

to prosecute any actions at law or in equity, commenced by the former executor or administrator, and obtain judgment in his own name, and likewise to defend any suit commenced against the former executor or administrator; and the new executor or administrator shall have the benefit of all judgments obtained by the former executor or administrator, and shall be bound by all judgments obtained against him, unless the same shall be shown to have been obtained by fraud and set aside by the court in which the judgment was rendered upon such suggestion of fraud, either upon examination in a summary way into the fact, or by directing an issue to try the same, or unless the executor or administrator shall show to the court that there are good grounds to open the judgment, in which case the court shall open the judgment for future litigation; and with respect to the allowance of costs, all such executors and administrators shall be on the same footing as if letters testamentary or of administration had not been granted; and the same rules in making such executor or administrator plaintiff or defendant shall be observed as directed for making new parties in cases where a party dies.

P. G. L., (1860,) art. 93, sec. 88. 1798, ch. 101, sub-ch. 14, sec. 1. 1874, ch. 402.

38. If any person entitled to administration shall deliver or transmit to the orphans' court a declaration in writing that he is willing to decline the trust, the court shall proceed as if such person were not entitled; and in any case in which letters testamentary or of administration have been or may hereafter be granted to any person, either as sole executor or administrator, or as executor or administrator to act in conjunction with another person or with other persons, and such executor or administrator shall be desirous to retire from and resign such appointment after he shall have accepted the same, said executor or administrator may exhibit his petition *ex parte* in the court by which said letters were granted, accompanied by a full and particular account, under oath, of his or her receipts and disbursements, if any, as such executor or administrator; and the said court upon the filing of such petition and accounts shall have jurisdiction in the premises, and shall cause notice to be given by publication in one or more papers of the city or county where such letters were granted, and for such time as the said court may deem proper, of the filing of