

or obstructing the water. 41. Of the storage of gunpowder in the borough. 42. Encroachments on the commons, how to be abated. 43. And future encroachments, how to be prevented. 44. Penalty for digging holes, pits, or quarries on the commons, without licence. 45. Penalties, fines and forfeitures, how to be recovered and appropriated. 46. Appeals to court how to be allowed and proceeded on. 47. The operation of the general road law not to extend to the borough. 48. Any person sued, &c. under this act, may plead the general issue, and give this act in evidence, in justification, &c.]

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Passed 24th September, 1787.—Recorded in Law Book No. III. page 269.

CHAPTER MCCC.V.

An ACT to declare and regulate Escheats. (g)

SECT. I. WHEREAS the due cultivation and improvement of every country greatly depends on the certainty of titles to real estates, and no regular course of proceeding hath been heretofore provided in Pennsylvania for distinguishing, and bringing into the public treasury, the value of the real and personal property of such persons, who, being possessed thereof within the same, die intestate, and without any known kindred, whereby the commonwealth is prevented of her rights, and the real estates which were of such intestates are holden by the possessors of the same, without any legal title, and the improvement thereof is consequently greatly hindred: Wherefore,

SECT. II. *Be it enacted, and it is hereby enacted by the Representatives of the Freemen of the commonwealth of Pennsylvania, in General Assembly met, and by the authority of the same,* That, from and after the publication of this act, if any person, who, at the time of his or her death, was seized or possessed of any real or personal estate within this commonwealth, die intestate, without heirs or any known kindred, such estate shall escheat to the commonwealth, subject to all legal demands on the same; provided that no escheat of real estate, for want of heirs, shall be, where brothers or sisters of the half blood, or father or mother, or grandfather or grandmother of the deceased, survive, to take the same, but that such brother and brothers, sister and sisters, by equal portions, if there be more than one, or, in default thereof, such father, or, in default of him, such mother, or, in default thereof, such grandfather, or, in default of him, such grandmother, shall inherit and hold the same estate in fee simple.

When there shall be an escheat.

(g) By an act of the 11th of February, 1789, aliens were allowed to purchase and hold real estates within this commonwealth; and that act expiring, by its own limitation, on the first of January, 1792, was revived and continued, for the term of three years; by an act of the eighth of March, 1792. By an act of the 23d of February, 1791, aliens were enabled to acquire, to take, hold

and dispose of real estates, by *devise*, or *descent*, and dispose of personal estates, to which they may be entitled, by testament, donation, or otherwise. (Note to former edition.) [Supplement to the act in the text, chap. 1517.] And see the general index, title *alien*, and the act of 10th of February, 1807, (chap. 2737.)

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Escheator-General to be appointed, with power to appoint deputies.

Process to ascertain escheats by an inquest.

SECT. III. *And be it further enacted by the authority aforesaid,* That the Supreme Executive Council may and shall commissionate a person, of integrity and ability, to be Escheator-General for this commonwealth (who shall hold his office for the term of seven years, if he shall so long behave himself well,) and shall be empowered to appoint a deputy in each county within the same, for whom he shall be accountable: And so often as information shall be given to the Escheator-General or to the Deputy-Escheator of the proper county, of any person dying intestate, or without heirs or any known kindred, as aforesaid, and who was, at the time of his or her death, seized or possessed of any real or personal estate within such county, the said Escheator-General shall, forthwith, issue his precept, directed to the Sheriff or the Coroner of the county, as the case may require, thereby commanding such Sheriff or Coroner to impanel and summon twenty-four good and lawful men of the same county to come before the same Escheator, or the deputy to be named therein, at some public and convenient place within the same county, not less than ten, nor more than twenty days thereafter, to enquire, whether (as shall be alleged) the said person hath died without heirs or known kindred, as aforesaid, and whether such decedent was, at the time of his or her death, seized or possessed of any and what estate, real or personal, in the same county, and also in whose hands or possession the same shall be; and when the said twenty-four persons, so impanelled and returned as aforesaid, or any sixteen or more of them, shall appear, according to the summons aforesaid, they shall (not exceeding twenty-three in number) be sworn or affirmed, as an inquest, to enquire concerning the matters in the said precept set forth; and the said Escheator or his deputy, and the said inquest, shall, thereupon, proceed to enquire, by the testimony of competent witnesses, duly sworn or affirmed, and other lawful evidence, concerning the matter in the said precept set forth, and shall permit witnesses, upon oath or affirmation made before him, (which he is hereby empowered to administer) and other lawful evidence, to be heard and adduced; and if any twelve or more of the said inquest shall find that any such estate, real or personal, within the said county, hath escheated to the commonwealth, an inquisition thereof shall be made, signed, and sealed by the Escheator, or his deputy, and twelve or more of the inquest that find the same, setting forth, that the intestate person, in the same writ named, hath died without heirs, or any known kindred, and specifying the estate, real or personal, (if any) of which such intestate died seized or possessed, and also the person or persons in whose hands or possession the same estate shall be; which inquisition, to be taken as aforesaid, shall be certified and transmitted by the said Escheator-General, as soon as conveniently may be after the holding of such enquiry, into the office of the Prothonotary of the Supreme Court.

