

sented by the pleadings, and the parties, after full notice, are heard upon it, it will be time enough to decide it. To do so now, upon this record and in this proceeding, would, in my opinion, be unjust. In the case of *Flickinger vs. Hull*, 5 Gill, 60, it will be found that the question decided by the Court was distinctly presented by the pleadings.

Before proceeding very briefly to decide upon the other exceptions to the report of the Auditor, it may be proper to say a word in reference to the mortgage from Basil Shepherd to George McNeir, dated the 4th of August, 1843. This mortgage was given to George McNeir as guardian of Hezekiah W. Coberth, and was duly acknowledged and enrolled, and, it is admitted, furnishes an ample security for the money loaned. The Orphans Court, as early as the 9th of August, 1842, had ordered the administrator to loan out, on mortgage on real estate, all sums over and above the amount required to pay the debts of the deceased; and on the 8th of August, 1843, they passed another order, directing Shepherd, administrator of Coberth, to retain in his hands \$2,000, being the amount of a bond which is recited in and secured by the mortgage of the 4th of August, 1843. I regard this last order as a legitimate exercise of power by the Orphans Court, because it in effect treats the mortgage from Shepherd to the guardian as an investment by the latter, and falls clearly within the power conferred upon the Courts by the Acts of Assembly before referred to. But as it is admitted that the money retained by Shepherd is well secured, it cannot be very material whether the Orphans Court transcended their power or not.

By the terms of that mortgage, the principal debt thereby secured, was made payable to the guardian on or before the arrival at full age of the ward; and as that period has not yet arrived, and the money is considered to be amply secured, there would seem to be no necessity, and perhaps it would be injurious to compel its payment, by decreeing a foreclosure and sale of the mortgaged premises at this time. Should the mortgagor fail to pay the interest, or the security of the debt for any reason become precarious, it will be in the power of the present