

[No. 140.]

A FURTHER SUPPLEMENT

To an act, entitled an act relating to Orphan's courts, passed the twenty-ninth day of March, one thousand eight hundred and thirty-two, and the supplement thereto, passed the fourteenth of April, one thousand eight hundred and thirty-five, and for other purposes.

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 where auditors are required to be appointed by the Orphan's courts of this commonwealth, pursuant to the nineteenth or thirty-fourth sections of the act of twenty-ninth of March, one thousand eight hundred and thirty-two, or the first section of the act of fourteenth of April, one thousand eight hundred and thirty-five, to which this is a supplement, it shall be lawful for said courts to appoint either one or three auditors, at their option, any thing in said laws to the contrary notwithstanding; and it shall hereafter be the duty of the Orphans' court to appoint auditors, according to the provisions of the nineteenth section of the act, entitled an act relating to Orphan's courts, passed the twenty-ninth day of March, one thousand eight hundred and thirty-two, on the application of any creditor as they are now authorized to do, on the application of the executor or administrator; and it shall be the duty of the Orphans' court, upon the application of any legatee, heir or other person interested in the distribution of the estate of any decedent, to appoint at such time as they may think proper, one or more auditors, to make distribution of such estate in the hands of any executors or administrators, to and among the persons entitled to the same.

SECTION 2. Whenever it shall happen that a devisee, legatee or distributee, being in his or her minority, shall reside out of this state, and the whole or any portion of his or her devise, legacy or share, shall be necessary for the support, maintenance or education of such minor, resident in another state, the Orphan's court having jurisdiction of the accounts of the executor, administrator or guardian, shall have power, upon the petition of such executor, administrator or guardian, having the estate or legacy, or share of the said minor in his, her or their hands, possession or control, or if such minor, his or her guardian, duly appointed by the court of that state

where the said minor resides, to make such order touching the payment of such legacy, distribution, share or proceeds of a devise, or such part thereof, for the use and benefit of such minor, as to the said court shall appear to be necessary and proper, and such payment shall be made to such person or persons as shall be designated by the court, and when thus made, the said executor, administrator or guardian shall be entitled to a credit for the same in the settlement of his, her or their account.

Certain proceedings in partition made valid.

SECTION 3. That all proceedings heretofore had in Orphans' Courts of this commonwealth, for the partition of any testator's estate or estates, wherein partition hath been made, or the property taken at the valuation, or sold and conveyed under the order of such court, by executors or administrators, and the proceeds of such sales distributed according to the will of the testator, shall be considered and taken to be as valid and effectual as if such courts had had jurisdiction of the same.

Jurisdiction of Orphans' Courts in partition &c. extended.

SECTION 4. The jurisdictions of the several Orphans' Courts of this Commonwealth, in the partition and valuation of the real estates of decedents, shall extend to all cases of testacy wherein the parties interested, or any of them are minors, or the course of descent is not altered by the provisions of the last will and testament of the decedent, and the same proceedings shall be had thereon as in cases of intestacy, subject always however to the provisions of the said last will and testament, and the true intent and meaning of the testator. *Provided however,* That nothing in this section contained shall be construed to prevent any of the parties interested in the said real estate from proceeding by action of partition as heretofore.

Proviso.

Luzerne co. attached to 13th Judicial district.

SECTION 5. That from and after the first day of January next, the county of Luzerne shall be attached to and form a part of the Thirteenth Judicial District, and the President of said district and the associate judges of Luzerne county shall hold the several courts for the said county.

Susquehanna co. attached to 11th Judicial district.

SECTION 6. That from and after the first day of January next, the county of Susquehanna shall be attached to and form a part of the Eleventh Judicial District, and the president of said district, and the associate judges of Susquehanna county shall hold the several courts for the said county.

Commencement of courts in Monroe co. changed.

SECTION 7. That the several courts of the county of Monroe shall, after the next term of said courts, commence and be holden on Tuesday of the week in which they are now by law held, instead of Monday.

