

CARTWRIGHT, MASTER.

OCTOBER 22ND, 1907.

CHAMBERS.

DOWN v. KENNEDY.

*Summary Judgment—Rule 603—Action against Executor
for Interest on Legacy—Defence in Law.*

Motion by plaintiff for summary judgment under Rule 603.

F. Arnoldi, K.C., for plaintiff.

L. V. McBrady, K.C., for defendant.

THE MASTER:—The particulars indorsed on the writ of summons are substantially for interest at 5 per cent. on a legacy of \$5,000 given to plaintiff by her father under his will, of which the defendant is executor.

The bequest to her is as follows: "I give, devise, and bequeath to my daughter Margaret M. Down the sum of \$5,000, to be paid to her immediately after my decease."

The testator died on 17th February, 1906, and the principal of the legacy was paid on 9th July, 1907. The plaintiff claims interest between those dates, amounting to \$347.26.

The defendant's affidavit sets up that interest is only payable from a year after testator's death, and says: "I have, therefore, as executor of the estate of my late father, a good defence to this action, and I am informed that in law I have a good defence."

He states that a similar legacy is payable to a granddaughter of the testator, and that the same question will arise there. He continues: "As the executor of my father's estate, I have a right to have this action determined and the question at issue settled." He concludes with the assertion that "the plaintiff is not entitled to summary judgment in a matter of this kind." I do not clearly apprehend what defence this affidavit sets up. The law seems well settled ever since the decision in *Wood v. Penoyre*, 13 Ves. 333.

In *Williams on Executors*, 9th ed., pp. 1290, 1291, the principle is recognized that in cases like the present the time