THE EQUITABLE DOCTRINE OF SATISFACTION.

By H. A. J. FORD, LL.M., Senior Lecturer in Law in the University of Melbourne.

The recent decision of the Court of Appeal in *Re Manners*; *Public Trustee v. Manners*[1] illustrates the importance which a direction contained in a will for payment of the testator's debts can assume when the operation of the equitable doctrine of satisfaction is in question.

The doctrine has a twofold operation: firstly, where a debtor bequeaths a legacy to his creditor of a sum equal to or greater than the debt, the legacy is *primâ facie* a satisfaction of the debt, and secondly, when a father or a person *in loco parentis* has covenanted to pay a portion to a child and afterwards gives a legacy of the same or a larger amount to that child, the legacy is *primâ facie* a satisfaction of the portion, and, if the legacy is of a smaller amount, it is a satisfaction *pro tanto*. The doctrine is of respectable age, having been applied by the Court of Chancery as early as the seventeenth century.[2] In respect of its first type of operation in cases where it depends solely upon the existence of a debtor-creditor relationship, the doctrine has often been judicially criticized and according to *Theobald on Wills*[3] it "has been held to be excluded by such slight indications of intention, that it is of small practical importance." For the purpose of excluding the presumption in these cases the courts have used considerations which themselves have been described as being as artificial as the presumption itself. In Theobald[4] it is stated that a direction in a will to pay debts rebuts the presumption of satisfaction in this first class of case. This statement would appear to make the presence of such a direction decisive. Even if the authorities do not go so far as to make this factor conclusive, it is clear that in this first class of case a direction for payment of debts is a prime consideration entitled to great weight, from which status it is not easily dislodged by other factors. However, in its second rôle in relation to portion debts the doctrine of satisfaction has been regarded as being reasonable, for here the presumption provides a means whereby the courts may give effect to their inclinations when they lean against double portions. As a result, factors which would be sufficient to rebut the presumption in cases of ordinary debts have not necessarily sufficed to exclude it in cases where its application to portion debts has been considered. Thus Theobald[5] states that in relation to portion debts a direction in a will to pay debts is not alone sufficient to rebut the presumption of satisfaction, although when coupled with other circumstances, it may have that effect.

In *Re Manners*[6] the testator, having been divorced from his wife, covenanted, in 1937, that during her life he would pay her £250 *per annum* less income tax by way of provision for her in consideration of her giving up any right she might have under a previous order of the court or otherwise in respect of maintenance. The money was to be

1. [1949] 2 All E.R. 201.
2. Holdsworth, *H.E.L.*, Vol. vi., p. 657.
3. 10th edn., pp. 541-2.
4. *ibid.*, p. 543.
5. *ibid.*, p. 540.
6. *Supra.*

payable by equal monthly instalments. It was expressly provided that the obligations under the covenant should continue notwithstanding that the testator might predecease the wife. The testator in fact predeceased the wife. By his will made in 1944, the testator, after revoking previous wills and appointing an executor, proceeded to direct that all his just debts and funeral and testamentary expenses should be paid. He then made provision for an annuity for his former wife in the following terms :—

> " I give and bequeath £5,000 to purchase an annuity of £250 *per annum* less tax for Amelia Martha Manners, the balance of this £5,000 after the purchase of this annuity of £250 *per annum* less tax I give and bequeath to my grand-children that is the children of my son Eric James Manners."

A number of pecuniary legacies to various other persons followed this provision, each legacy being introduced by the same formula, " I give and bequeath . . . ". Lastly, the testator " gave and bequeathed " his residue in shares to various beneficiaries.

It was argued on behalf of the residuary legatees that the annuity provided for by the will being exactly the same amount as the obligation under the deed (£250 *per annum* less tax), the doctrine of satisfaction operated so as to put the wife to her election and to prevent the testamentary annuity being cumulative upon the amount payable under the deed.

Wynn-Parry J. held that, on the true construction of the will, the bequest for the purchase of the annuity did not satisfy the obligation incurred by the testator under the deed, and the Court of Appeal, consisting of Sir Raymond Evershed M.R., Somervell L.J. and Jenkins L.J., affirmed his decision.

