

will and communicated them to the solicitor who drew it up, and that the solicitor did not himself see the testator. The will was upheld, but the circumstances under which it was drawn were held by Jeune, P.P.D., to be such as to invite inquiry, and to justify the Court in refusing to award costs against the defendant.

WILL—PROBATE—INFORMAL DOCUMENT—WITNESSES DEAD—NO ATTESTATION CLAUSE—NO EVIDENCE OF HANDWRITING OF ONE WITNESS—"OMNIA PRÆSUMNUTER RITE ESSE ACTA."

In the goods of Peverett (1902) P. 205, a holograph document was propounded for probate. The instrument was informal, it purported to have been executed by the testatrix in the presence of two witnesses, both of whom were dead; there was proof of the signature of one but not of the other. There was no attestation clause. Jeune, P.P.D., held that on the principle of *Omnia præsumnute rite esse acta*, it must be presumed that the document had been duly executed as a will, and administration with the will annexed was accordingly granted.

ADMINISTRATION OF ASSETS—INSUFFICIENCY OF GENERAL ASSETS—RESIDUARY ESTATE—TRUST DECLARED BY SEPARATE INSTRUMENT AFFECTING RESIDUE.

In re Maddock, Llewelyn v. Washington (1902) 2 Ch. 220, the judgment of Kekewich, J., (1901) 2 Ch. 372 (noted ante vol. 37, p. 781), has failed to meet with the approval of the Court of Appeal. A testatrix by her will devised her residuary estate to her executor, and by a separate instrument which the executor admitted created a binding trust had directed a portion of the residue to be held in trust for certain named persons. The residuary personal estate, other than that comprised in the memorandum, was insufficient for the payment of debts. Kekewich, J., held that the debts were payable rateably out of the portion of the residue affected by the trust, and the portion not so affected. The Court of Appeal (Collins, M.R., and Cozens-Hardy and Stirling, L.JJ.) however was of the opinion that the memorandum declaring the trust must be treated as if its contents had been contained in the will so that the trust of the specified portion of the residue stood in the same position as a specific bequest, and consequently that the debts were payable first out of that part of the residue not affected by the trust, and the deficiency must be borne rateably by the part affected by the trust, and the real estate.