

JOHN CAMPBELL WHITE AND
 MARY S. WHITE, HIS WIFE,
 vs.
 JOHN S. DONNELL AND
 BENJAMIN C. HOWARD.

SEPTEMBER TERM, 1850.

[INTEREST ON LEGACY—CONSTRUCTION OF MARRIAGE ARTICLES.]

WHERE no time of payment is fixed by the will and no interest provided for by its terms, the rule is irrevocably established that the legacy is not payable until the expiration of one year from the testator's death, and interest does not commence until then.

But where a legacy is given by a parent to a child, or where the testator stands to the legatee *in loco parentis* and the latter is otherwise unprovided for, then, whether a future time is fixed for the payment or not, interest will be allowed from the testator's death.

If other funds are provided for the support of the legatee, then, whatever the relation in which the testator stands to the former, the general rule applies.

A testator directed by his will, that his estate should be equally divided between his wife and daughter when the latter should attain the age of eighteen or marry; and until then, that his wife should occupy and enjoy the whole estate, to be applied to the proper maintenance of his family and the liberal education of his daughter. **HELD—**

That this provision for the maintenance and education of the daughter raises a trust, which Chancery will enforce.

A direction in a will, that the legacy shall be paid "*forthwith upon the decease*" of the testator, or "*as soon as possible,*" is not sufficient to supersede the general rule, that the legacy is payable and bears interest only from the expiration of the year from the testator's death.

By the terms of marriage articles, it was provided that "from and immediately after the death" of the intended wife, \$20,000 were to be set apart out of the trust estate for the use of her daughter then living, provided she left no other issue living at her death; and if she left such other issue, then one equal child's share of the trust property, provided such share did not exceed \$20,000, but only that sum if it did. This sum was to be ascertained and decided in writing by three disinterested persons, to be appointed by the trustee, the daughter, and the intended husband. The wife died on the 25th of April, 1839, during the minority of the said daughter, and leaving other issue, and the \$20,000 were set apart for the daughter on the 9th of June, 1842. **HELD—**

That under all the circumstances of this case, the daughter was not entitled to interest on this legacy, from the death of her mother.