



# 5 Stone Buildings

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## Overlooked Doctrines

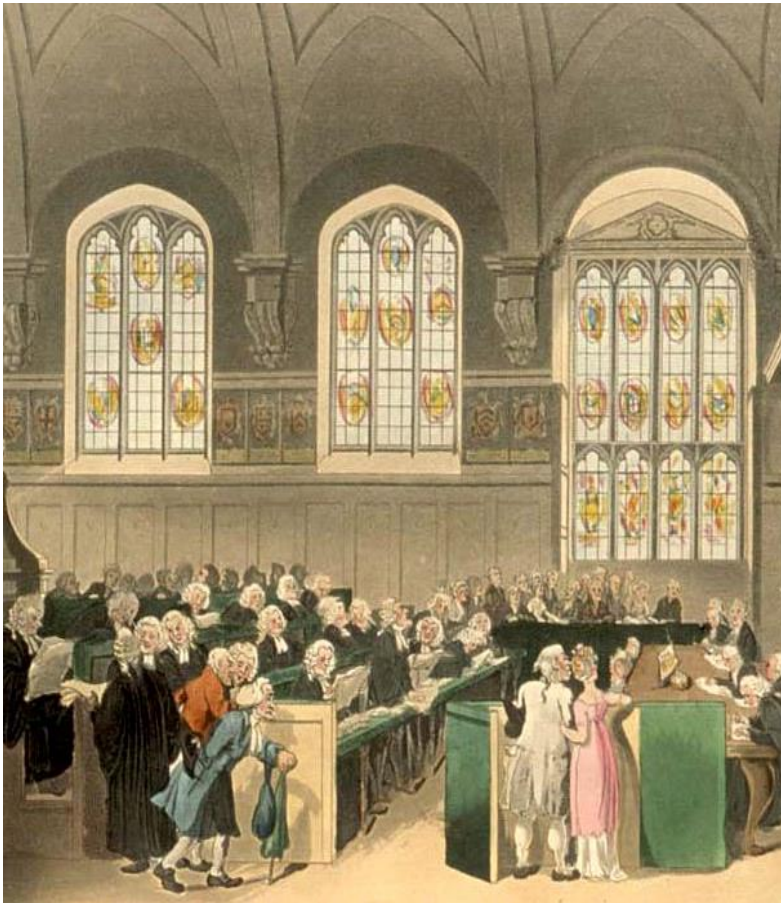
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## Equitable Presumption of Satisfaction



- Presumed intention of a testator
- Evidence of intention admissible to rebut or support the presumption
- Presumptions of satisfaction:
  - Presumption of satisfaction of a debt by a legacy
  - Presumption of satisfaction of a legacy by a legacy
  - **Presumption against double portions**

## Presumption Against Double Portions

- Three sub-categories:
  - **Presumption of satisfaction (or ademption) of a legacy by a portion**
  - Presumption of satisfaction of a portion debt by a legacy
  - Presumption of satisfaction of a portion debt by a portion
- Requirements to raise the presumption:
  - The testator was the parent or in loco parentis to the defendant;
  - The testator made a legacy to or a share of residue to the defendant in his will; and
  - The testator subsequently during his lifetime provides a portion for the defendant.

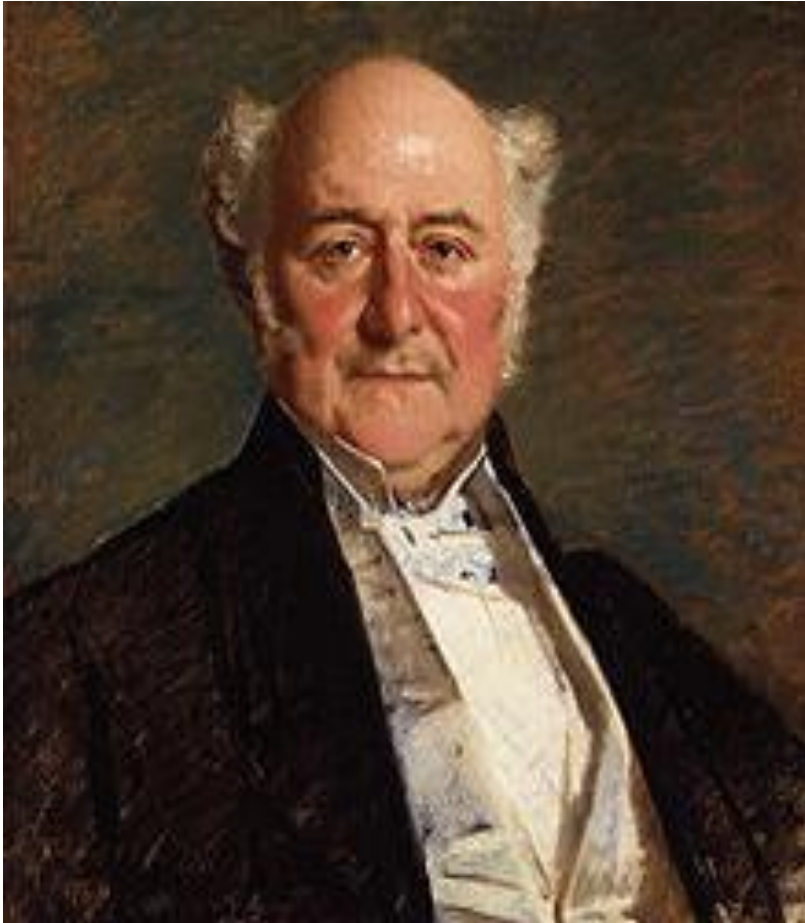
## Presumption Against Double Portions

- *Re Cameron* [1999] Ch. 386, 407:

*“a portion is very broadly speaking, a gift intended to set up a child in life or to make substantial provision for him or her”.*

- Rebuttable by:
  - Intrinsic evidence from the different nature of the two provisions; or
  - Extrinsic evidence of the testator’s actual intention.

## Secret Trusts



- Fully secret and half-secret trusts both require proof of:
  - An intention to subject the primary donee to an obligation in favour of the secondary donee
  - Communication of that intention to the primary donee during the testator's lifetime
  - Acceptance of that obligation by the primary donee, either expressly or by implication
- Half-secret trusts also require that communication to the primary donee was:
  - Made no later than when the will is executed
  - Made in strict compliance with the requirements of the will

## Donatio Mortis Causa



- Requirements:
  - Intended to be conditional on the donor's death
  - Made by the donor in contemplation of death
  - Donor must part with dominion over the subject matter of the *donatio*
  - Subject matter must be capable of passing by *donatio mortis causa*

## Rule in *Strong v Bird*



- Requirements:
  - Present intention to forgive a debt or make a gift of particular property
  - Intention continues unchanged until death
  - Property vests in the donee
- Executors
- Administrators?
- Executor by representation?

## Rule in *Strong v Bird*

- *Re Stewart* [1908] 2 Ch. 251, 254:

“The decision is, as I understand it, to the following effect: that where a testator has expressed the intention of making a gift of personal estate belonging to him to one who upon his death becomes his executor, the intention continuing unchanged, the executor is entitled to hold the property for his own benefit. The reasoning by which the conclusion is reached is of a double character—first, that the vesting of the property in the executor at the testator’s death completes the imperfect gift made in the lifetime, and, secondly, that the intention of the testator to give the beneficial interest to the executor is sufficient to countervail the equity of beneficiaries under the will, the testator having vested the legal estate in the executor.”





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