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whole of the
1st week.

Proviso,

tinue the sessions of the said court during the whole of the first week of each and every term, or so many days within said week as they shall deem necessary to finish the business thereof: *Provided*, That nothing contained in this act shall interfere with the act of the twentieth of February, eighteen hundred and sixteen, relative to the continuance of courts of Quarter Sessions.

WM. PATTERSON,

Speaker of the House of Representatives.

THO'S. RINGLAND,

Speaker of the Senate.

APPROVED—The twenty-first day of February, Anno Domini, eighteen hundred and thirty-four.

GEO: WOLF.

No. 52.

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70. This act to take effect from the first October next.

AN ACT

Relating to executors and administrators.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That the executors and administrators of every decedent shall immediately after the granting of letters testamentary, or of administration to them, cause notice thereof to be given in one newspaper, published at or near the place where such decedent resided, once a week during at least six successive weeks, together with their names and places of residence, and in every such notice they shall request all persons having claims or demands against the estate of the said decedent to make known the same to them without delay. Ex'rs, &c, to give notice to creditors, &c.

SECTION 2. It shall be the duty of executors and administrators, having given convenient notice to the appraisers of the decedents estate, of a time and place for making the inventory and appraisement thereof, to produce or make known to them, in the presence of such of the persons interested in the estate as may attend, the whole of the personal estate of the decedent, which may have come to their possession or knowledge; and the inventory and appraisement thereof being finished and certified by the appraisers, to return the same into the office of the proper register. To make an appraisement and inventory of the personal estate.

SECTION 3. Whenever personal property or assets of any kind, not contained in the inventory made and returned as aforesaid, shall afterwards come to the possession or knowledge of the executor or administrator, he shall take an inventory thereof, and return the same into the office of the proper register, within four months from the time of the discovery thereof. To make additional inventory of personal property, &c.

SECTION 4. In taking the inventory as aforesaid, it shall be the duty of the executor or administrator, if the decedent shall have left a widow or children who were residing with him at the time of his decease, and there is reason to believe the estate insufficient to pay his debts, exclusive of such articles as may children. In cases of insolvency, certain articles to be reserved for the widow & children.

be by law exempted from levy or sale upon an execution against a debtor, to keep, separate and distinct therein, an account of all such articles as may be exempted from levy or sale as aforesaid; and the same shall not be sold, but suffered to remain for the use of such widow and children, without further account thereof.

SECTION 5. All bonds, notes, and other evidences of debt, also all other claims and demands for money, or any other personal property owned or held by the decedent at the time of his decease, shall, as far as the same may be known to his executors or administrators, be included in the inventory to be made and returned as aforesaid.

Debt due by executor not extinguished.

SECTION 6. The appointment of any person to be an executor, shall in no case be deemed a release or extinguishment of any debt or demand which the testator may have had against him, but such debt shall be included in the inventory, and be subject to distribution like other personal estate.

Rents accruing to tenants for life to vest in the ex'rs or adm'rs.

SECTION 7. The rents of any real estate accruing to any tenant for life, of such estate who had demised the same, for a term or time not fully expired at his decease, shall go to and be vested in the executors or administrators of such tenants; and the due proportion of such accruing rent, to be computed according to the time elapsed at the decease of such tenant, shall be included in the inventory of personal assets.

Rents due to tenants, in fee simple, fee tail or for life, to vest in the ex's or adm's.

SECTION 8. The arrearages of any rent charge, or other rent or reservation in nature of a rent, due at the death of any tenant, in fee simple, fee tail, or for term of life or lives of such tenant, shall go to and be vested in the executors or administrators of such tenant, and be included in the inventory and appraised as personal assets.

Estates *per auter vie*, unless otherwise limited, to vest in the ex'rs or adm'rs.

SECTION 9. All estates in lands or tenements, of which the decedent was seized at the time of his decease, for the life or lives of another person or persons, shall, unless such estate have been limited to the decedent and his heirs, go to the executors or administrators of such decedent, and be included in the inventory, and be subject to distribution in like manner as leases, for terms of years.

Appraisers allowed \$1 per diem.

SECTION 10. The appraisers of the estate of a decedent shall be respectively entitled to receive, from the executors or administrators, a sum not exceeding one dollar, for their services in appraising the estate as aforesaid; and if not completed in one day, one dollar for every day diligently employed by them therein.

Ex'rs and adm'rs to file vendue lists in the Register's office.

