

## No. 99.

## AN ACT

Relating to Orphans' Courts.

SECT. 1. *It is enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met,* That the judges of the court of Common Pleas of each county, or any two of them, shall compose the Orphans court of such county: *Provided,* That in case of the absence of the president, if any person interested in the business before the court shall request the same to be continued until the president shall attend, such business shall be continued accordingly.

Court constituted.

Provido.

Absence of president.

Declared to be a court of record.

Conclusiveness of its decrees.

Periods of holding the courts.

SECT. 2. The Orphan's court is hereby declared to be a Court of Record, with all the qualities and incidents of a Court of Record at common law; its proceedings and decrees, in all matters within its jurisdiction, shall not be reversed or avoided collaterally in any other court, but they shall be liable to reversal, modification, or alteration, on appeal to the Supreme court, as herein after directed.

SECT. 3. The Orphan's court of the city and county of Philadelphia shall be held during every term of the court of Common Pleas of the said city and county, at such times and as often as the judges thereof shall think necessary or proper; and the Orphan's court of every other county of this commonwealth shall be held during the first week of each term of the court of Common Pleas of the respective county, and at such other times as the judges thereof shall think necessary or proper.

Jurisdiction of court.

SECT. 4. The jurisdiction of the several Orphan's courts of this commonwealth shall extend to and embrace the appointment, control, removal and discharge of guardians, the settlement of their accounts, the removal and discharge of executors and administrators deriving their authority from the register of the respective county, the settlement of the accounts of such executors and administrators, and the distribution of the assets or surplusage of the estates of decedents, after such settlements among creditors or others interested in the sale or partition of the real estate of decedents among the heirs, and generally to all cases within their respective counties, wherein executors, administrators, guardians or trustees are or may be possessed of or undertake the care and management of, or are in any way accountable for any real or personal estate of a decedent, and such

jurisdictions shall be exercised in the manner hereinafter provided.

SECT. 5. The Orphan's court of each county shall have the care of the persons of minors resident within such county, and of their estates, and shall have power to admit such minors when and as often as there shall be occasion to make choice of guardians, and to appoint guardians for such as they shall judge too young or otherwise incompetent to make choice for themselves: *Provided*, That persons of the same religious persuasion as the parents of the minors shall, in all cases, be preferred by the court in their appointment, and such appointment or admission of a guardian by the Orphan's court of the county in which the minor resides shall have the like effect in every other county of this commonwealth as in that by the Orphan's court of which he shall have been so admitted or appointed.

Care of minors and appointment of guardians.

SECT. 6. No executor or administrator shall be admitted or appointed by the Orphan's court guardian of a minor, having an interest in the estate under the care of such executor or administrator: *Provided*, That nothing herein contained shall be construed to extend to the case of a testamentary guardian.

Executors or administrators may not be appointed guardians, &c.

SECT. 7. No appointment of a guardian, made or granted by any authority out of this state, shall authorize the person so appointed to interfere with the estate, or control the person of a minor in this state: *Provided*, That such foreign guardian may, at the discretion of the court, be appointed by the Orphan's court, having jurisdiction on giving security for the due performance of his trust.

No foreign guardian to have authority in this state.

SECT. 8. The Orphan's court, having jurisdiction, whenever they may deem it proper, may require a bond with good and sufficient security, from every guardian of a minor, whether admitted or appointed by the court, or created by will, which bond shall be filed in the office of the clerk of the court, and be considered in trust for all persons interested; the bonds shall be taken to the commonwealth in such penalties as the court shall direct, and the condition shall be in the following form: "The condition of this obligation is such, that if the above bounden, A. B. guardian of C. D. a minor child of E. F. late of deceased, shall, at least once in every three years, and at any other time when required by the Orphan's court for the county of \_\_\_\_\_ render a just and true account of the management of the property and estate of the said minor, under his care, and shall also deliver up the said property, agreeably to the order and decree of the said court, or the directions of law, and shall, in all respects, faithfully perform the duties of guardian of the said C. D. then the above obligation shall be void, otherwise it shall be and remain in full force and virtue:" *Provided*, That nothing

Guardians to give security.

Form of bond.

in this act contained shall be construed to deprive a minor of any action or remedy to which he may be entitled at the common law against his guardian, for any cause whatever.

Guardians to file an inventory.

SECT. 9. Every such guardian shall, within thirty days after any property of his ward shall have come into his hands or possession, or into the hands and possession of any person for him, file in the office of the clerk of the court a just and true inventory and statement on oath or affirmation of all such property or estate.

Guardians to render accounts.

SECT. 10. Every such guardian, whether required by the court to give security or not, shall, at least once in every three years, and at any other time when so required by the court, render an account of the management of the minor's property, under his care, which accounts shall be filed in the office of the clerk of the Orphan's court for the information of the court and the inspection of all parties concerned; and every such guardian, unless previously discharged or removed, shall, on the arrival of his ward at full age, settle in the register's office a full and complete account of his management of the minor's property under his care, including all the items embraced in each partial settlement, and the decree of the Orphan's court upon such final accounts shall, like other decrees of the court, be conclusive, upon all parties, unless reversed, modified or altered, on appeal.

Guardians may be discharged. Proviso. Final settlement.

SECT. 11. The Orphan's court shall have power, upon the petition of any such guardian, to discharge him from the duties of his appointment: *Provided*, That no guardian shall be discharged from his liability for the estate of his ward, until he shall have rendered to the court an account of the management of his trust, nor until the same shall have been submitted to competent persons as auditors, for examination, and their report thereon be confirmed by the court, unless such account shall have been examined by the said court and the appointment of auditors be found necessary; nor until such guardian shall have surrendered the residue of the estate standing upon his account, settled and confirmed as aforesaid, to a subsequent guardian of such ward or to such other person as the court shall appoint to receive such estate. *And provided further*, That in every such case it shall be the duty of the court to appoint some suitable person to appear and act for the ward, in respect to the settlement of such account.

2d proviso. Court to appoint person to appear for ward.

Power of court to remove guardians.

SECT. 12. The Orphan's court shall have power to remove any guardian, whether testamentary or otherwise, on due proof of his mismanagement of the minor's estate, or misconducting himself in respect to the maintenance, education, or moral interests of the minor; in any such case the court shall have power to order the offending guardian to deliver up, assign, transfer and pay over to the successor in the guardianship, or to such persons as the court shall appoint,

all and every the goods, chattels, rights, credits, title, deeds, evidences, and securities whatsoever, belonging to the minor, and in the hands or under the power of the guardians, and to make such other order and decree, touching the premises, as the interest of the minor may require.

