

WILL—CONSTRUCTION—CHARGE OF DEBTS ON LAND AND PERSON-  
ALTY IN FOREIGN COUNTRY—MIXED FUND—NON-EXONERA-  
TION OF RESIDUARY PERSONALTY—REALTY—PERSONALTY.

*In re Smith, Smith v. Smith* (1913) 2 Ch. 216. This was an administration action, and the question dealt with relates to the proper order for the administration of assets in the following circumstances. By a will made in 1905 the testator, after appointing executors and trustees, gave certain legacies free of duty, and, subject to the payment of the said legacies, duties, debts, and funeral and testamentary expenses, he devised and bequeathed all his real and personal property in the Argentine Republic to his trustees upon trust to sell, and, after payment of the expenses of the sale, to pay the residue to the children of his two brothers in equal shares; and the testator devised and bequeathed the residue of his real and personal estate in trust for the plaintiff. The testator died in 1910 domiciled in England. The question submitted to the court was whether the charge of debts and legacies on the real and personal estate in the Argentine had the effect of exonerating the residuary personal and real estate. Eve, J., held that the charge created by the will was confined in its operation to the Argentine property; that the rule of construction which requires that there must be found in the will not only an intention to charge the realty but also to exonerate the personalty before the latter can be exonerated, applies to a charge on realty situate in a foreign country; that if there had been a mixed fund created the residuary estate might have been exonerated, but that in the present case a mixed fund for payment of debts, etc., had not been created, because the trust for conversion was not for payment of debts and legacies, but only of the balance of the property after payment of debts and legacies, etc. He therefore came to the conclusion that the devise of the Argentine realty charged with payments of debts and legacies made it an auxiliary fund to the personalty, but did not operate to exonerate the personalty from its primary liability; but he also held that as the rule of construction applicable to realty does not apply to personalty, the charge of the debts and legacies on the Argentine personalty did exonerate the residuary personalty of its primary liability therefor.

SETTLEMENT — CONSTRUCTION — HOTCHPOT CLAUSE — — COV-  
ENANT TO SETTLE AFTER-ACQUIRED PROPERTY—TRUSTS BY  
REFERENCE.

*In re Fraser, Ind v. Fraser* (1913) 2 Ch. 224. In this case the construction of a marriage settlement made in 1847 was in ques-