SECTION 11. Whenever any executor or administrator shall sell, at public auction or vendue, any of the personal estate of the decedent, he shall, within thirty days thereafter, file in the office of the register having jurisdiction, a just and true account of the articles so sold, and the prices and purchasers thereof.

SECTION 12. All powers, authorities and directions, relating to real estate, contained in any last will, and not given to any person by name or by description, shall be deemed to have been given to the executors thereof; but no such power, authority or direction, shall be exercised or carried into effect by them, except under the control and direction of the Orphans' Court having jurisdiction of their accounts.

SECTION 13. The executors of the last will of any decedent, to whom is given thereby, a naked authority only to sell any real estate, shall take and hold the same interest therein, and have the same powers and authorities over such estate, for all purposes of sale and conveyance, and also of remedy by entry by action or otherwise, as if the same had been thereby devised to them to be sold, saving always, to every testator, his right to direct otherwise.

SECTION 14. The survivor or survivors of several executors of any last will, containing a devise of real estate to such executors, for the purpose of sale or otherwise, or a power or naked authority only, to them, to sell the same as aforesaid; also, the acting executor or executors of any such will, where one or more of them resign, refuse, or renounce the trust, or are discharged or dismissed therefrom, shall have the same interest in and power over such estate, for all purposes of sale, conveyance, and remedy as aforesaid, as all the executors might have or exercise for the like purposes, saving always, to every testator his right to direct otherwise.

SECTION 15. Whenever any person shall, by a bargain or contract in writing, bind himself to sell and convey any real estate within this Commonwealth, and shall die seized or possessed of such real estate, without having made any sufficient provision for the performance of such bargain or contract, it shall be lawful for the executors or administrators of such decedent, or for the purchaser of such real estate, or other person interested in such contract, to apply, by bill or petition, to the Orphans' Court having jurisdiction of the accounts of such executors or administrators, setting forth the facts of the case; and after due notice of such bill or petition to the purchaser, or to the executors or administrators and heirs of the decedent, or devisees of such estate, as the case may require, to appear in such court on a day certain, and answer such bill or petition, if there be cause; such court shall have power, if the facts of the case be sufficient in equity, and no sufficient cause be shown to the contrary, to decree the specific performance of such contract, according to the true intent and meaning thereof.

SECTION 16. The like proceedings may be had, in all respects, whenever any parol contract shall have been entered into by any decedent for the conveyance of real estate within this Commonwealth, of which such decedent shall die seized or possessed, where no sufficient provision for the performance thereof shall have been made by the decedent, in all cases where

All powers, &c. in any will, to be executed by the ex'rs, under the control of the O. C.

Naked power to sell real estate, to vest the same estate in the executors, as if the same were devised to them to be sold.

Surviving or acting ex'r to exercise the powers vested in all.

Testator may direct otherwise.

O. C. may decree a specific performance of a written contract of a decedent, for the sale of real estate, upon application of ex'r, adm'r, or any party in interest.

Same provision as to parol contracts in part executed.

such parol contract shall have been so far executed that it would be against equity to rescind the same.

Order of the
O. C. in such
cases may be
recorded as
deeds are.

SECTION 17. The order or decree of the Orphans' Court for the specific performance of any such contract, in the cases herein before mentioned, being certified by the clerk of such court, under the seal thereof, may be recorded in the office for the recording of deeds in the county where such real estate is situate, in like manner as deeds are recorded, and with the same effect.

Ex'rs or ad's
to execute
deeds, as di-
rected by the
O. C.

SECTION 18. When such order or decree for the specific performance of any such contract shall have been made, and the purchase money paid, or secured to be paid, according to the terms of such contract, it shall be the duty of the executors or administrators of such decedent to execute such deed of conveyance, as shall be directed by the court, in conformity with the intention of such contract; and the same being so made, shall be of the same force and effect to pass and vest the estate intended, as if the same had been executed by the decedent in his life time.

Purchasers of
real estate
may pay pur-
chase money
into the O. C.
or to ex'rs
with leave of
the O. C.

Such paym't
to be valid
against all
persons in-
terested.

SECTION 19. Whenever any sale shall be made of any real estate by any executor or executors, in pursuance of any authority, power or direction contained in a will, or by force thereof and of this act, either for the payment of debts or of legacies, for the support of children, or for distribution of the proceeds, or other purpose, the purchaser of such estate may pay the purchase money or consideration of such sale into the Orphans' Court having jurisdiction of the accounts of such executor or executors, or, with the leave of such court, to such executor or executors, to be disposed of according to the uses and trusts contained in such will; and such payment shall be deemed valid against all persons having or who may have an interest therein.

