

1797. district shall hold their general elections at the house now occupied by Jacob Gunckel, in the same township.

Passed 1st April, 1797.—Recorded in Law Book No. VI. page 167.

### CHAPTER MDCCCC XXXVIII.

*An ACT supplementary 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."*

[See ante, pa. 143, and the notes thereto.]

**WHEREAS** the goods and effects of testators and intestates have sometimes been wasted by the executors of their last wills and testaments, and by administrators, to the great injury, not only of the legal representatives of the testator, but also of just creditors, and of the sureties in administration bonds; and where executors are empowered to sell real estates, it is just and right that the produce of such sales should be secured for the purposes intended thereby: Therefore,

**SECT. 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 when any legatee, creditor, or person interested in the real or personal estate of a person who has heretofore died, or shall hereafter die, with a last will or testament, or surety in any administration bond for administering the estate of any decedent, shall declare, on oath or affirmation, that he, she or they have sufficient cause to believe that the executors or administrators, with or without a will annexed, of such decedent are wasting or mismanaging the estate of such decedent, and shall make application for security to the Orphans' Court of the county, in which letters testamentary or letters of administration, with or without a will annexed, have been or shall be granted, the said Orphans' Court are hereby empowered to examine the cause of complaint; and if it should appear to them that the same is just, it shall and may be lawful for such Court to order such executors or administrators to give such sufficient bond, with sureties, or such further security as they may judge necessary, according to the value of the estate, which securities shall be taken and filed in the said Orphans' Court, in the name of the commonwealth of Pennsylvania; and the said bonds shall be deemed and considered in trust for the benefit of all persons interested in said estate, whether as legatees, legal representatives, creditors, or sureties in former administration bonds. And in case such executor or administrator shall refuse or neglect, for the space of thirty days after due notice of such order, to give the security or further security so ordered, then the said Court shall vacate the letters testamentary or of administration, and award new letters to be granted and issued by the Register of the proper county, to such person or persons, and upon such security; as the Court shall think proper; and shall moreover order the first executor or administrator to deliver over and pay to the successor all and every the goods, chattels, rights, credits, title deeds, evidences and securities, which were of the decedent, and

Proceedings to compel executors and administrators to give security.

Penalty on not giving the security; and proceedings thereupon to revoke the letters testamentary or of administration.

which came to his or their hands, and remain unadministered, and to account with the said successor for all and every the goods, chattels, rights and credits, which shall have been previously administered, and pay over the balance which shall remain due from him or them to the said successor in such manner and time as the said Court shall, upon an examination and confirmation of such account (to be had according to the usual course of proceeding in case of accounts of executors and administrators settled in such Courts,) award and order. And if such superseded executor or administrator shall neglect or refuse to comply with the award and order of the Court touching the premises, the Court, on motion, shall proceed against him or them, as is lawful in cases of contempt, or the succeeding administrator may proceed at law against him or them, or his or their sureties, if any there be, or against any other person or persons who may be possessed thereof, for the recovery thereof; or both the said remedies may be pursued at the same time, if the case so require, until the end be fully attained.

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Penalty for disobeying the award of the court in such case.

SECT. II. *And be it further enacted by the authority aforesaid,* That in all cases where a return of *nulla bona* shall have been made by the Sheriff of the proper county, to an execution against any such executors or administrators, their sureties shall, on notice thereof, unless they can shew goods or chattels, lands or tenements, in some other county, which may be seized and taken in execution by a *testatum fieri facias*, to satisfy the same, be liable to pay the amount of the debt and costs therein, in actions brought against them on the said bonds, and such further proof or evidence in support thereof as by law would have entitled the suitor or suitors to recover his, her or their demand of the said executors or administrators, *de bonis propriis*; provided such suits shall be instituted against the sureties within seven years after the date of the respective bonds; and the whole amount of the sums of money to be recovered thereupon shall not exceed the penalties of the said bonds respectively.

On return of *nulla bona*, how the sureties of executors or administrators shall be made liable.

Limitation of suits against sureties.

SECT. III. *And be it further enacted by the authority aforesaid,* That, from and after the passing of this act, any executor or executor, administrator or administrators, with or without a copy of a will annexed, may, with leave of the Register's or Orphans' Court in the respective counties, make a settlement of his or their accounts, so far as he or they shall have administered the estate of the deceased; and also, with leave of either of the said Courts, may be dismissed from the duties of his or their appointment, and surrender the residue of the estate under his or their care to such person or persons as the said court may appoint; the Register of the respective counties in every such case is hereby authorized and required to take bond, with two sufficient sureties, in a penalty of double the amount of the real value of such estate, and also to administer the usual oaths or affirmations to such person or persons so appointed, and to grant letters of administration of the unadministered part of such estate.

