

tiffs' counsel has not produced a single case in which it has been decided, that a direction in a will like the present revives a debt barred by the statute. It was several times determined between the years 1690 and 1726, that where a testator creates a fund in trust to pay his debts, the creditors barred by the statute shall come in equally with the others. In the year 1727, however, the House of Lords in *England*, reversed a decree which was founded on this principle in the case of *Blakeway v. the Earl of Strafford*. 3 Bro. Parl. Ca. 305. In the year 1744, *Lord Hardwicke* states the rule to be, that debts barred by the statute shall be paid out of a trust fund of lands created for payment of debts, although he declares he cannot see any good reason for it. 3 Atk. 107. But in 1754, he says that this principle has been a good deal shaken by the decree of the House of Lords in *Lord Strafford's* case, and that if the case before him had turned upon that point, he should have taken time to consider it. Ambl. 231. In the case of *Legastick v. Cowne*, in 1730, *Mosely*, 391, it was expressly decided, that the plea of the statute of limitations is a good bar in a case where a testator ordered his debts to be paid. This case is reported by *Mosely*, who does not stand high in reputation; it is

probable, however, that the decision was made as reported, because it was but three years after the decision in the House of Lords in *Lord Strafford's* case, and seems to have been founded on it.

In our own Courts, I know of no decision of the point in question, although I understand, that on more than one occasion, intimations have fallen from different judges unfavourable to the revival of the debt; but as no decision was made, it would not be proper to give weight to these intimations. In point of authority, then, the matter stands thus; there is one decision on the point that the act of limitations is a bar, notwithstanding the direction to pay all just debts; and there is no express decision to the contrary. This being the case, and feeling no inclination to go beyond the principles that have been established, I think myself bound to say, that I do not conceive the direction by *Robert Smith* to pay his just debts, can be fairly construed so as to deprive his executors of the right to plead the act of limitations in such cases as they think proper.

A nonsuit was accordingly ordered. 1 Binney, 209.

See the act of 1785, (post. chap. 1134,) for notes respecting the limitation of actions for real estates.

## CHAPTER CXCVII.

### *An ACT for establishing Orphans' Courts.*

WHEREAS by certain laws of this province, now in force, several matters of great importance are directed to be done by the Orphans' Courts, which being discontinued by the repeal of the former law of courts, and not hitherto revived, nor effectually supplied by another law, divers orphans, and persons concerned for them, or intrusted with their estates, labour under great inconveniences: *Be it therefore enacted*, That the Justices of the Court of General Quarter Sessions of the Peace in each county of this province, or so many of them as are or shall be from time to time enabled to hold those courts, shall have full power, and are hereby empowered, in the same week that they are or shall be by law directed to hold the same courts, or at such other times as they shall see occasion, to hold and keep a Court of Record in each of the said counties; which shall be styled 'The Orphans' Court, and to award process, and cause to come before them, all and every such person and persons, who, as guardians, trustees, tutors, executors, administrators, or otherwise are or shall be entrusted with, or any wise accountable for, any lands, tenements, goods, chattels or estate, belonging or which shall belong to any orphan or person under age, and cause them to make and exhibit, within a reasonable time, true and perfect inven-

The Justices of the Court of Quarter Sessions to hold the Orphans' Court.

Their power and duty.

1713. **tories and accounts of the said estates; and to cause and oblige the Register-General, or such person or persons as, for the time being, shall have the power of probates of wills and granting letters of administration in this province, or their deputies, upon application made in that behalf, to bring or transmit into the said Orphans' Court, true copies or duplicates of all such bonds, inventories, accounts, actings, and proceedings whatsoever, now or hereafter remaining or being in their respective offices, or elsewhere, within the limits of their authority, as do or shall concern or relate to the said estates, or any of them; and to order the payment of such reasonable fees for the said copies, and for all other charges, trouble and attendance, which any officer or other person shall necessarily be put upon in the execution of this act, as they shall think equitable and just. And if, upon hearing or examination thereof, it appears to the Justices of the said Court, that any of the said officers have misbehaved themselves, to the prejudice of any minor, or others concerned for them as aforesaid, the said Justices are hereby required to certify the same accordingly, which shall be good evidence for the party grieved to recover his damages at common law.**

Letters of administration, without giving bond and sureties, are void.

