

IV. *And be it further enacted*, That if any person or persons shall maliciously or voluntarily break, take down, destroy or deface any sign, put up by any inhabitant of this province, to denote his, her or their place of abode, occupation, business or employment, every such person or persons so offending, being thereof legally convicted, shall forfeit and pay the sum of ten pounds for every such offence, or be publickly whipped on his, her or their bare backs, with fifteen lashes, well laid on. (d)

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Or taking down signs.

V. *And be it further enacted*, That one moiety of the fines imposed by this act shall be, and is hereby declared to be, to and for the use of the person or persons injured, and the other moiety to and for the use of the poor of the city, borough, district or township, where the offence shall be committed.

Fines how appropriated.

VI. *Provided always nevertheless*, That nothing in this act contained shall be construed to prevent the commissioners for paving and cleansing the streets of the city of Philadelphia, from taking down or removing any sign put up within the said city contrary to law.

Proviso.

Passed 21st March, 1772.—Recorded A. vol. V. page 531.

(d) The punishment of this offence labour, post. chap. 1505. (Note to former edition.)

CHAPTER DCLIV.

*An ACT for the more easy recovery of Legacies.*

FORASMUCH as the act of general assembly, entitled *An Act for the more easy recovery of legacies* is near expiring, and requires a few, but necessary amendments, *Therefore be it enacted*, That, from and after the publication of this act, it shall and may be lawful for any person or persons, to whom any legacy or bequest of any sum or sums of money, or other goods or chattels, have been or may be made, by the last will and testament of any other person or persons, legally made, to commence, sue and prosecute an action upon the case, debt, detinue, or account-render, as the case may require, for such legacy, after it becomes due, in any of the County Courts for holding of pleas in any of the counties within this province. And if it shall appear that the legacy or legacies is or are due, and there be sufficient assets in the hands of the executors or administrators, with testaments annexed, to discharge the just debts of the testator, and the legacy or legacies bequeathed, the plaintiff or plaintiffs shall recover, with costs of suit, any law, usage or custom, to the contrary notwithstanding.

Legatees may commence, sue and prosecute an action of debt, &c.

II. *Provided always*, That where it shall so happen that there are assets in the hands of any executors or administrators, with testaments annexed, to discharge all the debts of the testator, with an overplus not sufficient to discharge all the legacies which may be given, then an abatement shall be made in proportion to the legacies so given, unless it shall be otherwise provided by the will. And where any legatee or legatees are or may be under age at the time

Abatement to be made, where assets not sufficient, &c.

1772. when such legacy or legacies shall become due, in such case such legatee or legatees shall and may maintain an action for their respective legacies, by guardian or next friend, as fully, amply and largely, as by law they may do in any other actions whatsoever.

Courts, where actions are commenced upon plea for want of assets, to appoint Auditors.

III. *And be it further enacted,* That the respective Courts where the said actions shall be commenced, upon the plea of the want of assets to pay all the debts and legacies, shall appoint Auditors to examine the accounts of the executors and administrators, with testaments annexed, who, after full hearing of the parties, at such times and places as by them the said Auditors shall be appointed, with notice to the parties, shall report how the accounts of the executors or administrators do stand, what assets will remain after payment of all the debts, and what part of the remainder is the proportion that ought to go towards paying of the plaintiff's legacies; for which proportion only, unless it shall be otherwise provided by the will, the Court shall then award execution upon the judgment to be had in the said suit; which judgments shall remain a security for the payment of the remainder of the said legacies and cost, when sufficient assets for the payment thereof come to the executors or administrators hands. And where any exceptions shall be taken by either of the parties to the report of the Auditors, it shall and may be lawful for the Court in which the action shall be depending, on hearing of the parties, to correct and amend any mistakes or errors which may happen in the accounts so to be reported.

No suit to be maintained, until reasonable demand made, &c.

