

bation; or at the instance of either party, the court may direct an issue or issues to be tried, and the same shall be tried in the circuit court for the county, or the superior court of Baltimore city, the court of common pleas or the Baltimore city court, as other issues from the orphans' court; and the circuit court or superior court, court of common pleas or Baltimore city court shall have power to direct the jury and grant a new trial, as if the issue or issues were in a suit therein instituted; and a certificate from such court, or the judge thereof, of the verdict, or finding of the jury, under the seal thereof, shall be admitted by the orphans' court to establish or destroy the claim, or any part thereof; and if the executor shall give in such claim, or any part thereof be established as aforesaid, he shall account for the sum due in the same manner as if it were so much money in his hands, and on failure his bond may be put in suit.

This section and section 229 being in derogation of the common law, must be strictly construed. They refer to "claims which the deceased had against" the executor or administrator. This section held inapplicable to an alleged default on an administrator's bond. *Kirby v. State*, 51 Md. 392.

Under this section, as well as under section 244, the orphans' court has jurisdiction to inquire as to money alleged to have been turned over to the executor by the testator during his lifetime. *Linthicum v. Polk*, 93 Md. 95.

History and intent of this section. Prior to the act of 1884, ch. 381—see section 229—an executor and his bond were absolutely liable for a debt due by such executor to the testator without regard to whether the executor was insolvent or not. *Lambrecht v. State*, 57 Md. 247.

Purpose of this section. The duty of the orphans' court to make up and transmit issues when required is imperative, and the findings of the court of law are final and must be made effective by the orphans' court. Under the circumstances of the case, held that a plaintiff might dismiss issues without trial. *Price v. Taylor*, 21 Md. 363. And see *Warford v. Colvin*, 14 Md. 552; *Pegg v. Warford*, 4 Md. 392; *Keene v. Corse*, 80 Md. 23.

In view of this section, where one of the executors who is also a legatee is indebted to the estate, the indebtedness should be deducted from the legacy. *Hoffman v. Armstrong*, 90 Md. 130.

This section applied. *Kealhofer v. Emmert*, 79 Md. 250.

This section referred to in deciding that the assignee of a *chose in action* due by an executor to his testator, may in his own name sue the executor thereon. *Kent v. Somervell*, 7 G. & J. 268.

This section referred to in discussing the question of when one obligor could be held liable although another pleaded a good defense. *Lingan v. Henderson*, 1 Bl. 260.

This section referred to in construing sections 5 and 224—see notes thereto. *Handy v. Collins*, 60 Md. 239.

This section referred to in construing section 255—see notes thereto. *Levy v. Levy*, 28 Md. 32.

As to the rule on the subject of this section at common law, and the reason thereof, see *Beall v. Hilliary*, 1 Md. 189.

Cited but not construed in *Gibbons v. Riley*, 7 Gill. 84; *Van Ness v. Van Ness*, 6 How. 62.

See notes to sec. 229.

1904, art. 93, sec. 228. 1888, art. 93, sec. 225. 1860, art. 93, sec. 225. 1798, ch. 101, sub-ch. 8, sec. 21. 1884, ch. 381.

229. In like manner it shall be the duty of every administrator to give in a claim against himself, and on giving it in, or failure to give it in, there shall be the same proceedings in every respect as are before prescribed in regard to an executor; but nothing herein, or in the pre-