restrain the defendant, who was assignee of the mortgagor, for the benefit of creditors, from selling the fixtures, on the ground that they were covered by his mortgage. The defendant contended that the mortgage was void as to the chattels for want of registration under the Bill of Sale Act, and Romer, J., decided that this contention was well founded, and that according to the test laid down in *Ex p. Barclay*, L.R. 9 Ch. 576, a mortgage of land, coupled with a power to the mortgagee to sell separately from the land all or any part of the trade fixtures, is a mortgage of chattels which must be registered to be valid. In *Robinson* v. *Cook*, 6 O.R. 505, a mortgage of land and trade fixtures was held to be valid as to the fixtures without registration as a chattel mortgage, but it does not appear from the report that there was any power in the mortgage there in question to sell the chattels apart from the land.

WILL—CONSTRUCTION—GIFT OF LEGACIES, FOLLOWED BY GIFT OF RESIDUE OF REAL AND PERSONAL ESTATE—MORTGAGED ESTATE DEVISED FREE FROM INCUMBRANCES—MARSHALLING.

In re Smith, Smith v. *Smith* (1899) 1 Ch. 365 several points arising on the construction of a will were determined by Romer, J. By the will in question, after four legacies of £100, the testator made specific devises, freed from any incumbrance thereon at the time of his death, and declared if he should sell any of the properties so devised his trustees should out of his residuary estate stand possessed of a sum equal to the price received, upon the same trusts as declared concerning the property sold. The testator then gave all other the residue of his real and personal estate upon trust to pay four annuities of £250 to his sons, and out of the balance of such residue to pay the incumbrances, and thereafter to pay the residuary estate to his sons. The testator sold one of the specifically-devised properties for £9,800. His estate proved insufficient to pay all the beneficiaries in full.

Romer, J., held that the four legacies of £100 were charged upon the entire residue, that the four annuities of £250 were only given to the sons as part of the residue, and were, therefore, not payable until the £9,800 above referred to, and the mortgage debts on the properties specifically devised, had been provided for, and that the £9,800 must be treated as an ordinary legacy payable out of the residue. He also held that the rule laid down in *Lutkins* v. *Leigh* (1734) Cas. t. Tal. 53, that pecuniary legatees have priority over a devisee, although the devisee is entitled under