

*G. & J.*, 220; 6 *G. & J.*, 25; and to exonerate himself from liability, he must administer it according to the trust, or under the authority of a competent tribunal. I have been able to find no special power or jurisdiction given to the Orphans Court over a trust of this kind, and that the court has general jurisdiction over trusts, even of personal estate, is not contended.

Treating the personal estate of Mrs. Ogle as legal assets, to be administered under the authority of the Orphans Court, and subject to its jurisdiction in the same manner as the personal estate of deceased persons usually is, let us see what the jurisdiction is with regard to a surplus after the payment of debts, and whether it has been properly exercised to the exoneration of the executor from any further claims? The surplus is, of course, to be distributed among the next of kin or legatees.

By whom? By the act of 1715, ch. 39, the Commissary General had power to make, or cause to be made, distribution of the surplus and transmit the account to the County Court. By the act of 1777, ch. 8, the Orphans Court, then constituted, were not required to transmit balances, but were given the same power as the County Court, nothing being said of the power to make distribution. These laws are superseded, however, by the act of 1798, ch. 101, and the whole subject is regulated by it. The power given by that act to distribute the surplus is not the same as that to pass the claims of creditors, or make allowances in the settlement of the estate. It has been decided by the Court of Appeals, in the case of *Owens vs. Collinson*, 3 *G. & J.*, 38, referred to by defendant's solicitor, and also in other cases, that the accounts themselves are *prima facie* evidence of their correctness. The right to pay claims of creditors depends on sub ch. 8, sec. 22, which provides that no executor or administrator shall discharge any claim against the deceased (otherwise than at his own risk) unless the same shall be passed by the Orphans Court, or unless the said claim be proved according to the following rules: And the court says, "the irresistible inference is, that if any executor or administrator *bona fide*, without knowledge of its injustice, pay a claim thus passed or proved, that the payment is not at his own risk." Sub ch.