SECT. 13. When any one shall die, leaving an infant child or children, without having made an adequate provision for the support and education of such child or children, during their minority, the Orphan's court may direct a suitable periodical allowance, out of the minor's estate, for the support and education of such minor, according to the circumstances of each case, which order may, from time to time, be varied by the court, according to the age of the minor and the circumstances of the case.

The Orphans court may direct maintenance of an infant.

SECT. 14. When an executor, administrator, guardian or trustee shall have in his hands any moneys, the principal or capital whereof is to remain for a time in his possession, or under his control, and the interest, profits or income thereof are to be paid away, or to accumulate, or when the income of a real estate shall be more than sufficient for the purposes of the trust, such executor, administrator, guardian, or trustee may present a petition to the Orphans court of the proper county, stating the circumstances of the case, and the amount or sum of money which he is desirous of investing; whereupon, it shall be lawful for the court, upon due proof, to make an order directing the investment of such moneys in the stocks or public debt of the United States, or in the public debt of this commonwealth, or in the public debt of the city of Philadelphia, or on real securities, at such prices or on such rates of interest and terms of payment respectively as the court shall think fit; and in case the said moneys shall be invested conformably to such directions, the said executor, administrator, guardian or trustee, shall be exempted from all liability for loss on the same in like manner as if such investments had been made in pursuance of directions in the will or other instrument creating the trust: *Provided*, That nothing herein contained shall authorize the court to make an order contrary to the direction contained in any will or other instrument in regard to the investment of such moneys.

The Orphans court may direct the investment of trust moneys.

*Proviso.*  
Not to act contrary to wills.

SECT. 15. No account of an executor, administrator or guardian shall be confirmed and allowed by the Orphans court, except in the cases herein specially provided for, unless it shall appear on the presentation of such account that notice of such presentation has been given, conformably to the directions of the act entitled "An act relating to Registers and Registers courts."

Accounts of executors, &c. not to be confirmed unless notice appear to have been given, &c.

SECT. 16. All accounts presented to the Orphans court by executors, administrators, guardians or trustees, except partial accounts rendered by guardians in pursuance of section the tenth of this act, shall, unless it be otherwise agreed

Accounts of executors, &c. to be examined by the court or referred to auditors. by all parties interested, be examined by the court or referred to suitable persons, not exceeding three in number, to be appointed by the said court, or by the parties where they are all present or duly represented, and competent to agree; and the persons so appointed shall be sworn or affirmed to perform their duties with fidelity, and shall have power to administer oaths and affirmations to parties and witnesses, in all cases referred to them.

Executors, &c. when liable to pay interest. Proviso. **SECT. 17.** No executors or administrator shall be liable to pay interest but for the surplusage of the estate remaining in his hands or power when his accounts are or ought to be settled and adjusted in the registers office: *Provided*, That nothing herein contained shall be construed to exempt an executor or administrator from liability to pay interest where he may have made use of the funds of the estate for his own purposes, previously to the time when his accounts are or ought to be settled as aforesaid.

Amount of interest to be determined by the court. **SECT. 18.** The amount of interest to be paid in all cases by executors, administrators and guardians, shall be determined by the Orphans court, under all the circumstances of the case, but shall not, in any instance exceed the legal rate of interest for the time being.

Auditors to be appointed to apportion assets among creditors. Proviso. **SECT. 19.** Whenever there shall not be sufficient assets to pay all the debts of a decedent, it shall be the duty of the Orphans court having jurisdiction, upon the application of the executor or administrator, to appoint auditors to settle and adjust the rates and proportions of the assets to and among the respective creditors, according to the order established by law: *Provided nevertheless*, That no creditor who shall neglect or refuse to exhibit his account to the executor or administrator within twelve months after public notice given in one or more of the newspapers published in the county in which letters testamentary or of administration may have been granted, or if there be none in such county, then in one or more newspapers published in an adjoining county, and continued in such newspaper for four consecutive weeks, shall be entitled to receive any dividend of such remaining assets.

Further notice may be given of the settlement of accounts. **SECT. 20.** When any of the heirs, legatees, distributees or creditors of a decedent reside out of this state, or out of the United States, or from other circumstances it may be expedient that additional or further notice should be given of the settlement of the account of an executor, administrator, guardian or trustee, or of the distribution of the assets or surplusage of the estate, it shall be in the discretion of the Orphans court to require such further or additional notice to be given by such accountant, as they may think proper, to appear in court, or before the auditors by them appointed, as the case may be, at such times as shall be fixed for the examination of such account, or for the distribution of the assets or the surplusage of the estate.

**SECT. 21.** An executor or administrator may, with the leave

of the Orphans court having jurisdiction, make a settlement of his accounts, so far as he shall have administered the estate committed to him, and the same being confirmed by the court, he may be discharged from the duties of his appointment, and surrender the remainder of the property in his hands, to such person as the court may direct.

Executor or administrator may be discharged.

SECT. 22. Whenever it shall be made to appear to the Orphans court having jurisdiction of the accounts of any executor, administrator or guardian, or to any judge thereof, when such court shall not be in any session, on the oath or affirmation of any person interested, that such executor, administrator or guardian is wasting or mismanaging the estate or property under his charge, or is like to prove insolvent, or has neglected or refused to exhibit true and perfect inventories, or render full and just accounts of such estate or property, come to his hands or knowledge, then and in every such case it shall be lawful for such court, or for such judge thereof, to issue a citation to such executor, administrator or guardian, requiring him to appear, on a day certain, before an Orphans court to be convened for such purpose, if the said court shall not then be in session, and the case shall require despatch, and upon the return of such citation, the said court may require such security of such executor, or such other and further security of such administrator or guardian as they may think reasonable, conditioned for the performance of their respective trusts, which security shall be taken in the name of the commonwealth of Pennsylvania and filed in the said Orphans court, and shall be deemed and considered in trust for the benefit of all persons interested in such estate: *Provided*, That if, in the cases above mentioned, it shall be made to appear to the said court or any judge thereof, on oath or affirmation as aforesaid, that such executor, administrator or guardian is about to remove from this commonwealth, or that the property under his charge may be wasted or materially injured before he can be reached by the ordinary process of the court, it shall be lawful for such court, or such judge thereof, to issue a writ of attachment, under which the same proceedings may take place as in other cases of attachment on mesne process in the Orphan's court; and on the return of such attachment, the court may proceed as on the return to the citation above mentioned.

Delinquent executors, &c. may be required to give security.

Proviso.

SECT. 23. If such executor, administrator or guardian shall neglect or refuse to give such security or such further security so ordered, then the said court shall vacate such letters testamentary or of administration, or remove such guardian, and award new letters, to be granted in such form as the case may require, by the register having jurisdiction upon such security as the court shall think proper; and in the case of a guardian, the court shall proceed to the admission or the

On failure to give security, executors, &c. may be removed.

appointment of a new guardian, according to the circumstances of the case; and the said court shall moreover order the first executor, administrator or guardian to deliver over and pay to his successor all and every the goods, chattels and estates in his hands, of the decedent or minor, as the case may be.

