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TURNBULL et al. v. BUFORD.

June 8, 1916.

[89 S. E. 233.]

1. Executors and Administrators (§ 509 (6)*)—Accounts—Reopening.—When fiduciaries, such as certain administrators, commissioners, etc., have settled their accounts in a chancery suit pending for that purpose, and their settlements have been duly confirmed by decree, they are presumed to be correct, and cannot be opened except upon a proper proceeding filed in due time, in which the errors complained of must be specifically pointed out, and the parties affected thereby given an opportunity to be heard and hence a decree in an estate, the administration of which had been before the court since 1874, during which time different accounts of commissioners, etc., had been settled by successive judges, made without any petition for rehearing or any showing of error in any of the settlements sought to be reopened, directing a master commissioner with the aid of a certified accountant to reopen and restate all the settlements, and subsequent decrees carrying into effect the result of the master's investigations, were erroneous.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. §§ 2210-2213; Dec. Dig. § 509 (6).* 5 Va.-W. Va. Enc. Dig. 668.]

2. Court Commissioners (§ 2*)—Investments and Accounts—Fees and Allowances.—In such suit the commissioners appointed by the court to invest and reinvest the funds of an estate under the court's supervision and decree, handling an amount between \$1,600 and \$2,450 during more than 13 years, and themselves acting as attorneys at only \$20 per annum, afterwards raised to \$50 per annum, and who during such time, as shown by the numerous reports, statements, settlements, and decrees in the record, rendered various professional services, were entitled upon the record and upon such other evidence as might be offered by the parties to a reasonable fee for their services as attorneys.

[Ed. Note.—For other cases, see Court Commissioners, Cent. Dig. § 5; Dec. Dig. § 2.* 5 Va.-W. Va. Enc. Dig. 654.]

3. Executors and Administrators (§ 509 (9)*)—Accounting—Charge against Administrator—Change.—In such suit, where the master's report, subsequently confirmed charged the then administrator of the estate with a balance due from him of \$897, which such administrator admitted by paying \$400 thereof to a succeeding administrator, the action of the same master under a later order of reference without authority from the decree or notice to the later commissioners, etc., in relieving the administrator of such charge and charging it against

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

the commissioners, etc., and its confirmation without opportunity to be heard, was erroneous, and the report should have been recommitted with direction to reconsider the action in the light of evidence offered by either party after due notice to the commissioners.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. § 2219; Dec. Dig. § 509 (9)*. 5 Va.-W. Va. Enc. Dig. 653.]

4. Executors and Administrators (§ 511 (1)*)—Accounting—Re-opening Accounts—Charges—Costs.—Where the court, on bill by the executors, had itself directed the investment of the funds of an estate through its commissioners during a long period, and where one qualifying as an administrator, without any petition for a rehearing, or other pleading pointing out errors, procured a decree referring the cause to a master commissioner, with direction to report certain accounts, involving the opening up and restating of numerous accounts and settlements of various executors, commissioners, etc., made and confirmed in the suit, entailing heavy costs especially in paying a public accountant, and where certain former commissioners, etc., wrongfully charged with certain interest, had faithfully administered the funds and were in no way responsible for the costs, it was error to impose upon them any part of the costs.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. §§ 2257, 2259; Dec. Dig. § 511 (1)*. 5 Va.-W. Va. Enc. Dig. 553.]

Appeal from Circuit Court, Brunswick County.

Bill by the executors of W. W. Talley, deceased, for instructions in the administration and investment of the estate. Investment and reinvestment of funds directed under the supervision and decrees of the court through its own commissioners, etc., pending which E. P. Buford, administrator, procured a decree referring the cause to a master commissioner to ascertain and report to the court certain accounts, involving the opening up and restating of numerous accounts and settlements, and resulting in a charge against Robert Turnbull and others, former commissioners, etc., for certain interest, etc., and Turnbull and others appeal. Decrees reversed and set aside, in so far as they affect the appellants, and cause remanded for further proceedings.

N. Turnbull, of Lawrenceville, and *John L. Jeffries*, of Norfolk, for appellants.

Buford & Peterson, of Lawrenceville, for appellee.

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.