Farrell v. National Trust Co., 17 D.L.R. 382, affirming 7 D.L.R. 419, 4 O.W.N. 335.

(§ III L—196)—Legacy in lieu of debt—Abatement—Insufficient assets.

The principle that a legacy given in satisfaction of dower does not abate upon a deficiency of assets is inapplicable to the case of a legacy given to a creditor in satisfaction of an ascertained debt, as to a physician in full settlement for his services; nor is the physician entitled in such event to claim the full amount of his bill and to share pro rata for the balance of the legacy. [Re Wetmore, [1907] 2 Ch. 277, followed.]

Re Rispin, 27 D.L.R. 574, 35 O.L.R. 385.

Under the Wills Act, R.S.O. 1897, c. 128, s. 26 (1) providing that every will shall be construed with reference to the real and personal estate comprised in it, to speak and to take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears in the will, where one clause of a will bequeathed money in a certain bank to specified legatees and another clause did the same with money in another bank to other specified legatees and before his death the testator withdrew the account in the one bank and deposited it in the other, the fund so increased is to be divided among the legatees to whom was bequeathed the account in the bank to which the transfer was made and not among the legatees of the money in the bank from which the account was drawn, there being nothing in the will to indicate a contrary intention on the part of the testator.

Re Atkins, 3 D.L.R. 180, 21 O.W.R. 238.

Specific legacy — Subsequent devise in trust—Construction.

The language of a general clause was limited by the introductory words that is it applies to those devises and bequests specifically given, by the will, in trust, and does not apply to the first clause, and, therefore, a devise to the son by the first clause is absolute.

Re Jones, 3 D.L.R. 261, 21 O.W.R. 272.

General of specific legacies — Abatement—Direction to solicitor to deliver chattels — Donatio mortis causa.

By his will the testator directed that the whole of his assets be converted into money and the proceeds distributed in pecuniary legacies. These legacies were made subject to a proviso for abatement. One of the legacies was to M. Subsequently, he executed a codicil containing the following clause: "I wish to leave to M. all my interest in the mortgage on . . . (certain lands)." None of the principal of said mortgage had been paid at this date. Held, that the legacy of the mortgage was a specific legacy, the mortgage was withdrawn from the effect of the clause in the will directing all the assets to be converted into money, and that the legacy was in substitution of that given by the will and not subject to the proviso in the will for abatement. [Burroughs v. Cottrell, 3 Sim. 375; Scott v. John, 4 O.R. 457, followed.] Held, that on the facts the provisions for abatement set out in the will did not apply. The deceased left a letter directed to his solicitor, asking that certain chattels be given to the parties designated and that a cheque he had drawn be given to the payee. Held, that these dispositions could only be supported as donatio mortis causa, and as there was neither actual nor constructive delivery, they must fail.

Re H. Aldridge, 32 W.L.R. 748.

Description of property — Charge on land.

The estate of the testator, who died in England, consisted of two small sums of money in England, a considerable sum in a bank in Ontario, and valuable real estate in Ontario. By his will he appointed an executor, and gave him $1,000. He gave his cousin in England (who predeceased him) an annuity of $600, to be provided from the rents of the real estate in Ontario—"my nephews to whom . . . I bequeath that property contributing this charge in such proportion as they shall mutually agree or . . . as my executor shall deem just." He then gave to the same cousin all his property in England. Then followed a legacy of $5,000 to his niece; and then—"Subject to the above-mentioned charges, I give . . . to my nephews . . . my real property" in Ontario. There were two nephews; to one three-fifths of the property was given and to the other two-fifths. Lastly, he directed that "all other property than the above-mentioned which I possess in Canada" should be divided equally between three named persons:—Held, that, though the annuity was made a charge upon the real estate, the legacies of $1,000 and $5,000, notwithstanding the use of the plural in the words "subject to the above-mentioned charges," were not so made a charge. The bequest of the property in England was a specific legacy. The residuary bequests were not specific, and had not priority over the pecuniary legacies of $1,000 and $5,000. A gift of "my property at A," is specific. The words "in Canada" at the end of the residuary bequest were not added with the view of making the gift specific, but because all in England had already been given.

Re Newcombe, 42 O.L.R. 590.

Estate insufficient to pay in full—Cesser of life interest in fund set apart—Application of fund to supplement abated legacies.

Re Perrie, 11 O.W.N. 160.

Specific bequests followed by general bequest—Modification or revocation Lapsed legacy—Residuary bequest—Real estate subject to legacies—Sale of land—Public auction.

Re Chambers, 11 O.W.N. 184.