

## TESTAMENTARY SYSTEM.

strator, have been discharged or retained for, or settled, it shall be his duty to deliver up the estate in his hands to those entitled, provided that his duty and power with respect to future assets shall not cease; and after such delivery he shall not be liable for any debt afterwards notified to him, provided he shall have advertised as herein before directed, unless assets shall afterwards come into his hands, which shall be answerable for such debts.

7. Whereas it often happens that an executor or administrator hath in his hands assets to a great amount, and there is no reason to apprehend that they will be nearly exhausted in payment of debts, and those entitled after payment of debts are in want of subsistence, or greatly straitened in their circumstances, in case any person so entitled shall apply, by petition, and satisfy the court that he or she is really in want of subsistence, or greatly straitened in circumstances, and that it probably will not require more than one half of the assets to discharge the debts, the court may direct the executor or administrator to deliver to the petitioner any part of what the court shall suppose will be the petitioner's distributive share, or any part of a legacy or bequest in money, not exceeding one third part, the said petitioner giving bond, with security, approved by the court, to the executor or administrator, for returning the same, or an equivalent, with interest, whenever so directed by the court; and the court shall have power to determine, in a summary manner, on any such petition, after a summons against such executor or administrator duly returned either summoned or *non est*.

8. And the court, in like manner, on any petition by a person in such circumstances, to whom a specific legacy or bequest hath been made, being satisfied that the assets, exclusive of all specific legacies, will not nearly be exhausted by debts, may direct the executor or administrator to deliver to the petitioner the said specific legacy or bequest, on his or her giving bond as aforesaid.

9. If an executor or administrator shall fail to return an account as herein before directed within the time limited by law, or by the court, his letters, on application of any person interested, may be revoked, and such administration, (as the case may require,) may be granted at discretion of the court; and the administrator, to whom letters shall be granted, shall be entitled to put the delinquent's bond in suit, and to recover such damages thereon as the jury may find; and in assessing such damages it shall be the duty of the jury to allow such sum as will be equal to six *per cent. per annum* on the amount of the inventory or inventories, from the time of the return or returns to the time of the verdict, over and beyond the damages for such loss or injury as the estate may have sustained by the delinquent's conduct.

10. Whenever it shall appear by the first or other account of an administrator, that all the debts of, or claims against, the estate, known by or notified to him, have been discharged or allowed for in his account, it shall be his duty to deliver up and distribute the surplus or residue of the estate as hereafter directed, provided that his power and duty, with respect to future assets, shall not cease; and after such delivery, the administrator shall not be answerable for any debt afterwards notified to him, provided he shall have advertised as herein before directed, unless assets shall afterwards come into his hands which shall be liable for such debts.

11. If by the provisions in a will it shall be necessary for an executor, or for an administrator with a copy of the will annexed, to retain in his hands the personal estate, or a part thereof, after all just claims are discharged, as where money, or some other thing, is directed to be paid at a distant period, or upon a contingency, the court of chancery alone shall have power, on the application of such executor or administrator, or of a party interested, to decree or give directions thereto relative; and it shall be the duty of such executor or administrator to apply to the court of chancery, and the said court shall have full power to decree what part of the personal estate shall be retained or appropriated for the purpose, and in what manner it shall be disposed of, and the legacy or benefit intended