

a testator, as against all persons taking benefit under his will, to release a particular chattel forming part of his personal property from liability for his debts, said: "The same principle applies to everything which a testator identifying it by a sufficient description and manifesting an intention that it should be enjoyed or taken in the state and condition indicated by that description, separates in favour of a particular legatee from the general mass of his personal estate the fund out of which pecuniary legacies are in the ordinary course payable:" p. 815.

Speaking of this statement, Lord Blackburn said: "I do not know if it were necessary to give a definition of a specific legacy that any would come nearer to my idea than what has just been said by the Lord Chancellor in this case:" p. 820.

The legacy in question in this case, in my opinion, comes clearly within this definition, and is therefore a specific legacy.

The same case determines that such a bequest as that to the testator's widow of his personal estate is not specific.

It follows, therefore, that the pecuniary legatees are entitled to have recourse to the general personal estate bequeathed to the widow, but not to the fund bequeathed to Sarah Fellman, James Moyer, and Deborah Moyer, for the payment of their legacies.

I have no doubt that the meaning I am compelled to give to the language which the testator has used to express his testamentary intentions will defeat his real intention, and I should have been glad, therefore, to have found in the will something which would enable me to hold that that intention had been expressed, but I have found nothing.

There must, therefore, be judgment declaring the true construction of the will to be in accordance with the opinion I have expressed, and the costs of all parties must be paid out of the general personal estate bequeathed to the widow.

---

BOYD, C.

MAY 13TH, 1907.

TRIAL.

BICKELL v. WOODLEY.

*Way—Private Way—Trespass—Boundary—User—Evidence—Costs.*

Action to recover possession of a strip of land in the town of Dundas and to restrain defendant from trespassing