Ex'rs or ad's
to sell real
estate to pay
debts,
under order
of the O. C.

Estate so sold
not to be lia-
ble in the
hands of the
purchaser.

SECTION 20. Whenever it shall satisfactorily appear to the executor or administrator that the personal estate of the decedent is insufficient to pay all just debts, and the expenses of the administration, he shall proceed, without delay, in the manner provided by law, to sell, under the direction of the Orphans' Court having jurisdiction of his accounts, so much of the real estate as shall be necessary to supply the deficiency; and such real estate so sold shall not be liable, in the hands of the purchaser, for the debts of the decedent.

Order of pay-
ing debts.

SECTION 21. All debts owing by any person within this state, at the time of his decease, shall be paid by his executors or administrators, so far as they have assets, in the manner and order following, viz.: 1. Funeral expenses, medicine furnished and medical attendance given during the last illness of the decedent, and servants' wages not exceeding one year; 2. rents not exceeding one year; 3. all other debts, without regard to the quality of the same, except debts due to the Commonwealth, which shall be last paid.

SECTION 22. No executor or administrator shall be compelled to pay any debt of the decedent, except such as are by law preferred in the order of payment to rents, until one year be fully elapsed from the granting of the administration of the estate.

Ex'rs or ad's not compelled to pay any debts except class 1, for 1 year after grant'g ad'n.

SECTION 23. Whenever the laws of the place in which was the decedent's domicil, at the time of his death, contain any provisions whereby a preference may be given in the payment of debts due to the citizens or residents thereof, as such, over the citizens or residents of this state, the executor or administrator shall, in the disposition of such of the assets as may come into his hands, observe the like rules of preference in favor of the citizens or residents of this Commonwealth, over the citizens or residents of such place, in the same manner as if such rules were hereby expressly enacted.

If the laws of the place of decedents domicil give a preference to its citizens, ex'r or adm'r to give the same to residents of this State, in payment of debts.

SECTION 24. No debts of a decedent, except they be secured by mortgage or judgment, shall remain a lien on the real estate of such decedent longer than five years after the decease of such debtor, unless an action for the recovery thereof be commenced and duly prosecuted against his heirs, executors or administrators, within the period of five years after his decease, or a copy or particular written statement of any bond, covenant, debt or demand, where the same is not payable within the said period of five years, shall be filed, within the said period of five years, in the office of the prothonotary of the county where the real estate to be charged is situate, and then to be a lien only for the period of five years after said bond, covenant, debt or demand, becomes due.

No debts except mortg's & judg'ts remain a lien on the real estate more than 5 years after death of debtor, unless suit be bro't.

SECTION 25. All judgments, which at the time of the death of a decedent shall be a lien on his real estate, shall continue to bind such estate during the term of five years from his death, although such judgments be not revived by *scire facias*, or otherwise, after his death; and such judgments shall, during such term, rank according to their priority at the time of such death; and after the expiration of such term, such judgments shall not continue a lien on the real estate of such decedent as against a *bona fide* purchaser, mortgagee, or other judgment creditor of such decedent, unless revived by *scire facias* or otherwise, according to the laws regulating the revival of judgments.

Or copy or statement of debts not due within that time, to be filed in prothon'y's office. All judg'ts, liens at the time of, to be a lien for 5 years after the death of the debtor, & no longer, unless revived by sci. fa.

SECTION 26. The executors or administrators of any person who at the time of his decease was a party, plaintiff, petitioner, or defendant, in any action or legal proceeding depending in any court of this Commonwealth, shall have full power, if the cause of action doth by law survive to them, to become party thereto, and prosecute or defend such suit or proceeding to final judgment or decree, as fully as such decedent might have done if he had lived; and if such plaintiff or petitioner die after judgment or decree in his favor, his executors or ad-

Ex'r's & ad's to become parties to legal proceedings, in place of their decedents.

ministrators may proceed to execution thereupon, as such plaintiff or petitioner might have done if he had lived.

Courts in which such proceedings may be pending, may require the ex'rs or adm's to become parties to the same.

SECTION 27. The court in which any action or legal proceeding may be depending as aforesaid, shall have power to require, by a writ of *scire facias*, such executors or administrators, within twenty days after the service thereof, to become party to such action or proceeding, or to show cause, at the next succeeding term, why they should not be made party thereto, by judgment of the court, and further proceedings be had in such action or proceeding; but in every such case, the executors or administrators, who shall become party as aforesaid, shall be entitled to the continuance of such action or proceeding during one term.

