

TESTAMENTARY SYSTEM.

claims; and on any judgment passed as aforesaid, a *fieri facias* may issue against the defendant, and either his own goods may be thereon taken and sold, or goods of the deceased may be taken and delivered by the sheriff to the plaintiff, according to their appraisement returned to the orphans court, in discharge of the sum mentioned in the *fieri facias*, and it shall be the duty of the executor or administrator to discharge the said judgment, or put it on a footing with other just claims, and on failure his administration bond may be put in suit by the plaintiff.

11. It shall be the duty of all executors and administrators to pay all just claims against the deceased, exhibited to him, or a just proportionable part thereof, according to the assets; and if any claim be known to the executor or administrator, (although the same be not exhibited,) he shall retain the same, or a just proportionable part, for the benefit of the creditors, provided he can satisfy the court that such claim is just, or may probably be recovered; and when it is certain that there is a claim of a person out of the state, but the amount thereof cannot be ascertained, the court may allow such sum as it shall think proper to be retained, to be accounted for nevertheless, if within three years after the death of the deceased no demand shall be made by the creditor, or his legal representative, and suit thereon brought on the rejection thereof by the executor or administrator, and from the time of making payment to, or a dividend amongst, the creditors, as hereafter directed, all interest on such claim, or proportionable part, shall cease; provided, that the executor or administrator shall pay, or tender the same, together with such further part as shall be due on further money coming into hand, to the creditor, on demand; and in case the executor or administrator, on demand of a greater sum made by such creditor, shall tender the principal and interest which were due at the time of such dividend, or the just proportionable part, together with such further proportion as aforesaid of assets, and the claimant shall notwithstanding bring suit, the said executor or administrator, at any time before judgment, may bring into court the money so tendered, or money to an equal amount, and if he shall satisfy the court, that the said sum was really the amount of the principal and interest due at the time of such dividend, or of the proportionable part to which the claimant was entitled at the dividend, together with such further proportion, (if any there arose,) the court shall thereupon give judgment, "that the sum so brought in, deducting the costs sustained by the defendant, be paid to the plaintiff," and the said judgment shall be pleadable in bar to any action afterwards brought to recover the said debt; or, in case the executor or administrator shall not tender as aforesaid before the suit brought, the creditor shall recover no more than the proportionable part due at the time of the dividend, and such further proportion as he was entitled to on the coming in of further assets, with interest on each to the time of judgment.

12. And if any action be commenced or prosecuted against an executor or administrator, for the recovery of a larger debt or damages than the said executor or administrator shall think due, so that the same cannot be ascertained before verdict, the executor or administrator shall be allowed to retain such sum to meet the said debt or damages as the orphans court shall allow, and if more than enough be allowed, the party shall afterwards account for it, but nothing shall be retained on account of such future debt or damages, where the court shall be satisfied that there will be money sufficient coming in after such dividend to meet the said damages, or a just proportion thereof, regard being had to other claims.

13. The orphans court shall have power, with the consent of both parties, to be entered on their proceedings, to arbitrate between a claimant and an executor or administrator, or the dispute may, by the parties, be referred to any person or persons approved by the orphans court.

14. No executor or administrator, who shall, after the lapse of one year from the date of his letters, have paid away assets to the discharge of just claims, shall be answerable for any claim, of which he had no notice or knowledge; provided, that at least six months before he shall make distribution, he shall have caused