

specific, and I cannot well understand how the bequest of all that remains after taking out a particular or designated portion, can be so considered. In order to constitute a bequest of personal estate specific, there must be a segregation of the particular property bequeathed from the mass of the estate, and a specific gift of a specified portion to the legatee. The cases cited in 1 *Roper*, 185, prove this, as do those referred to in 2 *Williams on Executors*, 747, 748. See also the cases collected in the notes to the case of *Kirby vs. Potter*, 4 *Ves.*, 748.

The bequest, however, of the books to Captain Mayo, is specific, because they are described with sufficient certainty to enable the legatee to call upon the executor to deliver them over to him in specie.

I am, therefore, of opinion, that in case of a deficiency of assets to pay the debts of the testator, the legacies to the testator's daughter and Captain Mayo would not be liable to abate, with the general legacy to the widow, which must be exhausted before the specific legatees can be resorted to for contribution.

The will was executed in May, 1845, at which time the testator owned certain real estate in the state of Virginia, which he authorized and directed his executors to sell, the proceeds to be applied to the payment of his debts in exoneration of his real and personal estate in this state, and the surplus to be invested as therein directed, and to be held and enjoyed by his wife during her natural life.

Prior, however, to the death of the testator, in November, 1846, he himself made sale of his real estate in Virginia, and some of the bonds taken for the purchase money remained unpaid at that time, which came to the hands of his executor, Captain Isaac Mayo, the other executor, the widow, having renounced the trust.

It is very apparent, that at the date of the will the testator considered that his Virginia property would produce money enough to pay his debts and leave a surplus, and as after he made sale of the property he made no further provision for the payment of his debts, we may, perhaps, reasonably infer that he continued under the impression that the money which his