

for the discovery of facts, by an examination in the probate court, which may be advantageously used as a preliminary step to the institution of a suit for the recovery of property fraudulently withheld from the estate. The statute provides that,

“Upon complaint made to the probate court by an executor, administrator, heir, legatee, creditor, or other person interested in the estate of a person deceased, against any person suspected of having fraudulently received, concealed, embezzled, or conveyed away, any money, goods, effects, or other estate, real or personal, of the deceased, the court may cite such suspected person, though he is executor or administrator, to appear and be examined on oath, upon the matter of the complaint. If the person so cited refuses to appear and submit to examination, or to answer such interrogatories as are lawfully propounded to him, the court may commit him to the jail, there to remain in close custody until he submits to the order of the court.¹ The interrogatories and answers shall be in writing, signed by the party examined, and filed in the probate court.”

Like proceedings may be had upon complaint of a guardian, ward, creditor, or other person interested in the estate of a ward, or having claims thereto in expectancy as heir or otherwise, against any one suspected of having fraudulently concealed, embezzled, or conveyed away any of the estate of the ward. The suspected person may be cited, though he is the guardian.²

The authority given to the probate court by the above provisions extends only to an examination for the purpose of discovery. No other power is given. The examination is not to be controlled by other evidence;

Now, finish with this paragraph ... UCC 3-305 and 3-306 ... claim in recoupment

Every single court case is all about a -feasance ... "profit" or "benefit" [usufruct] resulting from a breach of fiduciary duty ... UCC 3-307

Nonfeasance= civil negligence without malice or intent ; ie: carelessness

Misfeasance = misdemeanor with intent but no "capital loss"

Malfeasance = felony with malice and intent associated with a "capital loss"

Read this paragraph first and keep in mind the proceeding paragraph ... UCC 9-203 (b)(1) what VALUE was given? ... What equity was given to receive equity sought?

Read this paragraph second ... UCC 9-210 (a)(2) ... list of collateral subject to attachment and nature of obligation

¹ Gen. Sts. c. 96, § 6. See Appendix, forms 42, 43.

² Ibid. c. 109, § 30; *Sherman v. Brewer*, 11 Gray, 210.