

taken that for granted. The petitioners pray that the trustee may bring in the purchase money. The court passes an order that first the trustee and then the executor shall bring in the purchase money, or show cause to the contrary, and the executor in answer contends, not that the money was never received, but that the trustee had paid it away to the creditors, and that is the whole ground of defence as to the trustee. Testimony has been taken to sustain it, and in truth, the trustee must after this lapse of time not only be presumed to have received it, but is responsible for it, whether he has received it or not. The purchaser's bond and his own have long been subject to the plea of limitations, and he has neither brought the purchaser's bond into court nor communicated to the court any difficulty in the recovery of the amount. 1 *Bland*, 410. It is also too late now, at the hearing of the cause, to make such an objection. There is neither allegation nor proof that the executor ever received any part of the purchase money from the purchaser, or holds it as a distinct fund in his testator's estate, and as the claim of the petitioners could only be a lien upon such a fund, they can only, therefore, come in among the general creditors of James Brawner's personal estate, of which an account will be ordered.

The next question is, whether the purchase money of James Brawner's land, the sale of which was ratified by the Orphans Court, is to come in as a part of the personal estate. It seems to me, however, hardly to be a question. The will of James Brawner gives to his executor the power to sell and dispose of, and invest, and reinvest, any, and all parts of his estate, real, personal and mixed, in such way and manner as he may deem for the benefit of his estate and the interest of his said wife, sons and grandsons, and all others who may become interested in his estate. It is superfluous to ask whether his creditors are not so interested.

The executor has sold the land in question, and the sale has been reported to, and ratified by the Orphans Court, under the act of 1831, ch. 315, sec. 10, and by the same section, he is bound to account therefor to the Orphans Court, in the same