

a distribution of the surplus had been made among his next of kin. (*m*) It is true, that these matters might, without danger of inaccuracy, have been sufficiently set forth in a more condensed manner and with fewer words; but I cannot consider them as irrelevant, or say that they have been so very diffusively set forth as to amount to impertinences which should be expunged.

But these defendants have exhibited, as a part of their answer, a copy from the records of the Orphans Court of their second administration account, and of the distribution of the surplus of their intestate's estate. This I hold to have been wholly useless and unnecessary; because their administration accounts, or the mode in which they had administered the estate of their intestate, was in no way questioned, or called for by the bill; nor were any such matters involved in the controversy to be determined by the suit at common law, in relation to which dispute alone they were interrogated by the plaintiff. This copy of the account from the Orphans Court must therefore be expunged from this case.

The plaintiff has also objected to what the defendant *Mary* has said in relation to the freight; because what she states could, at most, amount only to a verbal agreement, and the contract of the parties was in writing.

This allegation made by the defendant *Mary*, in the joint and several answer of these defendants, is evidently introduced as an avoidance of so much of the plaintiff's claim; and therefore, could be of no weight on any prayer for relief here; unless sustained by proof. And if offered to be so established, the question would then arise, whether such proof should not be rejected so far as it was attempted to be relied on as giving an interpretation to a written contract; or whether it would not be admitted upon the ground, not of construing, but as an addition to, or alteration of a written agreement.

If the defendant *Mary* were offered as a witness, to prove the facts she states, it might be objected, that she was incompetent; because of having been, at the time she obtained a knowledge of the facts of which she speaks, the wife of the party as to whose contract she testifies; as husband and wife are incompetent witnesses for or against each other, as to all matters occurring during the marriage, as well after as during the coverture. (*n*) If, however,

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(*m*) *Boydell v. Drummond*, 11 East. 144, note; *Leeson v. Holt*, 2 Com. Law Rep. 349; *Wright v. Pülham*, 18 Com. Law Rep. 271.—(*n*) *Nelius v. Brickell*, 1 *Haywood's Rep.* 19; *Doker v. Hasler*, 21 Com. Law Rep. 416.