

or administrator whose letters have been revoked, and it shall not be found by the jury that the executor or administrator against whom such judgment has been rendered has assets sufficient to discharge the same, the plaintiff in such judgment may also issue a *scire facias* on such judgment against the executor or administrator whose letters have been revoked, suggesting that such executor or administrator did receive assets of the deceased, liable to such judgment, more than was paid over or delivered by such executor or administrator, to the persons obtaining the said letters testamentary or of administration; and if the same shall be controverted, it shall be ascertained by a jury in the same manner as in cases of *scire facias* suggesting assets against the second executor or administrator; and in case of a verdict and judgment being given against such former executor or administrator, execution may issue thereon in the same manner as against other executors or administrators, and the plaintiff may also sue the bond of such former executor or administrator.

An. Code, 1924, sec. 263. 1912, sec. 254. 1904, sec. 253. 1888, sec. 249. 1798, ch. 101, sub-ch. 15, sec. 16. 1892, ch. 275.

264. The orphans' court may, in all cases of controversy therein, upon the application of either party, direct plenary proceedings by bill or petition, to which there shall be an answer on oath, and if the party refuse to answer any matter alleged in the bill or petition, proper for the court to decide upon, he may be attached, fined and committed, or his property may be attached and sequestered; and the appearance of the defendant or defendants to such bill or petition may be compelled by writ of summons, order of publication or attachment, as such appearance is now compelled to bills and petitions in the circuit court for the counties, as courts of equity, and the judges of the orphans' court and register of wills shall have the same authority to order, issue and attest such process respectively as the judges and clerks of said circuit courts now have respectively, in cases in their courts.

Issues arising on petition for removal of co-executor under Sec. 255 may be sent to Court of law under this section and Sec. 265. *Flaks v. Flaks*, 173 Md. 358.

Issues are not proper before Orphans' Court under Secs. 264 and 265 except as ancillary to some relief in a matter over which the Court has jurisdiction to decide; *e. g.*, issue in caveat to will of sanity, *vel non*, of testator at time of execution. *Goldsborough v. DeWitt*, 169 Md. 473.

Cited but not construed in *Baldwin v. Hopkins*, 172 Md. 227; *Harlan v. Lee*, 174 Md. 586.

Wherever a bill or petition is filed, whether or not the other parties are cited to appear, if they do appear and answer, the proceeding is plenary. *Pegg v. Warford*, 4 Md. 396. And see *Stonesifer v. Shriver*, 100 Md. 28; *Daugherty v. Daugherty*, 82 Md. 232; *Bowling v. Estep*, 56 Md. 567; *Hubbard v. Barcus*, 38 Md. 172; *Cannon v. Crook*, 32 Md. 484; *Barroll v. Peters*, 20 Md. 178.

Plenary proceedings must be conducted as prescribed by this section and secs. 265 and 266. Where answer is irregular and none of testimony appears in record, and no judgment or decree can be founded upon record as it stands, case will be reversed. *Stonesifer v. Shriver*, 100 Md. 27; *Bowling v. Estep*, 56 Md. 567; *Cannon v. Crook*, 32 Md. 485; *Barroll v. Peters*, 20 Md. 178; *Kerby v. Peters*, 172 Md. 8.

Where both former administrator and new administrator claim property and both are in Orphans' Court, whose powers are adequate, that court may direct plenary proceedings under this section with right to issues under sec. 265. See notes to sec. 252. *Anderson v. Curran*, 155 Md. 546.

As against administratrix, there is no need to resort to equity for discovery or account in respect to assets of deceased. *Street v. Stubblefield*, 20 F. (2nd), (Ct. Apps., D. C.), 1019.

An order of Orphans' Court that all persons interested in will, appear and answer involves determining who are lawfully interested and thereafter decide whether persons applying shall be made parties, held not to be final order from which appeal may be taken. *Collins v. Cambridge Hospital*, 158 Md. 112.