

## TITLE X.

## DECEDENTS, ESTATES OF.

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## CHAPTER 1.

## ADMINISTRATION, WHERE INTESTATE DIES ABROAD.

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|------------------------------|--|---|
| 1. Order to show cause made. |  | 2. Letters granted on proof of notice.  |
| “ In what county.            |  | 3. Administration de bonis non granted. |

1837-8.  
PAMPH. 160.  
1845.  
PAMPH. 166.

An Act to provide for granting letters of administration of the estate of intestates residing out of this state at the time of their decease.

Revision....Approved April 17, 1846.

Preamble. WHEREAS doubts have arisen whether the ordinary of this state, or the surrogates of the several counties, have power to grant letters of administration of the estate of any person, who did not, at the time of his decease, reside in this state—therefore,

Order to show cause. 1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That when any person shall have died or may hereafter die intestate, who did not reside in this state, at the time of his or her decease, and it shall be necessary or desirable to have letters of administration granted in this state, it shall be lawful for the ordinary or the surrogate of any county upon application in writing, made to either for the purpose, to make an order that cause be shown before him, at a certain time and place therein to be expressed, not less than thirty days, nor more than six months, from the time of making such order, why letters of administration shall not be granted to the person or persons making such application; which order shall be published in such manner as the ordinary or surrogate making the same, shall direct; *provided*,

Publication of. Proviso.

if there shall be any goods, chattels, or assets of such intestate in any county of this state, such application shall be made to the surrogate of such county or ordinary, or if in two or more counties then to the surrogate of either of such counties or to the ordinary.

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2. *And be it enacted*, That if the person or persons making such application shall, at the time and place designated for that purpose as aforesaid, prove to the satisfaction of the ordinary or surrogate, that the said order has been duly advertised and published, in manner therein directed, and if no sufficient cause shall appear or be shown to the contrary, it shall and may be lawful for the said ordinary or surrogate to grant letters of administration of the estate of said intestate, to the person or persons making the application as aforesaid, upon his, her, or their giving bond to the ordinary, with security for the faithful administration of the estate of the said intestate, in the same manner as is now required by law, in granting letters of administration in other cases.

Letters granted on proof of publication.

Bond.

3. *And be it enacted*, That whenever any such administrator as aforesaid has died, or shall hereafter die, or become incapable of acting before fully administering the estate of his or her intestate, it shall and may be lawful for the surrogate of the county or the ordinary, as the case may be, to grant letters of administration de bonis non to any person or persons, in the manner prescribed by this act for granting letters of administration to the first administrator.

When administration de bonis non granted.

## CHAPTER 2.

### DESCENT.

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|---|--|---|
| <ul style="list-style-type: none"> <li>1. To children, and their issue.</li> <li>" Rule as to advances.</li> <li>2. To brothers, sisters, and their issue.</li> <li>3. To the father.</li> <li>4. To the mother.</li> <li>5. To the half blood, etc.</li> </ul> |  | <ul style="list-style-type: none"> <li>6. To equals in degree of consanguinity.</li> <li>" Curtesy, dower, marriage settlements.</li> <li>7, 8, 9. Rule as to posthumous children.</li> <li>10. Construction of certain devises.</li> <li>11. Of conveyance or devise in fee-tail.</li> <li>12. Alienism no bar.</li> </ul> |
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### An Act directing the descent of real estates.

REV. 392, 608,  
774.

Revision....Approved April 16, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That when any person shall die seized of any lands, tenements or hereditaments, in his or her own right in fee-simple, without devising the same in due form of law, leaving two or more lawful children, such lands, tenements or hereditaments shall descend to, and be equally inherited by, all the lawful children of such person so seized, as tenants in common, and in equal

1834-5.  
PAMPH. 67.  
1837-8.  
PAMPH. 85.

Descend equally, without regard to sex.

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Issue to take  
parent's  
share.

parts, without regard to sex; *provided always*, that if any child of the person so dying seized, shall have died before his said ancestor, leaving lawful issue, the share or part of the said lands, tenements or hereditaments, which such child so dying would have been entitled to, under and by virtue of this act, if such child had survived the person so dying seized, shall descend to and be inherited by such issue, in the manner and in equal parts as before mentioned; and the same law of inheritance and descent shall be observed in case of the death of the grandchildren and other descendants, to the remotest degree; *and provided also*, that if any such ancestor shall, in his lifetime, have given or advanced any part of his or her lands, tenements or hereditaments, to any of his or her issue, such issue shall not be entitled to any part or share of such ancestor's real estate, descending under or by virtue of this act, unless the real estate so given or advanced, shall not be equal in value to the respective shares of the other issue in the same degree of affinity, as the case may be, and then no more than will be sufficient to make such share equal in value to the respective shares of the other issue, in the same degree of consanguinity to the said deceased ancestor.

Rule as to  
advances.

How bro-  
thers and  
sisters inher-  
it,

2. *And be it enacted*, That when any person shall die seized of any lands, tenements or hereditaments, in his or her own right in fee-simple, without devising the same in due form of law, and without leaving lawful issue, leaving a brother or sister, or leaving a brother or brothers, and a sister or sisters of the whole blood, the inheritance shall descend to such brother or sister, or to such brother or brothers, and sister or sisters, as the case may be, as tenants in common, in equal parts. And in case any such brother or sister who would have inherited by this law, if living, shall die before the said person so seized, and leave a lawful child or children, such child or children, surviving the said person so seized, shall inherit, if a child, solely, and if children, as tenants in common, in equal parts, such share as would have descended to his, her or their father or mother, if such father or mother had survived the person so seized. And the same law of inheritance and descent shall be observed in case of the death of any child of such brother or sister before the person so seized, leaving a child or children.

and their  
children.

When the  
father shall  
take.

3. *And be it enacted*, That when any person shall die seized of any lands, tenements or hereditaments as aforesaid, without devising the same in due form of law, and without leaving lawful issue, and without leaving a brother or sister of the whole blood, or any lawful issue of any such brother or sister, leaving a father, then the inheritance shall go to the father of the said person so seized, in fee-simple; unless the said inheritance came to the person so seized

from the part of his or her mother by descent, devise or gift, in which case it shall descend as if such person so seized had survived his or her father. TITLE X.  
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4. *And be it enacted*, That when any person shall die seized of any lands, tenements or hereditaments, in his or her own right in fee-simple, without devising the same in due form of law, and without leaving lawful issue, and without leaving a brother or sister of the whole blood or any lawful issue of any such brother or sister, and without leaving a father (leaving a mother) then the inheritance shall go to the mother of the said person so seized, for life; and after her death, the same shall go and descend as provided for in this act, in case the person so dying seized, shall die without leaving a mother capable of inheriting the same. When the  
mother shall  
take.

5. *And be it enacted*, That when any person shall die seized of any lands, tenements or hereditaments as aforesaid, without devising the same in due form of law, and without leaving lawful issue, and without leaving a brother or sister of the whole blood, or any lawful issue of any such brother or sister, and without leaving a father or mother capable of inheriting the said lands, tenements or hereditaments by this act, and shall leave a brother or sister of the half blood, or a brother or brothers, and a sister or sisters of the half blood, the inheritance shall descend to such brother or sister of the half blood, or to such brother or brothers, and sister or sisters of the half blood, as the case may be, as tenants in common, in equal parts; and in case any such brother or sister of the half blood, who would have inherited by this act, if living, shall die before the person so seized, and leave a lawful child or children, such child or children surviving the said person so seized, shall inherit, if a child, solely, and if children, as tenants in common, in equal parts, such share as would have descended to his, her or their father or mother, if such father or mother had survived the person so seized; and the same law of inheritance and descent, shall be observed in case of the death of any child of such brother or sister of the half blood, before the person so seized, leaving a child or children; *provided always*, that in case the said lands, tenements or hereditaments came to the person so dying seized, by descent, devise or gift of some one of his or her ancestors, all those who are not of the blood of such ancestors, shall be excluded from such inheritance. When the  
half blood  
shall take,  
and their is-  
suc.

