

defendants against doing this. This order must be dissolved, and the perpetual order asked must be refused.

Defendants set up that, apart from the debt of \$300 from this legatee to the testatrix, mentioned in and forgiven by the will, there was another debt from him to her of \$220. . . . This debt . . . was barred by the Statute of Limitations. The contention was that, although it could not be collected by action, yet it might be deducted from or set off against this legacy. See Williams on Executors, 9th ed., p. 1171. Defendants sought to have it declared that they had or would have the right to set off this debt of \$220 and the interest upon it against this legacy; but I am not of this opinion. . . . "No case has been cited to shew, and it seems to me contrary to principle to hold, that there can be a right of retainer in respect of a debt owing from a specific legatee to the testator." In re Akerman, [1891] 3 Ch. at p. 218.

My conclusion then is, that there is not and cannot be a right of retainer or set-off of this old debt against this specific legacy. This opinion may be considered premature, but both counsel requested and in fact insisted upon my giving it.

This being my conclusion, it seems not necessary for me to consider the learned argument as to the interest on this old debt.

As each party set up a contention that failed, and as each of the contentions covered about the same amount of trouble and expense, I am of opinion that neither party should have any costs against the other party.

CARTWRIGHT, MASTER.

MAY 14TH, 1903.

CHAMBERS.

### GOOCH v. ANDERSON.

*Trial—Postponement—Absence of Necessary and Material Witness—  
Terms—Change of Venue—Costs.*

Motion by defendant to postpone trial.

S. B. Woods, for defendant.

H. H. Shaver, for plaintiff.

THE MASTER.—The trial should come on at Toronto next week. So far as appears on the material and from the statements of counsel on the argument, I do not see very clearly how defendant's husband can be so "necessary and material a witness that defendant cannot go to trial without him." He had nothing to do with plaintiff, though it would seem