

of the agreement of the 4th of March, 1847, and that the confession of the judgment should not preclude any defence the said Mayo might have in equity, (if any he had,) and that the question might be presented as the said Mayo may be advised, to the Chancellor, on proper proceedings for that purpose, whether the surplus of the debts over the fund provided by the testator specially, for the payment ought to fall upon Mrs. Bland, or the property held by her under the will of Theodorick Bland, deceased, or otherwise and in what proportions." And in order that all questions reserved might be properly decided, it was understood, that said Mayo should file his bill, &c.

I do not understand that it is very strenuously urged that Captain Mayo has forfeited his right to have these questions examined and decided in this court, by reason of the judgment confessed by him in pursuance of the above agreement, and certainly I can see no possible ground upon which it could be so insisted. There can be no doubt, I think, that whilst Mayo was willing to give the judgment, he meant to do so with a reservation of his right to litigate these questions, and that the plaintiff in the judgment was willing to take it upon these terms, and this mutual understanding of the parties is expressed in language altogether free from ambiguity.

It remains then to be considered whether the bequests to Mrs. Bland, though general, and though the property to which they apply would undeniably be liable to the claims of creditors before specific legacies could be resorted to, shall be protected to the prejudice of the specific legatees, in consequence of the relation she bore to the testator. In other words, whether the rule of law relative to general and specific legacies shall be reversed when the general legatee is the widow of the testator.

The ground upon which this preference is claimed for the widow is, that by the act of 1798, ch. 101, sub ch. 13, it is declared, that a widow accepting or abiding by a devise in lieu of her legal right, shall be considered as a purchaser with a fair consideration. Such is the provision in the act referred to, and it may be that if the devise or bequest to the widow, or the benefits she takes under the will do not exceed her common law