

was stayed until the infant attained full age ; (*p*) which privilege had been, by our law, extended to all infants who claimed by pur-

and B. appear to have been settled by the Orphans Court, where he has been allowed a commission on \$50,852 27, amounting to \$5,085 84. That exhibit C, is an account wherein he is charged with additional sums received, amounting to \$4,427 67; and he charges the estate with a dividend paid \$18 41; and the sum of \$105 37 for disbursements for which he has produced receipts; except for the two first items amounting to \$9 37; and it is to be observed, that out of the sums contained in this account, there has not been any commission allowed the said executor, &c.

To this report of the auditor the plaintiff excepted, impeaching the correctness and validity of the claims of several creditors. And they also excepted to the account of the defendant Carey, the executor; because he had been allowed a commission of ten per cent. on the payment of debts due from the said estate, which amounted to \$5,085 84; and yet the auditor had given him credit for the following sums of money, to which he was not entitled either in law or equity. The sum of \$17 30 paid for drayage and postage. The sum of \$176 paid James Winchester as a fee. The sum of \$5 paid Yundt & Brown for advertisement. The sum of \$8 37 paid for copies. \$90 paid John Purviance as a fee; and \$6 paid sundry printers.

On the 3d of March, 1808, the defendants Hollingsworth and wife, by their petition, objected to this report of the auditor; because, by one statement, he had allowed interest on interest, from the 15th of May, 1804, to this time. That, by another statement, it appeared that the deficiency for payment of debts was only \$2,287 99. That there appeared to be a balance in the hands of the defendant Carey, of \$4,491 83, which was more than sufficient to pay the deficiency, as shewn by either statement. Whereupon it was prayed that the defendant Carey, might be directed to bring into court, or pay into the hands of the trustee appointed to make sale of the real estate, under the decree of the 30th of December, 1803, the sum of \$3,871, which would be sufficient to meet any deficiency; and that the balance of money and property in the hands of the defendant Carey, might be paid over to the defendant Goodwin, the administratrix, who was also the trustee, to whom all the property of the defendant Rachel, had been conveyed in trust for her benefit.

3d March, 1808.—KELTY, *Chancellor*.—The Chancellor has taken up the above exceptions, on the motion of the counsel for Hollingsworth and wife, James Carey being in court, and apprised thereof. He is of opinion that the sum of \$176 and \$90 ought not to have been allowed in the manner they are charged by the Orphans Court. By the former law the court might have allowed five per cent. on the debts collected, so as to cover all extra expenses; but this was discretionary. For the defence of suits, and even the legal costs, could not be allowed without a certificate from the court; and the only mode seemed to be a contribution of the persons interested, for extra expenses. Considering the amount of the commission, in addition to these reasons, the auditor is directed to strike out these charges, retaining the others herein excepted to, and to state the balance accordingly.

With regard to the petition of Hollingsworth and wife, it does not appear to be conformable to the decree to order the money to be paid to the trustee, by James Carey. But he is directed to pay into this court, that is, to the register, at present, the sum of \$3,871, part of the balance in his hands, subject to the further order of

(*p*) Co. Litt. 290; Scarth v. Cotton, Cas. Tem. Talb. 198; Chaplin v. Chaplin, 3 P. Will. 368.