

the most delicate and important cases that are brought before it. (n) It is upon these grounds, that I think this mode of taking testimony deserves the continued sanction, approbation, and protection of this tribunal. (o)

The testimony taken under the order of the 21st of February, 1828, before a justice of the peace, has therefore, been brought in according to the regular course of the court.

The will of the late *William Duncan*, it appears, has been proved and recorded, according to the act of assembly, which declares, 'that it shall and may be lawful for the judge of probate of wills to take the probate, or cause to be proved any last will or testament within this province, although the same concerns titles of lands;' (p) which for this purpose is still in full force. A probate so made of a will devising real estate, it has always been held, is at least *prima facie* evidence of its validity; (q) and there being in this case, no allegation or evidence, which, so far questions the validity of this will, as to throw the burthen of sustaining its verity upon the plaintiffs; and these infant defendants as well as the plaintiffs claiming under it, the certified copy offered must be considered as sufficient, for all the purposes for which it is produced.

From the pleadings and proofs it is very clear, that this will cannot be so construed, as to authorize a sale of the real estate for

All the testimony, required by the parties, having been taken and returned; the auditor having stated and reported accounts as required; to which exceptions were filed; and the case having been set down for hearing, it was brought before the court.

28th December, 1807.—KILTY, *Chancellor*.—The object of the bill, in this case, was to obtain an allowance of certain payments and discounts, against a judgment obtained by McComas for the use of Smith, on a bond given by Onion; and to obtain an injunction against the said judgment; and also for general relief.

The Chancellor has considered the exceptions to the auditor's report, and is of opinion, that they ought to be overruled, and that it ought to be and is hereby confirmed—Whereupon it is *Decreed*, that the injunction heretofore issued in this case be perpetual; and that the defendant William McComas, pay to the complainant John B. Onion, or bring into this court to be paid to him, the sum of £1324 5s. 6d. with interest thereon from the 28th day of August, 1806, until paid; and that the defendant Thomas R. Smith be dismissed. The parties respectively to pay their own costs.—M. S.

(n) *Wellesley v. The Duke of Beaufort*, 3 Cond. Chan. Rep. 1; *Park's His. Co. Chan.* 441.—(o) *Winder v. Diffenderffer* order, 4 May, 1829, post.—(p) 1715 ch. 39, s. 2.—(q) *Carroll's lessee v. Llewellyn*, 1 H. & McH. 162; *Smith's lessee v. Steele*, 1 H. & McH. 419; *Massey v. Massey*, 4 H. & J. 142; *Darby v. Mayer*, 10 Wheat. 465; Since so expressly declared by 1831, ch. 315, s. 1.