

in this case, if these requisites had been complied with, is not clear ; but in fact they were not complied with. All that appears to have been done after the passing of his final account on the 24th February, 1816, the balance of which appears to be money, is an order of the Orphans Court on the 27th, directing him "to pay over and deliver to John Addison, the guardian of the minor children of George and Mary Bevans, the property in his hands, to which said children are entitled under the will of H. M. Ogle." No time appointed, no notification to any body, so far as appears, nothing to show that the question as to who was entitled to the whole surplus was ever presented to or acted upon by the court. No distribution of the whole sum between the Bevans ; no order to pay over the balance due on the final account, nor any reference to it ; but simply an order to pay over and deliver to their guardian the property in his hands, "to which the said children are entitled." What specifics he had in hand, and to which the term "property" might be more fitly applied than to a money balance, did not appear ; but the receipt shows that some such were in his hands, and might satisfy the terms of the order. We must, therefore, conclude, that this order did not, by its terms, authorize B. Ogle to pay over the balance due on his final account to the Bevans, and that if it did, the court had no authority to pass the order. The attention of the court was particularly directed to the 12th sec. of the 15th sub ch., being the one relied upon by the distinguished counsel of the defendants to sustain his view of the jurisdiction of the Orphans Court ; but after all the reflection and consideration which it has been able to bestow upon it, it has satisfied itself that it applies only to contested questions *inter partes*, not to *ex parte* proceedings, and that opinion is confirmed by the 16th and 17th sections providing for plenary proceedings.

The cases referred to from English reports, 3 and 7 *English Ch. Reps.*, 326, 328 ; 2 *Ball & Beatty*, 337 ; 1 *Reeve, &c.*, all establish the principle, that wherever there is a suit in Chancery, either by the executor or any person interested in the estate, for the administration of the assets, and the executor