

The legacy of the coal business is not however to be regarded as a specific legacy payable in full at the expense of the residue. Cf. *Petition of Cain*, 87 N. H. 318; *Malcolm v. Malcolm*, 90 N. H. 399. The intent of the testator that it should pass as a part of the residue is reasonably plain, and his expression of this intent should be given no different effect than are residuary clauses by which a general gift is intended, although specific items are enumerated therein. *Le Rougetel v. Mann*, 63 N. H. 472; annotation 128 A. L. R. 822, 835; 4 Page, *Wills* (Lifetime ed.) pp. 111, 112.

The will contains no evidence of an intention that any part of the residue should pass to the trustee in kind. A power on the part of the administrator to convert the residue, except for the business, into cash is to be implied. *Rompney v. Brothers*, 95 N. H. 258, 261, and cases cited.


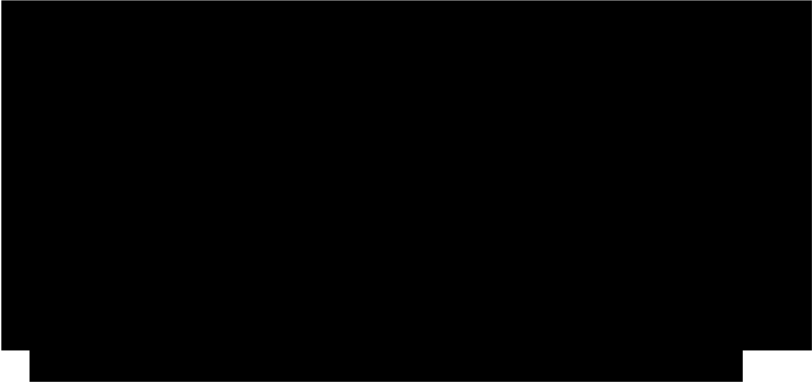
If the value of the assets of the coal business proves to be greater than half the value of the total "remainder," some division of these assets between the halves must be effected. Presumably liquid assets, such as the bonds described in the inventory, may be divided equitably to effect a satisfactory adjustment. If not the administrator may be licensed to sell the assets of the business as well. In view of the absence of any findings concerning values, no more specific advice can be given in response to the inquiry made.

*Case discharged.*

All concurred.

Rockingham, } No. 3966.  
Jan. 2, 1951. }

EMERY N. EATON & a. v. RALPH O. BRAGG.

*William H. Sleeper and Wayne J. Mullavey (Mr. Mullavey orally),*  
for the plaintiffs.

*Samuel Levy and David Strater of Maine (Mr. Strater orally),* for the  
defendant.

BLANDIN, J. The basic question is whether the vote of the town to merge the offices of tax collector and town clerk is legal. We believe it is not. Towns have only the powers which the state grants them. *Amyot v. Caron*, 88 N. H. 394, and authorities cited; 62 C. J. S., Municipal Corporations, ss. 107, 115. While there is nothing to prevent the election of the same person to the separate offices of tax collector and town clerk, neither our Constitution nor statutes indicate that authority has been given to towns to merge these two offices which the Legislature has kept separate and for which it has prescribed widely different functions. R. L., c. 59, s. 16, provides for the removal of a tax collector by the selectmen; s. 34 for his removal by the Tax Commission and section 44 states that no person shall "be compelled to serve as collector in any case." No such provisions appear regarding town clerks. R. L., c. 59, s. 41, provides that various officers including tax collectors "shall *severally* perform the duties prescribed by law." (Italics supplied). It seems unnecessary to multiply examples of the radical distinctions established by law between the two positions.

In 1947 when it was deemed proper to permit a merger of the offices of tax collector and town manager it was considered necessary to pass a special statute authorizing such action. Laws 1947, c. 236, s. 3. Had it been thought this power existed this law would have been unnecessary.

It appears the town seeks to alter substantially the nature of each office under consideration here by adding to it the duties of the other—duties so onerous in the case of the tax collector that the Legislature prescribed that no one should assume them against his will. This cannot be done. *Cf. Coleman v. District*, 87 N. H. 465, 470. Neither in R. L., c. 59, s. 41, permitting a town to choose officers “necessary for managing its affairs,” or elsewhere is there authority to create in effect new offices in place of those designated by statute. See *Attorney General v. Lowell*, 67 N. H. 198, 199. It appears the attempted merger is invalid and the order is

*Judgment for the plaintiff.*

All concurred.

Belknap, } No. 3969.  
Jan. 2, 1951. }

KATHERINE S. GAGNON *v.* ARTHUR J. CARRIER & *a.*