

Cases can, no doubt, be found with expressions of opinion favourable to Mr. Ferguson's contention. All his arguments are met and answered by *Re Shunk*, 21 O. R. 175.

The onus is upon the appellants to "raise a necessary implication that the gift is in substitution of dower:" per Kindersley, V.-C., in *Gibson v. Gibson*, 1 Dr. 42, adopted by a Divisional Court in *Re Hurst*, 11 O. L. R. 6.

The appeal is dismissed with costs.

MIDDLETON, J.

MAY 19TH, 1910.

RE SMITH.

*Will—Questions Submitted to High Court—Documents Admitted to Probate—Jurisdiction — Surrogate Court—Revocation of Probate—Residuary Clause — Construction — Inclusion of Money in Bank, though not Specified.*

Motion by Thomas R. Langrill and William S. Scott, executors of the will of William Smith, late of the township of Dereham, farmer, deceased, for an order determining the following questions:—

(1) The testator having purported to make a disposition of his estate by two separate documents, bearing the same date, both of which have been admitted to probate, and each containing the provision, "I revoke all former wills or other testamentary dispositions by me at any time heretofore made and declare this only to be and contain my last will and testament," does one of these documents revoke the other? If so, which one stands, or do they both co-exist and form one testamentary disposition?

(2) Does the clause, "Sixthly, I direct my farm stock, implements, chattels, and effects shall be sold by my executors by public auction, and the proceeds of the sale thereof shall form part of the residue of my estate, also all notes or mortgages held by me, shall be converted into cash as soon as due, and the whole shall be divided into eight equal parts, to be divided as follows: one part to my son Robert Smith; two parts to my son John H. Smith; two parts to my son Levi Smith; one part to my daughter Sarah A. Fletcher; one part to my daughter Montelina Pollard; one part to my daughter Lela Smith: but, in case any of the children predecease me, I direct that share coming to such child shall be divided equally among the remaining children, and the divi-