Ex'rs or ad's may bring all actions that the decedent could, except for slander or libel, or wrongs to the person.

SECTION 28. Executors or administrators shall have power to commence and prosecute all personal actions which the decedent whom they represent might have commenced and prosecuted, except actions for slander, for libels, and for wrongs done to the person; and they shall be liable to be sued in any action, except as aforesaid, which might have been maintained against such decedent if he had lived.

May sue or distrain for rent due to the decedent at the time of his death.

SECTION 29. The executors or administrators of every person who was the proprietor of any rent charge, or other rent or reservation in nature of a rent, in fee or otherwise, as mentioned in the eighth section of this act, shall and may have an action of debt for the arrearages of such rent due to the decedent, at the time of his decease, against the person who ought to have paid such rent; or his executors or administrators, or they may distrain therefor upon the lands or tenements which were charged with the payment thereof, and liable to the distress of such decedent so long as such lands or tenements remain and are in the seizin or possession of the tenant who ought to have paid such rent, or in the possession of any other person claiming the same, from or under the same tenant by purchase, gift or descent, in like manner as such decedent might have done if he had lived.

Ex'rs or ad's of tenants for life, may bring actions on the case against under lessees for rent.

SECTION 30. The executors or administrators of any tenant for life, who shall die before or on a day on which any rent was reserved or made payable upon any demise or lease of any real estate, which determined on the death of such tenant for life, may have an action on the case, to recover from the lessee or under tenant of such real estate, if such tenant for life die on the day on which the same was made payable, the whole, or, if before the day, a proportion of such rent for the last year, or quarter of a year, or other current period of payment, according to the time elapsed at the decease of such tenant for life as aforesaid.

SECTION 31. Administrators *de bonis non*, with or without a will annexed, shall have power to demand and recover from their predecessors in the administration, or their legal representatives, all moneys, goods and assets remaining in their hands,

due and belonging to the estate of the decedent, and to commence and prosecute actions upon promises made to such predecessors, in their representative character, and to sue forth and defend writs of error, writs of *scire facias*, and writs of execution upon judgments, obtained by or in the name of the executors or administrators into whose place they may have come; and also to proceed with and perfect all unexecuted executions, which may have been issued thereon at the instance of such predecessors: *Provided*, That when any suit shall have been brought by an administrator *de bonis non*, for the recovery of moneys, goods or assets, remaining in the hands of his predecessors, or their legal representatives, before they shall have settled their final administration account, the court, in which such action shall be brought, shall have power to stay the proceedings therein, on the defendants filing such account in the Register's office of the proper county, twenty days previous to the term next succeeding that to which the writ was returnable, until said account shall have been finally settled and adjusted; and on the production of a certified copy of said account, so settled and adjusted, the court, in which such suit shall be pending, is hereby authorized and required to render judgment for the balance which shall thereby appear to be due to either party.

SECTION 32. No action, or other legal proceeding, commenced by or against executors or administrators, shall be abated or otherwise defeated, by reason of the death, dismissal, resignation or renunciation of any one or more of them, nor by reason of the annulling or revoking of the letters or powers granted to them, or any of them; but such suit or proceeding may be prosecuted to final judgment or decree, by or against such other person or persons as may have been joined with them in the administration, or by or against such person or persons as may be their successors therein, in all cases, in like manner, as if no such change had occurred or act been done; and in all cases of the vacancy of the administration as aforesaid, the successors therein shall be made party to such action or proceeding, in the manner provided by the twenty-sixth and twenty-seventh sections of this act.

SECTION 33. No execution for the levy or sale of any real or personal estate of any decedent, shall be issued upon any judgment obtained against him in his life time, unless his personal representatives have been first warned, by a writ of *scire facias*, to show cause against the issuing thereof, notwithstanding the *teste* of such execution may bear date antecedently to his death; and in all cases where property, real or personal, of a decedent is sold upon an execution, and more money raised than is sufficient to pay off liens of record, the balance shall be paid over to the executor or administrator for distribution; but before any such payment shall be made, such executor or administrator shall give bond, to the satisfaction of the court, conditioned for the legal distribution of such money: *Provided*, give bond, &c.

