

MIDDLETON, J.

APRIL 29TH, 1920.

RE SMALL.

Will—Construction—Devise of Dwelling-house—Bequest to Devisee of all Testator's Furniture and other Articles of Household Use—Articles in House other than one Devised, Included—Motor-boat Used in Connection with other House not Included—Boat not Necessary for Occupation of House Devised—Residuary Clause—Costs.

Motion by the executors of the will of John Turnbull Small, deceased, for an order determining a question arising as to the construction of the will.

The motion was heard in the Weekly Court, Toronto.
J. W. Carrick, for the executors and adults interested.
F. W. Harcourt, K.C., Official Guardian, for the infants.

MIDDLETON, J., in a written judgment, said that the testator gave his residence in the city of Toronto to his brother, and also gave him "all my furniture, plate, plated goods, linen, glass, china, books, manuscripts, pictures, prints, musical instruments, and all other articles of personal, domestic, or household use or ornament not otherwise disposed of." The testator, in addition to his city residence, owned a summer house on Toronto Island. It was conceded that all articles of the description above quoted passed to the brother, even if found at the summer residence.

The question was, whether a motor-boat, owned by Mr. Small and used by him in connection with his summer residence, passed under this gift.

Reliance was placed upon the decision of Younger, J., in *In re White*, [1916] 1 Ch. 172, where the words of the bequest were practically identical with the words of the gift here, save that they had added to them, "and all my horses, carriages, harness, saddlery and stable furniture." It was there held that a motor-car, which the testator had purchased after the date of his will, having then sold all his horses and carriages, did not pass under the gift of carriages, but did pass under the gift of "furniture . . . and all other articles of personal, domestic, or household use or ornament;" the reason given being that from the words of the will he drew "an intention that the legatees should have all the effects necessary to enable them to occupy the house in the same state as the testator had done."

The present case was entirely distinguishable, without any attempt to contrast a motor-boat and an automobile, upon the