How the order of the court may be enforced against a superseded executor, &c.

SECT. 24. If such superseded executor, administrator or guardian shall neglect or refuse to comply with the order of the court in the premises, the court may proceed against him by attachment, with or without sequestration, or may issue process for the delivery of the trust, property and effects, as is hereinafter provided, or the successor may proceed at law against him and his sureties, if any there be, or against any other person who may be possessed of any goods or chattels belonging to the estate of the decedent or minor, as the case may be, or be indebted to him or the remedies by execution and suit at law may be pursued at the same time, if the case so require, until the end be fully attained.

Proceedings where an executrix marries without securing the minors' portion, &c.

SECT. 25. Whenever it shall be made to appear to the satisfaction of the Orphans court, having jurisdiction as aforesaid, or of any judge thereof, when such court shall not be in session, that an executrix, having minors of her own, or being concerned for others, is married, or like to be espoused to another husband without securing the minors' portions, or real estates, it shall be lawful for such court, or for such judge thereof, to issue a citation to such executrix, or if she shall have been married to another husband, then to her and such husband, requiring her or them, as the case may be, to appear on a day certain, before an Orphans court, to be convened for such purpose, if the said court shall not then be in session, as is herein before provided for in the case of delinquent executors, administrators, or guardians, and on the return of such citation, the said court may require such security to be given by such executrix, or by her husband, if she shall have been married again, as the circumstances of the case may require; and if such executrix, or her husband, as aforesaid, shall fail or refuse to give such security, it shall be lawful for the said court to vacate the letters testamentary, and to award new letters, to be granted by the register having jurisdiction, on such security, as they may think proper.

Proceedings where an executor is a lunatic or habitual drunkard.

SECT. 26. When any executor, administrator or guardian shall have been duly declared a lunatic, or an habitual drunkard, it shall be lawful for the Orphans court having jurisdiction over the accounts of such executor, administrator, or guardian, to vacate the letters testamentary or of administration granted to such executor or administrator, and to remove such guardian, and to award new letters, to be granted in such form as the case may require, by the register, having jurisdiction upon such security as the court shall think proper; and in the case of a guardian, the court shall proceed

to the admission or appointment of a new guardian accordingly; and the court shall also make such order, for the security of the trust property, and for its delivery to the successor of such executor, administrator or guardian, as the circumstances of the case may require.

SECT. 27. When any executor, administrator, or guardian shall have removed from this state, or shall have ceased to have any known place of residence therein, during the period of one year or more, the Orphans court, having jurisdiction of the account of such executor, administrator, or guardian may, on the application of any person interested, and after a citation shall have been returned, served, or published, as is hereinafter provided, make a decree vacating such letters testamentary or of administration, and remove such guardian, and award new letters, to be granted in such form as the case may require, by the register, having jurisdiction, upon such security, as the court shall think proper; and in the case of a guardian, the court shall proceed to the admission or appointment of another guardian accordingly: *Provided*, That no decree, as aforesaid, shall suspend the power, or prejudice the acts of any person who may be joined with such executor, administrator or guardian in the trust.

Proceedings where an executor, &c. has removed from the state, &c.

Proviso.

SECT. 28. Application may be made to the Orphans court, or any judge thereof, in the cases mentioned, in the twenty-third section of this act, by any surety in the bond of such executor, administrator or guardian, and upon such surety making oath or affirmation, as required in that section, the like proceedings may be had for the purpose of compelling such executor, administrator or guardian to give security, and thereupon the court may order such executor, administrator or guardian to give such counter securities as they shall judge necessary to indemnify him against loss by reason of his suretyship; and if such executor, administrator, or guardian shall refuse or fail to give such security, within such reasonable time as the court shall order, it shall be lawful for the court to direct such executor, administrator or guardian, to pay, or deliver over forthwith to such surety, or to some other person for him, all goods, chattels, effects and securities whatsoever, for which such surety may be accountable: *Provided*, That such surety shall first give, to the satisfaction of the court, sufficient security, faithfully to preserve and account therefor, and deliver and dispose of the same according to the order of the said court.

Relief may be given in the case of a surety.

Proviso.

SECT. 29. It shall be the duty of the prothonotary of the courts of Common Pleas of the respective counties, to file and docket, whenever the same shall be furnished by any parties interested, certified transcripts or extracts, of the amount appearing to be due from or in the hands of any executor, administrator, guardian, or other accountant, on the settlement of their respective accounts in

Balances due by executors, when certified to the Common Pleas to constitute a lien.

the Orphans court, which transcripts or extracts, so filed, shall constitute liens on the real estate of such executor, administrator, guardian, or other accountant, from the time of such entry until payment, distribution, or satisfaction; and actions of debt or scire facias may be instituted thereon, by any person or persons interested, for the recovery of so much as may be due to them respectively: *Provided however*, That the liens thereby created shall cease at the expiration of five years from the time of the entry aforesaid, unless revived by scire facias in the manner by law directed, in the cases of judgments in the courts of common law: *And provided further*, That in case of an appeal from the Orphans court, the liens shall be for no more than for the amount finally found due and decreed in the Supreme court, and it shall be the duty of the prothonotary of the Common Pleas, on such decree of the Supreme court being certified to him to enter on his docket the amount so found due and decreed by the Supreme court, and if such amount be greater than that decreed by the Orphans court, the lien for such excess shall take effect only from the time of entering the decree of the Supreme court; but if the amount be reduced by the final decree of the Supreme court, the prothonotary shall reduce the amount originally entered on his judgment docket and index accordingly, and such final decree, upon appeal being certified and filed in the said court of Common Pleas, the said term of five years shall be counted from the time of such entry.

Proviso.

2d proviso.

Satisfaction to be acknowledged of such lien.

SECT. 30. When the executor, administrator, guardian, or other accountant shall have fully paid and discharged the amount of such lien, the parties who have received payment shall acknowledge satisfaction thereof, to the extent of what they have received, on the record of the court of Common Pleas; and in case of neglect or refusal so to do, for the space of thirty days after request in writing and tender of all the cost, such party shall forfeit and pay to the party aggrieved, the sum of fifty dollars, absolutely, and any further sum not exceeding the amount by such person received, as shall be assessed by a jury on a trial at law; or the Orphans court, on due proof to them made, that the entire amount due from such executor, administrator, guardian, or other accountant, according to the final settlement of the said account, has been fully paid and discharged, may make an order for their relief from such recorded lien, which order, being certified to the court of Common Pleas, shall be entered on their records, and shall enure and be received as a full satisfaction and discharge of such lien.

