

words: "I give and bequeath absolutely unto my brother . . . a certain chattel mortgage for the sum of \$700 . . . and I also give and bequeath absolutely unto my said brother . . . a certain claim I hold against my said brother for \$300." The next following clause in the will was as follows: "I direct my executors to convert all the rest and residue of my estate into cash, and, after payment as aforesaid of all my debts and funeral and testamentary expenses, I dispose of the same as follows." Then followed legacies and gifts.

Defendants were by the will appointed executors, and they took upon themselves the burden of the trusts.

Defendants threatened to proceed to realize and get in the moneys secured by the chattel mortgage, and this action was brought to restrain them from doing so. An interim injunction was granted.

The action was tried at Toronto.

R. S. Neville, for plaintiff.

E. G. Graham, Brampton, for defendant.

FERGUSON, J.—It was scarcely contended that this gift to plaintiff is not a specific legacy. The contention, however, was that it is a pecuniary legacy as well. This I do not understand, for, according to the argument, almost any specific legacy might be considered also pecuniary in kind and character.

From a comparison of this gift with the cases collected in the 5th ed. of Theobald on Wills, at pp. 128-145, and some others referred to by counsel, and in the 9th ed. of Williams on Executors, p. 1030, I am clearly of the opinion that the gift in question is a specific legacy.

For plaintiff it was asserted and contended that there was no need of getting in the legacy, as the estate was clearly sufficient to answer the demands upon it. Even if this consideration could be entertained at present, it is to be borne in mind . . . that there is an action now pending against the estate of the testatrix for the recovery of a large sum of money, and should that action succeed, the case would be different.

[Reference to Williams on Executors, 9th ed., p. 1303.]

I am of the opinion that the executors not only have authority and power to get in this legacy, but that it is their duty to do so, and have it in hand, and safe to answer the proper purposes at the proper time. The getting in of the legacy in the present case must, I think, involve the collection of the mortgage. Plaintiff has an interim order enjoining