

RANDALL v. HODGES.

The original copy of a will of real or personal estate when proved and lodged with the Register of Wills cannot be taken from his possession, except under special circumstances.—The documents and vouchers upon which an account has been passed by the Orphans Court form no part of its records; and therefore, if they have been lodged with the Register of Wills he may be compelled, by a *subpœna duces tecum*, to produce them.

THIS bill was filed on the 25th of August, 1818, by *John Randall* and wife against *Thomas Hodges* and others, the administrators of *Charles D. Hodges*, deceased, praying, that they might be ordered to account for the personal estate of the deceased; and to pay to the plaintiff *Eliza*, the share of the surplus to which she was entitled as one of the next of kin of the deceased. The defendants answered, and by an order of the 17th of June, 1831, the case was, by consent, referred to *Thomas Culbreth* as special auditor, to state such accounts as the nature of the case might require.

The plaintiffs, by their petition, stated, that, in the investigation of the case before the auditor, it had become necessary to have all the vouchers and other papers, filed by the defendants, as administrators of the intestate, in the Orphans Court of Prince Georges county; which vouchers and papers appear to have been filed there for safe keeping only; and do not constitute any part of the records of that court. Whereupon they prayed for a *subpœna duces tecum* to *Philemon Chew*, the Register of Wills of Prince Georges county, commanding him to bring with him those papers before the auditor.

The defendants admitted, that they had no cause to shew against this application, and a *subpœna duces tecum* was, on the 12th of September, 1831, ordered accordingly, returnable forthwith.

The Register of Wills answered on oath, that the judges of the Orphans Court of Prince Georges county, as well as the register, from long settled practice have considered all such papers as office papers, filed in the office for the elucidation of all settlements of accounts in that court; and had uniformly refused to deliver such papers, even to an administrator, according to them copies only; and in no instance recognizing a right on their part to the originals; and that he, the respondent, was willing to furnish attested copies of all the papers required, &c.