

ment has been rendered has assets sufficient to discharge the same, the plaintiff in such judgment may also issue a *scire facias* on such judgment against the executor or administrator whose letters have been revoked, suggesting that such executor or administrator did receive assets of the deceased, liable to such judgment, more than was paid over or delivered by such executor or administrator, to the persons obtaining the said letters testamentary or of administration; and if the same shall be controverted, it shall be ascertained by a jury in the same manner as in cases of *scire facias* suggesting assets against the second executor or administrator; and in case of a verdict and judgment being given against such former executor or administrator, execution may issue thereon in the same manner as against other executors or administrators, and the plaintiff may also sue the bond of such former executor or administrator.

An. Code, sec. 254. 1904, sec. 253. 1888, sec. 249 1798, ch. 101, sub-ch. 15, sec. 16.  
1892, ch. 275.

**263.** The orphans' court may, in all cases of controversy therein, upon the application of either party, direct plenary proceedings by bill or petition, to which there shall be an answer on oath, and if the party refuse to answer any matter alleged in the bill or petition, proper for the court to decide upon, he may be attached, fined and committed, or his property may be attached and sequestered; and the appearance of the defendant or defendants to such bill or petition may be compelled by writ of summons, order of publication or attachment, as such appearance is now compelled to bills and petitions in the circuit court for the counties, as courts of equity, and the judges of the orphans' court and register of wills shall have the same authority to order, issue and attest such process respectively as the judges and clerks of said circuit courts now have respectively, in cases in their courts.

Wherever a bill or petition is filed, whether or not the other parties are cited to appear, if they do appear and answer, the proceeding is plenary. *Pegg v. Warford*, 4 Md. 396. And see *Stonesifer v. Shriver*, 100 Md. 28; *Daugherty v. Daugherty*, 82 Md. 232; *Bowling v. Estep*, 56 Md. 567; *Hubbard v. Barcus*, 38 Md. 172; *Cannon v. Crook*, 32 Md. 484; *Barroll v. Peters*, 20 Md. 178.

Plenary proceedings must be conducted as prescribed by this section and secs. 264 and 265. Where answer is irregular and none of testimony appears in record, and no judgment or decree can be founded upon record as it stands, case will be reversed. *Stonesifer v. Shriver*, 100 Md. 27; *Bowling v. Estep*, 56 Md. 567; *Cannon v. Crook*, 32 Md. 485; *Barroll v. Peters*, 20 Md. 178.

Purpose of this section. This section and sec. 264 only apply where there are matters in issue between parties, and not to cases where there is no dispute concerning facts. *Cain v. Warford*, 3 Md. 462.

The act of 1892, ch. 275, authorizes process by summons, order of publication or attachment, to compel appearance in all cases of controversy in orphans' court. How and when a will may be set aside upon its probate after contest. *Parties. Laches. McCambridge v. Walraven*, 88 Md. 383.

Plenary proceedings and an answer under oath may be demanded at any stage of proceedings before final adjudication. *Humes v. Shillington*, 22 Md. 358.

Plenary proceedings in pursuance of this and the two following sections, prayed. See notes to art. 46, sec. 3. *Wilson v. Jarrell*, 137 Md. 564.

The answer must be under oath, and the defect is not waived by arguing the case before the dismissal of the petition. *Cover v. Stockdale*, 16 Md. 7.

This section referred to in construing sec. 245—see notes thereto. *Conner v. Ogle*, 4 Md. Ch. 451.

Cited but not construed in *Campbell v. Porter*, 162 U. S. 483.

See notes to secs. 235 and 264.