Where the security appears to the Orphans' Court not sufficient, they shall compel such administrators to give better.

**II.** And where any letters of administration shall be granted, and no bond with sureties given, as the law in that case requires, such letters of administration shall be and are hereby declared to be void and of none effect, and that the officer or person that grants the same, and his sureties, shall be, *ipso facto*, liable to pay all such damages as shall accrue to any person or persons by occasion of granting such administration. And the party to whom the same shall be so granted may be sued as executor in his own wrong, and shall be so taken and deemed, in any suit to be brought against him for or by reason of his said administration. Or if, upon such examination, it appears that any of the said officers have not taken sufficient sureties, where the administrators may not be of ability to answer or make good the value of what the decedent's estate doth or shall amount to, then the said Justices of the Orphans' Court are hereby required and empowered to cause all such administrators to give better security to the Register-General, by bonds, in manner and form as the law prescribes, and under such penalties, and with such sureties as the said Justices, after they have heard the objections of creditors or persons concerned (if any such be made sitting the court,) shall approve of. And if it appears that any of the said administrators have embezzled, wasted or misapplied, or suffered so to be, any part of the decedent's estates, or shall neglect or refuse to give bonds, with sureties as aforesaid, then, and in every such case, the said Justices shall forthwith, by their sentence, revoke or repeal the letters of administration granted them, and thereupon the said Register-General, or other person then empowered to grant administrations as aforesaid, where such occasion happens, are hereby required to grant letters of administration to such person or persons, having right thereunto, as will give bonds in manner and form aforesaid, who may have their actions of trover or detinue, for such goods or chattels as came to the possession of the former administrators, and shall be detained, wasted, embezzled or misapplied by any of them and no satisfaction made for the same.

**III.** *And be it further enacted,* That when any complaint is made to any of the said Justices, that an executrix, having minors of her own, or being concerned for others, is married, or like to be espoused to another husband, without securing the minors' portions or estates, or that an executor, or other person, having the care and trust of minors' estates, is like to prove insolvent, or shall refuse or neglect to exhibit true and perfect inventories, or give full and just accounts of the said estates come to their hands or knowledge, then, and in every such case, the same Justices are hereby required forthwith to call an Orphans' Court, who shall cause all and every such executors and trustees, as also such guardians or tutors of orphans or minors, as have been formerly appointed, or shall at any time hereafter be appointed by the said Court, to give security to the orphans or minors, by mortgage or bonds, in such sums, and with such sureties, as the said courts shall think reasonable: conditioned for the performance of their respective trusts, and for the true payment or delivery, to and for the use and behoof of such orphans as they are concerned for, or such as shall legally represent them, the legacies, portions, shares and dividends of estates, real and personal, belonging to such orphans or minors, so far as they have assets, as also for their maintenance and education, as the said court shall think fit to order, for the benefit and best advantage of such orphans, as is usual in such cases.

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In case minors' estates be in danger, &c. the Orphans' Court shall cause the executors to give security.

**IV.** *And be it further enacted,* That any of the said executors, administrators, guardians or trustees, may, by the leave and direction of the Orphans' Court, put out their minors' money to interest, upon such security as the said court shall allow of; and if such security so taken *bona fide*, and without fraud, shall happen to prove insufficient, it shall be the minors' loss. But if no person who may be willing to take the said money at interest (with such security) can be found by the person so as aforesaid concerned for the minors, nor by any others, then the said executors, administrators, guardians or trustees shall, in such cases, be responsible for the principal money only, until it can be put out at interest as aforesaid.