The inquisition to be transmitted to the Prothonotary of the Supreme Court.

Process to secure the property, after inquisition found.

SECT. IV. *And be it further enacted by the authority aforesaid,* That immediately upon the finding of such inquisition, the Escheator-General shall issue his writ, directed to the Sheriff or Coroner of the county, as the case shall require, commanding him to seize, attach and secure the goods and chattels, so found to be escheated as

aforesaid, in whose hands soever the same shall be found; or if it be found by the said inquest, that the said goods and chattels be eloigned, then to seize and attach so much of the goods and chattels of the person or persons who shall have eloigned the same, as shall be equal in value to the goods and chattels which be eloigned, unless the person or persons in whose hands or possession such goods and chattels be found, give bond to the commonwealth, with sufficient security, to appear at the next Supreme Court thereafter, to traverse the said inquisition; and likewise, in case the same be confirmed, to render to the commonwealth the same goods and chattels found to be in his or her hands; which writ so to be issued, shall be duly returned to the Escheator-General, together with an inventory and appraisement of the goods and chattels (if any) which be seized and attached by virtue thereof, and the said Sheriff or Coroner shall, thereupon, sell the same goods and chattels at public auction, after ten days public notice of such sale, and shall, without delay, pay over the monies therefrom arising to the Treasurer of the commonwealth; copy of which return, inventory and appraisement, together with the account of sales of the same goods and chattels, shall without delay, be transmitted to the Escheator-General, and by him to the Comptroller-General of the commonwealth, and the same Sheriff shall be accountable to the said Comptroller-General, as in other cases, for the monies, which, by virtue of this act, shall come to his hands; and in case of lands or hereditaments which may be found to be escheated to the commonwealth, the said Escheator-General shall lease the same, for any term not exceeding two years, to the person or persons, who, at the time of finding the inquisition concerning the same, shall be in possession thereof, provided he give a reasonable rent therefor; and if the person or persons so in possession claim title thereto, he, she or they shall give bond, as aforesaid, to prosecute his, her or their claim, before the Supreme Court, in the manner hereinafter directed, and also to pay to the commonwealth a reasonable rent for the annual profits of the same land and hereditaments, in case the judgment of the said court shall establish the title of the commonwealth; and in case such tenant or tenants in possession will not accept of a lease as aforesaid, and give such bond as aforesaid, the Escheator-General shall lease the same lands and hereditaments, during the term aforesaid, to some other tenant or tenants of sufficient ability, and issue his writ, in the nature of an *habere facias possessionem*, directed to the Sheriff or Coroner of the county, as the case may require, commanding such officer to remove the tenant or tenants off the premises, out of possession, and to deliver possession thereof to such lessee or lessees.

SECT. V. *And be it further enacted by the authority aforesaid,* That after the return of such inquisition as aforesaid into the office of the Prothonotary of the Supreme Court as aforesaid, if there be any that claim the estate, real or personal, so as aforesaid found to be escheated, he, she or they shall be heard without delay, upon a traverse to the office, *monstrans de droit*, or petition of right, and the testimony, taken in writing, on finding of the inquisition concerning the same land, shall be admitted, as legal testimony on the part of the commonwealth; but if no such claim be made to lands so found.

Claims to be filed and heard in the Supreme Court, after inquisition found.