6. *And be it enacted*, That when any person shall die seized of any lands, tenements or hereditaments, as aforesaid, without devising the same in due form of law, and without lawful issue, and without leaving a brother or sister of the whole blood or half blood, or the issue of any such brother or sister, and without leaving When those  
of equal de-  
gree of con-  
sanguinity  
shall take.

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a father or mother capable of inheriting by this act the said lands, tenements or hereditaments, and shall leave several persons all of equal degree of consanguinity to the person so seized, the said lands, tenements or hereditaments shall then descend and go to the said several persons of equal degree of consanguinity to the person so seized, as tenants in common in equal parts, however remote from the person so seized the common degree of consanguinity may be, unless where such inheritance came to the said person so seized 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, if there be any person or persons in being of the blood of such ancestors capable of inheriting the said lands, tenements or hereditaments; *provided always*, that nothing contained in this act, shall be construed or taken to bar or injure the rights or estate of a husband, as a tenant by the curtesy, or a widow's right of dower, or to make void or in any way affect any marriage settlement.

Curtesy,  
dower, and  
marriage set-  
tlements,  
saved.

Posthumous  
children of  
intestates in-  
herit;

7. *And be it enacted*, That if the father die intestate, his posthumous child or children shall take, possess and inherit his estate real and personal, in the same proportion and manner as if such child or children were born in the lifetime of the father.

and so tho'  
will made,  
unless ex-  
cluded.

8. *And be it enacted*, That if the father die testate, his posthumous child or children, in case no provision be made for him, her or them, by such last will and testament, shall, unless expressly excluded or barred thereby, take, possess and inherit the estate, real and personal, of his, her or their father, in the same proportion and manner as if the said father had died intestate; and the share or shares of such child or children shall be taken from the devisees and legatees, to whom the said estate is given and devised, ratably and in proportion to their respective interests therein.

To inherit as  
though born  
in father's  
lifetime.

9. *And be it enacted*, That all posthumous children shall, in all cases whatsoever, inherit in like manner as if they were born in the lifetime of their respective fathers.

Construction  
of certain de-  
vises.

10. *And be it enacted*, That in case any lands, tenements, hereditaments or real estate, situate, lying or being in this state, shall hereafter be devised by the owner thereof to any person for life, and at the death of the person to whom the same shall so be devised for life, to go to his or her heirs, or to his or her issue, or to the heirs of his or her body, then and in such case, after the death of such devisee for life, the said lands, tenements, hereditaments or real estate, shall go to and be vested in, the children of such devisee, equally to be divided between them as tenants in common in fee, but if there be only one child, then to that one in fee, and if any child be dead, the part which would have come to him or her, shall go to his or her issue, in like manner.

11. *And be it enacted*, That from and after the passing of this act, where any conveyance or devise shall be made, whereby the grantee or devisee shall become seized in law or equity of such estate in any lands or tenements, as under the statute of the thirteenth of Edward the first, (called the statute of entails,) would have been held an estate in fee-tail, every such conveyance or devise shall vest an estate for life only, in such grantee or devisee, who shall possess and have the same power over, and right in, such premises, and no other, as a tenant for life thereof would have by law; and upon the death of such grantee or devisee the said lands and tenements shall go to, and be vested in, the children of such grantee or devisee, equally to be divided between them as tenants in common in fee, but if there be only one child, then to that one in fee; and if any child be dead, the part which would have come to him or her shall go to his or her issue in like manner; *provided*,<sup>Provisoes.</sup> that the widow of any such grantee or devisee of such estate, shall have her dower in the premises in like manner as if the said grantee or devisee had died seized thereof in fee-simple; *and provided also*, that where any person shall marry a woman being a grantee or devisee and seized of such estate, the said husband, after the death of his said wife, shall have his curtesy in the said lands and tenements, if there be issue of the marriage, in like manner as if said wife had died seized of an estate of inheritance in fee-tail of the premises.

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Operation of  
conveyance  
or devise in  
fee-tail.

12. *And be it enacted*, That in making title by descent, it shall be no bar to a party, that any ancestor, through whom he or she derives his or her descent from the intestate, is or hath been an alien.<sup>Alienism no bar.</sup>

## CHAPTER 3.

### DEVISES.

An Act to pass estates in fee by certain devises in wills and testaments, and to limit estates in tail. REV. 60.

Passed August 26, 1784.

WHEREAS it frequently happens, that, in making wills and testaments, the words heirs and assigns, in devises of land, or other real estate, are omitted, through the ignorance or inattention of the writer, though the testator meant and intended to grant an absolute estate in the devised premises; and devises are sometimes made in tail, without limitation of time, whereby the heirs

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are put to great expense in suing out recoveries, in order to dock such entails; for remedy in which cases—

Devises of lands, in which the words, heirs and assigns, are omitted, how to be construed.

BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That from and after the publication of this act, all devises made of land or other real estate, within this state, in which the words, heirs and assigns, or, heirs and assigns for ever, are omitted, and no expressions are contained in such will and testament, whereby it shall appear that such devise was intended to convey only an estate for life, and no further devise thereof being made of the devised premises, after the decease of the devisee, to whom the same shall be given; all such devises shall be taken and understood to be the intention of the testator, thereby to grant and devise an absolute estate in the same, and shall be construed, deemed and adjudged in all courts of law and equity, in this state, to convey an estate in fee-simple to the devisee, for all such devised premises, in as full a manner as if the same had been given or devised to such devisee, and to his heirs and assigns for ever; any law, usage or custom to the contrary notwithstanding.

## CHAPTER 4.

## ESCHEATS.

- |                                   |  |                          |
|-----------------------------------|--|--------------------------|
| 1. Writ and inquisition.          |  | 4. Compensation.         |
| 2. Notice to be published.        |  | 5. Injunction may issue. |
| 3. Proceedings after inquisition. |  |                          |

MAR. 176.

## An Act concerning escheats.

Passed February 27, 1828.

Attorney general to cause a writ to issue.

I. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That whenever the attorney general shall be informed, or shall have reason to suppose, that any person hath died seized of any real estate within this state, without making any devise thereof, and leaving no heirs capable of inheriting the same, he shall cause a writ to be issued out of the court of chancery, and directed to the sheriff of any county in this state, in the form following: "The state of New Jersey, to the sheriff of the county of — greeting: Because we are informed that — died seized of divers lands, tenements, and hereditaments in our county of — without making any devise thereof, and leaving no heir capable of inheriting the same; we command you, that, by the oath of twelve good and lawful men in

Form of it.

your county, you diligently inquire, what lands, tenements, and hereditaments the said — was seized of at the time of his death, if any; and what estate of inheritance, and when he died, and whether he made any, and what, devise thereof, and whether he left any heir, and, if he did, who is his heir, and what is the clear yearly value of such lands, tenements, and hereditaments; and the inquisition which you shall take thereof, do you send, under your seal and the seals of those by whose oaths you take the same inquisition, before us, in our court of chancery, without delay, together with this writ.”

