

any executor or administrator be thus summoned *ex officio* after more than three years have elapsed since his default.

The clause in this section exempting guardians from summons after their wards are of age does not preclude a proceeding at instance of an interested party, such as a surety or a ward, to require guardian to settle account. *Baldwin v. State*, 89 Md. 593.

This section gives the orphans' court power to compel an administrator to comply with sec. 223. *Fowler v. Brady*, 110 Md. 210.

An. Code, sec. 261. 1908, ch. 428.

270. The orphans' court shall have power to authorize and direct any executor, administrator or guardian to compromise any claim against or in favor of the estate of any decedent or ward, as the case may be, in such manner as the said court may approve.

This section does not confer upon orphans' court full powers with which courts of law and equity are invested of deciding upon validity and amount of creditor's claim against estate; it merely confers power to authorize an executor or guardian to compromise a claim on terms approved by court, without determining its legal status or amount. The action of orphans' court under this section will be upheld in absence of positive error or injustice. *Badders v. O'Brien*, 114 Md. 451.

See art. 75, sec. 60, and art. 16, sec. 268.

An. Code, sec. 262. 1904, sec. 260. 1888, sec. 256. 1798, ch. 101, sub-ch. 15, sec. 20. 1886, ch. 164.

271. The orphans' court shall not, under pretext of incidental power or constructive authority, exercise any jurisdiction not expressly conferred by law, but every judgment, decree, decision or order of the said court may be enforced by attachment and sequestration as aforesaid; and if the said judgment, decree, decision or order be for the payment of money the property sequestered may, at the discretion of the court, be applied to the purpose for which such judgment, decree, decision or order was given; and if the judgment, decree, decision or order shall be for the payment of costs, and the party or parties against whom the said judgment, decree, decision or order for the payment of costs shall be rendered shall be entitled to a distributive share of the estate in which the suit is involved, the court may order said costs to be paid out of said distributive share.

Guardians.

The orphans' court has no jurisdiction to authorize a guardian to invest ward's funds in a loan to guardian himself upon his promissory note bearing interest. *Fidelity Co. v. Freud*, 115 Md. 29.

This section referred to in discussing the authority *vel non* of the orphans' court, to appoint a guardian *ad litem*. *Williams v. Holmes*, 9 Md. 289.

This section referred to in discussing the jurisdiction of equity to appoint a guardian. *Corrie's Case*, 2 Bl. 502.

As to jurisdiction of orphans' court to allow a guardian to exceed in expenditures income of a ward's estate, as to personalty and also as to real estate, see sec. 170.

Costs and counsel fees.

The powers of orphans' court cannot be extended by construction or implication. The power to allow a fee for advice given an administrator in his individual capacity and before his appointment denied. *Flater v. Weaver*, 108 Md. 677. And see *Browne v. Preston*, 38 Md. 380; *Townshend v. Brooke*, 9 Gill, 91.

The orphans' court has no power to allow residuary legatees costs and counsel fees incurred in fighting claim of executrix. *Bell v. Funk*, 75 Md. 371.