Power of the Orphans court to authorize a sale or mortgage of real estate.

SECT. 31. The Orphans court which possesses jurisdiction of the accounts of an executor, administrator, or guardian, shall have power to authorize a sale or mortgage of real estate by such executor, administrator or guardian, in the following cases, viz:

I. On the application of the executor or administrator, setting forth that the personal estate of the decedent is insufficient for the payment of debts and maintenance and education of his minor children, or for the purpose of paying the debts alone. 1st case.

II. On the application of such executor or administrator, or of any person interested, setting forth, that on the final settlement of the administration account, it appears that there are not sufficient personal assets to pay the balance appearing to be due from the estate of such decedent, either to the accountant or others. 2d.

III. On the application of a guardian, setting forth that the personal estate of the minor is insufficient for his maintenance and education, or for the improvement and repair of other parts of his real estate, or that the estate of said minor is in such a state of delapidation and decay, or so unproductive and expensive, that it would be to the interest and benefit of said minor, in the judgment of said court, that the said estate should be sold, and the Orphans court of the county wherein any such real estate may be situate, shall have the same authority to direct a sale in this latter case, as in the cases particularly mentioned in the thirty-second section of this act.

SECT. 32. When the real estate, with respect to which, application shall be made to the Orphans court, in the cases mentioned in the preceding section, is situated in the same county, the said court may order the sale or mortgage of such part, or so much of such real estate as to them shall appear necessary, when the real estate is situated in another county or counties, or in the same and another county or counties, and the Orphans court which possesses jurisdiction over the accounts of such executor, administrator or guardian, shall be satisfied of the propriety of a sale or mortgage of some portion of such real estate not within their jurisdiction, it shall be lawful for such court to make a decree, authorizing such executor, administrator or guardian, to raise so much money as the said court may think necessary, from real estate situated in such county or counties as they may designate; and thereupon, it shall be the duty of the Orphans court of the county wherein the real estate so designated is situated, upon the petition of such executor, administrator or guardian, to make an order for the sale or mortgage, as they shall think expedient, of so much, and such parts of such real estate, as shall, in their opinion, be necessary to raise the specified sum; and such executor, administrator or guardian, shall in all cases make return of his proceedings in relation to such sale or mortgage, to the Orphans court of the county in which the real estate so sold or mortgaged lies, when, if the same be approved by the court, it shall be confirmed. Manner of proceeding on application for sale of land.

Inventory to be filed before order of sale can be granted.

SECT. 33. That no authority for the sale or mortgage of real estate, lying in the same or another county or counties, shall be granted, until the executor, administrator or guardian, as the case may be, shall have exhibited to the said court a true and perfect inventory and conscionable appraisement of all the personal estate whatsoever of the decedent or minor, as the case may be, together with a full and correct statement of all the real estate of such decedent or minor, wherever situated, which has come to his knowledge; and also, in the case of an executor or administrator, a just and true account upon oath or affirmation, of all the debts of the decedent which have come to his knowledge; nor in any case shall such authority be granted, until such executor, administrator or guardian, shall have filed in the office of the clerk of the said court, a bond, with sufficient security, to be approved of by the court, conditioned for the faithful appropriation of the proceeds of such sale or mortgage, according to their respective duties: *And provided further*, That no real estate contained in any marriage settlement, shall, by virtue of this act, be sold or disposed of contrary to the form and effect of such settlement, and that the mansion house or most profitable part of the estate, shall be reserved to the last.

Proviso.

The Orphans court may appoint auditors on application for sale of land.

SECT. 34. In all cases where an application shall be made to any Orphans court, for a decree authorizing the sale or mortgage of real estate, under any of the provisions contained in this act, the court may appoint suitable persons to investigate the facts of the case, and to report upon the expediency of granting the application, and the amount to be raised by such sale or mortgage; and upon such report being made, the court may decree accordingly.

Widow's election of dower or otherwise.

SECT. 35. In every case of a devise or bequest to a widow, which by force of any last will and testament, or by operation of law, will bar such widow of dower, subject to her right of election of dower, or of the property devised or bequeathed, it shall be lawful for the Orphans court, on the application of any person interested in the estate of the decedent, to issue a citation at any time after twelve months from the death of the testator, to any such widow, to appear at a certain time not less than one month thereafter, in the said court, to make her election, either to accept such devise or bequest in lieu of dower, or to waive such devise or bequest and take her dower, of which election a record shall be made, which shall be conclusive on all parties: if the widow shall neglect or refuse to appear upon such citation, then upon due proof to the court of the service thereof, the said neglect or refusal shall be deemed an acceptance of the devise or bequest, and a bar of dower, of which a record shall be made, which shall be conclusive on all parties concerned.

SECT. 36. The Orphans court of the county where the real estate of a decedent is situate, shall have power, on the application of the widow or any lineal descendant of the decedent having an interest in such real estate, if of full age, or if under age on the application of his guardian, to appoint seven or more disinterested persons, chosen on behalf and with consent of the parties, or when the parties cannot so agree to award an inquest, to make partition of the real estate of such decedent; and upon the return made by the persons so appointed, or of the inquisition taken, to give judgment that the partition thereby made be firm and stable forever, and that the costs thereof be paid by the parties concerned.

Partition,  
power of the  
court to au-  
thorize.

SECT. 37. When any such estate cannot be divided among the lineal descendants as aforesaid, or the widow and such lineal descendants, without prejudice to or spoiling the whole, the said seven or more persons, or the said inquest as the case may be, shall make and return a just appraisement thereof to the Orphans court, and thereupon, but not otherwise, the said court may order the same

Partition pro-  
ceedings  
where the es-  
tate cannot be  
divided:

I. To the eldest son, if he be living; but if he be dead, to his children, if any, in the order of their birth, and preferring males to females; and in like manner to his other lineal descendants in the same order.

II. If the eldest son, or his lineal descendants, do not accept the same, then to the second and other sons, or their lineal descendants successively, in the order of birth, in like manner as is provided for the eldest son and his descendants.

III. If the second or other sons, or their descendants, do not accept the same as aforesaid, then to the eldest daughter or her lineal descendants, in like manner as is provided in the case of the eldest son.

IV. If the eldest daughter, or her lineal descendants, do not accept the same, then to the second and other daughters, or their lineal descendants successively, in like manner as is provided for the second and other sons.

In every such case, the party accepting the same, or some one on his behalf paying to the other parties interested their proportionable parts of the value of such estate, according to the just appraisement thereof, made in manner aforesaid, or giving good security by recognizance or otherwise, to the satisfaction of the court for the payment thereof, with legal interest in some reasonable time, not exceeding twelve months, as the court may direct; and the persons to whom or for whose use payment or satisfaction shall be so made, in any of the cases aforesaid, for their respective parts or shares of such real estate, shall be forever barred of all right or title to the same.