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Inquisition  
to be made.

2. *And be it enacted*, That it shall be the duty of the attorney general, in every case where an inquisition shall be taken pursuant to this act, to cause notice to be given thereof, in one of the newspapers printed at Trenton, in this state, in one of the newspapers printed at the city of Washington and in one of the newspapers printed in the city of New York, for the space of six months successively, requiring the persons claiming any interest in the lands described in such inquisition, to appear and traverse the said inquisition, within twenty days after the expiration of the time limited in the said notice: *and further*, that no judgment shall be given upon the said inquisition, until after the expiration of said twenty days.

To cause notice thereof  
to be advertised.

3. *And be it enacted*, That in all cases in which any such inquisition shall be taken, if the real estate to be affected thereby, shall be possessed by any person residing on, or improving the same, it shall be the duty of the attorney general to cause notice of such inquisition to be served on each of the tenants occupying such real estate, at least forty days before any judgment shall be entered on such inquisition, which notice shall set forth the taking of such inquisition, and that judgment will be rendered thereon at the time limited in such notice, unless such tenants shall appear and traverse the same; and if any of the occupants above mentioned, or any other person aggrieved thereby, shall traverse the inquisition taken on the writ by this act directed to be issued, and if any issue shall be joined thereupon, the record thereof shall be sent into the supreme court, who shall direct the same to be tried at the next or any subsequent circuit court to be held in and for the county in which the lands affected thereby, are situate; and on such trial, it shall be incumbent on the prosecution in behalf of this state, to prove all such matters as are requisite in judgment of law, to establish any such escheat, without prejudice to the defendant, from the finding of the inquest in any such case; and if the judgment shall be given thereupon for this state, then a writ shall be issued out of the same supreme court, to the sheriff of the same county, commanding him to seize and take the lands, tenements and here-

Further proceedings.

Writ to issue.

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Record and proceedings to be exemplified, and filed in the office of secretary of state.

Treasurer authorized and directed to advertise and make sale of the lands.

Attorney general to make conveyances.

Compensation to be made by the state for certain services.

Injunction to restrain waste, etc.

ditaments, whereof the person named in such inquisition shall be found to have died seized, as aforesaid, into his hands; but if no such traverse shall be taken to such inquisition, before the end of the term next after the time limited in the second section of this act, then such writ shall immediately thereafter be issued out of the court of chancery, commanding the sheriff to seize and take the same lands, tenements, and hereditaments; and upon the return of such writ of seizure, the attorney general shall cause the record and proceedings to be exemplified under the seal of the court out of which the same writs of seizure issued, and deposit such exemplification in the office of the secretary of this state; and the treasurer of this state shall thereupon cause the said lands, tenements, and hereditaments to be sold at public vendue; and he shall give at least six weeks previous notice of the time and place of such sale, by publishing the same in one of the newspapers printed at Trenton, in this state, and also in three of the most public places of the county where the said lands, tenements, and hereditaments shall lie, for the term of four weeks next preceding the time of such sale; which sale, however, shall be subject to adjournment by the treasurer for any time, in the whole, not exceeding two months; and the treasurer shall, upon such sale, give the purchaser a certificate containing the name of the purchaser, and a description of the bounds of the lands, tenements, and hereditaments purchased, and the price to be paid for the same; and the purchaser shall thereupon, and within thirty days thereafter, pay to the treasurer of this state the sum mentioned in such certificate; and the treasurer shall thereupon endorse a receipt for the same upon such certificate, and, upon producing the same certificate and receipt to the attorney general, he shall make, execute, and deliver, in the name of this state, a deed to such purchaser for the lands, tenements, and hereditaments in the same certificate mentioned, granting and conveying an estate of inheritance in the said lands, tenements, and hereditaments to such purchaser, and to his heirs and assigns for ever; and, upon the production of such deed to the sheriff, he shall deliver the possession of the said lands, tenements, and hereditaments to the purchaser thereof.

4. *And be it enacted*, That jurors and witnesses in every case of escheat, shall be entitled to the like compensation, as is authorized by law for attending in causes commenced in the supreme court; and that the expenses of conducting the said proceedings, shall be made out by the treasurer, and, when approved of by the legislature, shall be paid by him.

5. *And be it enacted*, That it shall be the duty of the attorney general, in case of any waste done or committed on any lands, tene-

ments, and hereditaments which have escheated or may escheat to this state, to apply to the court of chancery for an injunction to restrain all such waste: *and further*, that the person or persons committing any such waste or other trespass upon such property, shall be liable in damages for the same, to be sued for and recovered, in the name of the state, by action of trespass, in any court having cognizance thereof.

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CHAPTER 5.

ESTATES OF CERTAIN INTESTATES.

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|--|--|--|
| 1. Administration granted.<br>" Interest, how applied. |  | 2. Principal, when paid to representatives.<br>3. When to overseers of the poor. |
|--|--|--|

An Act for the better securing of the surplus of personal estates, after payment of debts of persons who die intestate leaving no relations entitled to the administration thereof.

REV. 76.

Passed December 22, 1784.

WHEREAS no sufficient provision hath hitherto been made for securing the personal estates of foreigners, and others, who die intestate, leaving no relations entitled to the administration of such estates—therefore,

Preamble.

1. BE IT ENACTED *by the Council and General Assembly of this state, and it is hereby enacted by the authority of the same,* That whenever any person shall hereafter die intestate within this state, and shall leave no relations, justly entitled to the administration of his or her personal estate, or, if so entitled, shall not claim the same within fifty days next after the death of such person, so dying intestate, it shall and may be lawful for the ordinary, or his surrogates, to grant letters of administration on such decedent's estate, to any fit person or persons applying therefor, taking his or their bond for the faithful execution of the trust reposed in him or them; which person or persons, so applying, and taking out letters of administration, shall, at the expiration of one year after the death of such intestate, put the surplus of said estate, after payment of debts and necessary expenses, out to interest, and pay the interest thereof annually, to the overseers of the poor of the township, in which such intestate shall so die, to, and for the use of the poor of the said township.

Persons dying intestate, leaving no relations, ordinary to grant letters of administration to any proper applicant.

The interest of the money to be paid annually to the overseers of the poor.

2. *And be it further enacted by the authority aforesaid,* That the person or persons, so administering on the estate of any person

The principal to be paid to the intestate.

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tate's repre-  
sentative, if  
applied for  
in seven  
years.

If no repre-  
sentative  
shall so ap-  
ply, money  
to be paid to  
the over-  
seers of the  
poor.

Proviso.

dying intestate as aforesaid, shall, whenever applied to for that purpose, pay the principal of such personal estate, if thereto required, within seven years next after the decease of such intestate to his or her legal representative or representatives applying for the same, by assigning to him, her, or them, the bond or other security therefor, or by otherwise satisfying them for the same.

3. *And be it further enacted by the authority aforesaid,* That if no person or persons, legally entitled to the personal estate of such intestate, shall, within the said seven years next after his or her decease, make application to such administrator or administrators for the said principal, he, she, or they, so entitled, shall, for ever thereafter, be debarred from all right, title or claim, to such decedent's personal estate; and the said administrator or administrators shall, immediately after the expiration of the said seven years, pay the whole of the said principal, with the interest that may then be due thereon, to the overseers of the poor of the township in which such intestate died, to and for the use of the said township; *provided always,* that the right of foreigners, by treaty or otherwise, shall not be affected by any thing in this act contained.

