We have considered the legacy without a reference to the annuities which the testator has charged upon it. It is only necessary for us to determine a single question in regard to them. Are the heirs at law interested in the question of their legality?

The civil code (C. C., 1697) declares, "that legatees under a universal title, and legatees under a particular title, benefit by the failure of those particular legacies which they are bound to discharge."

It will be seen that all the annuitants, having a distinct character from the cities, have a claim upon them for their annual allowance. Should these annuities be invalid this charge would be removed, and the cities relieved. Such was the decision of the Supreme Court of Louisiana, (Prevost vs. Martel, 10 Rob., 512,) and such the conclusion of the court of cassation in Hanaire vs. Tandon—the report of whose judgment is appended to one of the briefs of the appellants.

The annuities created to establish an asylum for the poor and a school farm—and of the validity of which grave doubts exist—are charges upon the legacy of the cities. If the directions of the testator cannot be legally complied with, the charge will be remitted without defeating the legacy.—Sav. Roman Law, § 120–'9.

We shall not express any decided opinion in reference to either of the annuities, but leave the question of their validity to be settled by the persons interested, or by the tribunals to whose jurisdiction they appropriately belong.

We have considered it to be our duty to examine the several questions which arise upon the record, so that the important interests involved in them may be relieved from further embarrassment and controversy. In our opinion the failure of the devise to the cities would not have benefitted the appellees; for that, the limitation over to the States of Maryland and Louisiana would have been operative in that event.

We close our opinion with expressing our acknowledgments for the aid we have received from the able arguments at the

bar, and the profound discussions in the Supreme Court of Louisiana, with whose judgment we have concurred.

The decree of the Circuit Court for the eastern district of Louisiana is reversed, and the cause remanded to that court, with directions to dismiss the bill of the plaintiffs with costs.

True copy. Test,

Wm. Thos. Carroll,
C. S. C. U. S.