Minors' money may be put to interest.

**V.** *Provided always,* That the day of payment of the money so to be put out to interest, at any one time, shall not exceed twelve months from the date of the obligation, or other security given for the same, and so *toties quoties*, when and so often as the said money shall be paid in, or come to the hands of the said executors, guardians or trustees.

Not exceeding twelve months at one time.

**VI.** *Provided also,* That no executors, administrators or guardians, shall be liable to pay interest, but for the surplusage of the decedent's estate remaining in their hands or power, and belonging to the minors, when the accounts of their administration are or ought to be settled and adjusted before the said Orphans' Courts, or Register-General, respectively.

**VII.** *And be it further enacted,* That the Justices of the said Orphan's Court, in the said respective counties, shall, by virtue of this act, have full power and authority to exercise all the powers, authorities and jurisdictions, granted or mentioned, or intended to be granted to the Orphans' Court, in and by a law of this province, entitled *An act for better settling of intestates' estates*, and to do,

Further authority of the Orphans' Court.

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execute and perform all such matters and things as the Orphans' Court, in the said act, or in any other act or law of this province mentioned, might or ought to have done or performed, according to the true intent and meaning thereof; with power also to admit orphans or minors, when, and as often as there may be occasion, to make choice of guardians or tutors, and to appoint guardians, next friends or tutors, over such as the said court shall judge too young or incapable, according to the rules of the common law, to make choice themselves; and at the instance and request of the said executors, administrators, guardians or tutors, to order and direct the binding or putting out of minors apprentices to trades, husbandry, or other employments, as shall be thought fit. And that all guardians and *prochein amis*, which shall be appointed by any of the said Orphans' Courts, shall be allowed and received, without further admittance, to prosecute and defend all actions and suits relating to the orphans or minors, as the case may require, in any court or courts of this province.

This power is preserved to the Orphans' Court by the act for regulating apprentices, passed September 29th, 1770, (post, chap. 616, sect. 5.

Persons summoned, and not appearing, &c.

VIII. And if any person or persons, being duly summoned to appear in any of the said Orphans' Courts, ten days before the time appointed for their appearance, shall make default, the Justices may send their attachments for contempts, and may force obedience to their warrants, sentences and orders, concerning any matter or thing cognizable in the same courts by imprisonment of body, or sequestration of lands or goods, as fully as any court of equity may or can do.

Appeal to the Supreme Court.

IX. *Provided always*, That if any person or persons shall be aggrieved with any definitive sentence or judgment of the said Orphans' Court, it shall be lawful for them to appeal from the same to the Supreme Court: which appeal, upon security given, as is usual in such cases, shall be granted accordingly.

Discharges for money, &c. by executors, &c. are binding to the orphans.

X. And if any of the said executors, administrators, guardians or trustees, did or shall receive and give discharges for any sums of money, debts, rents or duties, belonging to any orphan or minor, for whom they were or are intrusted, *It is hereby declared and enacted*, That all such discharges or receipts shall be binding to and upon the orphan or minor, when he or she attains to full age, and shall be most effectual in law to discharge the person or persons that take the same.

Bonds how to be cancelled.

XI. And when any of the said minors attain to their full age, and the person or persons so as aforesaid intrusted or concerned for them having rendered their accounts to the Orphans' Court, according to the direction of this and the said other acts, and paid the [minors]\* their full due, then such minors shall acknowledge satisfaction in the said court; but in case any of them refuse so to do, then the said court shall certify how the said persons concerned have accounted and paid; which shall be a sufficient discharge to the guardians or tutors, and to the trustees, executors or administrators, who shall so account and pay, and thereupon all bonds entered into for payment of such orphans' portions shall be delivered up and cancelled.

\* The word [minors] is minor in the original roll.