## CHAPTER 6.

### ESTATES OF INSOLVENTS.

- |  |                                       |
|--|---------------------------------------|
| 1. Distribution of, among creditors.     | 8. Remedy at law or in equity.        |
| 2. Suits not allowed within six months.  | 9. Debts growing due admitted.        |
| 3. Order on creditors to exhibit claims. | 10. Distribution from time to time.   |
| 4. Report of claims to be made.          | 11. When creditor's claims barred.    |
| 5. Account and inventory exhibited.      | 12. Suits may proceed to judgment.    |
| 6. Exceptions, and appeal.               | 13. If residue, heirs to take.        |
| 7. Sale of lands ordered.                | 14. How lands in other counties sold. |

Rev. 766.

### An Act concerning the estates of persons who die insolvent.

Revision....Approved April 16, 1846.

Distribution  
of estate a-  
mong credit-  
ors.

1. *BE IT ENACTED by the Senate and General Assembly of the State of New Jersey,* That the estate, real and personal, of a testator or intestate, who shall have died since the thirteenth day of June, seventeen hundred and ninety-nine, or shall hereafter die, in case the same shall be insufficient to pay all his or her debts, shall be distributed among his or her creditors, in proportion to the sums that shall be due to them respectively, except as hereinafter is excepted.

No suits to  
be brought  
within six  
months.

2. *And be it enacted,* That to enable the executor or executors, administrator or administrators, to examine into the condition of

the estate and ascertain the amount and value thereof, and the debts to be paid out of the same, no action, either at law or equity, shall be brought against such executor or executors, administrator or administrators, within six months after the decease of the testator or intestate, unless it be on suggestion of fraud or for the physician's bill during the last sickness, funeral charges and expenses, and any judgment or judgments entered of record against such decedent in his lifetime and unsatisfied, all which shall have preference and be first paid out of the personal and real estate of the testator or intestate.

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Exceptions.

3. *And be it enacted*, That when any executor or administrator shall, by application in writing, represent to the orphans' court of the proper county, on oath or affirmation, taken or made before any of the judges of said court, that the personal and real estate of the decedent is insufficient to pay the debts of the deceased, according to the best of his knowledge and belief, the said court shall thereupon direct the said executor or administrator to give public notice to the creditors of the estate, to exhibit to such executor or administrator, under oath or affirmation, their claims and demands against the estate within such time as the court shall direct and appoint, not exceeding eighteen months, nor less than six months, by setting up such notice in five of the most public places in the county, for the space of two months, and also by advertising the same for the like period in one or more of the newspapers printed in this state, as may be appointed by the said court, and such further notice, if any, as the said court shall direct.

Order on creditors to exhibit claims.

Within what time.

Notice.

4. *And be it enacted*, That the said executor or administrator shall make report to the next term of the said court after the said limited time shall expire, of the several claims and demands which may be so exhibited against such estate, particularly specifying the demand and amount thereof, at the time of such report, and whether by judgment, decree, bond, note, book account, or otherwise, giving at least two months notice of his intention to make such report, in three of the most public places in the county; and where there shall not be two months from the expiration of the said limited time and the succeeding court, the said report and notice shall be to the term after.

Report of claims presented.

Notice of.

5. *And be it enacted*, That the said executor or administrator shall, at the time of making such report, exhibit, under oath or affirmation, as aforesaid, to the said court, a true and just account of the moneys, goods, chattels, rights and credits of the decedent, which have come to his knowledge, hands or possession, and shall also make out, and exhibit at the same time, an inventory of the real estate of said decedent, which may have come to his or her

Account and inventory to be exhibited.

TITLE X. knowledge, and the value thereof, as near as may be, under oath  
 CHAP. 6. or affirmation.

Exceptions  
 may be filed.

6. *And be it enacted*, That it shall be lawful for any creditor, or other person interested, by himself or attorney, to appear at the said term, and file exceptions to the account and exhibition of the said executor or administrator, in respect of the amount and value of the real and personal estate of the said decedent; and in like manner for the executor or administrator, or other person interested, to file exceptions against the claim or demand of any creditor, exhibited as aforesaid, or any part thereof, and the said court shall proceed to hear the proofs and allegations in the premises, at the same or any subsequent court, as may be expedient, and upon such exceptions, decree and determine in regard to said claims and demands of creditors, respectively, and on the account of such executor or administrator, in respect of the personal estate, as may be just and lawful; and in case no exception be made against any claim or demand of a creditor, as aforesaid, it shall be held and deemed as justly due; and so in like manner, the account of said executor or administrator, not excepted to, shall be allowed and held as true; *provided*, that either party may appeal from such decree to the ordinary, within twenty days from rendering the same, and not after.

Appeal al-  
 lowed.

Estate insol-  
 vent, sale of  
 lands order-  
 ed.

7. *And be it enacted*, That if upon the adjustment of the claims and demands of creditors, and consideration of the amount of the personal and real estate, and value thereof, it shall appear to the court that the real and personal estate is insufficient to pay the debts, and that the estate is likely to be insolvent, the said court shall so decree, and shall order and direct the said executor or administrator to proceed as if the estate was insolvent, and to make sale of the whole or any part of the real estate of the testator or intestate, from time to time, as may appear expedient, in such manner as is now or may hereafter be directed in case of an executor or administrator, directed to sell lands by an order of the orphans' court, for the payment of the debts of a testator or intestate.

Creditors  
 may proceed  
 at law or in  
 equity.

8. *And be it enacted*, That if any creditor, who shall have exhibited his claim or demand as aforesaid, to any executor or administrator, upon the same being excepted to as aforesaid, shall at the same term to which the exception is made, elect to proceed at common law or in equity, in preference to having the same determined by the said court, such creditor shall so proceed immediately; and the sum recovered against the executor or administrator, if any, shall be the amount on which a ratable proportion shall be paid as aforesaid; and in case any executor or administrator shall elect at the said term, that the claim or demand of any creditor, so as

aforsaid exhibited against the estate, shall be determined at common law or in equity, the said creditor shall proceed immediately in either court, as his case may be, and the sum recovered shall be the amount on which a ratable proportion shall be paid as aforesaid ; and the court in which any such action may be brought, shall take order, that the same may be determined as speedily as possible.

TITLE X.  
CHAP. 6.

9. *And be it enacted*, That the creditor may exhibit to the executor or administrator aforesaid, not only all debts actually due and owing, but all debts and claims to grow due in future, making in such case a reasonable rebate of interest, when interest is not accruing on the same.

Debts growing due admitted.

10. *And be it enacted*, That the proceeds of the said personal and real estate of the testator or intestate, which shall come to the hands of the said executor or administrator, the preferred debts, as mentioned in the second section of this act, and the reasonable allowance which may be decreed by the court to the executor or administrator, for care and expenses, being first paid, shall be distributed to the said several creditors, by the said executor or administrator, in proportion to the sums that shall be found due to them respectively, as aforesaid, under the direction of the said court, from time to time, as may be found convenient and just ; and the said court may enforce obedience to such orders and directions by attachment.

Distribution from time to time.