How executors and administrators may settle their accounts, and be discharged.

SECT. IV. Whereas inconveniences may arise from the debts of

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Limitation  
of the time,  
during  
which debts  
shall remain  
a lien on real  
estates,

deceased persons remaining a lien on their lands and tenements an indefinite period of time after their decease, whereby *bona fide* purchasers may be injured, and titles become insecure: Therefore, *Be it further enacted by the authority aforesaid*, That no such debts, except they be secured by mortgage, judgment, recognizance, or other record, shall remain a lien on said lands and tenements longer than seven years after the decease of such debtor, unless an action for the recovery thereof be commenced and duly prosecuted against his or her heirs, executors or administrators, within the said period of seven years, or a copy or particular written statement of any bond, covenant, debt, or demand, where the same is not payable within the said period of seven years, shall be filed within the said period in the office of the Prothonotary of the county where the lands lie: *Provided always*, That a debt due and owing to a person, who at the time of the decease of such debtor is a *feme covert*, in his or her minority, *non compos mentis*, in prison, or out of the limits of the United States, shall remain a lien on the said lands and tenements (notwithstanding the said term be expired) until four years after discoveriture, or such person shall have arrived at the age of twenty-one years, be of sound mind, enlarged out of prison, or return into some one of the United States of America.

Proviso, as  
to the sons  
under legal  
disabilities,

Distribution,  
where there  
is a widow,  
and no issue,

SECT. v. And whereas the provisions of the act, to which this act is supplementary, appear to be incomplete: Therefore, *Be it further enacted by the authority aforesaid*, That where an intestate leaves a widow, and no lawful issue, the real and personal estate not given by the former act to the widow shall descend and be divided as is directed by this act, and the act to which this is a supplement, in cases where the intestate shall leave neither widow nor lawful issue; and that where any woman shall hereafter die intestate, without leaving a husband, her estate, real and personal, shall descend and be divided in the same manner as is directed by this act, and the act to which it is a supplement, in cases where men have died or shall die intestate; but where she leaves a husband, he shall take the whole personal estate, and the real estate shall descend and go in the same manner as is directed in the case of men dying intestate, saving to the husband his right as tenant, by the curtesy; and if any intestate shall die seized of real estate in fee-simple, and shall leave no widow, nor lawful issue, father, brother, sister, or their representatives, then the said estate shall go and be vested in fee-simple in the mother, unless where such estate has descended from the part of the father, in which case it, or such part thereof as shall have come from the part of his or her father, shall pass and be enjoyed, as if such person, so dying seized, had survived his or her mother; and where any person shall die seized or possessed of any real or personal estate, leaving neither widow nor lawful issue, father or mother, but brothers and sisters of the whole blood, the said estate shall descend to and be vested in such brothers or sisters, as tenants in common, in equal parts; and if any of the brothers or sisters of the intestate shall be then dead, leaving lawful issue, then it shall descend to and be enjoyed by the surviving brothers and sisters and the lawful issue of such brothers or sisters as shall

Distribution,  
where a wo-  
man dies  
without  
leaving a  
husband; and  
where there  
is a husband,

Distribution,  
where there  
is no widow  
nor lawful  
issue, father,  
brother, sis-  
ter, or their  
representa-  
tives,

Distribution,  
where there  
is no widow,  
nor lawful  
issue, father,  
or mother,  
but brothers  
and sisters of  
the whole  
blood,

be then dead, such issue always to inherit, if one person, solely, if several persons, as tenants in common, in equal parts, such share only as would have descended to his, her or their parent, had such parent been then living, and each of the brothers and sisters of the persons so dying intestate, who shall be living at the time of the death of the intestate, always to inherit and enjoy such share, as would have descended and been distributed to him or her, if all the brothers and sisters leaving lawful issue had been living at the time of the death of the intestate.

SECT. VI. *And be it further enacted by the authority aforesaid,* That if the intestate shall die seized of real estate, leaving neither widow nor lawful issue, father or mother, brother or sister, of the whole blood, but shall leave lawful issue of deceased brothers or sisters, the said estate shall be enjoyed and possessed by such lawful issue, in the same shares and proportions, and for such estates, as is directed in case some of the brothers or sisters are living.

Distribution where there is no widow or lawful issue, father or mother, brother or sister of the whole blood, but lawful issue of deceased brothers or sisters.

