

RICHARD J. CRABB, ADM'R D. B. N.  
 OF FRANCES H. HARRIS AND OTHERS }  
 vs. } DECEMBER TERM, 1846.  
 SAMUEL MOALE AND OTHERS.

[PRIORITY OF PAYMENT OF LEGACY AND ANNUITY.]

A TESTATOR, by his will executed in 1786, gave to his wife a legacy of £2250, and an annuity of “£500 during her natural life, to be secured to her out of the rents of his estate,” and devised to his brother the residue of his estate, “after the above will is complied with.” The legacy being unpaid and the annuity in arrear, a decree was passed in 1790, charging the rents of all the lands of the testator, with the payment of the annuity due and to become due, *in the first place*, and *after said payment*, declaring the reversion chargeable with the payment of the legacy. The property was subsequently sold, and the proceeds proved insufficient to pay the arrears of the annuity.

HELD—

That both the legacy and annuity are by the decree of 1790, treated as a charge upon the real estate of the testator in the hands of his residuary devisee, and the same decree settles the question of priority of payment between the annuity and legacy by declaring that the former must *be first paid*.

[The facts of this case are stated in the Chancellor's opinion.]

THE CHANCELLOR:

This case comes before the court upon exceptions to the report and accounts of the Auditor filed on the 30th of October last, and having been argued by the counsel of the parties, it becomes the duty of the court to decide upon the questions presented for its consideration.

In the will of the late Richard Moale, of Baltimore county, executed and proved in February, 1786, are the following provisions: “I will and direct, give and bequeath, unto my dear wife, Frances Halton Moale, £2250 specie, to be paid in English guineas, at 35 shillings each.” “I give and bequeath unto my dear wife, Frances Halton Moale, £500 in English guineas, at 35 shillings each, yearly, during her natural life, to be secured to her, my dear wife, Frances H. Moale, out of, and from the rents arising from my estate, but with this reserve, in tender care and affectionate regard to my dear wife, I will and direct