Partition proceedings to effect equality of partition.

SECT. 38. When equal partition in value cannot be made by the seven men appointed as aforesaid, or by the said inquest, they shall make a just appraisement of the respective purparts or shares in which they may divide the estate, and thereupon the court may order the said purparts or shares successively to the persons entitled to make choice therefrom, in the order and according to the rules enacted in the preceding section, where the estate cannot conveniently be divided; and they shall award that one or more purparts or shares shall be subject to the payment of such sum or sums of money as shall be necessary to equalize the value of the said purparts, according to the said appraisement thereof; which sum or sums of money shall be paid, or secured to be paid, by the several persons accepting such purparts, in the manner prescribed in the foregoing section.

Partition proceedings where the estate cannot be divided into as many parts as heirs.

SECT. 39. When such estate cannot conveniently be divided into as many shares as there are parties entitled, the seven men appointed as aforesaid, or the said inquest shall make a just appraisement of the respective purparts or shares, into which they may divide the estate, and thereupon the court may order the shares successively to the parties entitled, to make choice therefrom, in the order and according to the rules hereinbefore provided for the case where the estate cannot conveniently be divided, they or some one in their behalf, paying or securing to be paid to the other parties interested, their respective parts of the value thereof, in the manner prescribed as aforesaid.

Partition, the court to grant a rule on the heirs to accept or refuse their shares.

SECT. 40. In all cases of appraisement or partition mentioned in the preceding section, the Orphans court shall on application, grant a rule on all persons interested, to come into court at a certain day by them to be fixed, to accept or refuse the estate or a share or portion thereof, as the case may be, and in case the party entitled to a choice, do not come into court in person or by guardian or attorney duly constituted, or in case he shall refuse the same, a record shall be made thereof and the court may and shall direct the same to be offered to the next in succession, according to the rules hereinbefore provided.

Partition, the widow's share to remain a charge.

SECT. 41. Should the widow of the decedent be living at the time of the partition, she shall not be entitled to payment of the sum, at which her purpart or share of the estate shall be valued, but the same together with interest thereof shall be and remain charged upon the premises, if the whole be taken by one child or other descendant of the deceased, or upon the respective shares if divided as hereinbefore mentioned, and the legal interest thereof, shall be annually and regularly paid by the persons to whom such real estate shall be adjudged, their heirs or assigns holding the same according to their respective portions to the said widow during her natural life, in lieu and full satisfaction of her dower at com-

mon law, and the same may be recovered by the widow by distress or otherwise, as rents in this commonwealth are recoverable, on the death of the widow the said principal sum shall be paid by the children, or other lineal descendants to whom the said real estate shall have been adjudged, their heirs or assigns holding the premises to the persons thereunto legally entitled.

SECT. 42. Upon an appraisement or valuation of real estate made as is hereinbefore provided, should all the heirs neglect after due notice, or refuse to take the same at the valuation, the court shall on the application of any one of the heirs, grant a rule upon the other heirs and others interested to show cause why the estate so appraised should not be sold, which rule shall be returnable at the next regular session of the court, or at such subsequent period as the court having respect to the circumstances of the case may direct, and notice of such rule shall be given in the manner provided in this act for other notices to heirs; on the return of such rule, the court may on due proof of notice to all persons interested, make a decree authorizing and requiring the executor or administrator, as the case may be, to expose such real estate to public sale at such time and place and on such terms as the court may decree: *Provided*, That the rule to show cause herein directed may be dispensed with by the court on the application of all the heirs if of full age, and of the guardians of such as are minors for such decree, and notice of such sale shall be given by the executor or administrator, in the manner provided in this act for other notices of sale.

Partition, the estate may be sold if all the heirs refuse or neglect to take.

Proviso.

SECT. 43. Where a decree for the sale of real estate shall be made by the Orphans court, in the event provided for in the preceding section, the court shall direct that the share of the widow, if there be one, of the purchase money, shall remain in the hands of the purchaser during the natural life of the widow, and the interest thereof shall be annually and regularly paid to her by the purchaser, his heirs and assigns, holding the premises, to be recovered by distress or otherwise as rents are recoverable in this commonwealth, which the said widow shall accept, in full satisfaction of her dower in such premises, and at her decease, her share of the purchase money shall be paid to the persons legally entitled thereto.

Partition, the widow's share of the purchase money to remain a charge.

SECT. 44. When the lands, in respect to which application for partition shall be made to the Orphans court as aforesaid lie in one or more adjoining tracts, in different counties, it shall be lawful for the Orphans court of the county in which the principal mansion is situate, or if there be no mansion or building on the lands, then the court of the county in which the greatest part of the land lies, on the application of any person interested, either to proceed by the

Partition, lands lying in different counties.

appointment of seven or more men agreed on by the parties, or to issue their writ to the sheriff of the county within the jurisdiction of the court, specifying the lands of which a partition or valuation is to be made, and thereupon the said sheriff shall summon an inquest to divide or value the said lands in the same manner as if the whole were within his proper bailwick; and upon the return thereof, or upon the return of the seven or more men appointed by consent, as aforesaid, the court may further proceed therein, in all respects, as if all the said lands were in the proper county, and any recognizance taken in pursuance of such proceedings, shall be as effectual, to all intents and purposes, as if the lands bound by it were wholly within the county where such recognizance is taken: *Provided*, That an exemplification of the proceedings which may be had shall, within twenty days after the final decree therein, be delivered to the clerk of the Orphans court of each county in which the application shall not have been made, and in which any part of the said lands are situate which shall be entered on the records of such court at the joint expense of all parties concerned.

Partition,  
heirs not entit-  
led to elec-  
tion in more  
than one coun-  
ty.

SECT. 45. In any case where one of the heirs of a decedent has elected to take the real estate of such decedent in one county, or any share thereof, if divided into shares, such heir shall not have the right of preference or election to take the real estate or any share thereof in any other county, or any other share in the same county, until all the other heirs shall have neglected, after due notice, or refused to take the same at such valuation.

Partition, col-  
lateral heirs  
entitled to  
partition.

SECT. 46. When the decedent leaves no lineal descendants, the like proceedings shall be had in all respects on the application of the persons in whom the estate shall vest in possession: *Provided*, That if there be a life estate or life estates with remainders over such remainder, men shall be made parties to the proceedings in partition, and shall have the right to accept or refuse the premises, at any valuation that may be made by seven men, appointed as aforesaid, or by an inquest in the same manner as the lineal descendants of a decedent, such remainder men being bound by recognizance or other sufficient security, according to the direction of the court, for the payment of the annual interest to the tenant or tenants for life, and thereupon the court shall give judgment, that the partition so made between them be and remain, firm and stable for ever, and that the costs thereof be paid by the parties concerned.