**XII.** *Provided always, and be it further enacted,* That none of the said Orphans' Courts shall have any power to order or commit the tuition or guardianship of any orphans or minors, or bind them apprentices to any person or persons, whose religious persuasion shall be different from what the parents of such orphan or minor professed, at the time of their decease, or against the minor's own mind or inclination, so far as he or she has discretion and capacity to express or signify the same; or to persons that are not of good repute, so as others of good credit, and of the same persuasion, may or can be found. 1713.

What persons may have the charge of orphans or minors.

**XIII.** *Provided also,* That the Justices of the said Courts, and all others concerned in the execution of this act, shall have due regard to the direction of all last wills, and to the true intent and meaning of the testators, in all matters and things that shall be brought before them concerning the same. Due regard to be had to wills, &c.

**XIV.** *And be it further enacted,* That all such bonds or obligations as are by this act, or by any other law of this province, directed and required to be given to the Register-General, and all such bonds as by any law are directed to be given by the Register-General, or by any other officers or persons in office whatsoever, in this province, for the due execution of his or their respective offices or employments, are hereby declared to be to and for the use of, and in trust for, the person or persons concerned, and that the benefit thereof shall be extended from time to time, for the relief and advantage of the party aggrieved by the misfeazance or nonfeazance of the officers, that did or shall give the same. Bonds directed to be given by any law, &c. to be for the use of the persons concerned, &c.

**XV.** And that when any of the said bonds shall be put in suit, and judgment thereupon obtained, the judgment shall remain in the same nature the bonds were, and that no execution issue out thereupon, before the party grieved shall, by writ of *scire facias*, summon the person or persons against whom the said judgment is obtained, to appear, and shew cause, why execution shall not issue upon the said judgment. And if the party grieved shall prove what damages he sustained, and thereupon a verdict be found for him, the Court of Common Pleas where such suit is, shall award execution for so much as the jury shall then find, with costs, and no more; and the former judgment is hereby declared still to remain cautionary, for the satisfaction of such others as shall legally prove themselves damnified, and recover their damages in manner aforesaid.

**XVI.** And the said Register-General, and all others, in whose hands the said bonds shall be deposited or lodged, are hereby required to give any person injured, that requests the same, a true copy of any of the said bonds, he paying three shillings for the same, and to produce the original in Court, upon any trial that shall be had for the breach of any of them, if required by the Court; and if the person, in whose hands the said bonds shall be lodged or come, shall refuse or delay to give copies thereof, and produce the original in Court as aforesaid, he or they shall forfeit and pay to the party grieved treble damages, to be recovered against the officer that gave such bonds, or his sureties, by action of debt, bill, plaint or infor: The Register-General, &c. to give copies of such bonds, &c.

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mation, in any Court in this province, where no essoin, protection or wager of law, or any more than one imparlance shall be allowed.

Passed March 27th, 1713.—Recorded A. vol. II. page 73. (m)

(m) See the note to chap. 133, ante. page 36.

The constitution of 1776, sect. 26, declared that Orphans' Courts should be held quarterly in each city and county. By the existing constitution it is provided, that the judges of the Court of Common Pleas of each county, any two of whom shall be a *quorum*, shall compose the Orphans' Court thereof. Art. 5, sect. 7. And by the act of April 13th, 1791, (post. chap. 1564, sect. 6,) it is enacted that the Orphans' Court shall be held at such stated times as the judges of the said court, in their respective counties, shall for each year ordain and establish. And by the act of February 24th, 1806, the judges of the Court of Common Pleas of the first district, or any two of them, the president being one, shall compose and hold the Orphans' Court in that district, at such times as they may think proper; and the judges of the Courts of Common Pleas in each county, wherein the term of the Court of Common Pleas is to continue for two weeks, or any two of them, the President being one, shall compose and hold the Orphans' Court in said counties in the first week in each term of the Court of Common Pleas, and at such other times as they may think proper; and the judges of the Court of Common Pleas in each of the other counties, or any two of them, the president being one, shall compose and hold the Orphans' Court, at such times as they may think proper; but any two of the Judges in each county, may hold the Orphans' Court in said county, for the appointment of guardians, and for the transacting, hearing and deciding upon any business in the Orphans' Court: but in case any person or persons interested in the business then before the Court, shall request the same to be continued until the president can attend; in that case the business shall be continued accordingly.