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to be escheated as aforesaid, within seven years next after the inquisition concerning the same be returned into the office of the Prothonotary of the Supreme Court, or if, upon claim, the title of the commonwealth be established to any lands, which be found to be escheated as aforesaid, in such case the Prothonotary of the Supreme Court shall certify to the Escheator-General, that no claim had been made, or that if such claim had been made, judgment thereupon had been rendered against the same, and the title of the commonwealth to the same land established, whereupon the said Escheator shall proceed to make sale, by public auction, of the premises, to him, her or them, that will offer the best and highest price for the same; such sale to be after public notice of the time and place of holding thereof, and, together with the conditions thereof, advertised at least one month in two or more of the public newspapers of this commonwealth, and also by writings affixed on the door or doors of the court-house of the county, wherein the lands lie; and immediately after the sale as aforesaid shall be made, the Escheator shall certify the name, surname and addition of the purchaser of the lands sold by him, as herein before directed, to the President, or in his absence the Vice-President, in Council, who, on the filing of such certificate in the office of their Secretary, together with an acquittance from the Treasurer of this commonwealth for the price bidden and offered as aforesaid, shall, by deed, under the great seal, grant the same lands and hereditaments to the purchaser thereof, to hold to him or her, his or her heirs and assigns, for ever, subject, nevertheless, to any reversion, remainder, lease, rent, common mortgage, incumbrance, office, or other profit, issuing out of the same lands, as the same lands respectively were subject to, before the finding of the inquisition touching the particular lands so sold: *Provided always*, That the person or persons who were entitled to such reversion, remainder, lease, rent, common mortgage, lien, office, or other profit, had, previously to the sale of the said lands, exhibited his, her or their claim to the Supreme Court, and established his, her or their title to the same, in default of which they shall be for ever debarred from recovering the same.

Of sales of
escheated
property.

The same to
be certified
to the Exe-
cutive.

Proviso as to
prior liens
and incum-
brances,

Mode of pay-
ing rightful
claimants,
in the case
of property
sold as
escheat.

SECT. VI. *And be it further enacted by the authority aforesaid*, That if any person shall, within seven years next after the sale of any lands, as herein before directed, appear, and make claim thereto, in manner aforesaid, and establish his, her or their title to the same, as herein after directed, in such case, and not otherwise, such person shall be entitled to receive from the Treasurer of this state, by virtue of a warrant for the same, signed by the President, or in his absence by the Vice-President, in Council, all such monies as the commonwealth shall have received on the sale of such lands, after all charges thereon be deducted; and if any person, within five years next after the sale of such goods and chattels as aforesaid, shall make his or her claim, in manner herein before directed, and establish his or her right thereto, as herein after provided, he or she shall, in like manner as in the case of real estate, by warrant of the President or Vice-President, in Council, receive all such monies as had been received by the commonwealth for the same goods and chattels, after all charges thereon be deducted.

SECT. VII. *Provided always*, That if, at the time of sale as aforesaid, any person having claim to the goods and chattels, or to the lands, so sold as aforesaid, be out of this state, covert baron, imprisoned, an infant, or insane, such person, if an inhabitant of this state, shall be allowed, in the case of goods and chattels, two years, and, in case of real estate, four years, to be computed from and after the return of such claimant into this state, becoming discoverd, at large, attaining to full age, or recovering sound mind and memory, as the case may be, to make his or her claim to such estate respectively; and that any person having claim to such real or personal estate, who, at the time of such sale, shall not be an inhabitant of this state, yet be of full age and of sane mind and memory, such person, continuing to reside elsewhere, shall be allowed to make his or her claim, as aforesaid, within five years, to be computed from and after the sale of the goods and chattels, and seven years, to be computed from and after the sale of the lands, by such person so claimed.

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Proviso, in favour of claimants under legal disabilities.

SECT. VIII. *And be it further enacted by the authority aforesaid*, That if any person, at the time of the death of any intestate as aforesaid, shall be indebted to such intestate, or if any part of the estate, real or personal, which was of such intestate, and not mentioned and included in such inquisition, be in the hands or possession of any person dwelling within this state, the same shall be recovered to the use of the commonwealth, by information of debt, intrusion or action, in the nature of trover and conversion, or upon the case, for money received to the use of the commonwealth, as the case may require, in which proceedings, respectively, the inquisition touching the estate of such intestate shall be admissible evidence, to prove that the same intestate died without heirs or known kindred, as herein before described.

Of the debts due to intestates, whose property has escheated.