Ad's de bonis non may bring actions against their predecessors, for assets, &c. in their hands
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Courts may stay such suits if the def'ts file an account in the Reg. office till it be settled. Judg't to be rendered for the balance found for either party.
No suit, &c. to abate, &c. on acc't of the death of one or more ex'r. or adm'r.
Successors in the administration to be made parties, according to the 26th and 27th sections.

No execution to issue after the death of debtor, without a *sci. fa.* against the ad's or ex'r's tho' it bear *teste* before.
Balance of proceeds of sale on an execution, after discharging liens of rec'd, to be paid to ex'r or adm'r who shall give bond, &c.

Proviso.

always. That such money shall be distributed as the real estate of which it is the proceeds would have been.

Creditors who may wish to charge real estate of the decedent, must give notice of their actions ag't ex'rs, &c. to widow, heirs devisees, &c.

SECTION 34. In all actions against the executors or administrators of a decedent who shall have left real estate, where the plaintiff intends to charge such real estate with the payment of his debt, the widow and heirs, or devisees, and the guardians of such as are minors, shall be made parties thereto; and in case such widow and heirs, or devisees, and their guardians, reside out of the county, it shall be competent for the court to direct notice of the writ issued therein, to be served by publication or otherwise, as such court may determine by rule of court; and if notice of such writ shall not be served on such widow and heirs, or devisees, and their guardians, the judgment obtained in such action shall not be levied or paid out of the real estate of such widow, heirs, or devisees, as shall not have been served with notice of such writ.

Court may stay execution against real estate, till ex'rs or ad's sell by order of the O. C.

SECTION 35. In every case of an execution against the executors or administrators of a decedent, whether founded upon a judgment obtained against such decedent in his life time, or upon a judgment obtained against them in their representative character, if it shall be made to appear to the satisfaction of the court issuing such execution, that there is reason to believe that the personal assets are insufficient to pay all just demands upon the estate, such court shall thereupon stay all proceedings upon such execution, until the executors or administrators shall have made application to the proper Orphans' Court for the sale of the real estate of the decedent, or for the apportionment of the assets, or both, as the case may require.

Court may order ex'rs or adm's to apply to O. C. for this purpose.

SECTION 36. It shall be competent for the court, in the cases aforesaid, on application of the plaintiff in such judgment, or of any other person interested as heir, devisee, or otherwise, to order the executors or administrators to make application to the Orphans' Court, for the purpose as is herein before mentioned, and to enforce such order by attachment.

Omissions or errors in pleading on either side, to have no effect on the quest'n of assets.

SECTION 37. The omission of any executor or administrator to plead to any action brought against him in his representative character, that he has fully administered the estate of the decedent, or any other matter relative to the assets, shall not be deemed an admission of assets to satisfy the demand made in such action; also the omission of the plaintiff to reply to any such matter when pleaded, shall not be deemed an admission of the want of assets as aforesaid, nor shall such omission otherwise prejudice either party; and no mispleading, or lack of pleading, by executors or administrators, shall make them liable to pay any debt or damages recovered against them, in their representative character, beyond the amount of the assets which in fact have come or may come into their hands.

Distribut'n to be made within 1 year

SECTION 38. No administrator shall be compelled to make distribution of the goods of an intestate, until one year be fully expired from the granting of the administration of the estate.

SECTION 39. Whenever distribution as aforesaid shall be required by any person interested, the administrator shall present, to the Orphans' Court having jurisdiction of his accounts, a statement of all demands against the estate which have been made known to him, and after deducting the amount thereof from the assets in his hands, together with such further sum as may be necessary to pay the interest and costs of suit of such as may be in dispute, and of such as he may deem it his duty to dispute, make distribution of the residue, under the direction of the Orphans' Court aforesaid.

How made.

SECTION 40. After six months elapsed from a distribution made as aforesaid, the like proceedings, in all respects, may be had for the distribution of further assets, if any shall then remain, after deducting as aforesaid for other demands which may have been made known to the administrator, and so, from time to time, until the whole estate shall be settled and distributed.

Six months thereafter, further assets to be distributed in the same way.

SECTION 41. Before any person shall be entitled to receive any share in the distribution as aforesaid, he shall give sufficient real or personal security, to be approved of by the Orphans' Court having jurisdiction as aforesaid, in such sum and form as the said court shall direct, with condition that if any debt or demand shall afterwards be recovered against the estate of the decedent, or otherwise be duly made to appear, he will refund the rateable part of such debt or demand, and of the costs and charges attending the recovery of the same; but if the person or persons entitled to receive the same, is, or are unable to give the security aforesaid, then the money shall be put at interest, on security approved by the Orphans' Court, which interest is to be paid annually to the person entitled to it, and the money to remain at interest until the security aforesaid is given, or the Orphans' Court, on application, shall order it to be paid to the person or persons entitled to it.

