

NEW YORK COURT OF CHANCERY

Flagler v. Flagler

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

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.

