

## TESTAMENTARY SYSTEM.

ments or decrees have been passed against the deceased, unless in the high court of chancery, or the general court of the shore, or the court of the county, where the deceased last resided.

19. If a claim be exhibited against an executor or administrator, which he shall think it his duty to dispute or reject, he may retain in his hands assets proportioned to the amount of the claim, which assets shall be liable to other claims, or be delivered up or distributed as hereafter mentioned, in case the claim be not established; and if on any claims exhibited and disputed as aforesaid, the creditor or claimant shall not, within nine months after such dispute or rejection, commence a suit for recovery, the said creditor or claimant shall be for ever barred, and the executor or administrator may plead this act in bar, together with the general issue, or other plea proper to bring the merits of the cause to trial; and, on any dividend to be made nine months after such dispute or rejection, and failure to bring suit, the executor or administrator may proceed to pay, or distribute, as if he had not knowledge or notice of such claim, or as if it did not exist, but if the claim be put in suit within the nine months, it may be ascertained by verdict, or otherwise, and the court shall proceed as herein before directed, regard being had to the rules herein before laid down as to the notice to be given by the executor or administrator, and distribution or payment to be made after such notice.

20. In no case shall an executor or administrator be allowed to retain for his own claim against the deceased, unless the same be passed by the orphans court, and every such claim shall stand on equal footing with other claims of the same nature.

21. The bare naming of an executor in a will shall not operate to extinguish any just claim which the deceased had against him, but it shall be the duty of every such executor, accepting the trust, to give in such claim in the list of debts, and on his failure to give in such claim, or any part thereof, any person interested in the administration may allege the same, by petition to the orphans court granting the administration, and the said court, with consent of the parties, may decide on the same, or it may be referred by the parties, with the court's approbation, or, at the instance of either party, the court may direct an issue or issues to be tried, and the same shall be tried in any court of law proper for the trial, and most convenient under all circumstances; and the court of law shall have power to direct the jury, and grant a new trial, as if the issue or issues were in a suit therein instituted, and a certificate from such court, or any judge thereof, of the verdict or finding of the jury, under the seal thereof, shall be admitted by the orphans court to establish or destroy the claim, or any part thereof; and if the executor shall give in such claim, or the same, or any part, be established as aforesaid, he shall account for the sum due in the same manner as if it were so much money in his hands, and in failure his bond may be put in suit.

22. In like manner it shall be the duty of every administrator to give in a claim against himself, and on giving it, or failure to give it in, there shall be the same proceedings in every respect as are herein prescribed with regard to an executor.

23. No executor or administrator shall discharge any claim against the deceased, (otherwise than at his own risk,) unless the same be first passed by the orphans court granting the administration, or unless the said claim be proved according to the following rules.

### C H A P. X.

*Rules for authenticating or proving claims against a deceased person.*

1. **T**HE voucher or proof of a judgment or decree shall be a short copy thereof, under seal, attested by the clerk, or register of the court, where it was obtained, who shall certify, that there is no entry, or proceeding in the