

(ALLOWED *ob favorem.*)1664. June 25. MARGARET INGLIS *against* THOMAS INGLIS.

MARGARET INGLIS having obtained a decret before the Commissaries of Edinburgh against Thomas Inglis, for giving her security of L. 1000 in legacy, left in her father's testament, and for payment of the annualrent of the said legacy: Thomas suspends on this reason, That the legacy being left to be paid, the one-half at the charger's marriage, and the other half at the death of the defunct's wife, bore no annualrent, as neither doth any other legacy, much less this, being *in diem incertum*, which is equivalent to a conditional legacy; for, if the defunct's wife had survived the legatar, or if she never marry, nothing will ever be due. The charger *answered*, That this legacy was in effect *alimentar*, though not expressly left *eo nomine*; and therefore ought to be profitable, and that the Lords had been accustomed to give annualrent in such cases, as in the case of Lady Otter and her Daughters*. The suspender *answered*, That the case was far different, these being lawful daughters, and their provisions being in lieu of an estate of land, and this charger being but a bastard, and come to that age that she may serve for her maintenance.

THE LORDS, considering that the one-half of the sum was payable at the time of the charger's marriage, being a condition in her own power, and that it was not favourable to put her to a necessity to marry: Therefore they sustained annualrents for that half, but not for the other.

Fol. Dic. v. 1. p. 44. Stair, v. 1. p. 208.

1700. July 5. POOR of the PARISH of CARDROSS *against* M'ADAM.

CROCERIG reported the Heritors and Poor of the parish of Cardross against Mr Patrick M'Adam merchant at London. Jean Moor, a Scots woman, having married in England, and acquired considerable means; in her testament, *anno* 1691, she legates sundry sums to two negroes, her servants, and likewise bequeaths L. 500 Sterling to the poor of Cardross parish, to be secured on land there, and names M'Adam, her late husband's apprentice, to be her executor and administrator in the English form. He being pursued for the legacy and its annualrents, he declares himself willing to pay the principal on their securing it to the use of the poor; but alleges no annual was due, because not mentioned in the testament, and none due *ex lege*. The LORDS considered even pious legacies do not bear annualrent *de jure*, yet if he has either made use of the money, and laid it out on profit or trade, or if he was *in mora* in giving them timeous advertisement of the legacy left them, that in either case he might be liable; therefore they recommended to the reporter to try the matter of fact.

Fol. Dic. v. 1. p. 45. Fount. v. 2. p. 102.

* Examine General List of Names.

No 106.

A legacy being left to a bastard daughter, one half payable at her marriage, the other at the death of the testator's wife; annualrent allowed on the first mentioned half, not on the other, because she ought not be put to the necessity of marrying.

No 107.

Contrary to No 104. relative to money destined to the poor; yet if the executor either use the money, or be *in mora*, by not informing of the legacy, he will be liable.