary real estate also, which was not the case.

For the effect of the absence of any residuary gift upon the construction of general words following a particular clause or bequest, we may refer to *King v. George*, (1877) 4 Ch.D. 435; 5 Ch.D. 627, where a will was in question which was as follows: "I, S.G., do bequeath to A.K.G. all that I have power over, namely, plate, linen, china, pictures, jewellery, lace, the half of all valued to be given to H.G. The servants in the house who have been a year with me to receive £10 and clothes divided among them, also all the kitchen utensils." There was no other residuary gift. The Court of Appeal (James and Mellish, L.JJ., and Baggallay, J.A.) affirmed the judgment of Malins, V.C., who