11. *And be it enacted*, That if any creditor shall not exhibit his claim to the executor or administrator as aforesaid, within the time limited and prescribed by the said court, such creditor shall be for ever barred from prosecuting or recovering his said demand, unless the estate shall prove sufficient after all debts exhibited and allowed are fully satisfied, or such creditor shall find some other estate not inventoried or accounted for by the executor or administrator before distribution, in which case such creditor shall receive his ratable proportion out of the same.

When creditor's claim barred.

12. *And be it enacted*, That if any action shall be pending against said executor or administrator, at the time of the making the application, as in the third section mentioned, or any action shall be brought against such executor or administrator, after the making of the said application, the plaintiff or plaintiffs in such action may proceed to final judgment, unless the claim shall be adjusted as is herein before directed, or otherwise ; but no execution shall in any case issue after the making of said application ; and the amount of such judgment, when recovered, shall be the sum on which the creditor shall receive his ratable proportion as aforesaid.

Suits may proceed to judgment.

13. *And be it enacted*, That if it should happen that there is

TITLE X.  
CHAP. 7.

If residue, to go to heirs.

enough produced from such real and personal estate, to make full payment, and any residue of the said estate shall remain in the hands of the executor or administrator, after paying all the said debts and expenses, the said residue shall be divided among the heirs of the intestate, in such proportions as the said real estate would have descended, or in case of a will, as the said will directs.

How lands in other counties sold.

14. *And be it enacted*, That it shall be lawful for the orphans' court of any other county, upon the production of an authenticated copy of such order and decree as is mentioned in the seventh section, to order and decree the sale and conveyance of any lands or real estate of such decedent, situate in such other county, the report of which sale shall be made to the orphans' court making the first or original decree.

CHAPTER 7.

EXECUTORS AND ADMINISTRATORS.

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| <ul style="list-style-type: none"> <li>1. May have actions for trespass.</li> <li>2. And liable to like actions.</li> <li>3. Liable for waste or conversion.</li> <li>4. Actions by executors of executors, etc.</li> <li>5. Adm'r de bonis non may have a sci. fa.</li> <li>6. Executors considered as one.</li> <li>7. Administrator, who to be appointed.</li> <li>8. To recover, and be liable as executors.</li> <li>9. Of executors in their own wrong.</li> <li>10. Inventory and appraisal made and filed.</li> <li>11. Administrator's bond.</li> <li>12. Suits on forfeited bonds—distribution.</li> </ul> | <ul style="list-style-type: none"> <li>13. Manner of distribution.</li> <li>14. How estate of deceased child divided.</li> <li>15. Of estates of femes covert.</li> <li>16. One year to elapse before distribution.</li> <li>17. Refunding bonds required.</li> <li>18. Administration with will annexed.</li> <li>19. Acting executors may sell land.</li> <li>20. And so of administrators with will annexed.</li> <li>21. Same, if no executors appointed.</li> <li>22. How amount of bond fixed.</li> <li>23. Citation of executors or administrators.</li> <li>24. Appointment, not to discharge debt.</li> </ul> |
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REV. 174, 226, 573, 605. An Act concerning executors and the administration and distribution of intestates' estates.

HAR. 19.

1838-9.

PAMPH. 32.

1843-4.

PAMPH. 211.

May have actions for trespass.

Revision....Approved April 16, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That executors and administrators shall and may have an action for a trespass done to their testator or intestate, as of the goods and chattels of the same testator or intestate, carried away in his or her lifetime, against the trespassers, and recover their damages, in like manner as the person, whose executors or administrators they be, should have had, if he or she were living.

Liable to like actions.

2. *And be it enacted*, That where any testator or intestate shall, in his or her lifetime, have taken or carried away, or converted to his or her use, the goods or chattels of any person or persons, such person or persons, his or her executors or administrators shall have

and maintain the same action against the executors or administrators of such testator or intestate, as he, she or they might have had or maintained against such testator or intestate, and shall have the like remedy and process for the damages recovered in such action, as are now had and allowed in other actions against executors or administrators.

TITLE X.  
CHAP. 7.

3. *And be it enacted*, That all and every the executors and administrators of any person or persons, who, as executor or executors, either of right, or in his, her or their own wrong, or as administrator or administrators, hath or have wasted or converted, or hereafter shall waste or convert any goods, chattels, estate or assets of any person deceased, to his, her or their own use, shall be liable and chargeable, in the same manner as his, her or their testator or intestate would have been, if living.

Liability for  
waste or con-  
version.

4. *And be it enacted*, That executors of executors shall have actions of debt, account, and of goods carried away of the first testator, and execution of judgments obtained by, or recognizances made to the first testator, in any court of record, in the same manner as the first testator should have had, if he were in life, as well of actions of the time past as of the time to come; and that the same executors of executors shall answer to others, of as much as they have recovered of the goods of the first testator, as the first executors should do, if they were in life.

Actions by  
executors of  
executors,  
etc.

5. *And be it enacted*, That where any judgment hath been, or shall be had, by or in the name of any executor or administrator, in such case an administrator de bonis non may sue forth a scire facias, and take execution upon such judgment.

Administra-  
tor de bonis  
non may  
have sci. fa.

6. *And be it enacted*, That in actions against divers executors, all the same executors shall be considered as one person, representing the person of the testator; and such of the executors, as the sheriff shall return, "summoned," on the summons, or "cepi corpus," or "corpora," on the capias ad respondendum, shall answer to the plaintiff or plaintiffs; and in case judgment shall pass for the plaintiff or plaintiffs, then such plaintiff or plaintiffs shall have his, her or their judgment and execution against such of the executors, as the sheriff shall have returned in manner aforesaid, and against all others named in the writ, of the goods and chattels of the testator, as well as if they had all been summoned, or taken, or had appeared.

Executors  
considered  
as one per-  
son.

7. *And be it enacted*, That if any person die intestate, or if the executors named in any testament renounce the executorship, or refuse or neglect, for the space of forty days after the death of the testator, to prove such testament, then administration of the goods, chattels and credits of such intestate, or of such testator, with the

Administra-  
tor, who to  
be appoint-  
ed.

TITLE X.  
CHAP. 7.

testament annexed, shall be committed or granted to the widow, or the next of kin of such intestate or testator, or to some of them, if they or any of them will accept the same; and if none of them will accept thereof, then to such other proper person or persons, as will accept the same.

To recover,  
and be liable  
as executors.

8. *And be it enacted*, That all administrators, of whatever kind or description they may be, shall have actions to demand and recover, as executors, the debts due to the person deceased, and shall answer to others, to whom such deceased person was holden and bound, in the same manner as executors shall answer, and shall be accountable as executors be, in case of testament, as well of the time past as of the time to come.

Preamble.

9. *And whereas*, it is sometimes practised to the defrauding of creditors, that such persons as are to have the administration of the goods of others dying intestate committed to them, if they require it, will not accept the same, but suffer or procure the administration to be granted to some other of mean estate and indigent circumstances, from whom themselves, or others, by their means, do take deeds of gifts, and authorities by letters of attorney, whereby they obtain the estate of the intestate into their hands, and yet stand not subject to pay any debts owing by the same intestate, and so the creditors, for want of knowledge of the place of habitation of the administrator, cannot arrest or sue him or her; and if they happen to find him or her out, yet, for want of ability in him or her to satisfy, of his or her own goods, the value of that which he or she hath conveyed away or wasted of the intestate's goods, or released of his or her debts, the creditors cannot have or recover their just debts and demands—therefore, *be it enacted by the authority aforesaid*, that all and every person and persons, who shall obtain, receive and have any goods or debts of any person dying intestate, or a release or other discharge of any debt or duty that belonged to the intestate, upon any fraud as is aforesaid, or without such valuable consideration, as shall amount to the value of the same goods or debts, or near thereabouts, (except it be in or towards satisfaction of some just debt, of the value of the same goods or debts, to him or her owing by the intestate, at the time of his or her decease) shall be charged and chargeable as executor of his or her own wrong, and so far only as all such goods and debts, coming to his or her hands, or whereof he or she is released or discharged by such administrator, will satisfy; deducting, nevertheless, to and for himself, allowance of all just debts, upon good consideration, and without fraud, owing to him or her by the intestate, at the time of his or her decease, and all other payments made by him or her, which lawful executors or administrators may and ought to have and pay by the laws of this state.

