

In *re Stenning*, Wood v. Stenning, 1895, 2 Ch., 433, was an interlocutory application by a client of a deceased solicitor to obtain payment of money due to her from the balance standing to his credit in a bank under the following circumstances: In March, 1890, the solicitor received the sum of £593, the proceeds of the sale of a sum of consols belonging to the plaintiff, and paid it into his private bank account; between that date and the 31st August, 1890, he received certain other moneys for other clients, which he also paid in to the same account. The aggregate of the moneys thus received from the plaintiff and other clients amounted to £3,042, but on the 11th August, 1890, the balance to the credit of the account was only £1,088. At the solicitor's death £4,442 was standing to his credit, but his estate was insolvent. The plaintiff claimed that the money in the bank account was earmarked to the extent of her claim, and that she was entitled to payment in full. None of the other clients, whose money had been paid into the same account, made any claim on the fund, but one of them had proved a claim against the estate. North, J., on the facts, came to the conclusion that the plaintiff had really lent the money to the solicitor, and therefore, had no specific claim on the fund; and his decision of the other point may, therefore, be regarded as an *obiter dictum*; but assuming that the plaintiff did stand in the position of *cestui que trust* he held that as between herself and the other *cestui que trust* the rule in Clayton's case must apply, and that when the balance was reduced on 31st August, 1890, to £1,088, it must be assumed that her moneys had been first drawn out.

In *re Fereday*, 1894, 2 Ch., 437, 13 R., Aug., 169, a writ of attachment had been issued against a solicitor at the instance of clients for contempt in non-payment of £78 which he had been ordered to pay the clients. At the request of the solicitor, the clients agreed to suspend proceedings under the writ for fourteen days on payment of £25 on account. This was done, and, no further payment having

been made within the fourteen days, after the expiration of that time he was arrested. He then applied to be discharged, claiming that the acceptance of part payment and giving of time amounted to a waiver of the right to enforce the attachment; but North, J., held that there had been no waiver and dismissed the motion.

In the case of *Somers-Cocks*, Wegg-Prosser v. Wegg-Prosser, 1895, 2 Ch., 449, the construction of a will was in question. The testatrix thereby bequeathed her personal estate upon trust for sale, and out of the proceeds to pay her debts and testamentary expenses, and then to pay a legacy to her niece; and the residue of her personal estate, save and except such parts thereof as could not by law be apportioned by will to charitable purposes, she bequeathed to a charity. Part of her estate consisted of impure personalty. It was contended on behalf of the charity that the will operated as a direction to marshal the assets in favor of the charity, but Kekewich, J., was of opinion that marshalling in favor of a charity is only to be resorted to in order to give effect to the directions of a will; and that in the present case the express exception from the bequest to the charity, of property which could not by law be apportioned by will thereto, indicated that the due effect could be given to the will without marshalling. He therefore held that there was no intestacy as to the impure personalty.

In *Birkett v. Purdom*, 1895, A.C. 371, 11 R., July, 1, a somewhat curious marriage contract was in question, whereby in contemplation of marriage the husband bound himself to pay to his wife an annuity of £1,000, "to be applied by her towards the expenses of my household and establishment, and that during all the days of my life." He secured the annuity upon land, and declared the annuity to be his wife's separate property free of the *jus mariti*. The husband having made a trust deed in favor of creditors, the wife, with the concurrence of her husband, brought the present