

whereby there appeared to be a balance over and above the payment of debts of \$13,357.44. But by the account so referred to and exhibited with the petition, headed as "the first account" of this executrix, passed on the 22d of January, 1823, the concluding allowance in which is in these words: "Retained by this accountant, being the residue of the deceased's estate, according to the last will and testament of the deceased, \$13,357.44." Whereupon it was prayed, that the defendant, Eleanor Dawson, might be ordered to bring that sum into Court to await the final decree.

On the 27th of February, 1826, it was ordered that she bring in that sum of money as prayed, on the 3d of April then next, or shew cause; provided a copy be served, &c.

On the 13th of July, 1826, Eleanor Dawson filed her answer, without oath, to this petition, shewing for cause, that the \*plaintiffs have no interest in the money called for; that **266** the trustees, of whom her testator was the survivor, were only to be held answerable for gross negligence; and that he had transferred the fund from England to this country and invested it here as stated in her answer to the bill; in doing which he had the assent of those interested, and was guilty of no neglect or default; that she had not assets sufficient to pay the debts of her testator, and protesting against the right of the plaintiffs to travel out of the admissions in her answer to their bill; she referred to her petition to the Orphans' Court, and to an order passed on the 10th of July, 1825, allowing her account to be opened for correction, and for rendering a further account, under which authority she had accordingly passed a second account on the 28th of December following, in which she charged herself with some additional receipts and the sum of \$13,357.44 retained, as mentioned in her first account, and then obtained an allowance for cash, as per account proved and passed, to the amount of \$17,777.78, and several other smaller items; and that she was only bound to pay away the assets of her testator as they came to her hands in the due course of administration.

By agreement, the hearing of the matter of this petition of the plaintiffs had been postponed to the 13th of July, but was not brought before the Court until sometime after.

BLAND, C., 6th September, 1826.—The petition of the plaintiffs standing ready for hearing, the solicitors of the parties were fully heard and the proceedings read and considered.

Having lately had occasion maturely to consider the nature of an application to order money to be brought into Court before the final hearing, *McKim v. Thompson*, 1 *Bland*, 155, it will be here unnecessary to give any further explanations in regard to it. The counsel for the petitioners seemed to think that the Court had, in that case, gone further with the doctrine than had been done in