

Only such questions of fact as are properly in issue between the parties may become the subjects of issues. Duty of the orphans' court before issues are sent. *Bridge v. Dillard*, 104 Md. 421; *Williamson v. Montgomery*, 40 Md. 378; *Smith v. Young*, 5 Gill, 197.

There can be no modification of issues after they have been sent from the orphans' court. *Cook v. Carr*, 20 Md. 410.

Issues presuppose a plenary proceeding—see notes to section 254. *Hubbard v. Barcus*, 38 Md. 172.

Issues are required to be granted only in cases where the orphans' court itself has the power to determine the question involved. *Fowler v. Brady*, 110 Md. 209.

Issues should not be granted upon the propriety of the allowance of a counsel fee. *Maynadier v. Armstrong*, 98 Md. 178; *Miller v. Gehr*, 91 Md. 714.

As to when issues will be granted or refused, see *Bridge v. Dillard*, 104 Md. 421; *Maynadier v. Armstrong*, 98 Md. 178; *Miller v. Gehr*, 91 Md. 714; *Williamson v. Montgomery*, 40 Md. 378; *Redman v. Chance*, 32 Md. 54; *Humes v. Shillington*, 22 Md. 358; *Barroll v. Reading*, 5 H. & J. 176.

#### Costs, counsel fees, etc.

Where issues are sent to a court of law, the latter court does not enter the judgment for costs, but such costs are certified to the orphans' court which has power to enter the proper judgment and enforce the payment of costs. *Levy v. Levy*, 28 Md. 29; *Brown v. Johns*, 62 Md. 333; *Johns v. Hodges*, 60 Md. 229; *Browne v. Browne*, 22 Md. 116.

The award of costs under this section is in the discretion of the orphans' court, and not reviewable upon appeal. *Bantz v. Bantz*, 52 Md. 696; *Brown v. Johns*, 62 Md. 335.

This section and section 254 afford no warrant for allowing an administrator appointed in Maryland, for personal expenses, services and counsel fees spent in unsuccessfully attacking a will probated in another State. Application of the portion of this section relative to costs. *Dalrymple v. Gamble*, 68 Md. 162.

#### Generally.

This section referred to in deciding that when a will has been granted or denied probate after contest, the decision is final and the same question can not again be raised by a suit in ejectment. *Johns v. Hodges*, 62 Md. 534.

This section referred to in construing section 236—see notes thereto. *Conner v. Ogle*, 4 Md. Ch. 451.

This section referred to in construing section 348—see notes thereto. *Price v. Moore*, 21 Md. 374.

Cited but not construed in *Campbell v. Porter*, 162 U. S. 483; *Ormsby v. Webb*, 134 U. S. 47; *Van Ness v. Van Ness*, 6 How. 62; *Nicholls v. Hodges*, 1 Pet. 562.

See notes to sec. 254.

1904, art. 93, sec. 255. 1888, art. 93, sec. 251. 1860, art. 93, sec. 251.  
1818, ch. 204, sec. 3.

**256.** In all cases of plenary proceedings, or caveat filed in any of the orphans' courts of this State, where any motion or application to the court shall be made in writing, it shall be the duty of the court to reduce to writing, and sign the order or decree that may be made by them on such motion or application; and the said motion or application to the court and the order or decree thereon shall be filed as a part of the proceedings, and, in case of appeal from the final decree of the orphans' court, be transmitted to the appellate court with the other proceedings, and be subject to the judgment and revision of such appellate court.

The right of appeal under this section, upheld. Caveators, by temporarily submitting to interlocutory orders, held not to have waived their rights under this section. *Humes v. Shillington*, 22 Md. 357.