



Pomeroy's Equity Jurisprudence and Equitable Remedies Volume 3

John Norton Pomeroy

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This historic book may have numerous typos and missing text. Purchasers can usually download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1905 edition. Excerpt: ...legacies are governed by certain rules which distinguish them from other kinds, and which determine the rights of the legatees with respect to them. Of these rules the most particular and distinctive is that of ademption.¹ Ademption is the taking away or removal of the legacy; or in other words, the extinguishment of it as a legacy, so that the legatee's rights under or claim to it are gone. The doctrine of ademption results from the very nature of a specific legacy as already defined. By its very nature as the gift of a specific, identified thing, operating as the mere gratuitous transfer of the thing without any executory obligation resting on the testator or his personal representatives, it follows that unless the very thing bequeathed is in existence at the death of the testator, and then forms a part of his estate, the legacy is wholly inoperative; the legatee has no right or claim; the executors are under no obligation to replace the thing by purchasing another one of the same kind as 438; *Sampson v. Sampson*, L. R. 8 Eq. 479; *Farquhar v. Hadden*, L. R. 7 Ch. 1. Residuary bequests: A specific legacy may be included in a residuary bequest: *Mills v. Brown*, 21 Beav. 1; *Davies v. Fowler*, L. R. 16 Eq. 308; *Golder v. Littlejohn*, 30 Wis. 344. It will appear in the sequel that where a testator gives a bequest not of or a part of specific property, but the property is merely designated as the particular fund out of which the legacy is payable, such a legacy is or may be demonstrative, not specific; but where the testator deals with specific property belonging to himself, not by giving legacies or sums of money out of it, but by dividing and apportioning out the very property itself, or the proceeds of it if it is directed to be sold and...

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