Of executors  
in their own  
wrong.

Charged, but

just set-off al-  
lowed them.

10. *And be it enacted*, That the executor and executors named by the testator, or person deceased, or such other person or persons, to whom administration hath been or shall be committed, where any person hath died or shall die intestate, or by way of intestate, calling or taking to him, her or them, at least two reputable disinterested freeholders; and in their presence, and by their discretion, shall make or cause to be made, a true and perfect inventory of all the goods, chattels and credits, as well moveable as not moveable, whatsoever, that were of the person so deceased, and the same shall, by the said executor or executors, administrator or administrators, be presented and delivered to the surrogate, before whom the testament of such person so dying was proved, or administration committed, upon the oath or affirmation of such executor or executors, administrator or administrators, to be taken before the said surrogate, that the same inventory is just and true, and also upon the oath or affirmation, to be taken as aforesaid, of the said persons or appraisers, or one of them, in whose presence the said inventory was made, and by whom the goods, chattels and credits, therein specified, were appraised, that the same were appraised, according to their just and true respective rates and values, after the best of his or their (as the case may be) judgment and understanding; and in case but one appraiser is sworn or affirmed, the following words shall be added, that the other appraiser or appraisers was or were present at the same time, and consented in all things to the doing thereof; on which inventory a copy of the said oaths or affirmations shall be, by the said surrogate, endorsed; which said inventory, so taken, appraised and sworn or affirmed to, as aforesaid, shall be deposited in the registry of the prerogative court, there to remain affiled.

TITLE X.  
CHAP. 7.

Inventory  
and appraise-  
ment made  
and filed.

11. *And be it enacted*, That the surrogates of the respective counties of this state, and every of them, for the time being, shall and may, upon their respective granting and committing of administration of the goods of persons dying intestate, take of the respective person or persons, to whom such administration shall be committed, except where administration shall be granted to a husband, of the goods, chattels and credits of his wife, sufficient bonds, with two or more able sureties, to the ordinary of the state, in such penalty as the said surrogate shall think reasonable, respect being had to the value of the estate, with condition in form and manner following, to wit:

Administra-  
tor's bond.

*The condition of this obligation is such*, That if the above bound A. B. administrator of all and singular the goods, chattels and credits of C. D., deceased, do make or cause to be made, a true and perfect inventory of all and singular the goods, chattels and credits of

Condition.

TITLE X.  
CHAP. 7.

the said deceased, which have or shall come to the hands, possession or knowledge of the said A. B. or into the hands or possession of any other person or persons for the said A. B., and the same so made do exhibit, or cause to be exhibited into the registry of the prerogative court, in the secretary's office of this state, or into the surrogate's office of the county of ———, at or before the expiration of six calendar months, from the date of the above written obligation, and the same goods, chattels and credits, and all other goods, chattels and credits of the said deceased, at the time of ——— death, which at any time after shall come to the hands or possession of the said A. B. or into the hands or possession of any other person or persons for the said A. B., do well and truly administer, according to law: and further, do make, or cause to be made, a just and true account of ——— administration, within twelve calendar months from the date of the above written obligation; and all the rest and residue of the said goods, chattels and credits, which shall be found remaining upon the account of the said administration, the same being first examined and allowed of by the judges of the orphans' court of the county, or other competent authority, shall deliver and pay unto such person or persons, respectively, as is, are or shall, by law, be entitled to receive the same. And if it shall hereafter appear, that any last will and testament was made by the said deceased, and the executor or executors therein named, or any other person or persons, do exhibit the same into the said prerogative court or the surrogate's office of the county of ———, making request to have it allowed and approved; if the said A. B., being thereunto required, do render and deliver the said letters of administration, (approbation of such testament being first had and made) to the said court, then the above obligation to be void and of none effect, or else to remain in full force and virtue.

All other administrators to give like bonds.

*And it is hereby declared,* that the like bonds, with conditions suited to the nature of the respective cases, shall be given by administrators durante minore ætate, durante absentia, pendente lite, cum testamento annexo, or by whatever other name or description they may be known and distinguished.

Proceedings on bonds forfeited.

12. *And be it enacted,* That all administration bonds, given in pursuance of this act, shall be good to all intents and purposes, and pleadable in any court of justice. And in case any such bonds shall become forfeited, it shall and may be lawful for the ordinary or surrogate general, to cause the same to be prosecuted in any court of record, at the request of any party grieved by such forfeiture; and the moneys recovered upon such bond shall be applied towards making good the damages sustained by the not performing

the said condition, in such manner as the judge of the prerogative court shall, by his sentence or decree, direct: *and further*, that it shall and may be lawful to and for the judges of the orphans' court, of the respective counties of this state, after such administrators shall have legally accounted for and touching the goods, chattels, and credits of the person so deceased, to order a just and equal distribution of what shall remain clear, after debts, funeral charges, and just expenses of every sort, first allowed and deducted, amongst the wife and children, or children's children, if any such there be, or otherwise to the next of kindred to the intestate, in equal degree, or legally representing their stocks, each according to his or her respective right, pursuant to the laws in such cases, and the rules and limitations hereinafter set down, and the same distribution to decree and settle; and the persons entitled to such distribution shall have their remedy at law, in case of non-payment, for the recovery of the same, against the executor or executors, administrator or administrators, so accounting, saving to every one, supposing him, her or themselves aggrieved, his, her and their right of appeal.

TITLE X.  
CHAP. 7.  
Distribution of estates.

Remedy of persons entitled to distribution.  
Appeal.

13. *And be it enacted*, That the whole surplusage of the goods, chattels and personal estate of every person dying intestate, shall be distributed in manner following, that is to say: one-third part of the said surplusage to the widow of the intestate, and all the residue, by equal portions, to and among the children of such intestate, and such persons as legally represent such children, in case any of the said children be then dead, other than such child or children, who shall have any estate by the settlement of the intestate, or shall be advanced by the intestate, in his lifetime, by portion or portions equal to the share, which shall, by such distribution, be allotted to the other children, to whom such distribution is to be made; and in case any child shall have any estate by settlement from the said intestate, or shall be advanced by the said intestate, in his lifetime, by portion not equal to the share which will be due to the other children, by such distribution as aforesaid, then so much of the surplusage of the estate of such intestate shall be distributed to such child or children, as shall have any land by settlement from the intestate, or were advanced in the lifetime of the intestate, as shall make the estate of all the said children to be equal, as near as can be estimated. And in case there be no children, nor any legal representatives of them, then one moiety of the said estate shall be allotted to the widow of the said intestate, and the residue of the said estate shall be distributed equally to every of the next of kindred of the intestate, who are in equal degree, and those who represent them; *provided*, that no representation shall be admitted

Manner of distribution.

widow one third;  
residue to children and their representatives.

