

**Issues.**

Where a testatrix provides that all residue of her estate, including all debts due her, shall go to A, B & C, and A owes the testatrix money, A, B, and C also being named as executors, and executors have stated an account in orphans' court which shows a balance ready for distribution to residuary legatees, orphans' court will not, under this section and sec. 252, grant issues to a court of law to determine whether A is indebted to the testatrix. B and C may sue A at law direct for their respective interests in his indebtedness to testatrix. Where a testatrix bequeaths to a residuary legatee a part of his indebtedness to testatrix, such indebtedness to that extent is extinguished. *Sloan v. Sloan*, 117 Md. 142.

Purpose of this section. The duty of orphans' court to make up and transmit issues when required is imperative, and findings of court of law are final and must be made effective by orphans' court. Under circumstances of case, held that a plaintiff might dismiss issues without trial. *Price v. Taylor*, 21 Md. 363. And see *Warford v. Colvin*, 14 Md. 552; *Pegg v. Warford*, 4 Md. 392; *Keene v. Corse*, 80 Md. 23.

Form of issue under a petition filed under this section to require an executor to return a claim of decedent against him, approved. Requisites of issue. *Simmons v. Hagner*, 140 Md. 250.

**Generally.**

This section complied with in *Mullen v. Moore*, 156 Md. 424.

This section and sec. 236 being in derogation of the common law must be strictly construed. They refer to "claims which the deceased had against" executor or administrator. This section held inapplicable to alleged default on administrator's bond. *Kirby v. State*, 51 Md. 392.

Under this section, as well as under sec. 253, orphans' court has jurisdiction to inquire as to money alleged to have been turned over to executor by testator during his lifetime. *Linthicum v. Polk*, 93 Md. 95.

History and intent of this section. Prior to act of 1884, ch. 381—see sec. 236—an executor and his bond were absolutely liable for a debt due by such executor to testator without regard to whether executor was insolvent or not. *Lambrech v. State*, 57 Md. 247.

This section referred to in holding that a case had not been set down for hearing by orphans' court on petition and answer. While this section does not in terms provide for even an answer, the proper practice is to file an answer and plenary proceedings are evidently contemplated—see sec. 264, *et seq.* Object of a replication and when it should be filed. *Long v. Long*, 115 Md. 134.

In view of this section, where one of executors who is also a legatee is indebted to estate, the indebtedness should be deducted from legacy. *Hoffman v. Armstrong*, 90 Md. 130.

This section applied. *Kealhofer v. Emmert*, 79 Md. 250.

This section referred to in deciding that assignee of a *chose in action* due by executor to his testator may in his own name sue executor thereon. *Kent v. Somervell*, 7 G. & J. 268.

This section referred to in discussing question of when one obligor could be held liable although another pleaded a good defense. *Lingan v. Henderson*, 1 Bl. 260.

This section referred to in construing sec. 265—see notes thereto. *Levy v. Levy*, 28 Md. 32.

As to the rule on the subject of this section at common law, and the reason thereof, see *Beall v. Hilliary*, 1 Md. 189.

Cited but not construed in *Gibbons v. Riley*, 7 Gill, 84; *Van Ness v. Van Ness*, 6 How. 62; *Harlan v. Hunter*, 170 Md. 517; *Hohman v. Orem*, 169 Md. 637.

See notes to secs. 232 and 236.

An. Code, 1924, sec. 236. 1912, sec. 229. 1904, sec. 228. 1888, sec. 225. 1708, ch. 101, sub-ch. 8, sec. 21. 1884, ch. 381.

**236.** In like manner it shall be the duty of every administrator to give in a claim against himself, and on giving it in, or failure to give it in, there shall be the same proceedings in every respect as are before prescribed in regard to an executor; but nothing herein, or in the preceding section, in reference to executors shall be construed to make the bond of such executor or administrator liable for a claim so given in or established, if such executor or administrator shall have been insolvent or unable to pay his debts at the time of his qualification as such executor or administrator; provided, however, that all commissions allowed to such executor or administrator in the estate shall be applied towards the payment or satisfaction of the claim so given in or established before he be allowed