Executors &c.  
may make  
deeds for  
property sold  
by predeces-  
sors,

SECT. 47. In all cases where a sale shall be made by an executor, administrator or guardian, under an order of the Orphans court, and such executor, administrator or guardian, shall be removed by the court, or shall die, or become insane, or otherwise incapable, before a conveyance is made to the purchaser, it shall be lawful for the succeeding adminis-

trator of the decedent, or for the successor in the guardianship as the case may be, such succeeding administrator or guardian having given security, to be approved of by the said court, for the faithful appropriation of the proceeds of such sale, to execute and deliver to the purchaser a deed of conveyance for the estate, so sold on the purchasers full compliance with the terms and conditions of sale, but if within three months after such sale, there shall be no such succeeding administrator or guardian having given security as aforesaid, it shall be the duty of the Orphans court, on petition of the purchaser, to direct the clerk of the court to execute and deliver to the purchaser the necessary deed of conveyance, on his full compliance with the terms and conditions of sale, paying into court the monies payable, and delivering to the clerk the securities required by the said terms and conditions, which monies and securities shall remain subject to the disposition of the court; every deed made in pursuance of, and agreeably to the provisions of this act, shall vest the property therein described in the grantee, as fully and effectually as if the same had been made by the persons who may have sold any such estate, circumstanced as aforesaid; the like proceedings may be had where an executor, administrator or guardian, shall neglect or refuse to execute and deliver such deed for the space of thirty days, after due notice of an order of the court, requiring him to execute the same.

Or clerk of court may convey in certain cases.

SECT. 48. When, upon any proceedings in the Orphans court, a sum of money shall be awarded by the court for the share or portion to which a married woman may be entitled, such money shall not be paid to her husband until he shall have given security, to the satisfaction of the court, that the amount thereof, or so much thereof as the court shall deem proper, be paid after his death to his wife, or, if she shall not survive him, to her heirs, as if the same were real estate; or, if the husband shall be unable, or refuse to give security as aforesaid, the same may be vested in trustees, to be approved by the court, for the same purposes, but reserving to the husband the interest thereof during his life, unless the husband shall desire the same to be settled for the separate use of the wife: *Provided always*, That if the wife, being of full age, on a separate examination, the husband not being present, shall declare before one of the judges of the same court, or, if not resident in the county, before a judge of a court of record in the county or place where she may reside, that she does not require such monies to be so secured, and that she makes this declaration freely and voluntarily, without any threats or compulsion on the part of her husband, the full contents and legal effects of such declaration being first made known to her by the judge, and the said declaration and acknowledgement be certified by the same judge, and filed of

Interest of a married woman how secured.

Proviso.

Form of declaration.

record in the said orphans court, then and in such case, the husband shall not be required to secure the said monies in manner aforesaid: The form of such declaration shall be as follows: *Whereas*, I, A. B., the wife of C. B., am entitled to the sum of \_\_\_\_\_ proceeding from the sale (or partition) of the real estate of D. E., in the county of \_\_\_\_\_

Now, I do certify and declare, that I consent and agree that the same be paid to my husband, the said C. B., without any condition or security whatever. Witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_ &c. The form of the certificate to be given by the judges, shall be as follows: On the \_\_\_\_\_ day of \_\_\_\_\_ A. D. \_\_\_\_\_ personally appeared before me, one of the judges of the (Orphans court) for the county of \_\_\_\_\_ A. B., the wife of C. B., of [*here insert his residence and occupation*] who, being of full age, and by me examined, separate and apart from her said husband, and the contents and legal effect of the foregoing instrument, by me fully explained and made known to her, declared that she executed the same freely and voluntarily, without any threats or compulsion on the part of her husband or any other person. Witness my hand and seal, the day and year above written.

Proceedings where there are liens upon the parts of heirs.

SECT. 49. In all cases where, in consequence of proceedings in partition, the share or any part thereof of an heir in real estate, shall be converted into money, either by reason of the impracticability or inequality of partition, or by virtue of a sale or otherwise, the Orphans court, before making a final decree confirming the partition or sale as aforesaid, may appoint a suitable person as auditor, to ascertain whether there are any liens or other incumbrances on such real estate, affecting the interests of the parties; and if it shall appear by the report of such auditor or otherwise, that there are such liens, the said court may order the amount of money which may be payable to any of the parties against whom liens exist, to be paid into the court, and shall have the like power as to the distribution thereof among lien creditors or others, as is now exercised by the courts of common law where money is paid into court by sheriffs or coroners; and where recognizances or other security shall be given for the payment of money, the court may make an order on the party giving such recognizances or other security, to pay the amount thereof into court, when the same shall become due, to be distributed in like manner among the persons holding liens at the time of the partition.

Satisfaction to be acknowledged when a recognizance is discharged.

SECT. 50. Where a recognizance hath heretofore been, or shall hereafter be taken in any Orphans court, on the acceptance of the real estate of a decedent at the valuation or appraisement thereof, as herein before provided for, and the same, or any part thereof, shall be satisfied or paid to the person or persons interested therein, his, her or their agent

of attorneys, any such persons so having received satisfaction of the amount coming to him, shall enter an acknowledgment thereof upon the record of such court, which shall be satisfaction and discharge of the said recognizance, to the amount acknowledged to be paid; and the recognizance shall cease to be a lien on the real estate of the conusor to a greater amount than the principal and interest actually remaining due.

SECT. 51. If any person who shall have received satisfaction as aforesaid, for his claim or lien, secured by such recognizance, shall neglect or refuse to enter upon the record his acknowledgment thereof, upon the written request of the owner of the premises, bound by such recognizance or of any part thereof, or of his legal representatives or other person interested therein, on tender of all the costs for entering such acknowledgment within sixty days after such request and tender as aforesaid, such person, for every such default, shall forfeit and pay to the party aggrieved the sum of fifty dollars, absolutely, and any further sum not exceeding the amount by such person received, as shall be assessed by a jury on a trial at law; or the Orphans court, on due proof to them made that the entire amount due to any heir, legatee, or distributee, shall have been fully paid and discharged, may make an order for the relief of such person from any recognizance or other recorded lien; which order, being certified to the proper court where such lien may appear, shall be entered on their records, and shall enure and be received as a full satisfaction and discharge of the same.

Penalty for not entering satisfaction.

SECT. 52. In all cases in which heirs, legatees, or distributees are interested, and in consequence of such interest notice shall be required to be given to them or any of them, of any proceedings in the Orphans court, such notice shall in all cases be given in the manner following, except in the case of the accounts of executors or administrators, and other cases specially provided for, viz: To all persons resident within the county in which the court has jurisdiction, notice shall be given personally, or by writing left at their place of abode; to all persons resident without the county, personal notice as aforesaid shall be given, if in the opinion of the court such notice be reasonably practicable; if otherwise, by publication in such one or more newspapers as, in the opinion of the court, will be most likely to meet the eye of those entitled to notice.