SECT. IX. *And with intent that all estates real and personal, which shall escheat to the commonwealth from and after the publication of this act, may be discovered, so that the commonwealth may be secured of the public right to the same, and that the titles to such lands which shall so escheat may be re-established, and industry and improvement thereupon exerted by the future possessors thereof with full confidence, Be it further enacted by the authority aforesaid*, That the person who shall first inform the President or Vice-President in Council, by writing, signed by such person, in the presence of two subscribing witnesses, of any escheat happening within this commonwealth, from and after the publication of this act, and who shall procure necessary evidence to substantiate the title of the commonwealth to the same, and shall prosecute the right of the commonwealth thereto with effect, such person shall be entitled to one third part of the price, which such goods and chattels, or one fifth part of the price, which such lands, respectively, shall have produced, after all costs of prosecution and charges of sale be deducted therefrom.

Reward for informing of escheats.

SECT. X. *Provided nevertheless*, That before such third part be paid to the person who shall first give information as aforesaid, his or her heirs or representatives (which payment shall be by warrant for the same, signed by the President or Vice-President in Council,

Proviso, that security shall be given by the informants;

1787. on the Treasurer of the commonwealth) bond, with sufficient freehold security, shall be given to the commonwealth, conditioned to refund the same, or any part thereof, as the case may be, if any claimant to the estate, upon which such one-third or one-fifth part shall become payable, appear, within the time herein before limited, touching such estate, and establish his or her title to the goods and chattels, or lands, respectively, which shall have been sold as aforesaid.

The commonwealth not to acquire a greater interest by the Escheator than the party had.

SECT. XI. *And be it further enacted by the authority aforesaid,* That in every case wherein goods or chattels, or lands, be holden in common with any person, whose estate shall escheat, as aforesaid, the commonwealth shall not acquire by such escheat any other or greater title to the same, than the person who shall die intestate, without heirs or known kindred, as aforesaid.

The Escheator to give a bond;

SECT. XII. *And be it further enacted by the authority aforesaid,* That the said Escheator-General, before he enter upon the duties of his office, as required by this act, shall give bond, with two sufficient sureties, to the commonwealth, for his faithful performance of the trust reposed in him as aforesaid, in the sum of two thousand pounds, which bond shall be deemed to relate to his proceedings by virtue of this act, during seven years from and after the date thereof, and not afterwards, and shall be enforced, as to any suit or action which shall be commenced within the term of twelve years, to be computed from the date of such bond, and not otherwise; and that the Escheator who shall then be in office shall, at the end of the term of seven years, renew the security by this act required of him, in like manner and to like effect, as afore directed; and it shall be the duty of the Secretary of the Supreme Executive Council to take care, that the Escheator give bond, and renew the same, conformably to the directions of this act, and that the same bond be recorded in the Rolls-office of this commonwealth.

to be taken by the Secretary.

The escheator's fees;

SECT. XIII. *And be it further enacted by the authority aforesaid,* That the fees and reward of the Escheators aforesaid shall be as follow:

For receiving and filing each information, twenty shillings.

For issuing writs or precepts to the Sheriff or Coroner, fifteen shillings.

For filing return, three shillings.

For every *Subpœna* for witnesses (four to be named in each, if so many there be) five shillings and seven-pence.

For calling and attesting the jury of enquiry, and holding, drawing and filing the inquisition, thirty-five shillings.

Attesting each witness, one shilling and six-pence.

For examining witnesses and reducing their testimony to writing, for each line of twelve words, four-pence.

For all copies (besides the certificate) for each line of twelve words, two-pence.

And for a certificate, besides the copy, seven shillings and six-pence.

For drawing a bond to traverse the inquisition, if necessary, seven shillings and six-pence.

For filing the same, three shillings.

Executing every lease and filing the counterpart (the expense of drawing the same to be paid by the lessee) fifteen shillings. 1787.

And that the fees of the Prothonotary, Sheriff, and other officers of the Supreme Court, and jurors and witnesses, shall be the same, as they are entitled to receive for similar services in the same court. and of the other officers, &c.

SECT. XIV. *And be it further enacted by the authority aforesaid,* That in all cases where escheats, for want of heirs or known kindred, have happened, as well previously to the late revolution, as since the same, they, and each of them, shall be enquired of by the Escheator-General, or his deputy, decided upon by like traverse and claim, and under the like limitations of time for making such traverse and claim, exposed to sale, and sold in like manner, as is herein before provided as to escheats for want of heirs, and the monies thence arising shall belong and go, as the same by law would before the publication of this act. Provision respecting escheats antecedent to this act.

SECT. XV. *Provided,* That the brothers or sisters of the half blood, the father, mother, grandfather or grandmother of the person so dying, shall not have any benefit or share of the escheats which have happened heretofore: *Provided also,* That nothing in this act shall affect the claim of any person, who shall be possessed of any escheat which had previously happened as aforesaid, by virtue of an escheat warrant for the re-surveying of any lands that had formerly escheated. Proviso, as to who shall share in such escheats.

