

that his exception to the account B, in respect of this sum of money, is well taken.

But the counsel of Shepherd insists not only that he should be acquitted from all responsibility on account of this loan, but that in this case, and upon this record, the Court should proceed farther, and determine whether O'Hara, the plaintiff, as surety for George McNeir, the former guardian of the infant, is or is not liable for it.

George McNeir, the principal in the bond, as appears by an agreement filed on the 1st of Oct., 1852, obtained the benefit of the insolvent laws on the 27th of Oct., 1845, after the institution of this suit, and his trustee has not been made a party to the cause. His absence presents an insuperable objection to adjudicating the question as between the ward and the parties to the bond of the first guardian. To any account between the ward and the surety in that bond, the principal, or the trustee of the principal, he being insolvent, is a necessary party.

But independently of this, there is another objection to deciding upon the responsibility of the surety in McNeir's bond, which would not be obviated by bringing all the necessary parties to an account before the Court. It has been already observed, that the Orphans Court having recognised the mortgage by William McNeir and wife to Basil Shepherd, and assigned by him to George McNeir, as guardian of the minor, as a valid security and investment of the money of the ward, the legal effect is the same as if their previous authority for the loan had been obtained; and therefore it results, that if the surety of George McNeir is liable for the loss, it must be because of his subsequent neglect in permitting the property to be wasted, or by some act of negligence, or the want of due diligence on his part subsequent to the loan. But no such question as this is presented by the pleadings, and therefore O'Hara would justly complain of being taken by surprise if the Court was now to undertake to fix the responsibility upon him because of the assumed negligence of the principal in the bond. When that question is brought before the proper tribunal, and fairly pre-