Distributees to give security to refund to pay debts.

If he cannot, money to be at interest, & the interest paid to him.

SECTION 42. Whenever the real estate of a decedent, or any part thereof, shall be sold by an executor or administrator, by virtue of an order of an Orphans' Court having jurisdiction under proceedings in partition, such real estate shall not be liable, in the hands of the purchaser, to the debts of the decedent, provided such sale be made after the expiration of two years from the granting of letters testamentary or of administration.

Sale made under an order of O. C. in partition, to be free from debts of decedent, in the hands of the purchaser, if sold in two years after ad'n granted.

SECTION 43. No executor or administrator shall have power to execute any order or decree of the Orphans' Court for the sale of any real estate, for the purpose of distribution or otherwise, nor to receive the proceeds of the sale of any of the real estate of the decedent made by authority of law, until he shall have given security, to be approved of by the Orphans' Court having jurisdiction of his accounts, for the faithful application of the proceeds of such real estate according to law.

Ex'rs or ad's to give security before they receive the proceeds

SECTION 44. Whenever any real estate shall be ordered to be sold under proceedings in partition, the Orphans' Court are hereby authorized and required, in case of the neglect or refusal

of sale of real estate.

O. C. may, in case of the neglect, &c. of the ex'rs or adm's, appoint a trustee to execute their order of sale, in cases of partition.

Distributees in these cases to give security to refund

Share of tenant for life, to be charged on the estate sold, or other real estate.

Interests in remainder to be secured.

Payment of legacies.

Abatement of legacies.

sal of the executor or administrator to execute such order, or in case there be no executor or administrator, to appoint some suitable person trustee for the purpose of making such sale, who shall be subject to the same restrictions, and have the same powers, and whose proceedings shall have the same effect, to all intents and purposes, as are provided in the case of such sales by executors or administrators.

SECTION 45. Before any distribution of the proceeds of such real estate shall be made among the kindred of the decedent, the persons entitled to receive the same, shall, respectively, give sufficient real or personal security, to be approved of by the Orphans' Court having jurisdiction, with condition that if any debt or demand shall be afterwards recovered against the estate of the decedent, or otherwise be duly made to appear, they will respectively refund the rateable part of such demand, and the costs and charges attending the recovery of the same, so far as such real estate would have been liable to such demand if it had remained unsold; but if the person or persons entitled to receive the same, is or are unable to give the security aforesaid, then the money shall be put at interest, as directed in the forty-first section of this act.

SECTION 46. *Provided always*, That in the case of a sale of real estate, under proceedings in partition in the Orphans' Court, the share of any tenant for life shall not be paid to him or her, but shall remain charged on such or other real estate, according to the directions of such Orphans' Court; and in the case of a sale for the payment of debts, such tenant for life shall not be entitled to receive his share of the surplusage until he shall have given such security, under the direction of the Orphans' Court, as shall sufficiently provide for the interests of the persons entitled in remainder.

SECTION 47. Executors, after one year elapsed from the granting of the administration of the estate, upon the requisition of any legatee, or any other person interested, shall pay and deliver, under the direction of the Orphans' Court having jurisdiction of their accounts, all such legacies as are due and payable by them, or a proportionate part thereof, first deducting all demands against the estate, and such further sums as may be necessary to pay the interest and costs of such as are disputable or in dispute; and if there shall be a residue, distributable under the intestate laws of this Commonwealth, they shall also distribute the same, and the proceedings in any such case shall, in all respects, whether of security or otherwise, be the same as are herein before provided in the cases of distribution by administrators of the estates of decedents intestate, so far as the nature of the case will permit.

SECTION 48. If, after deducting the amount of debts as aforesaid, the residue shall not be sufficient to discharge all the pecuniary legacies bequeathed, an abatement shall be made, in

proportion to the legacies so given, unless it shall be otherwise provided by the will.

SECTION 49. Whenever personal property is bequeathed to any person for life, or for a term of years, or for any other limited period, or upon a condition or contingency, the executor of such will shall not be compelled to pay or deliver the property so bequeathed to the person so entitled, until security be given, in the Orphans' Court having jurisdiction of his accounts, in such sum and form as, in the judgment of such court, shall sufficiently secure the interest of the person entitled in remainder, whenever the same shall accrue, or vest in possession.

