

tiffs have no interest in the money called for; that the trustees, of whom her testator was the survivor, were only to be held answerable for gross negligence; and that he had transferred the fund from England to this country and invested it here as stated in her answer to the bill; in doing which he had the assent of those interested, and was guilty of no neglect or default; that she had not assets sufficient to pay the debts of her testator; and protesting against the right of the plaintiffs to travel out of the admissions in her answer to their bill; she referred to her petition to the Orphans Court, and to an order passed on the 10th of July, 1825, allowing her account to be opened for correction, and for rendering a further account, under which authority she had accordingly passed a second account on the 28th of December following, in which she charged herself with some additional receipts and the sum of \$13,357 44 retained, as mentioned in her first account; and then obtained an allowance for cash, as per account proved and passed, to the amount of \$17,777 78; and several other smaller items; and that she was only bound to pay away the assets of her testator as they came to her hands in the due course of administration.

By agreement, the hearing of the matter of this petition of the plaintiffs had been postponed to the 13th of July; but was not brought before the court until some time after.

6th September, 1826.—BLAND, *Chancellor*.—The petition of the plaintiffs standing ready for hearing, the solicitors of the parties were fully heard and the proceedings read and considered.

Having lately had occasion maturely to consider the nature of an application to order money to be brought into court before the final hearing, (a) it will be here unnecessary to give any further explanations in regard to it. The counsel for the petitioners seemed to think, that the court had, in that case, gone further with the doctrine than had been done in any of the English cases; but, in what particular is not perceived. The English cases are grounded upon an interest in the plaintiff, and an admission in the answer itself, or an admission by reference to a schedule, or to books or documents; or upon an auditor's report confirmed; because the confirmation of such a report is a judgment of the court. In the late case in this court, the admission was accompanied by a reference to a deed, the construction of which belonged to the court,

(a) *McKim v. Thompson*, 1 Bland, 155.