Settlements or advances deducted.

Or, one moiety to widow, and the other to next of kin.

Proviso.

- TITLE X.  
CHAP. 7.
- Or, equally to children or next of kin.
- How estate of deceased child divided
- Of estates of femes covert.
- One year to elapse before distribution.
- Refunding bonds required.
- Of administration with will annexed.
- Acting executors may sell land.
- among collaterals after brothers' and sisters' children. And in case there be no widow, then all the said estate to be distributed equally to and among the children; and in case there be no child, then to the next of kindred, in equal degree, of or unto the intestate, and their legal representatives as aforesaid, and in no other manner whatsoever.
14. *And be it enacted*, That if, after the death of a father, any of his children shall die intestate, without wife or children, in the lifetime of the mother, every brother and sister, and the representatives of them, shall have an equal share with her; any thing in this act, or any law to the contrary, notwithstanding.
15. *And be it enacted*, That neither this act, nor any thing herein contained, respecting the distribution of intestates' estates, shall be construed to extend to the estates of femes covert, who shall die intestate; but that their husbands may demand and have administration of their rights, credits, and other personal estates, and recover and enjoy the same, as fully as they might have done before the passing of this act.
16. *And*, to the end that a due regard be had to creditors—*be it enacted*, That no distribution of the goods, chattels and credits of any person dying intestate shall be made until one year be fully expired after granting administration thereof.
17. *And be it enacted*, That every person, to whom any distribution or share of the goods, chattels, and personal estate of any intestate shall be allotted, shall give bond, with sufficient sureties, in double the sum at least of such distributive share, to the administrators, with condition, that if any debt or debts, truly owing by the intestate, shall be afterwards sued for and recovered, or otherwise duly made to appear, and which there shall be no other assets to pay, that then, and in every such case, he or she shall respectively refund and pay back to the administrators, his or her ratable part of such debt or debts, and of the costs of suit and charges by reason of such debt or debts, out of the part and share so allotted to him or her; thereby to enable the said administrators to satisfy such debt or debts.
18. *And be it enacted*, That, in all cases, where any administration shall be granted, with a will or testament annexed, the will of the deceased in such testament expressed, shall be observed and performed.
19. *And be it enacted*, That where any lands, tenements or hereditaments, have been, or shall be given or devised by any last will or testament, executed in due form of law, to the executors therein named or any of them, to be sold; or have been, or shall be thereby ordered to be sold by the executors therein named or

any of them, and one or more of said executors shall die or have died in the lifetime of the testator, or if living at the death of the testator, shall refuse or neglect to prove the said last will of the testator, or shall die; or if, having proved said last will and taken upon himself, herself, or themselves the execution thereof, shall have died or shall die, then and in either case, the said trusts in said will shall vest in the other executor or executors in said will named, who shall prove or shall have proved said will, and in the survivor and survivors of them, unless it shall be otherwise expressed in said will. And it shall be lawful for such acting, or surviving executor or executors to sell and convey the said lands, tenements and hereditaments of the testator, in the same manner, to all intents and purposes, as if all had been living, and joined in such sale.

TITLE X.  
CHAP. 7.

20. *And be it enacted*, That any deed or conveyance heretofore made and delivered, or which may hereafter be made and delivered, by any administrator or administrators with the will annexed, or the survivors or survivor of them, for any lands, tenements, hereditaments, or real estate, sold pursuant to any power or direction in the said will annexed, given to, or vested in, the executor or executors named therein, shall be as good, valid, and effectual as if the same had been or were made and delivered by the executor or executors named in said will, and received in evidence as such; and such administrator or administrators with the will annexed, and the survivors or survivor of them shall have the same power and authority, and no other, as was given to, or vested in, or may hereafter be given to, or vested in, the executor or executors named in said will, unless where otherwise expressly provided in the same; and in case of the death or incapacity of such administrator or administrators with the will annexed, and the appointment of an administrator or administrators de bonis non, with the will annexed, the same power and authority shall be vested in him or them, and the survivor of them, as was vested in the administrator first appointed.

And so of administrators with will annexed.

21. *And be it enacted*, That wherever any will hath heretofore been duly made and executed, or shall hereafter be duly made and executed, authorizing or directing any lands, tenements, hereditaments, or real estate, mentioned therein, to be sold, and no executor or executors hath or have been or shall be named in said will, and letters of administration with the will annexed have been or shall be granted thereon, any deed or conveyance heretofore made and delivered, or which may hereafter be made and delivered, by such administrator or administrators with the will annexed, or the survivors or survivor of them, for said lands, tenements, hereditaments, or real estate, pursuant to any power or direction in the

Same, if no executors appointed.

TITLE X.  
CHAP. 8. said will, shall be as good, valid, and effectual as if the same were made and delivered by any executor or executors who might have been, or might be named in said will.

How amount of bond fixed. 22. *And be it enacted*, That in the taking of the bond of any administrator or administrators with the will annexed, to the ordinary, as directed in the eleventh section of this act, the ordinary and surrogates of the respective counties shall have regard to the value of the real estate ordered or directed to be sold in said will, as well as of the personal estate of the deceased, and may, in their discretion, examine the applicant or applicants for such letters of administration with the will annexed, under oath or affirmation, touching the value of said real and personal estate.

Citation of executor or administrator. 23. *And be it enacted*, That no administrator or executor shall be cited before any court or competent authority to render an account of the personal estate of his intestate or testator, otherwise than by an inventory or inventories thereof, unless it be at the instance or prosecution of some person or persons in behalf of a minor, or having a demand out of such personal estate, as a creditor, legatee, or next of kin, nor be compellable to account before the said court or authority, otherwise than as aforesaid.

Appointment as executor no discharge of debt. 24. *And be it enacted*, That if any person shall hereafter appoint his debtor an executor or executrix of his or her last will or testament, such appointment shall not, unless otherwise expressed in the said will or testament, be construed so as to discharge such executor or executrix from the payment of the debt, but the said debt shall be considered assets in his or her hands to be accounted for in the same manner as any other part of the personal estate.

## CHAPTER 8.

### LEGACIES.

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| <ul style="list-style-type: none"> <li>1. Legatees may sue for.</li> <li>2. Auditors to examine and report.</li> <li>3. Refunding bond required.</li> <li>4. Costs, how to be awarded.</li> </ul> | } | <ul style="list-style-type: none"> <li>5. Acts done before notice of will.</li> <li>6. Legatees, when to refund.</li> <li>7. One year allowed to pay legacies.</li> <li>8. Creditors to be first paid.</li> </ul> |
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REV. 49. **An Act for the more speedy recovery of legacies in this province, and for affirming such acts of administrators bona fide done before notice of a will.**

Passed March 11, 1774.

Preamble. Forasmuch as the laws of this province, relating to the recovery of legacies, which have been or may be given by the last will and testament of any person or persons, are defective—for remedying whereof,

1. BE IT ENACTED *by the Governor, Council, and General Assembly of this province, and it is hereby enacted 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 whatsoever, to whom any legacy, devise or bequest of any sum or sums of money, or other personal 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 or prosecute an action of debt, action on the case, or detinue for such legacy, after it becomes due, if it amounts to the value of fifteen pounds or upwards, in the supreme courts of this province, or any other court of record; and if under fifteen pounds, in any court where the same may be cognizable; in which action or actions so to be commenced, if it shall appear that the legacy or legacies are due, and there be sufficient assets in the hands of the executors to discharge the just debts of the testator, and the legacy and legacies bequeathed, the plaintiff or plaintiffs shall recover, with costs of suit, any law, usage or custom to the contrary notwithstanding. But in case there shall be assets to discharge all the debts of the testator, with an overplus not amounting to a sum sufficient to discharge all the legacies that may be given, then an abatement shall be made in proportion to the legacies so given; 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 so given, by guardian or next friend, as fully, amply and largely as by law they may do in any other actions whatsoever.

