Street, J.] IN RE PINK. [Nov. 26, 1902.

Will—Construction—Inconsistent bequests—Reconciling—Formal bequest of residue.

A testator bequeathed all his clothing, wearing apparel, and personal effects to his brother; all his household furniture and other personal property to his sister; he then devised to his sister for life all his real estate, with remainder in fee to his nephew, subject to certain legacies and annuities which he charged upon it; and wound up his will by devising and bequeathing the rest and residue of his real and personal property to his nephew. And at the time of his death the testator's personal property consisted of: household goods and furniture, $150; farming implements and live stock, about $500; book debts and promissory notes, $35; cash, $273; wearing apparel, watch, chain, etc., $25; total $983.

Held, that all the brother took was the wearing apparel and the watch and chain; that the sister took all the remainder of the personalty; the nephew taking none of it.

The proper view of the residuary clause was that the testator, having disposed specifically of all his estate, both real and personal, added the residuary clause for the sake of greater caution or as a usual form.

W. F. Kerr, *B. M. Jones*, and *F. W. Harcourt*, for the various parties.

Divisional Court.] FLETT *v.* COULTER. [Nov. 27, 1902.

Infant—Evidence—Examination for discovery.

An infant suing by a next friend may, in the absence of special incapacity, be examined for discovery. *Arnold* v. *Playter* (1892) 14 P.R. 399, approved. Judgment of MEREDITH, C.J.C.P., affirmed.

An order for the examination of an infant for discovery should not give to the examiner a discretion to determine the capacity of the infant; the proper manner of raising any question as to the capacity of the infant is by motion to set aside the appointment, or, if there is no time for that, then upon the motion to commit for non-attendance, so that the question of capacity may be considered by the Court itself.

O'Donoghue, for appellant. *Parker*, for respondent.

Falconbridge, C.J.K.B.] [Dec. 9, 1902.

IN RE BERGMAN *v.* ARMSTRONG.

Division Court jurisdiction—Assignments and preferences—Declaration of right to rank.

An action for a declaration of the right to rank against an insolvent estate vested in an assignee under the Assignments Act, R.S.O. 1897, c. 147, is not within the jurisdiction of the Divisional Court.

Blake, K.C., for defendant. *W. Davidson*, for plaintiff.