Interests in remainder in personal property secured

SECTION 50. It shall be lawful for any person to whom any bequest of money, or other goods or chattels, may be made by last will or testament, to commence and prosecute an action of debt, detinue, account render, or an action on the case for the recovery thereof after it becomes due, against the executors of such will having in their hands sufficient assets to pay all the just debts of the testator, and the legacies by him bequeathed.

Action for legacy.

SECTION 51. Legacies, if no time be limited for the payment thereof, shall, in all cases, be deemed to be due and payable at the expiration of one year from the death of the testator.

Time of payment.

SECTION 52. No action for the recovery of any such legacy shall be commenced, until reasonable demand have been made by the legatee of the executor, for the payment or delivery thereof; nor shall such legatee be entitled to execution in such actions, until security have been given in the Orphans' Court, in the manner herein before directed with respect to distributive shares.

Demand to be made.

SECTION 53. If the executor shall plead to such actions that he hath not sufficient assets to pay all just debts and demands against the estate, and also all the legacies given, without any other plea, no further proceedings shall be had on such action, until an account shall have been taken, in the proper Orphans' Court, of the debts and assets of the estate, and the amount, if any, payable on such legacy, be ascertained; and in such case it shall be competent for the court to order the executor to proceed, without delay, in the Orphans' Court for the purpose aforesaid, and to enforce such order by attachment.

Action to be suspended on pleas of want of assets.

SECTION 54. If any other plea be pleaded by such executor, the issue thereon shall be decided in due course as in other cases; and if judgment thereupon be rendered against such executor, he may, nevertheless, aver the want of sufficient assets to pay all the debts and legacies as aforesaid, and thereupon execution shall be stayed, until such accounts shall be taken as is provided in the next preceding section of this act; and the court in which such action is brought, may, by attachment, compel such executor to proceed in the Orphans' Court for such purpose.

Execution to be stayed for want of assets

SECTION 55. If it shall appear, by the account taken in the Orphans' Court, that there are no assets in the hands of such executor which ought to be applied to the payment of the le-

Non-suit if there be no assets.

gacy demanded, or if such legacy be a chattel that is required for the payment of debts, judgment of non-suit shall thereupon be entered.

Costs at the discretion of the court.

SECTION 56. If judgment as aforesaid be entered for the plaintiff, for any sum, or for the value of any chattel bequeathed, the court shall, according to justice and equity, either award costs or no costs out of the testator's estate, or if such executor has been faulty in delaying, without sufficient excuse, the payment or delivery of the legacy demanded, or a proportionable part thereof, then out of the proper estate of such executor.

Ex'rs paying legacies lawfully not liable to creditors.

SECTION 57. Executors or administrators making distribution, or paying or delivering any legacies as aforesaid, shall not be liable for the assets so paid or distributed, in respect to any claim or demand upon the decedent not previously made known to them, where security shall be taken, as is herein before provided.

May pay them at their own risk.

SECTION 58. Executors and administrators may make distribution, and pay or deliver legacies, without application as aforesaid, to the Orphans' Court, upon such security as may be satisfactory to them, nevertheless at their own risk.

Proceedings where legacy is charged on real estate.

SECTION 59. When a legacy is or shall be hereafter charged upon, or payable out of real estate, it shall be lawful for the legatee to apply, by bill or petition, to the Orphans' Court having jurisdiction of the accounts of the executor of the will by which such legacy was bequeathed; whereupon, such court having caused due notice to be given to such executor, and to the devisee or heir, as the case may be, of the real estate charged with such legacy, and to such other persons interested in the estate as justice may require, may proceed, according to equity, to make such decree or order touching the payment of the legacy, out of such real estate, as may be requisite and just.

Where the estate charg'd is in another county.

SECTION 60. If the real estate charged with such legacy shall be situate in another county, and the party against whom such decree may have been made shall fail to comply therewith, according to the terms thereof, such decree may be certified to the Orphans' Court of the county in which such real estate is situate, and thereupon the like proceeding may be had in such court for enforcing payment of the amount decreed to be paid, as if the real estate were situate in the county in which application was originally made.

Legatee to give security in these cases

SECTION 61. Before such legatee shall be entitled to the benefit of any such decree, he shall give such security as the court, in which application was originally made, shall direct, for the indemnity of the devisee or heir, or other person interested, in the event of any debt due by the testator being recovered, for the payment of which such real estate would be liable.

