

by the authority of the same, That the governor, be, and he is hereby authorized to draw his warrant on the state treasury in favor of James Kerr, for the sum of five hundred and twelve dollars; which shall be paid out of any unappropriated money in the treasury, and shall be disposed of for the benefit and maintenance of Edward Chisselden, in such manner as shall be thought most beneficial by the said James Kerr, his executor or executors, administrator or administrators; and it shall be his duty to make an annual return to the orphans' court of Washington county, on oath or affirmation, how and in what manner he or they have executed the trust in him or them confided by this act.

Approved April 7, 1807. Recorded in L. B. No. 11, p. 14.

CHAPTER MMDCCCXXV.

AN ACT SUPPLEMENTARY TO THE SEVERAL ACTS OF THIS COMMONWEALTH CONCERNING PARTITIONS, AND FOR OTHER PURPOSES THEREIN MENTIONED. (4)

Section I. (Section I, P. L.) 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 courts of common pleas of the different counties in this commonwealth, be, and they are hereby authorized to issue writs of partition in all cases in which partition is demanded, of lands, tenements or hereditaments in this commonwealth, owned and held in joint tenancy, coparcenary or in common, and whether the demandant or defendants be minors or of full age; and where a minor or minors is or are the defendant or defendants in any action of partition, the writ shall be served upon his, her or their guardian or guardians; or if he or she have no guardian, then upon a guardian to be appointed for this purpose by the court, on notice thereof given in the manner hereinafter directed; and upon appearance of the parties, or on default being made,

the court shall proceed to examine the plaintiff's title and quantity of his part or purpart; and accordingly as they shall find his right or purpart to be, they shall give judgment, and award a writ to make partition whereby such proportion or purpart shall be set out in severalty; which writ being executed after ten days public notice, and the inquest of partition being returned and final judgment thereupon entered, the same shall be good and shall conclude all persons whomsoever; in the same manner as though the parties were under no disability of age or otherwise, and notwithstanding all persons concerned are not named in the proceedings, nor the title of the defendants truly set forth.

Section II. (Section II, P. L.) And be it further enacted by the authority aforesaid, That if any defendant or other person against whom, or against whose right or title, judgment by default be given, shall within the space of one year after the final judgment entered, apply to the court by motion where such judgment is entered, and shown a good and probable matter in bar of such partition, or that the plaintiff hath not title to so much as he hath recovered, then in such case the court may suspend or set aside such judgment and admit the party to appear and plead, and the cause shall proceed according to the due course of law; and if the court upon hearing thereof, shall adjudge for the plaintiff, then the said first judgment shall stand confirmed; or in case such defendant or other person shall within the time aforesaid appear and admit the plaintiff's title, part or purpart, and show to the court any inequality in the partition, the court may award a new partition to be made in presence of all parties concerned, if they will appear, notwithstanding the return and filing upon record of the former; which said second partition returned and filed, shall be good and firm against all persons whomsoever.

Section III. (Section III, P. L.) And be it further enacted by the authority aforesaid, That where any of the defendants in any action of partition reside in the county where the lands lie, service of the said writ shall be made upon them by the

sheriff of the county or his deputy, by leaving a copy of the writ at his, her or their usual place of abode, at least fifteen days before the return day thereof; and when any of the said defendants reside out of the county where the lands lie, but within this commonwealth, service of the said writ shall be made upon them in like manner by the sheriff of the county where the lands lie, or his deputy; and where any of the said defendants reside out of this commonwealth, or beyond seas, a copy of the said writ shall be published in one public newspaper printed within or nearest to the said county, and in one daily newspaper of the city of Philadelphia, for the space of two months prior to the said return day; which said publication shall be deemed and taken by the court, and it is hereby declared to be a good and effectual service of the said writ upon the defendant or defendants so residing out of this commonwealth: Provided always, that where the lands lie in more than one county, the service aforesaid shall be made by the sheriff of the county where the action is brought.

Section IV. (Section IV, P. L.) And be it further enacted by the authority aforesaid, That no plea in abatement shall be admitted or received in any suit for partition, nor shall the same be abated by reason of the death of any defendant.

Section V. (Section V, P. L.) And be it further enacted by the authority aforesaid, That where equal partition in value cannot be made of any share or purpart, the sheriff and inquest shall have power to equalize such partitions or purparts, by valuing the purparts respectively; and to award that any one or more shares or purparts shall be subject to the payment of such sum of money as shall be equal to the difference in value of any other share or shares, purpart or purparts; and shall return the same with their inquest, which sum or sums of money when final judgment shall be rendered on such writ of partition, shall be a lien on the lands or tenements which the inquest aforesaid shall have determined to be liable to pay the same.