IV. *Provided always,* That no such suit shall be maintained for any such legacy, until reasonable demand made of the executor or executors, administrator or administrators, with wills annexed, who ought to pay the same, and an offer made of two sufficient sureties to the said executor or executors, administrator or administrators aforesaid, who, if they think proper to accept thereof, shall become bound to them, the said executor or executors, administrator or administrators aforesaid, in double the sum of the legacy given, where such legacy is ascertained by the will, and where not ascertained as aforesaid, in double such sum as the person or persons shall think him, her or themselves justly entitled to, with condition underwritten, that if any part, or the whole thereof, shall at any time after appear to be wanting to discharge any debt or debts, legacy or legacies, which the said executor or executors, administrator or administrators, shall not have other assets to pay, that then he, the said legatee, will return his said legacy, or such part thereof as shall be necessary for the payment of the said debts, or the payment of a proportional part of the said legacies. And if the said executors or administrators shall not think proper to accept of such bond, then the said legatees shall file the same with the Clerk of the Court, before obtaining any process against the executor or executors, administrator or administrators; otherwise, and in default thereof, the process issued shall abate.

Costs how to be awarded, &c.

V. *And be it further enacted,* That the Justices of the Courts aforesaid respectively, upon consideration of the report of the accounts of the executors or administrators, shall, according to justice and equity, either award no cost or costs out of the testator's estate, or, in case the executors or administrators have been faulty in delaying to pay the legacy demanded, or a proportional part thereof,

without sufficient excuse, then out of the proper estate of the executor or executors, administrator or administrators, any thing herein contained to the contrary notwithstanding.

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**VI. Provided also,** That where there are or may be several legatees, and a return of part of the said legacy sued for shall appear necessary, in such case, each legatee shall only be compelled to return a proportional part of his legacy, so as to make up the whole sum wanting.

Legatees to return a proportional part.

**VII. Provided also,** That where no time in and by any last will and testament is limited for the payment of any such legacies, that then, and in such case, the said executors or administrators shall have the space of one year to discharge the same.

Time allowed for the payment of legacies.

**VIII. And be it further enacted,** That an act of General Assembly, passed in the fifth year of his present Majesty's reign, entitled *An Act for the more easy recovery of legacies*, shall be, and is hereby declared to be, repealed.

Former act repealed. [Chap. 529.]

**IX. Provided always,** That nothing in this act contained shall be deemed, taken or construed, to discontinue any suit or suits depending at and before the publication of this act, but that every such suit or suits may be prosecuted, notwithstanding the repeal of the said recited act, in the same manner as they would have been prosecuted, had the said law not been hereby repealed, but continued during the time of prosecuting to effect such suit or suits.

Suits depending not to be discontinued by this act.

**[X. And be it enacted,** That this act shall continue in force for the term of seven years, and from thence to the end of the next session of Assembly, and no longer.]

Limitations [Made perpetual, October 9th, 1779, post. chap. 852.]

Passed 21st March, 1772.—Recorded A. vol. V. page 503. (e)

(e) For the act respecting the Probate of wills, &c. see ante. pa. 33, and the notes thereto subjoined. Since the notes to chap. 133 were printed off, the following cases have been published.

*French v. M'Ilhenny.*

The testator devised as follows: "As for such worldly estate wherewith it has pleased God to bless me in this life, I give, dispose and bequeath the same in the following manner and form.—To his wife, one half of his *plantation* during her *natural life*; to his nephew S. two thirds of his *plantation*, excepting what was above to his wife already willed; also to his nephew R. one third of his *plantation*, excepting what was above willed to his wife." It was held by two judges, against the opinion of the chief justice, that the nephews took a *fee simple* in the *plantation*, subject to the life estate of the wife in a moiety. 2 Binney, 13.

*Havard v. Davis.*

A will in writing, of lands, may be revoked by the parol republication of a former will in writing.—And in order to ascertain whether the will republished operates as a revocation, the con-

tents may be proved by parol, if the will itself cannot be found, and the usual ground is laid for introducing the secondary evidence. *Teates, J.* dissenting on the latter point, upon the circumstances of the case, 2 Binney, 406.