SECT. XVI. *Provided nevertheless,* That such escheat warrant, and the survey which hath been made thereon, be returned into the office of the Surveyor-General of this state, within two years from and after the publication of this act, and that the purchase money, together with the interest which shall be due upon the same, be satisfied within one year thereafter, where such survey hath not been duly returned, and satisfaction made for the same land heretofore. Of escheat warrants, and surveys made thereon.

SECT. XVII. *And be it further enacted by the authority aforesaid,* That the proceeding in cases of escheats of lands, and goods and chattels, which shall hereafter accrue to the commonwealth by forfeiture upon attain, shall commence by the issuing of a commission out of the Supreme Court, to the Escheator-General directed, commanding him to enquire concerning the same; whereupon the same Escheator shall send forth his precept to the Sheriff or Coroner, who, thereupon, shall hold an inquest, and return the inquisition, lease, sell and dispose of the personal estate, if any, and the money arising from the same escheats; and the Supreme Court shall allow of traverses and claims (if made under the limitations herein before provided) to such forfeited property, and decide upon the same, direct the sale of real estate, and give relief to those, whose traverses shall succeed, and whose claims be allowed; and the President in Council shall give a deed for any real estate so sold as aforesaid, in like manner and to similar effect, as in the cases of escheats for defect of heirs; and all creditors of any attainted person, who have or shall have a demand of debt, or other demand of a pecuniary nature, upon the estates which were of such offenders respectively, shall be satisfied out of the estate personal and real of the debtors severally; but in case any such estate prove insolvent, the demands aforesaid made upon it, within one year Proceedings in cases of escheats of lands, &c. upon attain.

1787. from the attainder of the offender, shall be paid in an equal and proportionable manner, according to the quantity of the demands, whether the same be yet due and payable, or payable thereafter; and the Justices of the Supreme Court, or any two of them, shall hear and determine upon all and any claims, as last aforesaid, in a summary manner, as to equity shall appertain, and the widow, child, children and kindred of the offender, shall be awarded their respective legal demands upon the estate, which he or she shall forfeit as aforesaid, in like summary manner, upon petition to the Justices of the Supreme Court, made within two years after the attainder of the forfeiting persons, respectively, but not afterwards, by the person or persons who shall be entitled to the same: *Provided*, That no person shall have any share or part of any estate, which shall be escheated by attainder, for discovering the same to the President or Vice-President in Council, unless the President or Vice-President in Council, by proclamation, think fit to offer a reward for such discovery, which reward shall not exceed one half of the monies arising from the same, after all charges and costs be deducted, nor unless the person discovering the same procure the necessary evidence to substantiate the title of the commonwealth thereto, and prosecute the right of the commonwealth to the same with effect. (*h*)

The Escheator to have access to papers and records.

SECT. XVIII. *And be it further enacted by the authority aforesaid*, That the Escheator-General, or his deputies, shall, at all reasonable times, have access to the public papers in the Land-Office, and other public records, free from any cost, charge or fee.

Passed 29th September, 1787.—Recorded in Law Book No. III. page 294.

(*h*) By the 19th section of the 9th article of the constitution, it is declared, that no attainder shall work corruption of blood, nor excepting during the life of the offender, forfeiture of estate to the commonwealth; that the

estates of such persons as shall destroy their own lives shall descend, or vest, as in case of natural death; and if any person shall be killed by casualty, there shall be no forfeiture by reason thereof (*Note to former edition.*)

CHAPTER MCCCVI.

An ACT for incorporating the German Reformed Congregation of Frankford, in the township of Oxford, and county of Philadelphia.

Passed 29th of September, 1787.—Private Act.—Recorded in Law Book No. III. page 263.

CHAPTER MCCCVII.

An ACT for regulating chimney-sweepers, within the city of Philadelphia, the district of Southwark, and township of the Northern-Liberties, in the county of Philadelphia. (i)

SECT. I. WHEREAS the houses and estates of the inhabitants of the city of Philadelphia, and of the district of Southwark,

(*i*) By a supplement to the act for incorporating the city of Philadelphia (enacted the 2d of April, 1790) the corporation are empowered to regulate the

prices of chimney-sweepers, &c. and an ordinance was passed for that purpose on the 28th of February, 1791. (*Note to former edition.*)

[See vol. 1, page 129, Chap. 245.]