

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,"¹ is near expiring and requires a few but necessary amendments:

[Section I.] Therefore be it enacted by the Honorable Richard Penn, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and John Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania, by and with the advice and consent of the representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, 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.

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

¹ Passed September 20, 1765, Chapter 529.

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 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.

[Section II.] And be it further enacted by the authority aforesaid, That the respective courts where the said actions shall be commenced, and 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 toward 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 judgment shall remain a security for the payment of the remainder of the said legacies and costs 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.

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.

[Section III.] And be it further enacted by the authority aforesaid, 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, anything herein contained to the contrary notwithstanding.

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.

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.

[Section IV.] And be it further enacted by the authority aforesaid, 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,"¹ shall be and is hereby declared to be repealed.

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.

[Section V.] And be it enacted by the authority aforesaid, 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.

Passed March 21, 1772. Referred for consideration by the King in Council, January 15, 1773, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXX, and the Acts of Assembly passed October 9, 1779, Chapter 863; February 24, 1834, P. L. 70.

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 FLOODGATES IN GOOD REPAIR.

Whereas the embanking and draining of swamps and marshy lands and converting the same into meadow renders it valuable and advantageous to the owners thereof and tends to promote the trade and commerce of this province, and as disputes and controversies frequently happen amongst the owners of drained meadow ground, occasioned by default in some of them to support their just and equal proportions of the dams, banks, sluices and floodgates, nor can they be compelled thereto without the aid of the legislature:

¹ Passed September 20, 1765, Chapter 529.