The office of Register General is abolished, formally, by the act of 14th March, 1777, (post. chap. 737,) in pursuance of the then existing constitution, directing a distinct register's office to be kept in each county: which provision is contained in the present constitution, and acts regulating the judiciary department, in pursuance thereof.

By the intestate act of April 19th, 1794, (post. chap. 1740,) administration accounts are to be examined and allow-

ed by the Orphans' Courts, which are authorized to proceed and call administrators to account, and to make distribution, and the same distributions to decree and settle, and to compel such administrators to observe and pay the same by the due course of the laws of this commonwealth. But no distribution shall be compelled until one year be fully expired after the intestate's death. And the person entitled to a distributive share, shall give bond, with sufficient securities, in the Orphans' Court, to refund, and pay in proportion, to the administrator in case any debts of the intestate should afterwards be sued and recovered, &c.

In case of a deficiency of assets to pay debts, the Orphans' Court of the proper county, upon application by the executors or administrators, is empowered to appoint three or more auditors, to settle and adjust the rates and proportions of the assets due and payable to the respective creditors, whose report thereupon, if approved by the Court, shall be confirmed, and the executors or administrators shall pay such creditors accordingly.

Persons dying intestate, being owners of lands, leaving lawful issue, but not a sufficient personal estate to pay their just debts, the administrators may borrow on mortgage, or sell and convey such part of the land as the Orphans' Court of the proper county shall, in either case, from time to time, think fit to allow, order and direct for defraying debts, &c. but lands contained in any marriage settlement not to be sold, nor any sale to be made before the administrator shall exhibit an inventory, &c. and settle an account upon oath or affirmation, &c. and the manner of proceeding to sell and make report to the Orphans' Court, is particularly directed; and no sale so made by order of the Orphans' Court, shall be liable in the hands of the purchaser for the debts of the intestate, (4 Dallas, 450.)

Section 22, prescribes the powers and duties of the Orphans' Court in making valuation and partition of intestate's estates, and the same power is given, where there is a will, and children, *after born*, are not provided for. And by the supplement to the said act, passed April 4th, 1797, (post. chap. 1938,) when any legatee, or creditor, or person interested in the real or personal estate of a person who has died, or hereafter shall

die, with a last will, or surety in any administration bond, shall declare on oath, &c. that he believes the executors or administrators are wasting or mismanaging the estate, &c. and shall apply to the Orphans' Court of the proper county for security, the said Court shall examine the cause of complaint, and if it appears to them that the same is just, it shall be lawful for the said Court to order such executors or administrators to give bond with sureties, or such further security as they may judge necessary, according to the value of the estate; which securities shall be taken and filed in the said Orphans' Court in the name of the commonwealth, and shall be deemed and considered in trust, &c. and on neglect or refusal for thirty days, the Court shall vacate the letters testamentary, or of administration, and award new letters to be granted, &c. And moreover shall order the first executor or administrator to deliver over to his successor all the goods and chattels, &c. of decedent, remaining unadministered, and account for such as shall have been previously administered, and pay over the balance in such manner and time as the Court shall award and order, &c. and on neglect or refusal to comply with the award and order of the Court touching the premises, the Court, on motion, shall proceed against him or them, as is lawful in cases of contempt, &c.

SECT. 3. In what manner executors and administrators may settle their accounts, and be discharged by the Orphans' Court.

SECT. 9. Particular notice to be given of the time of presenting administration accounts to the Orphans' Court for confirmation and allowance.

