

CONTEE v. DAWSON.

The plaintiff may set the case down for hearing on bill and answer; but, in doing so, he admits the truth of every fact set forth in the answer.—Where an application is made, grounded on admissions in the answer, for an order on the defendant to bring money into court, the whole of his answer must be taken together and for true. An order confirming an auditor's report is a judgment of this court, final in regard to the matter to which it relates.—The foundation for an order to bring money into court, must be found in the direct progress of the case, and be such as not open to be removed or explained away.

No direction in a will, nor any mere agreement to refer a controversy to arbitration can oust the proper courts of justice of their jurisdiction in the case.—There may be cases, where the bringing of a suit by a legatee is prohibited, with a bequest over, that the bringing of a suit will be a forfeiture.—It is sufficient, that the husband alone be made a party, to shew, that he has obtained satisfaction for the chose in action of his wife.—The answer of a defendant, resident out of the state, is a judicial record of this state, and must be authenticated accordingly as such.—In accordance with the spirit of the federal constitution, it is proper to go as far as may be safe, in giving credit to authentications coming from other states of the Union.—An answer, by consent of the plaintiff, may be received without being sworn to; and will be allowed to have full effect as regards co-defendants.—A party cannot avail himself of proof, in regard to any matter not alleged.—An executor must expressly aver an insufficiency of assets, otherwise he cannot prove it, and so avail himself of the fact.

How and when, under the peculiar expressions of a certain will, the legacies thereby given will vest.—A trustee held liable for all the consequences of a violation of his trust.—Those who have only a possible, or expectant interest in a legacy, can give to a trustee no direction as to its disposition.—Those who mislead or practise a fraud upon a trustee, can claim nothing of him.—The court must decree between co-defendants, so as to close the case.—Contingent legacies ordered to be brought in and invested, to await the contingency.

Where a sum is directed to be invested, and the investment is given to one for life, with remainder over, the interest which accrued before the investment, was held to be a part of the sum directed to be invested.—Where it becomes necessary to determine the day on which an event happened, and the proof only designates a space of time within which it happened, the middle of that space is assumed as the day on which it took place.

THIS bill was filed on the 15th of November, 1824, by *Edmund H. Contee*, and *Eleanor* his wife, and *Josias Hawkins*, and *Caroline A.* his wife, against *Eleanor Dawson*, *Philip A. L. Contee*, *Elizabeth Clerklee*, *Margaret Clerklee*, and *Sarah E. Clerklee*, for the purpose of recovering a legacy given by the late *Ann Russell*, of England, to the children of *Margaret Russell Clerk*, which the plaintiffs alleged had come to the hands of the defendant *Eleanor Dawson* as executrix of *William Dawson*, the deceased, who was the surviving trustee.

The several defendants answered. And the executrix *Eleanor Dawson*, in her answer filed on the 27th of September, 1825, ad-