The case was treated as falling within the first form of operation of the doctrine ; as a case of satisfaction of debts and not a satisfaction of a liability akin to portion debts. The Master of the Rolls, in whose judgment the other members of the Court concurred, accepted the contention that a *primâ facie* case of satisfaction was raised by the facts and directed his attention to the question whether the presumption could be said to be rebutted. He found that the presumption was rebutted and to justify this finding, he relied primarily on the direction for payment of the testator's debts (of which the obligation to pay the annuity under the deed was one). After referring to *Horlock v. Wiggins*[7], where Bowen L.J. decided that the presence of such a direction warranted a finding that the doctrine of satisfaction was excluded, the Master of the Rolls observed : " From a consideration of other cases and of the text-books I think that it seems now to be tolerably clear that the presence of a direction for payment either of debts and legacies or of debts *simpliciter* is treated as being, whether or not artificially—and I do not think it is particularly artificial—something which takes the case out of the rule ".[8] He does not appear to regard the presence of a direction for payment of debts as decisive, for after distinguishing *Re Hall*,[9] he said,[10] " Therefore, it seems to me that *Re Hall* is wholly distinct from the

7. (1888) 39 Ch. D. 142.
8. [1949] 2 All E.R. at p. 204.
9. [1918] 1 Ch. 562.
10. [1949] 2 All E.R. at p. 205.

present case, but the language used by the learned judge which I have read seems to me to support and confirm the view that I have ventured to express—that where one has an obligation to pay debts then that direction *primâ facie*, at any rate, takes the case out of the general rule." He pointed out that it would have been open to counsel for the residuary legatees to shew that other passages of the will indicated a contrary intention and that the testator meant, nevertheless, that the benefit under the will should be taken conditionally on its being treated as a satisfaction of the debt, but it seemed to him that further examination of the will led in the opposite direction. In his opinion, the form of the provision for the annuity prescribed by the will supported the view that there was no intention on the part of the testator that the legacy should operate in satisfaction of the obligation incurred under the deed. The testator, in making a bequest of a sum of money out of which the annuity was to be purchased, was " not merely providing out of one and the same source, namely, the residue of his estate, a testamentary annuity in addition to the contractual annuity ".[11] He was giving something in the nature of a settled legacy by setting aside for all purposes a sum of £5,000 and the residuary legatees would have no interest whatever in that sum, whether there was satisfaction or not. This pointed to exclusion of the doctrine of satisfaction. In passing, it may be observed, with respect, that it would have been more consistent with established principles to regard the specific character of the provision made by the testator as pointing to an intention to provide satisfaction of the liability under the covenant rather than in the other direction. It is well settled that if the testator makes a bequest of residue or of a share of residue to his creditor, that form of bequest, because of its uncertain nature, constitutes a factor indicating that the testator did not intend to satisfy the earlier obligation by the bequest.

The Master of the Rolls finally added that the consistent use by the testator of the words " give and bequeath " in relation to each disposition made by him supported the view that he intended in any case to give his wife a benefit under his will apart from the benefits accruing to her under the covenant.

Apparently Wynn-Parry J., in the court below, found that there were minor differences in the times of payment and in the dates on which the annuitant could enforce her respective rights which furnished further grounds for his decision, but the Master of the Rolls did not find it necessary to investigate these additional grounds for excluding the doctrine of satisfaction.

It is worthwhile to compare *Re Manners* with the Australian case *Royal North Shore Hospital v. Crichton-Smith*[12], in which the facts were generally similar. In the latter case, a husband, in 1922, covenanted in a deed of separation that during her life and so long as she should remain chaste, he would pay to his wife a clear annuity of £630 by equal quarterly payments in advance on four special quarter days without any deduction whatever, for her separate use. The husband died in 1937. By his will, made in 1931, he directed that the income of a share of his residuary

11. *ibid.*, at p. 206.
12. (1938) 60 C.L.R. 798.

estate up to but not exceeding £630 *per annum* should be paid, on the same special quarter days, to his wife during her life or until she should re-marry. No evidence was tendered as to the actual intention of the testator. The will, unlike that in *Re Manners*, did not contain a direction for payment of debts. The High Court (Rich, Starke, Dixon and McTiernan JJ.) held that the legacy given by the testator was intended to be in satisfaction of the gift of the annuity contained in the deed of separation and consequently the widow was put to her election.

