

TEETZEL, J.

MAY 19TH, 1906.

WEEKLY COURT.

RE MOODY.

Will—Specific Devise—Residuary Devise—Bequest of Personal Estate — Provision for Payment of Debts and Funeral and Testamentary Expenses “out of my Estate” —Incidence of Debts, etc.—Devolution of Estates Act, sec. 7—Gift of Chattels—Exoneration.

Motion by executors under Rule 938 for order determining questions arising upon the construction of a will as to the administration of the testator's estate.

E. G. Graham, Brampton, for executors.

R. T. Heggie, Brampton, for William Moody.

F. W. Harcourt, for infants.

TEETZEL, J.:—The principal question is as to the order of assets for payment of debts.

The testator bequeathed all his personal estate to his son William, to whom he also specifically devised a farm, and he devised the residue of his real estate to his executors upon certain trusts. The debts and funeral and testamentary expenses are directed to be paid “out of my estate.”

It was held in *Re Hopkins*, 32 O. R. 315, that, excepting in cases coming within sec. 7 of the *Devolution of Estates Act*, R. S. O. 1897 ch. 127, the order in which different classes of property are applicable for payment of debts before the passing of that Act, has not been disturbed by its provisions.

In the absence, therefore, of anything in this will either expressly or by necessary implication exonerating the personal property not specifically bequeathed from liability to pay debts, it remains the primary fund for that purpose.

There is nothing in this will to shew any intention to exonerate the personal property, so it must be first applied, as far as it will go, in payment of debts.

No doubt, the effect of the direction in the will is to charge payment of the debts, etc., on the testator's land,