No. 5449 Equity

That said allowances to Wm E Smith and F. J Nelson were excepted to, and the Court on the 8th day of September 1888, ratified said audit except as to the claims of said Wm E. Smith and F. J. Nelson, Thus left in the hands of said assignee the sum of $883 75/100 subject to the further order of this Court — on the 29th day of October 1888, this court, upon the petition of Joseph Wood, a Judgment Creditor, referred this case to Clayton O Keedy, as special Auditor, to state an account allowing the claim of said Joseph Wood, on November 29-1888 the auditor filed his report in which he distributed said sum of $883-75/100 (after allowing additional costs and expence) to said Joseph Wood in payment of the balance of his judgment, to said Wm E. Smith, in full of his said 2nd Mortgage, and to George D. Shank & Co in part payment of their Judgment - On the same day, Isaac Russell filed exceptions to said Report of the special Auditor because his claim, of $45 for a Coffin for said John T. Meredith, deceased and for attention to his funeral was not allowed. The Judgment of Joseph Wood is dated February 12 - 1886 - The said 2nd Mortgage to Wm E Smith is dated April 12 1887. The Judgment of George D Shank & Co is dated September 19 - 1887. The only question in the case is whether the claim of Mr. Russell, the undertaker, for funeral expenses ought to be allowed in preference to the Lien claims just mentioned. About this there ought to be no question. Mr Wood when he sold the personal estate under his mortgage thereof, should have been paid this claim out of the money arising therefrom, before he appropriated it to the part payment of his Judgment - This, however, makes no practical difference, because, if he had paid the Russell claim out of the proceeds of the sale of the Personal Property, there would then have been that much more to be paid, out of the fund now in Court, on the Wood Judgment —

It is admitted that the claim is for necessary and proper Funeral Expenses — And when the case was submitted to the Court on the Exceptions, there seemed to be no objection on the part of any one to its allowance — The Code of P G Laws of 1888. Art 81 Sec 65 (Old Code Art. 81 sec 72) provides that "Administrators shall pay all Taxes due from their decedents as preferred debts, and to the exclusion of all others except funeral expenses - The Court of Appeals in Bonaparte Exr. vs The State 63 Md 472, commenting on this section, say, "Thus executors and administrators are evidently held affected with Notice of Taxes due upon the property held in their Custody, and it is their Legal duty to ascertain and discharge them, next after funeral expenses, before proceeding to further Administration of the estate" In view of this provision of the Code, and this opinion of the Court of Appeals, this Court is convinced that said Claim, for funeral expenses, ought to be paid, out of this fund. And moreover, not only public policy, but public decency requires that the dead should be buried and the expenses therefor, first paid out of the Property the deceased may have left at the time of his death

It is thereupon, this first day of December A.D. 1888, by the Circuit Court for Frederick County as a Court of Equity, and by the authority thereof, adjudged, ordered and decreed that this Case be referred to F. J. Nelson Esq. (the former Special Auditor being absent) who is hereby appointed Special Auditor to state another account, and report the same to this Court; and he is hereby instructed, after allowing costs &c to first allow to Isaac Russell his account of $45; then to Joseph Wood the balance of his judgment; then to Wm E Smith the balance of his 2nd Mortgage, and the remainder, if any, to George D. Shank & Co. on their Judgment.

John A Lynch
Judge of the Cir. Court

Special Auditor's Report

Oath of Fred. Nelson Special Auditor —

Final Ratification of Audit —