And by a further supplement to the intestate act, passed April 2d, 1804, (post. chap. 2486,) where an intestate's estate will not admit of division, and neither of the heirs will take it at the appraisement, the Orphans' Court may decree a sale, and distribute the proceeds as to law and justice shall appertain, and the method of proceeding is prescribed, which is explained and amended by the 2d section of the act of 26th March, 1808, (post. chap. 2965.) And by the 3d section of this latter act in case of a decree by the Orphans' Court for the sale of an intestate's real estate, or any part thereof, the Court is authorized to require and take security from the administrators for the faithful execution of the power committed to them, and to account for and pay over the proceeds thereof in such manner as the said Court shall legally decree.

And by an act passed April 7th, 1807,

(post. chap. 2813,) where an intestate's estate is divided into fewer parts than there are representatives, if any one, or all of the said parts, is or are refused, the Court may decree a sale of the part refused to be taken, in the same manner as if the whole had been appraised and refused to be taken. And where such estate is divided into fewer parts than there are representatives, in order to give the younger children an opportunity of accepting or refusing, the Orphans' Court may grant a rule to shew cause within a certain time, &c. and on neglect to appear, by those who are in seniority, the Court may direct the same to be offered to the next representative in order.

And in case of an intestate's estate lying in more counties than one, the representative, who accepts the estate in one county, shall not have the preference as to lands in any other county. And by sect. 10, where the personal estate of a minor is not sufficient for his maintenance and education, the Orphans' Court may allow the guardian to sell the real estate, or so much as may be necessary for such purposes, taking security from the guardian, &c. and by an act passed April 1st, 1805, where the lands of intestate, consisting of one entire tract, or of several adjoining tracts, lie in different counties, the Orphans' Court of the county where the principal mansion is situated, shall award an inquest to make partition or appraise the whole, and a particular form of recording such proceedings is prescribed.

See the notes to the different intestate acts before cited.

It is now usual, by the practice of the legislature, in granting pensions to old, invalid soldiers, to appoint trustees, in the particular acts, to expend and appropriate the sums granted, for the benefit of the pensioners, and to direct such trustees to settle their accounts in the Orphans' Courts of the counties, where such trustees reside, and also, in acts authorizing the sale of lands of minors or others, the persons directed to sell, are most commonly obliged by the law, to exhibit their accounts for settlement to the Orphans' Court. Such acts being personal and private, are not printed at large in this edition, and are not necessary to be referred to more particularly.

No appeal lies from the Orphans' Court until definitive sentence. MSS. Reports, Supreme Court.

Ingersoll moved for the confirmation of the decree of the Orphans' Court of Northumberland, given 26th March, 1792, from which (as it appeared by a certificate he produced,) an appeal had

1713. been entered. But the Court, finding that there was no copy of the proceedings lodged with the *prothonotary* refused to receive the motion: and by *Slippen*, Justice; the regular method of bringing up the record, is by *certiorari*; and nothing else can stay the proceedings below. *Walker's* appeal. 2 Dal-las, 190.

The 4th, 5th, and 6th sections of the act in the text, came fully to the consideration of the Court in the case of *Fox*, administrator of *Hockley v. Wilcocks* and others.

*Fox* settled his account with the Register, from which it was passed to the Orphans' Court for confirmation. With consent of the parties, it was referred by that Court for examination and statement. The next of kin gave notice to *Fox*, the administrator, that he would be required to produce to the auditors, the bank book of his administration, and to state on affirmation whether he had used for his own purposes, any and what monies of the intestate. At the meeting of the auditors, the dispute turned upon two points, the amount of compensation allowed to the administrator in the Register's office, which the next of kin said was too great, and a credit which was claimed by the next of kin for interest upon sums alleged to have been a considerable time in the administrator's hands; but Mr. *Fox* refused to produce his bank book, or to make the required statement upon affirmation. The auditors allowed the compensation as it stood, and although they refused the interest as it was claimed, they nevertheless charged Mr. *Fox* £. 150 as a reasonable compensation for any use he could or did make of the money remaining in his hands, during his administration; reporting at the same time, that it did not appear he was ever unprepared to pay any money legally demanded of him.