SECTION 62. The executor or administrator paying any legacy or share in the distribution of any estate, subject to the

collateral inheritance tax, to any person not being the father, mother, husband, wife, or lawful issue of the decedent, shall deduct therefrom at the rate of two dollars and fifty cents in every hundred dollars, upon the whole legacy, or share or sum paid; or if not money, he shall demand payment of a sum, to be computed at the same rate, upon the appraised value thereof, for the use of the Commonwealth; and no executor or administrator shall be compelled to deliver any specific legacy or article, to be distributed to any such person, except upon payment into his hands of a sum computed upon its value aforesaid; and wherever any such legacy shall be charged upon or payable out of real estate, the heir or devisee, before paying the same, shall deduct therefrom at the rate aforesaid, and pay the amount so deducted to the executor; and the same shall remain a charge on such real estate, until paid, and the payment thereof shall be enforced by the decree of such Orphans' Court, in the same manner as the payment of such legacy might be enforced.

SECTION 63. If the legacy so to be paid or delivered, be given to any such person, during a limited period, or upon a condition, or otherwise, as is mentioned in the forty-ninth section of this act, if the same be money, he shall retain upon the whole amount as aforesaid, but if not money, he shall make application to the Orphans' Court having jurisdiction of his accounts, to make an apportionment, if the case require it, of the sum to be paid into his hands, between such legatees, and for such further order relative thereto as equity shall require.

SECTION 64. Every sum of money retained by any executor or administrator, or paid into his hands on account of any legacy or distributive share for the use of the Commonwealth, shall be paid by him without delay to the treasurer of the county, for which payment he shall be entitled to demand duplicate receipts, one of which he shall immediately lodge with the Register of the proper county.

SECTION 65. Whenever any of the real estate of which any decedent may die seized, shall pass to any body politic or corporate, or to any person other than the father, mother, husband, wife, or lawful issue of the decedent, or in trust for them, or some of them, it shall be the duty of the executors or administrators of such decedent, to give information thereof, in writing, to the commissioners of the county where such real estate is situate, within six months after they undertake the execution of their respective duties, or, if the fact be not known to them within that period, within one month after the same shall have come to their knowledge.

SECTION 66. Whenever any devise or bequest shall be made to any public corporate body, by any last will and testament, the executors thereof shall, within six months after they undertake the execution of such will, make known, by letters addressed to such corporate body, the nature and amount of such de-

Collateral inheritance tax.

Continued.

To be paid to the county treasurer.

Ex'rs to give notice to co. com'rs of real estate subject to this tax.

To give notice to bodies corporate of devise, &c.

vise and bequest, together with their names and places of residence.

Adm's cum
test. annexo.

SECTION 67. All and singular the provisions of this act, relative to the powers, duties, and liabilities of executors, are hereby extended to administrators with a will annexed.

Discovery of
a will after a
supposed in-
testacy.

SECTION 68. All such acts of administration as would be in due course of law in case of intestacy, if done in good faith, and without notice of a will, shall not be impeached, though a will should afterwards be discovered and established.

Collateral in-
heritance tax
to be refund'd
in certain
cases.

SECTION 69. Whenever debts shall be proven against the estate of a decedent, after distribution of legacies from which the collateral inheritance tax has been deducted, in compliance with the sixty-second section of this act, and a refund is made by the legatee, a proportion of the said tax shall be repaid to him by the executor or administrator, if the said tax has not been paid into the State or County Treasury, or by the County Treasurer, if it has been so paid.

Act to take
effect 1st Oct.
Repealing
clause.

SECTION 70. This act shall take effect from and after the first day of October next, and all such acts of assembly as are hereby altered or supplied, shall be, and are hereby repealed, except so far as may be necessary to finish proceedings commenced, or to settle the estates of persons who may have died before that time.

WM. PATTERSON,

Speaker of the House of Representatives.

THO'S. RINGLAND,

Speaker of the Senate.

APPROVED—The twenty-fourth day of February, one thousand eight hundred and thirty-four.

GEO: WOLF.

No. 53.

AN ACT

For the improvement of the borough of Norristown, in the county of Montgomery.

Comm'rs ap-
pointed to
open new
streets and
alleys, &c.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania in General Assembly met, and it is hereby enacted by the authority of the same,* That Allan W. Corson, Evan Jones, General Henry Scheets, and George Richards, Esq., be, and they are hereby appointed commissioners, and they, or any three of them, being duly sworn or affirmed to perform their duties with impartiality, shall have full power and authority to lay out any additional