SECTION 8. In all cases where any sheriff, prothonotary, or register of wills, or clerk of court is or shall be required by law or an order of court, to publish any notice in the newspapers, and is allowed by law, in said order, to charge the ex-

pense of said advertisements, it shall be the duty of said officer to make out a bill showing specifically the amount actually paid for printing said notice, and if said officer shall charge any greater or other amount than that actually paid for publishing such notice, he shall be subject to the penalties prescribed by law for taking illegal fees, to be sued for and recovered in the manner provided by the twenty-sixth section of the act, entitled an act establishing a fee bill, passed the twenty-eighth day of March, one thousand eight hundred and fourteen, but subject to the limitations contained in the fifteenth section of the supplement to said act, passed the twenty-second day of February, one thousand eight hundred and twenty-one; *Provided*, That this penalty shall not take effect until the first day of August next.

SECTION 9. It shall be the duty of the Judges of the court of Common Pleas of Montgomery county, or a majority of them, the president being one, with the commissioners of said county, to examine into the condition of the books in the recorder's office of said county, in which deeds, mortgages, assignments and miscellaneous papers are recorded, and also the books containing the general indexes of the deeds and mortgages, and if the said Judges shall be of opinion that the interest and safety of the public and the individuals having deeds and mortgages recorded in said office require that such indexes should be transcribed, or that new general indexes of such deeds and mortgages should be made, and that the expense thereof would not be too great, they shall make an order directing the recorder of deeds to procure books of such size and quality as they may think suitable for such indexes, and to transcribe therein the general indexes now in said office, or make new general indexes of the deeds, mortgages, assignments and other miscellaneous papers, excepting commissions and their accompanying bonds, and papers recorded in said office as they may deem proper, in a plain, neat and legible hand, in the form and manner in which the general indexes in said office are made, and shall make such order respecting the other books of record in said office as they may deem necessary and proper; and when the said indexes shall be transcribed or new general indexes made agreeably to the order of said Judges, and other services so directed shall be performed, the books shall be submitted to the said judges and commissioners, and if the same be approved they shall fix the amount of the compensation to be paid for the services directed to be done, which sum together with the costs of the books procured shall be paid by the county commissioners, by orders drawn on the treasurer of said county. And after the said indexes shall be kept up by the recorder of deeds for the time being, without any fee or compensation.

But if the said judges on inspecting the general indexes of deeds and mortgages, now in said office, shall be opinion that it is unnecessary to have the same transcribed, or to have new indexes to such deeds and mortgages made, the said recorder shall then procure four books of the size of the general indexes now in said office to continue therein the said general indexes of the deeds, mortgages, assignments and other miscellaneous papers, excepting commissions and their accompanying bonds and papers, which shall hereafter be recorded in said office, which shall be kept up by the recorder of deeds for the time being, without any fee or compensation, and the expenses of procuring said books shall be paid by the said county commissioners by orders on the county treasurer.

Books, indexes, &c.

Duties of Prothonotary of Montgomery county.

SECTION 10. It shall be the duty of the Prothonotary of the Court of Common Pleas of Montgomery county to procure a suitable book or books, and transcribe or cause to be made therein, at least two indexes to all the proceedings of said court since its organization, contained in the continuance dockets in the Prothonotary's office, in a plain, neat and legible hand, one of which indexes shall contain the names of the plaintiffs, and the other the names of the defendants, so arranged as to afford an easy and ready reference to the matters contained in said continuance dockets, with a note stating the result of the case if the same shall have been terminated, and which shall be added whenever the cases now pending shall be terminated. And when the said indexes shall be completed, they shall be submitted to the judges and commissioners named in the preceding section, who shall fix the compensation, to be paid to the Prothonotary for said services, which, with the costs of said books shall be paid by said commissioners, by orders drawn on the county treasurer, and thereafter the said general indexes shall be kept up by the Prothonotary for the time being, without any fee or compensation. The said judges and commissioners shall also examine into the condition of the books and dockets in said Prothonotary's office, and if they should be of opinion that general or other indexes should be made, besides the general indexes

Duties of judges and commissioners.

Duties of judges and commissioners to examine books, &c. in Prothonotary's office.

above directed to be made, for any such books or dockets, or that any indexes in said office should be transcribed or that any thing else should be done for the safe keeping and preservation of said books and dockets, the said judges shall make an order directing said prothonotary to procure suitable books and cause such general or other indexes to be entered therein in a plain, neat and legible hand, in such manner as they shall direct, and when the said services shall be performed, the books shall be submitted to the said judges and commissioners, and if approved they shall fix the amount of the compensation to be paid for making the above mentioned indexes and for performing the other services above mentioned, and the

amount thereof with the costs of such books shall be paid by said commissioners, by orders drawn on the county treasurer.

