

TESTAMENTARY SYSTEM.

which there shall be an answer, on oath, (or affirmation,) and if the party refuse to answer on oath (or affirmation, as the case may require,) to any matter alleged in the bill or petition, and proper for the court to decide upon, the said party may be attached, fined and committed, or his property may be attached and sequestered, as aforesaid.

17. And on such plenary proceeding, all the depositions shall be taken in writing, and recorded; and in case either party shall require, the court shall direct an issue or issues to be made up, and sent to any court of law, which may be most convenient under all circumstances, for trying the same; and the said issue or issues shall be tried in the said court of law as soon as may be, without any continuance longer than is necessary to procure the attendance of a witness or witnesses; and the power of the court of law, and proceedings thereto relative, shall be as herein before directed respecting the trial of issues; and the orphans court shall give judgment or decree upon the bill and answer, or upon bill, answer, depositions, or finding of the jury; and in all cases of contest, the orphans court may award costs to the party in their opinion entitled thereto, and may compel payment, by attachment of the body, and fine, or attachment and sequestration, as aforesaid, of the property.

18. Any person who may conceive him or herself aggrieved by any judgment, decree, decision or order, of the orphans court, shall have the liberty of appealing to the court of chancery, or to the general court of the shore whereon such orphans court is held; if the judgment, decree, decision or order, shall have been given or made on a summary proceeding, and on the testimony of witnesses, the party shall not be allowed to appeal, unless he or she shall immediately notify his intention, and request, that the testimony be reduced to writing, and in such case the depositions shall be, at the cost of the party in the first instance, reduced to writing; and a transcript of the whole proceedings relating immediately to the matter shall be made out by the register of wills, and certified by him under seal, and transmitted to the said appellate court by the party within thirty days from the date of the decision or order, the said party shall otherwise lose the privilege of appeal; and if the decision of the orphans court be in a summary way, and on papers filed in the court, no party shall be entitled to appeal, unless he or she enter the appeal within three days, and transmit a certified copy of the proceedings as aforesaid, within thirty days aforesaid; but in case there shall have been plenary proceedings as aforesaid, either party may prosecute the appeal, by entering the same as aforesaid, and by transmitting a certified copy as aforesaid, within sixty days from the date of the decree, judgment, decision or order, provided that this article shall not affect the case of appeal by this act before specially provided for; and in the said appellate court the appeal, so carried up, shall stand for hearing and decision at the term next succeeding the transmission of the proceedings, and the said court shall, at the said term, or as soon as conveniently may be, either affirm the decree, judgment, decision or order of the court below, or direct in what manner it shall be changed or amended; and the decision of such appellate court shall be final and conclusive; and when the decision of such appellate court shall be certified, under the seal, by the register or clerk of such court, and transmitted to the orphans court, the said orphans court shall proceed according to the tenor or directions thereof.

19. An appeal from the orphans court shall not stay any proceedings therein which may with propriety be carried on before the appeal is decided, provided the said orphans court can provide for conforming to the decision of the court above, whether the said decision may eventually be for or against the appellant.

20. The said orphans court shall not, under pretext of incidental power, or constructive authority, exercise any jurisdiction whatever not expressly given by this act, or some other law; but every judgment, decree, decision or order, of the said court, may be enforced by attachment and sequestration as aforesaid; and if the said judgment, decree, decision or order, be for paying money, the
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