

estate was insufficient to pay her debts; so that there would be nothing for the legatees. The diamond ring was not buried with the testatrix, but was removed from her corpse by the sister before interment, and the sister claimed to be entitled to retain it.

D. O. Cameron, for the executors and for Maria Hendron personally.

T. N. Phelan, for John Wainwright, brother of the testatrix.

M. Wilkins, for the other legatees.

MIDDLETON, J., said that, if the direction in the codicil revoked the specific gift contained in the will, even though the direction in the codicil should itself be invalid, the sister would then take it under the residuary gift of the personalty; but this would be called upon to abate before the specific legacies in the order of administration.

This motion was launched upon the theory that the debts would not require this ring to be sold to pay creditors; and the contest was between the pecuniary legatees and the sister.

Two questions appeared to be involved: first, what was the effect of the direction found in the codicil; secondly, if it was invalid, did it revoke the specific gift to the sister?

The proper conclusion was that the direction contained in the codicil was invalid in law. A testator has the power to make a gift of personal property, but the gift implies the existence of a donee. A direction that property is to be buried or destroyed falls short of being a gift. It is not such a disposition of the property as is recognised by law. The ring, therefore, passed to the sister under the gift to her. This gift had not been revoked by any other disposition of the property; and she was, therefore, entitled to it under the specific bequest; and the pecuniary legatees could not call upon her to sacrifice a chattel specifically devised to her, to pay their legacies which fail for lack of assets.

Another question arising on the will was, whether the proceeds of the real estate should be resorted to for payment of debts in priority to the personal property passing to the sister under the residuary devise. The legacies were made a charge upon the proceeds of the sale of the land, and the effect of this was to make the residue of the personal property primarily subject to the payment of the debts.