SECTION 11. That the new seals procured by the commissioners of the counties of Somerset and Bedford, for the several courts of the said counties, be, from and after ten days from the passage of this act, the seals of the respective courts for which they were procured, and that all process, certificates, and proceedings heretofore sealed with either of the said seals, as the seals of the court for which it was procured, shall be and the same is hereby declared to be valid in law, to all intents and purposes.

New seals for Somerset and Bedford, when to be used in courts.

SECTION 12. It shall be lawful for any court within this commonwealth, in which any trial or question arising on a writ of quo warranto is or may hereafter be pending, on the expiration of the term of office, or the resignation of the relator or relators, or person or persons against whom the same has or may have issued, if said court shall be of opinion that the attainment of substantial justice, and the trial of the rights in question, requires the substitution of the person or officer elected or appointed to fill the place of such relator or relators, defendant or defendants, to order and decree that the person or persons so elected or appointed, shall be substituted in the room or stead of the person or persons so resigning, or whose time of office has expired, and direct such notice to be served on the person or persons so substituted, as to said court shall seem just and reasonable, after which the cause shall proceed to final hearing and adjudication, in the same manner as though no change had taken place.

Writs of Quo Warranto.

Substitution of names.

SECTION 13. In all questions arising on writs of quo warranto between persons claiming to be duly elected to fill any office, it shall be lawful for the court trying the same, to decide both on the legality of the election of the party claiming said office, as also of the party in possession of the same, and if judgment of ouster is given against the party in possession, said court may decree that the office shall be held by the person or persons who they shall be of opinion is duly elected; and after judgment of ouster, when it cannot be ascertained who is duly elected, said court may order a new election to fill said office, to be held at such times thereafter as shall be appointed by such court.

Writs Quo Warranto cr's may decide legality of possessor or claimant.

May order new elections.

SECTION 14. When the persons claiming to be officers of any corporation shall be ousted by the judgment of any court, on a writ of quo warranto, it shall be lawful for said court to appoint not less than three nor more than nine trustees to take charge of said corporation, who shall be selected and chosen by the said court, out of such persons as are, by the charter of said corporation, competent to be elected officers thereof, and said trustees so appointed, shall exercise and perform all the duties of officers of the said corporation, until others shall be

Quo Warranto ouster in case of corporation, court to appoint trustees.

Powers of Trustees.

elected in their stead, pursuant to the law, regulating said corporation, or the order of court, where there is no sufficient law providing for the same.

Alterations in 11th and 13th Judicial disc't. SECTION 15. The alterations in the eleventh and thirteenth judicial district, as provided in the fifth and sixth sections of this act, shall take place from and after the first day of April next, instead of the first day of January next, mentioned in said section.

WM. HOPKINS,

Speaker of the House of Representatives.

W. T. ROGERS,

Speaker of the Senate.

APPROVED—The thirteenth day of April, one thousand eight hundred and forty.

DAVID R. PORTER.

[No. 141.]

A N A C T

To incorporate the President, Managers and Company of the Bustleton and Summerton Turnpike Road company.

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 Franklin Comly, Israel Walton, John Fox, Josiah Walton, Jacob Snyder, Benjamin Snyder, James L. Dunn, John Vanzant, Jacob Shallcross, John Rupert, Jacob Shearer, James Carter, Jonathan Wilson, and Robert C. Green, of Philadelphia county; Franklin Vanzant, Marden Wilson, Thomas H. Buckman, Phineas Jenks, Joseph Morrison, John Eastburn, Joseph Comly, Aaron Feaster, Thomas Buckman, Lewis S. Corryell, Amos Wilkinson, John A. Mitchell, Simon V. Fenton, and Michael H. Jenks, of Bucks county; John Walton, Israel Hallowell, Christian Snyder, Amos Harris, Derrick Hogeland, William Eyre, George Woodward, William Rankin, John Smith, Richard Robb, Jorman Murray, and Thomas Warner, of Montgomery county, be and they are hereby appointed commissioners, to do and perform the several things hereinafter mentioned, that is to say, they shall, on

Commis'rs.