

Only such questions of fact as are properly in issue between parties may become subjects of issues. Duty of the orphans' court before issues are sent. *Bridge v. Dillard*, 104 Md. 421; *Williamson v. Montgomery*, 40 Md. 378; *Smith v. Young*, 5 Gill, 197.

There can be no modification of issues after they have been sent from the orphans' court. *Cook v. Carr*, 20 Md. 410.

Issues presuppose a plenary proceeding—see notes to sec. 264. *Hubbard v. Barcus*, 38 Md. 172.

Issues are required to be granted only in cases where orphans' court itself has power to determine question involved. *Fowler v. Brady*, 110 Md. 209.

Issues should not be granted upon the propriety of the allowance of a counsel fee. *Maynadier v. Armstrong*, 98 Md. 178; *Miller v. Gehr*, 91 Md. 714.

As to when issues will be granted or refused, see *Bridge v. Dillard*, 104 Md. 421; *Maynadier v. Armstrong*, 98 Md. 178; *Miller v. Gehr*, 91 Md. 714; *Williamson v. Montgomery*, 40 Md. 378; *Redman v. Chance*, 32 Md. 54; *Humes v. Shillington*, 22 Md. 358; *Barroll v. Reading*, 5 H. & J. 176.

Costs, counsel fees, etc.

Orphans' Court has no jurisdiction to pass order directing caveators to pay costs in Circuit Court without certification from Circuit Court of its findings thereon and costs in connection therewith. *Greenhawk v. Quimby*, 168 Md. 396.

Where issues are sent to a court of law, latter court does not enter the judgment for costs, but such costs are certified to orphans' court which has power to enter proper judgment and enforce payment of costs. *Levy v. Levy*, 28 Md. 29; *Brown v. Johns*, 62 Md. 333; *Johns v. Hodges*, 60 Md. 229; *Browne v. Browne*, 22 Md. 116.

The award of costs under this section is in discretion of orphans' court, and not reviewable upon appeal. *Bantz v. Bantz*, 52 Md. 696; *Brown v. Johns*, 62 Md. 335; *French v. Washington County Home*, 115 Md. 315.

This section and sec. 264 afford no warrant for allowing an administrator appointed in Maryland, for personal expenses, services and counsel fees spent in unsuccessfully attacking a will probated in another state. Application of portion of this section relative to costs. *Dalrymple v. Gamble*, 68 Md. 162; *French v. Washington County Home*, 115 Md. 315.

Generally.

This section referred to in deciding that when a will has been granted or denied probate after contest, the decision is final and the same question cannot again be raised by a suit in ejectment. *Johns v. Hodges*, 62 Md. 534.

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

This section referred to in construing sec. 363—see notes thereto. *Price v. Moore*, 21 Md. 374.

Cited but not construed in *Campbell v. Porter*, 162 U. S. 483; *Ormsby v. Webb*, 134 U. S. 47; *Van Ness v. Van Ness*, 6 How. 62; *Nicholls v. Hodges*, 1 Pet. 562; *Baldwin v. Hopkins*, 172 Md. 227.

See notes to secs. 264 and 330, and to art. 5, sec. 12.

An. Code, 1924, sec. 265. 1912, sec. 256. 1904, sec. 255. 1888, sec. 251. 1818, ch. 204, sec. 3.

266. In all cases of plenary proceedings, or caveat filed in any of the orphans' courts of this State, where any motion or application to the court shall be made in writing, it shall be the duty of the court to reduce to writing, and sign the order or decree that may be made by them on such motion or application; and the said motion or application to the court and the order or decree thereon shall be filed as a part of the proceedings, and, in case of appeal from the final decree of the orphans' court, be transmitted to the appellate court with the other proceedings, and be subject to the judgment and revision of such appellate court.

Right of appeal from order appointing administrator *ad litem* not waived by intermediate procedure. *Lewis v. Mason*, 156 Md. 35.

Cited but not construed in *Collins v. Cambridge Hospital*, 158 Md. 116.

The right of appeal under this section upheld. Caveators, by temporarily submitting to interlocutory orders, held not to have waived their rights under this section. *Humes v. Shillington*, 22 Md. 357.

Although order appealed from is not signed by judges of orphans' court, the defect may be remedied by agreement of counsel. *Watson v. Watson*, 58 Md. 445.

See notes to secs. 264 and 265.

As to appeals, cf. secs. 254 and 327, and art. 5, sec. 64, *et seq.*