Section VI. (Section VI, P. L.) And be it further enacted by the authority aforesaid, That when partition is made of

an intestate's real estate and a part is allotted to each of the children or representatives, in case there be a widow of the intestate living and entitled to a part of the said real estate during her life, it shall be the duty of the inquest or referees making partition, to estimate the value of the said part, and to apportion the same among the respective shares of the children or representatives; and upon confirmation thereof by the orphans' court, the same shall remain as a charge upon the said shares; and the interest thereof shall be annually and regularly paid to such widow, and may be recovered by action of debt or by distress as rents are usually recovered in this commonwealth; and where the estate of the intestate is divided into fewer parts than there are children or representatives, the same proceedings shall be had to estimate and apportion the value of the widow's purpart among the said parts; which shall remain a charge thereon, and the interest thereof shall be paid and may be recovered as aforesaid; and upon the decease of any such widow, the whole value of the said purpart shall be distributed among all the said children or representatives in proportion to their respective shares, according to law.

Section VII. (Section VII, P. L.) And be it further enacted by the authority aforesaid, That where the estate of an intestate is divided into a fewer number of parts than there are children or representatives, and any one or all of the said parts is or are refused to be taken by the children or representatives, the like proceeding shall be had to sell the parts so refused, as is directed in case of an appraisement of the whole, in and by an act passed the second day of April, one thousand eight hundred and four, entitled "A further supplement to the act entitled "An act directing the descent of intestates' real estates and distribution of their personal estates, and for other purposes therein mentioned;"⁽²⁾ and any such sale or sales heretofore made by the decree of any orphans' court is, and are hereby ratified and confirmed.

Section VIII. (Section VIII, P. L.) And be it further enacted by the authority aforesaid, That in order to give the younger children, or representatives of an intestate, an opportunity of accepting or refusing the estate of the intestate, in case of an appraisement or partition into fewer parts than there are children or representatives, the orphans' courts of the different counties of this commonwealth are hereby authorized, upon application, to grant a rule upon any of the children or representatives, to come into court within a certain time, and to accept or refuse the same; a copy whereof shall be served upon the party personally, ten days before the return thereof, in case he, she or they reside within the county, or if they reside out of the county, a copy of the rule shall be published in at least one newspaper printed in the proper county; or if there be none therein, then in some adjacent county, and in one daily newspaper of the city of Philadelphia, for the space of one month before the return thereof; and in case he, she or they do not come in, according to the said rule, and accept or refuse, the court shall and may direct the same to be offered to the next child or representative in order.

Section IX. (Section IX, P. L.) And be it further enacted by the authority aforesaid, That where any person shall die intestate, after the passing of this act, leaving lands or tenements in more than one county in this commonwealth, if after inquisition held, any of the legal representatives of such intestate shall accept of the real estate upon the valuation thereof, in any one county, such person shall not have the right of preference, or elect to take the real estate, or any part thereof in any other county, until all the other heirs or legal representatives shall refuse to take the same at such valuation.

Section X. (Section X, P. L.) And be it further enacted by the authority aforesaid, That where it shall be made to appear to the orphans' court, that a minor child or children, is or are possessed of real estate, but is or are not possessed of personal estate, adequate to the maintenance and educa-

tion of such minor child or children, then, and in every such case, the orphans' court of the county where the real estate lies, shall allow the guardian or guardians of such child or children to make public sale thereof, or of so much of the said real estate upon the best computation they can make of the value thereof, as the said court shall judge necessary for the purposes aforesaid, and to make a title thereto to the purchaser: Provided always, that the guardian or guardians aforesaid, shall, before they proceed to convey, give bond with sufficient surety to the orphans' court, to dispose of the proceeds of sale for the use of the said minor or minors, and to invest within six months from the receipt of the same, so much thereof, if any there be, as shall not be immediately required in good real or other securities for the same use.

Section XI. (Section XI, P. L.) And be it further enacted by the authority aforesaid, That where any person or persons shall hereafter die, having made and executed any testament and last will, and shall not therein have disposed of the residue of his or her personal estate, the executor or executors therein named, shall distribute such undisposed of residue to and among the next of kin, agreeably to the intestate laws of the commonwealth, but nothing in this section contained shall be construed to affirm or deny the right of any executor or executors to such undisposed of residue prior to the passing of this act.

Approved April 7, 1807. Recorded in L. B. No. 11, p. 15.

Note (*) See a supplement to the act in the text Chapter 2977; *infra* this volume, p. 867.

Note (*) Chapter 2498; 17 Statutes at Large p. 838.

CHAPTER MMDCCCXXVI.

AN ACT AUTHORIZING CERTAIN PERSONS TO SELL AND CONVEY A TRACT OF LAND, THE PROPERTY OF WEST CALN TOWNSHIP, IN THE COUNTY OF CHESTER.

Whereas it hath been represented to the legislature, that a certain Abraham Dawson, did by his last will and testament, bequeath to the inhabitants of West Caln township,