

1st February, 1832.—BLAND, Chancellor.—This matter standing ready for hearing, and having been submitted by the plaintiff's solicitor on notes, and no one appearing on behalf of the Register of Wills, the proceedings were read and considered.

It may be well to observe, that upon the return of a *subpœna duces tecum* the party, so summoned, may in court object to produce the documents; yet, if the objection is overruled, the court will compel the production; (a) it therefore, becomes necessary to consider whether the cause shewn in answer to the *subpœna* can be deemed sufficient.

It is evident, as well from the pre-existing judicial institutions as from the general complexion of the course of proceedings in the now Orphans Court, that those tribunals have been constituted after the manner, and are regulated by the principles of law derived from the Ecclesiastical Courts of England. And therefore, we shall be more likely to procure light and help from the course of proceeding in those English courts, than from any other source.

The question here presented, is whether the written vouchers or proofs upon which an account has been settled in an Orphans Court can be considered as parts of the records or proceedings of that court? For if they do, then it is clear, that the register or keeper of them cannot be called upon to bring them before this or any other court; because, as constituting a part of the public judicial records of the state, they cannot be removed from the place where they are by law directed to be kept; since copies of all such records are made legal evidence for every purpose, and those copies may be obtained by any one on paying the legal fees. It is however, urged, that even supposing they were required to be deposited with the Register of Wills for safe keeping; yet he may be required to bring them into this court, upon the same principle, that, in England, the Register of the Ecclesiastical Court may be compelled to produce an original will.

A will is an instrument of a peculiar character. It is in some respects like a deed of gift, by which the title to property is passed from one to another without any valuable consideration. A deed of gift takes effect in the life-time of all concerned, who may see to

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(a) *Field v. Beaumont*, 1 Swan. 209; *Ridgely v. Dorsey*.—Ordered, that a *subpœna duces tecum* issue when applied for.—*Proceedings in Chancery*, lib. W. K. No. 1, fol. 97.—*Beall v. Waggoner*.—Summons issued to P. W. Morgan & C. Conner to produce the respective agreements between plaintiff and defendant lodged in their hands or either of them.—*Chancery Proceedings*, lib. S. H. lett. B. fol. 6.