

A considerable portion of this debt has been lost, the borrower having become insolvent, and the property mortgaged, for reasons which I do not deem it necessary now to advert to, having proved inadequate to pay the money except to a very limited amount.

An effort has been made to throw the loss upon Shepherd, the administrator of the deceased Coberth, upon the ground that George McNeir, the then guardian of his son, never knew of or sanctioned the loan. But the evidence, oral and documentary, to the contrary is so conclusive, that no conceivable doubt can be entertained upon the subject. The deposition of William McNeir, the mortgagor, taken before the Auditor on the 18th of September, 1852, is so full, explicit, and unanswerable, and so completely establishes the knowledge, consent, and co-operation of George McNeir, that the attempt upon this ground to fix the responsibility upon Shepherd utterly fails. This deposition proves, not simply that George McNeir knew of and consented to the loan in question, but that it was by his advice, instigation, and procurement, that it was made. And in addition to this particular evidence, his guardian's account, settled with the Orphans Court on the 9th of May, 1843, recognises and treats this mortgage as a part of the estate of the ward in his hands. To permit him, therefore, or any other person claiming through or under him, or liable for him as surety, to repudiate this transaction, upon the ground that he did not know of or approve it, would be monstrous. It may also be observed in this connexion, that in an account settled with the Orphans Court by William O'Hara, the complainant and present guardian of the minor, on the 13th of May, 1846, this same debt due by William McNeir and wife is treated as a part of the estate of the ward in his hands.

It is urged, however, that this loan from the administrator to William McNeir, even though approved of and sanctioned by the guardian, was totally unauthorized, and the consequences must be visited upon the former; and the 5th section of the 12th sub-ch. of the Act of 1798, ch. 101, is referred to in support of this proposition. The provision in this section