

trustees of Rebecca, and thus pass over this first difficulty, as to the proper parties.

× The next question is, what is the nature of the bequest of the late Samuel Owings to his daughter Rebecca? The defendant seems to have a notion, that his father gave him the right to take charge of the person of his sister, and to maintain her as he thought proper. But the devise conveys no such idea; and if it did, it is clear, that although a father may appoint a guardian of his infant children; yet he cannot dispose of the custody of his adult children whether of sound mind or *non compos mentis*, in any way whatever. *Ex parte Ludlow*, 2 P. Will. 635. It is evident, however, that the testator had no reference to the custody or the place of residence of his daughter; his expressions show, that his thoughts were directed exclusively to her maintenance, in whatever place she might dwell. And that *maintenance he endeavors to make as unalterably and imperishably cer- **296** tain as the nature of things would admit. His son William was to take the estate he gave him expressly upon the condition, that he maintained Rebecca. William has taken the estate; and, consequently, he has assumed this duty to Rebecca, and has become personally bound to her, in consideration of the estate he has thus taken and now enjoys. But this condition is not confirmed to William Owings personally and only; it is extended to "the person or persons to whom the estate may eventually pass." It is a condition, that runs with the land; and is a continuing charge upon it. *The Mayor of Congleton v. Pattison*, 10 East, 130; *Powell's Case*, Nelson, 202; *Elliott v. Merryman*, Barn. Ch. Rep. 82. It is an incumbrance to which the land is liable in the hands of every one, (not having a better title than the deviser,) during the life of Rebecca. This charge upon the land devised to William Owings cannot be deemed a rent of any description; nor can it properly be considered as an annuity; because by an annuity the person alone is charged; no land is encumbered with it. But here the land is charged, and the person only in respect of the enjoyment of that land. This devise, therefore, has given to Rebecca a particular interest in the land. *Clark v. Ross*, Dick. 529; *Pow. Mort.* 221, 1032; *Co. Litt.* 4, 122; *West v. Biscoe*, 6 H. & J. 460; *Attorney-General vs. Christ's Hospital*, 3 Bro. C. C. 165.

It has imposed upon it an incumbrance, which follows it into the hands of William and every holder during the life of Rebecca. It is a kind of legacy, the punctual payment of which this Court will, and, perhaps, only can enforce.

It is then clear, that these plaintiffs are properly here; and that they ought to obtain relief: the mode in which it should be granted is the only remaining enquiry. Under the general prayer the Court is left free to adopt any mode by which it can most readily and effectually administer that relief which the equity of the case