To this report, both parties filed exceptions; the administrator, that he had been charged with any sum in the shape of interest; the next of kin, that he had not been charged enough: but by agreement the report was confirmed, and an appeal made to the Supreme Court, to obtain a decision upon the principle that was to govern the case.

The Chief Justice, after stating the case, delivered the opinion of the Court.

What I consider as the principal point in this case, is, whether the administrator is liable to interest, for the sums of money, which from time to time remained in his hands, before the settlement of his accounts.

By the act of 1713, sect. 4, "Execu-

tors, &c. may, by leave and direction of the Orphans' Court, put out their minors' money to interest, but if no person can be found to take it, who will give good security, they shall only be responsible for the principal." By the same law, sect. 6, "they shall only be liable to pay interest on the surplusage of the estate remaining in their hands, when the accounts of their administration are, or ought to be, settled before the Orphans' Court, or Register."

It is therefore the duty of executors, administrators and guardians, not to let money remain unemployed in their hands; and by fair implication of the words of this act of assembly, if they do through negligence suffer it to remain unemployed, they are responsible for interest: much more so, if they use the money for their own purposes. As the law expressly declares that they are only liable to pay interest on the balance in their hands, when the administration accounts are, or ought to be settled, it should seem that they are not liable to interest during twelve months from the death of the intestate, since that period is reckoned reasonable for the settlement of those accounts.

To lay down rules by which it may be ascertained in every case, whether administrators shall pay interest on balances in their hands, is impossible; because every case depends on its own circumstances. But I think it may be established as a principle, that interest is payable where the administrator has been guilty of neglect in not putting out money, or where he has made use of it himself. (1 Washington's Reports, 246.) Both the act of Assembly, and the principles of universal reason concur in this; and it is agreeable to the authorities from the law of England, and the civil law. Still it remains to be decided by the facts in each case, whether the principle is applicable. As to the auditors, no law has been shewn, which satisfies me, that they have power to call for the oath of the administrator as to the use he has made of the money, or to demand the production of his books. At the same time, I cannot help remarking, that the administrator should reflect well before he declines the offer of his adversary, to appeal to his own books: because it lies on him to shew what has been done with the money; and unless he does shew it, in a satisfactory manner, he leaves himself open to the conclusion, of having used it for his own purposes. 1 Binney, 194.

For cases respecting the charge of interest upon the valuation money of lands taken at an appraisement, by or

der of the Orphans' Court, see the notes to the intestate acts.

In *Graham's* appeal, all the Court held, That on the 7th and 12th sections of the act in the text, and the true construction thereof, the Orphans' Court have a power to assign the guardianship of minors under 14, to whom they please, according to their legal discretion; which legal discretion by sect. 12, is confined to the choice of persons of the same religious persuasion, of good repute, and approved by the orphan. If any of these objections should occur, the Court must appoint some other persons, which could not be the case, if they were confined to the guardian in *socage*, or by nurture.

The opinion of the Court is conformable to the invariable practice of every county in the State, from the date of the act to this day; and the construc-

tion given to an act immediately after it has passed, cannot be altered at so distant a period, even although it might have been a little erroneous in the first instance. 1 Dallas, 136.

Where an heir at law takes an intestate's lands at a valuation, the Orphans' Court ought, instead of bonds, which are a mere personal security, to take recognizances, by which the lands themselves would be bound for payment of the distributive shares. 1 Dallas, 265

The Orphans' Court have jurisdiction to ascertain the amount of an advancement made to a child by a father who has died intestate; and also of a debt due by a child, or son-in-law, to a father, previous to the division of the estate, And the Orphans' Court may, if necessary, direct an issue to settle a disputed fact. See *Tohe v. Barnett*, 1 Binney, 358.

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