Although the absence of a direction for payment of debts in the *Royal North Shore Hospital Case* doubtless had a bearing on the High Court's decision, that is not the most important distinction between the two cases. In comparing these cases, what is important is not the effect of the direction for payment of debts in the one and of its absence from the other, but a difference in the approach adopted by each court. *Re Manners* was dealt with on the basis that it was an ordinary case of *primâ facie* satisfaction of debts and that it did not differ from cases where the debtor-creditor relationship arose out of ordinary commercial transactions. In this way it fell into the category of cases wherein the doctrine of satisfaction is excluded with comparative ease. In *Royal North Shore Hospital v. Crichton-Smith*, on the other hand, the High Court, particularly Rich and Dixon JJ., recognized that the facts did not constitute a normal case of debtor and creditor. According to Rich J., " It is a case of two instruments giving a similar annuity. The one is a covenant creating an obligation *inter vivos*, and this is enough to bring the case under the general purview of the doctrine, which perhaps is too narrowly stated if it is expressed in terms of debtor and creditor."[13]

Dixon J., after pointing out that the case was nearer to one of satisfaction of portion debts than one of ordinary debts, stated that the question whether satisfaction had occurred must be answered " by reference to considerations akin to those arising when similar or apparently identical benefits are in terms conferred first by an instrument *inter vivos* and then by will. . . . Where as a matter of interpretation and strict law, as, for instance, under an instrument *inter vivos* and a will, both benefits might be claimed, the jurisdiction " (of a court of equity) " to control the unconscientious assertion of a right attaches."[14] Later in his judgment he says,[15] " The principle is not narrow. It goes further than effectuating an intention to discharge a debt or obligation by means of a testamentary disposition. It prevents the unconscientious claim to enjoy a testamentary provision intended as a substitution for and not as an addition to a provision already made by the testator and it does so independently of his reasons for making the substitution."

In this case the will was made before the decision of the House of Lords in *Kirk v. Eustace*[16] that a contractual obligation to pay an annuity of the kind assumed by the testator passed to his personal representative and bound his estate. It could be presumed that both the testator and his legal advisers had supposed that the testator's death would put an end to the operation of the deed of separation. By looking at the deed

13. *ibid.*, at p. 805.
14. *ibid.*, at pp. 814-5.
15. *ibid.*, at pp. 815-6.
16. [1937] A.C. 491.

of separation and the will together, the higher degree of probability was that the testator intended to make a provision in his will replacing the annuity secured by the deed, supposing the operation of the deed to cease upon his death.

Under the wide approach adopted by the High Court, it was possible to take account of this probability in deciding that the doctrine of satisfaction applied, despite the existence of various factors which, if the approach had been narrower, might have excluded the doctrine. Thus the legacy was a share of residue and as such uncertain. Again, the testamentary annuity was not so advantageous as the annuity under the covenant. It would terminate on remarriage, whereas the annuity secured by the covenant was for life, subject to a *dum casta* condition. The legacy was subject to Federal estate duty and being a share of residue it was liable to be depleted by applications under the *Testator's Family Maintenance and Guardianship of Infants Act*. These considerations, which might have sufficed to exclude the doctrine of satisfaction if the case had been treated as one of satisfaction of ordinary debts, were not enough to outweigh the probabilities arising from the peculiar circumstances of the case. If the Court of Appeal had adopted the same kind of approach in *Re Manners*, the search for the testator's intention might have proceeded over a wider area and the weight accorded to authorities dealing with the effect of a direction for payment of debts might have been less. Whether the High Court would have reached the same decision in *Royal North Shore Hospital v. Crichton-Smith* if the testator had directed payment of his debts is not entirely a matter of conjecture. In view of its recognition of the fact that this was not a normal case of debtor and creditor, the presence of such a direction would appear to be merely one consideration the weight of which was relative to other considerations. It is by no means clear that the High Court would on the facts in *Re Manners* have come to the same conclusion as the Court of Appeal, and in this peculiar class of case it is conceived that there is a difference between English and Australian law. It would seem that an Australian court would be bound in this class of case to be more circumspect than an English court in giving weight to considerations which have sufficed to exclude the doctrine where the obligation between debtor and creditor has arisen out of ordinary commercial transactions.