For the act respecting intestates' estates, see post. chap. 1740, and the notes thereto subjoined.

By the act of March 9th, 1771, (ante. chap. 635, sect. 15; pa. 338,) all gifts, grants, devises and bequests hereafter to be made of any houses, lands, tenements, rents, goods, chattels, sum or sums of money, not exceeding in the whole, including all gifts, grants, devises and bequests heretofore made, the yearly value of five hundred pounds, to the poor of any borough or township within this province, (except the townships as before excepted,) [*Northern Liberties, Moyamensing and Passyunk,*] or to any other person or persons for their use, by deed, or by the last will and testament of any person or persons, or otherwise howsoever, shall be good and available in law, and shall pass such houses, lands, tenements, rents, goods and chattels, to the Overseers of the poor, and their successors in the said trust, for the use of the said poor forever.

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Legacies to corporate bodies are to be notified by the Register when the will is brought for probate, (post. chap. 1536, sect. 5.)

By an act passed March 19th, 1810, no devise or legacy in favour of a child, or other lineal descendant of any testator shall be deemed or held to lapse or become void by reason of the decease of such devisee or legatee, in the lifetime of the testator, if such devisee or legatee shall leave issue surviving the testator, but such devise or legacy shall be good and available in favour of such surviving issue, with like effect, as if such devisee or legatee had survived the testator: *Provided always*, That nothing herein contained shall be construed to affect any devise or legacy contained in the last will of any testator who shall have deceased before the passing of this act: *And provided also*, That nothing herein contained shall be construed to defeat the intention of any testator, to exclude such surviving issue, or any of them.

Conformable to the old law, it had been decided, in *Robinson v. Robinson's executors*, in the Supreme Court, Dec'r, 1799, that a legatee dying before the testator his legacy is lapsed: And where a residue is devised to several, though some of them are not executors, and there are no words pointing to a tenancy in common, and one of them dies in testator's life-time, his share shall survive. MSS. Reports.

Divers devises in a will, of the same thing, the last devise shall take place. S. C.

The words goods, or moveables, in a will, may include bonds, unless there be something in the context of the whole will to restrain the construction. *Jackson v. Vanderspiegle's executor*. MSS. Rep. Sup. Court, Jan'y. 1792.

Devise of Lands to a second son and his heirs, he or they paying to a daughter £.300 within three months after the expiration of a lease under which the lands were; and also £.150 within three months after the death of testator's wife (to whom an annuity of £.27 per annum was devised out of the said lands during life.) The legacies are vested and transmissible to representatives, though the legatees die before the day of payment. *Stone's administrators v Massey*. Sup. Court, Dec'r. 1798. MSS. Reports.

An action was brought by a residuary legatee under the act in the text, to which the defendants pleaded fully administered: And the plaintiff thereupon moved for the appointment of auditors. It was objected that the executor's accounts had already been left by consent to referees, on a former citation before the Register of wills, &c. But the Court determined that the former settlement was not conclusive, and that by the words of the act, (sect. 3.) it was intended new auditors should be appointed, *ex tempore*, upon the plea of want of assets. 1 Dallas 164.

## CHAPTER DCLV.

*An ACT to enable the owners and possessors of a certain tract of meadow land, situate in the borough of Chester, in the county of Chester, to keep their dams, banks, sluices and flood-gates, in good repair.*

Passed 21st March, 1772.—Private Act.—Recorded A. vol. V. page 488.

## CHAPTER DCLVIII.

*An ACT for explaining and better ascertaining the boundary lines of the county of Bedford. (f)*

**WHEREAS** by an act of General Assembly of this province, entitled *An Act for erecting a part of the county of Cumberland into a separate county*, passed in the eleventh year of the present reign, it was enacted, That all and singular the lands, lying and being within the boundaries following, that is to say; beginning where the pro-

(f) For the act erecting the county of Bedford, see ante. chap. 629, and the references thereto; and the title *Bedford county*, in the index. (Note to former edition.)