

struction which imposes an unlimited liability upon districts failing to maintain approved schools in respect to the payment of the tuition of children who attend such schools elsewhere, it is clear, when the section is read in connection with section 4, that such was not the sense in which the legislature used it. Section 4 defines the duty imposed by section 1; and if the language of section 4 is given its ordinary meaning, the duty imposed by section 1 is limited to paying the tuition of children while they are obtaining a high-school education. Districts which maintain schools approved for a part of a high-school course—say for two years—are only liable for tuition of children for the remaining two years of the course. The fact that districts which maintain schools so approved are only liable for tuition while the children complete the course is conclusive that the legislature intended to limit the duty imposed by the act to the payment of the tuition necessary to enable the children to graduate from an approved school. Since this is so, the act is not intended to benefit children who have graduated from such a school; and consequently it must be held that the Northwood school district is not liable for the tuition of these children, either to the New Hampton Institution, or to the children's parents.

*Case discharged.*

All concurred.

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Strafford, }  
Dec. 26, 1907. }

GEBHARD, *Ex'or*, v. LENOX LIBRARY & a.

The jurisdiction of the court to advise an executor as to his duties will not be exercised during the pendency of proceedings in the probate court for a re-examination of the will.

BILL IN EQUITY, for the construction of the will of Mary S. Durell. Transferred from the February term, 1907, of the superior court by *Wallace, C. J.*

*Daniel Hall*, for the plaintiff.

*Arthur O. Fuller*, specially, for Edward Gebhard.

WALKER, J. It appears that the will was duly proved in common form in March, 1907, that in April, 1907, the defendant,

Edward Gebhard, an heir of the testatrix, filed a petition in the probate court asking for a re-examination of the probate of the will, and that this petition is still pending. The court is, therefore, asked to construe the provisions of a document purporting to dispose of the property of the deceased, while proceedings are pending which may show that its execution was invalid, and that the plaintiff has no title to the estate as executrix and no trust duties to perform. It does not appear that the advice sought will be of use to the plaintiff in the discharge of official duties. In such a case the court will decline to comply with the request for instructions. As held in *Carr v. St. Paul's Parish*, 71 N. H. 231, the jurisdiction of the court to advise in the administration of a trust is not ordinarily exercised unless the advice is necessary for the protection of the trustees.

*Case discharged.*

All concurred.

Hillsborough, }  
Dec. 26, 1907. }

MANSFIELD, *Adm'r*, *v.* HOLTON.

An administrator who assumes management of the decedent's realty, under an agreement with the heir to apply the net income thereof in liquidation of the debts of the estate, is chargeable with the ascertained amount of such income upon a settlement of his administration account; but in the event of a controversy as to the amount received from the property under the agreement, the probate court does not have jurisdiction to determine the question of net income, unless the estate has been decreed to be administered in the insolvent course.

The probate court does not have jurisdiction to inquire into an administrator's management of the decedent's realty until the estate has been decreed to be administered in the insolvent course; and jurisdiction, having once attached by virtue of such decree, is not liable to be defeated by proof that the estate is in fact solvent, but continues in full force until the administration is closed or the decree is set aside.

PROBATE APPEAL, from a decree allowing the plaintiff's first account as administrator *de bonis non* of the estate of Henry Holton, both in this state and in Massachusetts. Transferred from the January term, 1907, of the superior court by *Peaslee, J.*

The personal property of the estate was insufficient to pay the