Notices to heirs, legatees and distributees.

SECT. 53. In all cases in which proceedings may be had in the Orphans court, affecting the interest of any minor, notice of such proceedings shall be given to the guardian of such minor, if such guardian be resident within the county, or within forty miles of the seat of justice of the county, in the same manner as is herein provided for in the case of resident persons of full age; but if such minor have no guar-

Notices in the case of minors.

dian, it shall be the duty of the party making application to the Orphans court, to cause notice of such application to be given to the minor, if above the age of fourteen years, or if under that age, to the next of kin of full age: *Provided*, such minor, or next of kin, be resident within the county, or within forty miles of the seat of justice thereof; and if, at the next session of the Orphans court, application shall not have been made on the part of such minor, praying for the appointment of a guardian, it shall be the duty of the court to appoint a suitable person as guardian, on whom notice shall be served in all cases in which notice shall be requisite.

Proviso.

Notice of the sale of real estate.

SECT. 54. Whenever, by the provisions of this act, it shall be lawful for the Orphans court to order the sale of real estate, public notice of such sale shall be given by the executor, administrator or guardian, as the case may be, at least twenty days before the day appointed therefor, by advertisement in at least one newspaper published in the county, if there be one, or if there be none, then in an adjoining county; and in all cases, notice shall also be given by handbills, affixed in at least three of the most public places in the vicinity of such estate.

Power to send an issue to the Common Pleas.

SECT. 55. The Orphans court shall have power to send an issue to the court of Common Pleas of the same county, for the trial of facts by a jury, whenever they shall deem it expedient so to do.

Power to examine accountants, &c. on oath, and to compel the production of books and papers.

SECT. 56. The Orphans court or any auditors appointed by them, shall have power to examine on oath or affirmation, any of the parties, to any proceedings instituted in such court, respecting any matter in dispute in such proceedings, and the said court, shall have power to compel the production of any books, papers, or other documents, necessary to a just decision of the question before them, or before auditors.

Process of the Orphans court.

SECT. 57. The manner of proceeding in the Orphans court, to obtain the appearance of a person amenable to its jurisdiction, and to compel obedience to its orders and decrees, shall be as follows:

§I. On the petition to the court, of any person interested, whether such interest be immediate or remote, setting forth facts necessary to give the court jurisdiction, the specific cause of complaint, and the relief desired and supported by oath or affirmation, the Orphans court or any judge thereof in vacation, may award a citation returnable at a day certain, not less than ten days after the issuing thereof.

§II. Such citation may be served by the party obtaining the same, or by any authorized agent, or if required by the party, it shall be served by the sheriff or coroner, as the case may require of the proper county.

§III. The manner of service shall be by giving a copy thereof to the defendant personally, or by leaving such

copy with some member of his family, at his last place of abode.

§IV. If the defendant be not found, and have no known dwelling place within the county, such citation may be served in like manner upon the person or persons, who may be the surety or sureties of such party, in any bond or recognizance given by him, for the performance of any trust or duty in respect to which such citation may have issued.

§V. The return to a citation, if made by the party on whose petition it issued, or his agent as aforesaid shall be on oath or affirmation, and in all cases of service, the return shall state how such citation was served.

§VI. If the party to be cited cannot be found, and have no known dwelling place within this commonwealth, and there is no surety on whom service of the citation can be made as aforesaid, and the facts shall be so stated in the return on oath or affirmation by the party complaining, or by some one competent to make affidavit in that behalf, the Orphans court may award another citation, returnable in like manner with the first.

§VII. At the time of awarding such second citation, the court may make an order for publication of the same in two or more newspapers, to be designated by the court in such place or places and for such length of time as the court, having regard to the supposed place of residence of the defendant, and other circumstances, shall direct.

§VIII. At the time appointed for the appearance of the defendant, should he not appear, according to the requisition of the citation, and if due proof be made of the service thereof, or when service cannot be made, of the publication thereof, as hereinbefore prescribed, the court may, with or without another citation, as justice may require, proceed to make such order or decree in respect to the subject matter as may be just and necessary.

§IX. It shall be lawful for the court, on such proof, to order that the petition of the complainant be taken as confessed, and to direct a reference to an auditor or auditors to take proof of the facts and circumstances set forth in the petition, and to report thereon, and also to report an account against such defendant if necessary.

§X. On the report of the auditor or auditors the court shall make such order or decree thereon as may be just and necessary.

§XI. Compliance with an order or decree of the court may be enforced by attachment or sequestration, or in case of a decree for the payment of money, against a party who has appeared, the complainant may have a writ of execution in the nature of a writ of fieri facias, which writs may be allowed by the court or by any judge thereof, in vacation.

§XII. Writs of attachment and sequestration shall be directed to and executed by the sheriff or coroner, as the case may require, of the proper county.

§XIII. Writs of sequestration shall be in the following form:

Form of writ.	The Commonwealth of Pennsylvania, To the sheriff of the county of	Greeting:
	<i>Whereas</i> , A. B. (here set out the <i>decrée</i> , or so much thereof as is material to explain the duty to be performed.)	
	Therefore we command you that you do, at proper and convenient hours in the day time, go to and enter upon all the messuages, lands, tenements, and real estate of the said A. B. and that you do collect, take, and get into your hands, not only the rents, issues, and profits of all his said real estates, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands; and also that you attach all stocks held by him in incorporated companies, and keep the same under attachment until our said Orphans court shall make other order to the contrary; and you are to return with this writ an inventory or schedule of the property you have sequestered or attached, and a certificate under your hand of the manner in which you shall have executed this writ, to our said court, on the _____ day of _____ next. Witness, &c.	

§XIV. A sequestration shall not abate by the death of the complainant or defendant.

§XV. It shall be the duty of the sheriff or coroner, as the case may be, immediately after receiving any such writ of sequestration, to file a copy thereof in the office of the prothonotary of the court of Common Pleas of the same county, who shall, forthwith, enter the substance thereof on his docket, with the names of the parties, and the entry thereof shall thenceforward operate to charge the real estate of the defendant, according to the form and effect of such writ, and shall bind the same in the hands of all purchasers and mortgagees, subsequently to such entry, without other notice; *Provided*, That if such sequestration shall be dissolved by the order of the Orphans court, the defendant, or any person interested in such real estate, may have a certificate of the same from the clerk of the said court, which it shall be the duty of such clerk to furnish, on application, and which, being entered on the docket, shall have the effect of a satisfaction of such lien.

