

NEW YORK COURT OF CHANCERY

Flagler v. Flagler

11 Paige Ch. 457 (1845) · Decided March 4, 1845

SUMMARY

The court construed a will to determine whether money found in the decedent’s desk passed to the residuary beneficiaries or remained undisposed personal property. It held that the residuary bequest included the desk and the money contained in it, except for specified title deeds, and affirmed the surrogate’s decision with costs.

CASE DETAILS

COURT	New York Court of Chancery
WRITING FOR THE COURT	The Chancellor
JURISDICTION	New York
DECIDED	March 4, 1845
DISPOSITION	affirmed
PROCEDURAL POSTURE	The widow appealed from a decree or order of the surrogate of Dutchess County rejecting her claim to a distributive share of money found in the decedent's desk.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Widow of Philip Flagler v. Children of Zachariah Flagler, except David

TOPICS

- probate
- estate planning
- estate administration

PRACTICE AREAS

- Probate
- Trusts and estates

QUESTIONS PRESENTED

- Whether money found in the decedent's desk was included in the widow's legacy and household-furnishings bequest.
- Whether the money instead passed to the residuary devisees and legatees under the will.

HOLDINGS

1. The money in the decedent's desk was excluded from the widow's bequest and passed under the residuary clause to the children of the testator's brother Zachariah, except David.

KEY QUOTATIONS

“Taking the whole will together, I think there can be no doubt whatever that the bequest to the widow was not intended to include the desk, or any of the papers or money in the desk; and that the subsequent devise to these children was intended to include the desk, and all the papers and money therein which had been excepted in the bequest to the wife” (459)

“If there were any doubt upon the subject, the broad and comprehensive terms in which he has given all his residuary estate, not otherwise disposed of, to these legatees, is conclusive to show that he could not have intended to leave any part of his property undisposed of by his will.” (459)

FACTUAL BACKGROUND

The testator's will gave his wife a \$10,000 legacy and household furnishings but expressly excepted his desk, private writings, and all money and papers in the desk. The will later gave the children of the testator's brother Zachariah, except David, the residue of the testator's real and personal property and specifically gave them the desk, papers, and money therein, subject to an exception for certain title deeds. After the testator's death, approximately \$1,300 in money was found in the desk, and the widow claimed it as part of the estate not disposed of by the will.

PROCEDURAL HISTORY

The surrogate determined that the money found in the decedent's desk passed under the residuary clause of the will to the children of the testator's brother Zachariah, rather than remaining undisposed personal estate. The widow appealed, and the Court of Chancery affirmed the surrogate's decision with costs.

DISPOSITION

affirmed

OPINION

PER CURIAM.

The Chancellor. The only question for consideration in this case is, whether this sum of money, found in the decedent's desk, belongs to the children of the testator's brother Zachariah, as residuary devisees and legatees, or whether it is a part of the testator's personal estate not disposed of by his will.

The testator, after directing the payment of his debts, gives to his wife a legacy of \$10,000, and all his household furniture, linen, beds and bedding, with the exception of his desk, which contains his private writings, and all the money and papers therein, in lieu of dower. And after devising

divers portions of his real estate to other of his relatives, and giving several other pecuniary legacies, the testator makes a general residuary devise and bequest as follows: “ I give, devise aftd bequeath, to the children of my brother Zachariah, except David, all the residue of my property and money,. except such as is necessary to pay the legacies and devises above specified; and it is my will that they s hould have all the residue of my real and personal estate, my chattels, goods, and movables, wheresoever they may be, and whatever goods I may acquire hereafter and own at my decease; and I also give unto my brother Zachariah’s children, exclusive of David, my desk and all my papers and writings, excepting deeds of property given to others, and money (if any) therein contained.” The testator also gave to them, all the residue of his lands and all the lands he should thereafter acquire.

And he directed that all his legacies, and his debts and funeral expenses, should be paid out of the property so given to them. Taking the whole will together, I think there can be no doubt whatever that the bequest to the widow was not intended to include the desk, or any of the papers or money in the desk; and that the subsequent devise to these children was intended to include the desk, and all the papers and money therein which had been excepted in the bequest to the wife; with the exception of the title deeds of such of his real estate as was devised to others.

If there were any doubt upon the subject, the broad and comprehensive terms in which he has given all his residuary estate, not otherwise disposed of, to these legatees, is conclusive to show *459that he could not have intended to leave any part of his property undisposed of by his will.

The decision of the surrogate, therefore, was not erroneous; and the decree or order appealed from must be affirmed with costs, to be paid by the appellant.