

has been sold in aid of the personalty, and as appears by the report of the Auditor, a considerable surplus of the proceeds of the realty remains for distribution among the heirs-at-law, which by said report has been equally distributed, no deduction being made from the shares assigned to said Martha and Heloise, on account of the property so advanced to them. And the petitioners pray that the accounts may be remanded to the Auditor, with directions to restate them, so as to bring the said advancements into hotchpot with the residue of the said estate now to be distributed.

The answer of Heloise Smith and her husband, George H. Smith, may be treated as denying the allegation of the advancement to the wife, though its statements are not very explicit or satisfactory. But, conceding that it does deny the allegations, I consider the proof of the advancement quite strong enough to overthrow the answer, and I am also of opinion, that if the property so advanced to Mrs. Smith, in case any of the personal estate remained for distribution, was equal to or superior in value to her share of such surplus, she would be excluded unless she brought it into the reckoning. *Act of 1798, ch. 101, sub-ch. 11, sec. 6, State use of Wilson and Wife vs. Jameson, 3 G. & J., 442.*

Martha Young being dead, the petition setting up the advancement to her, which consisted of real and personal estate, has been answered by her executor, devisees, and legatees, and certain parties claiming under a deed executed by her on the 20th of March, 1848, for the purpose of indemnifying one of them from responsibility, as her surety in her bond as administratrix upon the estate of her father. It is objected, on the part of the respondents, that inasmuch as it does not now, at this time, certainly appear, whether the surety in the bond will or will not be damnified, the proceeds of the real estate should not be impaired or withdrawn from the control of the trustees under the deed, until the final settlement of the estate of the said intestate shall show conclusively that no such loss or damage will result to the surety. They say that when the responsibility was assumed, and the deed of indemnity was