SECT. VII. *And be it further enacted by the authority aforesaid,* That if the intestate shall die seized or possessed of real or personal estate as aforesaid, leaving neither widow nor lawful issue, father or mother, but brothers and sisters, of the whole and half blood, or their representatives, the brothers and sisters of the whole blood, and the legal representatives of such of the whole blood as are dead, shall inherit the real estate in fee-simple, and the personal estate shall be distributed equally between the brothers and sisters of both the whole and half blood, or their representatives; but if there are no lawful issue, widow, father or mother, brothers or sisters, or their representatives, of the whole blood, then brothers and sisters of the half blood shall inherit the said real estate in fee-simple, and the personal estate absolutely, the estate both real and personal to be held by them, as tenants in common, in equal parts, except such parts of the real estate as came to such intestate by descent, devise or gift of some one of his or her ancestors, in which case, all those who are not of the blood of such ancestor, shall be excluded from such inheritance, and such part of the real estate.

Distribution, where there is no widow nor lawful issue, father or mother, but brothers and sisters of the whole and half blood, or their representatives.

Distribution, where there is no lawful issue, widow, father or mother, brothers or sisters, or their representatives, of the whole blood.

SECT. VIII. *And be it further enacted by the authority aforesaid,* That like proceedings may be had where the intestate leaves no children, or their legal representatives, both in making partition, or where the estate cannot be divided without prejudicing or spoiling the whole, by directing an appraisement, and ordering the whole to the eldest brother or his issue, if any of such issue shall then be of full age, if he or she shall accept it, or to any other of the brothers or their issue successively, if any of such issue shall then be of full age, upon the refusal by the eldest brother or his issue, or if there be no brothers or their issue, or they all neglect or refuse, then to the eldest sister or her issue, if any of such issue shall then be of full age, and on her neglect or refusal, to any other sister or her issue successively, if any of such issue shall then be of full age, in the manner and on the conditions directed by the act, to which this is supplementary, with respect to the children of an intestate; and the same mode of dividing, assigning and appraising estates, shall be observed in all cases, where by this act, or the act to which this

Partition of intestates estates, how to be made.

1797. is supplementary, estates are to be vested in several persons, as tenants in common.

SECT. IX. And whereas inconveniences have arisen, and may hereafter arise, from the want of notice being given to the parties concerned by executors, administrators and guardians, before the passing and allowing of their respective accounts: For remedy whereof, *Be it further enacted by the authority aforesaid*, That where any executor, administrator or guardian shall have stated and filed his account in the office of the Register for the probate of wills and granting letters of administration for the proper county, it shall be the duty of the said Register, and he is hereby required to give notice, in at least three of the most public places in said county, to all legatees, creditors, or other persons (as the case may be,) setting forth that such executor, administrator or guardian (as the case may be) has filed his account, and that the same will be presented to the Orphans' Court for confirmation and allowance, at the time and place for that purpose appointed, a copy of which notice shall also be set up in his office; and no such account shall be confirmed and allowed by the said court, unless such notice shall have been given, and a copy thereof set up in the office aforesaid, at least thirty days prior to the time appointed for such confirmation and allowance.

SECT. X. *And be it further enacted by the authority aforesaid*, That if any testator, after the passing of this act, shall devise or bequeath to his wife any portion of his estate, such devise or bequest shall be deemed and taken to be in lieu and bar of her dower out of the estate of her deceased husband, in like manner as if the same were so expressed, unless such testator shall, by his last will and testament, declare otherwise, any law, usage or custom of this commonwealth to the contrary in anywise notwithstanding, *Provided always nevertheless*, That nothing in this section contained shall deprive the widow of her choice either to dower, or the estate so devised or bequeathed. (c)

SECT. XI. *And be it further enacted by the authority aforesaid*, That all the bonds directed by law to be taken by the Registers for the probate of wills and granting letters of administration shall be hereafter in the name of the commonwealth of Pennsylvania, and that the second section of the act to which this is supplementary, be, and the same is hereby repealed, and made null and void.

Passed 4th April, 1797.—Recorded in Law Book No. VI. page 190.

(c) In what manner and time the widow shall make her election, see the act passed, relative to dower, 1st April, 1811.

## CHAPTER MDCCCXLIII.

An ACT directing the sale of such of the barrack and city lots, as remain the property of this commonwealth.

[SECT. I. *BE it enacted by the Senate and House of Representatives of the commonwealth of Pennsylvania, in General Assembly*

How notice shall be given, before the accounts of executors and administrators are passed.

A devise to a wife shall be deemed in lieu of dower;

but the widow may elect which to take.

Bonds taken by Registers shall be in the name of the commonwealth.