§XVI. Writs of fieri facias shall be directed to, and executed by the sheriff or coroner, as the case may require, of the proper county, and the proceedings thereon shall be the same as on writs of fieri facias issued by the court of Common Pleas of the same county.

§XVII. When proof shall be made on oath or affirmation,

to the satisfaction of the court if in session, or to any judge thereof in vacation, at the time of filing a petition as aforesaid, that the defendant has absconded, or is about to abscond or depart from his usual place of abode, to the prejudice of the complainant, it shall be lawful for the court or for such judge to allow the issuing of a writ of attachment, or a writ of sequestration, or both in the first instance, against such defendant, and on the return thereof, the like proceedings may be had as are authorized on the return of a citation.

§ XVIII. If such attachment or sequestration, issued in the first instance, be executed, the court, or any judge thereof in vacation, may dissolve the same, on the defendant giving security, to the satisfaction of the court, or of such judge, to appear on a day certain, to answer to the petition and to abide the orders and decrees of the court in the premises.

§ XIX. When proof shall be made on oath or affirmation, to the satisfaction of the court, or of any judge thereof in vacation, at the time of presenting a petition or at any stage of the cause, that the defendant therein named has in his possession, trust, property or effects, which he is wasting, or otherwise disposing of contrary to his duty and trust, or that he is about to abscond, and carry such trust, property or effects, out of the jurisdiction of the court, it shall be lawful for the court, or such judge in vacation, to award a writ in the name of the commonwealth, to the sheriff or coroner, as the case may require, of the proper county, returnable on a day certain, to an Orphans court, to be convened for the purpose, if the said court shall not then be in session, commanding him to take possession of all such trust, property and effects specified in such writ, and to hold the same subject to the order of the court, and also, to attach all debts due to such trust, whether by bond, mortgage or otherwise, and all stocks in incorporated companies, and serve a copy of such writ upon each debtor, and upon each company in which stock may be held, belonging to the trust as aforesaid: *Provided*, That before the execution of such writ, the sheriff or coroner, as the case may be, may require of the party at whose instance such writ may have been issued, sufficient security to indemnify him against any damages arising from the execution thereof: *And provided also*, That if the party, against whom such writ may issue, shall give sufficient security to such sheriff or coroner, that the trust property or effects specified in such writ, shall be forthcoming at the return thereof, then such sheriff or coroner, shall not execute the same, but shall make return of the facts to the court.

§ XX. The like proceedings may be had, where the court has made a final order and decree, for the delivery of the trust, property and effects by the defendant to any persons,

who may be designated by law, or by the order of the court to receive them.

§XXI. On the return of such writ, the court may take such order respecting the disposition of such trust, property and effects, as may be necessary and proper, according to the principles of justice and equity.

§XXII. When a decree shall have been had against any defendant, who shall not have appeared according to the requisitions of the citation, and a sequestration shall have issued against the real or personal estate of such defendant, the court may order the decree to be satisfied out of the estate, and effects sequestered: *Provided*, That such order shall not be carried into execution, until the complainant shall have given security to the satisfaction of the court to abide the order of the court, touching the restitution of what he may have received, in case the defendant shall appear, and be admitted to defend the suit, but if such security shall not be given, the estate and effects sequestered, or the proceeds thereof, shall remain subject to the directions of the court to abide its further order.

§XXIII. If the defendant against whom such decree shall have been made, or his representatives shall within one year after personal notice of such decree, and within five years after the entry thereof, when no such notice shall have been given, present a petition to the same court praying to be admitted to be heard, and shall pay such costs as the court shall adjudge, the party so petitioning shall be admitted to a defence, and the case shall then proceed in like manner as if such defendant had appeared in due season, and no decree had been made.

§XXIV. If such defendant or his representatives, shall not within such period present a petition as aforesaid, the court may make such final order and decree, both in respect to any estate or effects that may have been sequestered, and in respect to the matters in controversy in the case, as may be according to justice and equity, and may, if necessary, award a writ in the nature of a *feri facias*, in the manner herein before provided, as in the case where the defendant appears.

§XXV. When any executor, administrator or guardian, shall reside or move out of the county in which his appointment shall have taken place, or shall not possess real or personal estate in such county, sufficient to satisfy any decree or order of the Orphans court of such county, it shall be lawful for the Orphans court of such county to issue process to the county in which such executor, administrator or guardian, may be, or in which he may have any real or personal estate, amenable to such process, and such process shall be executed by the sheriff or coroner, as the case may

require, of the county in which such executor, administrator or guardian may be, or may possess real or personal estate as aforesaid.

SECT. 58. The several Orphans courts shall have power to fix the return days of all process issuing out of the respective courts, whenever such return days are not otherwise provided for by law, and from time to time to make rules for the regulation of the practice of such courts, not inconsistent with this act.

Practice of  
the Orphans  
court.

SECT. 59. Any person aggrieved by a definitive sentence or decree of the Orphans court, may appeal from the same to the Supreme court: *Provided*, That the party appealing shall give security by recognizance with sufficient surety, in the Orphans court, or before one of the judges thereof, conditioned to prosecute such appeal with effect, and to pay all costs that may be adjudged against him, and shall make oath or affirmation that the appeal is not intended for delay: which appeal, thenceforth, shall stay all proceedings in the Orphans court, until the same be determined in the Supreme court, and the record be remitted to the Orphans court: no appeal shall be allowed, unless the same be entered and security given within three years after the final decree of the Orphans court: *And provided*, That no reversal or modification of any decree or proceedings of the Orphans court for the sale of real estate, shall have the effect of divesting any estate or interest acquired under such decree or proceedings, by persons not party thereto, where the Orphans court had jurisdiction of the case.

Appeal to the  
Supreme  
court.

Proviso.  
Security to be  
given, &c.

2d proviso.

SECT. 60. The fees to be taken by the sheriffs of each county, for the services enjoined by this act, shall be the same as those already allowed for like services; and for executing a writ of sequestration the same fees shall be allowed as upon a writ of foreign attachment, together with reasonable costs and expenses, according to the discretion of the court; on all writs and process sent from another county, no mileage shall be allowed, except for the distance actually travelled, but an allowance shall be made for the transmission of such writs and process, to the clerk of the court from which they may have issued at the common rates of postage.

Fees of sher-  
iff's for duties  
required by  
this act.

SECT. 61. This act shall take effect on the first Monday in August next, and so much of any law as is altered by this act, is hereby repealed from that period.

Time of operation of act.

JOHN LAPORTE,  
*Speaker of the House of Representatives.*

WM. G. HAWKINS,  
*Speaker of the Senate.*

APPROVED—The twenty-ninth day of March, Anno Domini, eighteen hundred and thirty-two.

GEO. WOLF.