

which the property has been sold, unless such examination would reflect some light upon the only question now to be decided, which relates to the distribution of the proceeds of the sales, and he does not think that any such light can be borrowed from that decree, or that the late Chancellor, in passing it, meant in any way to contrast, or express an opinion upon the relative claims of the parties. He meant to decide, and he did decide, that the property was liable to be sold for the payment of these claims, but in what *order* they were to be paid, does not appear to have been considered by him.

Looking to the will of Richard Moale, there can be no doubt that he intended that his wife should, in any event, enjoy both the legacy and the annuity, the former within the usual period after his death, and the latter from year to year during her life, and that he supposed he had provided beyond contingency for the regular and punctual payment of both. There is nothing, therefore, in the will which very clearly indicates the order in which these claims should be paid, or rather which shall be preferred in case there should not be enough to pay both, and perhaps if confined to the will, the case would not, by any means, be free from difficulty.

The first proceeding in the case which relates to the order in which these claims are to be paid, or a preference given to one over the other, is the decree of the 17th of May, 1796, which declares in terms that the annual rents of all the property shall, *in the first place*, be charged with the payment of the annual sum of £500, and, *in the next place*, with the arrearages of said annuity, with the interest thereon, and *afterwards*, that the reversion shall be chargeable with the payment of the legacy of £2250, with the interest thereon.

This decree, therefore, having settled the question of priority between the annuity and the legacy, and having declared that the former must *be FIRST paid*, must decide the present controversy, unless there is something in the subsequent proceedings, or in the acts or agreements of the parties which can have the effect of modifying or controlling that decree.

David Harris having died on the 16th of November, 1809, his