TITLE X.  
CHAP. 8.

Legatees may have action of debt, case, or detinue for legacies or bequests.

2. *And be it further enacted by the authority aforesaid,* That the respective courts, where the said actions may be commenced, upon the plea of want of assets to pay all the debts and all the legacies, shall appoint auditors to examine the accounts of the executors, who, after full hearing thereof, at such time and place, or times and places, as by the said auditors shall be appointed, with notice to the executors and the plaintiffs or their respective attorneys, shall procure the auditors aforesaid, to report how the accounts of the executors do stand, and how much assets will remain after payment of the whole 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 the court shall then award execution upon the judgment to be had in the said suit; which judgment shall remain a security for payment of the remainder of the said legacies and costs, when sufficient assets for payment thereof come to the executor's hands; which court is also hereby empowered, upon exception of either party, and hearing of the parties,

Under plea of want of assets to pay debts and legacies, auditors to be appointed to examine the accounts of the executors, and to report thereon.

TITLE X.  
CHAP. 8.

to correct and amend any mistakes or errors that may happen in the accounts so reported.

Before any action be commenced, the legatee to give bond, with surety.

3. *Provided always*, That no such suit shall be maintained for any such legacy or bequest, until reasonable demand made of the executor or executors, who ought to pay the same, and an offer made of two sufficient securities to the said executor or executors, who, if they think proper to accept thereof, shall become bound to them, the said executor or executors, in double the sum of the said legacies or bequests, with condition under written, 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 may not have other assets to pay, that then and in such case, he, the said legatee, will return his said legacy, or such part thereof as may be necessary for the payment of the said debts, or for the payment of a proportional part of the said legacies; and if the said executors should not think proper to accept thereof, then the said legatees shall file such bond in court, before obtaining any process against the said executors, otherwise the same process, for want thereof, shall abate.

Costs, how to be awarded.

4. *And be it enacted by the authority aforesaid*, That the said courts, upon consideration of the report of the accounts of the executors, shall, according to justice and equity, either award no costs, or costs out of the testator's estate, or in case the executors 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, any thing herein contained to the contrary notwithstanding.

All bona fide acts of administrators, before notice of a will, good.

5. *And be it further enacted*, That all lawful acts done, or to be done bona fide, by any administrator, before notice of a will, and all purchases made of such administrator bona fide, before such notice, shall remain good, and shall not be impeached or altered by any executor or executors, on such will after appearing; *provided always*, that when, at any time after such will shall appear, the executor or executors shall have the same remedy against such administrator or administrators, for the goods and chattels, rights and credits remaining unadministered, as he, she or they might have had before the making of this act.

Legatees, when to refund.

6. *Provided also*, That where there are or may be several legatees, and a return of part of the said legacy shall afterwards 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.

Executors to have a year to pay legacies.

7. *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 executor or executors shall have the space of one year to discharge the same. TITLE X.  
CHAP. 9.

8. *Provided also*, That nothing in this act contained shall be construed to enforce the payment of any legacies to the prejudice of creditors, or to enforce any last will and testament, not warranted by the former laws of this province. Creditors to  
be first paid.

9. Repealer.

CHAPTER 9.

PROBATE OF FOREIGN WILLS.

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| <ul style="list-style-type: none"> <li>1. Order to show cause made.</li> <li>2. Manner of proof required.</li> <li>3. Certified copies evidence.</li> </ul> |  | <ul style="list-style-type: none"> <li>4. Bond required of administrator.</li> <li>5. Commission to examine witnesses.</li> <li>“ Commissioners' certificate.</li> </ul> |
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An Act relative to the probate of wills from other or foreign states. HAR. 91, 122,  
195.

Revision.....Approved April 15, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That when any will shall have been admitted to probate in any state or territory of the United States or the District of Columbia, or in any foreign state or kingdom, and it shall become necessary or desirable for the executor or executors named in such will or codicil, or for any of the persons interested therein, to have such will proved and recorded in this state, it shall and may be lawful for any surrogate of any county in this state, upon application made to him for the purpose, and upon filing in his office an exemplified copy of such will, to make an order that cause be shown before him at a certain time and place therein to be expressed, not less than thirty days nor more than six months from the time of making such order, why a duly certified copy of such will, and codicil or codicils thereto, if any, should not be filed and recorded in the office of such surrogate, and letters testamentary thereupon be issued to such executor or executors as aforesaid, or letters of administration with the will annexed, as the case may require; which order shall be published in such manner as the surrogate making the same shall direct. How will  
proved a-  
broad, may  
be proved in  
this state.  
  
Order to  
show cause.  
  
Publication.

2. *And be it enacted*, That if the person or persons making such application, shall, at the time and place designated for that purpose as aforesaid, produce before the said surrogate a copy of such will or wills, and codicil or codicils, and shall prove to the satisfaction of the surrogate, that the same is exemplified and attested to be a true copy thereof, in the manner in which copies of such instru- Manner of  
proof.

TITLE X.  
CHAP. 9.

Will record-  
ed and let-  
ters issued.

Certified co-  
pies to be  
evidence.

Bond requir-  
ed.

Commission  
may issue to  
examine wit-  
nesses.

Commission-  
er's certifi-  
cate.

ments are usually exemplified and attested in the state, territory or kingdom where the same shall have been admitted to proof, and that such copy would be received in evidence in the courts of such state, territory, district or kingdom; and shall also prove, to the satisfaction of the surrogate, that the said order has been duly advertised and published in the manner therein directed; and if no sufficient cause shall appear or be shown to the contrary, it shall and may be lawful for the said surrogate to record such will or wills, and codicil or codicils, and to file the said copy thereof, and thereupon to grant letters testamentary to the executor or executors therein named, or letters of administration with the will annexed, to some person or persons entitled thereto, in the same manner; and which letters testamentary, or of administration with the will annexed, shall be of the same and of no other force and effect than they would have been if such will or wills, and codicil or codicils, had been produced and proved by the subscribing witnesses thereto, in the usual manner, under the laws of this state.

3. *And be it enacted*, That the record of such will or wills, and codicil or codicils, when the same shall have been recorded as aforesaid, and duly certified copies thereof, shall be evidence in the same manner, and have the same force and effect in all courts of law and equity, as such record or copies thereof would have, if such will or wills, and codicil or codicils, had been proved in the usual manner, under the existing laws of this state.

4. *And be it enacted*, That in all cases where the person or persons applying for probate of any will, in the manner provided for in this act, shall reside out of the state of New Jersey, it shall be the duty of the surrogate to whom such application is made, before granting the same, to take and receive from such person or persons a bond, with security for the faithful administration of the estate of the testator, in the same manner as is now required by law in case of administrations.

5. *And be it enacted*, That it shall be lawful for any surrogate or orphans' court, or for the ordinary, when any will shall be produced to such surrogate, court or ordinary, for probate, and any witness or witnesses attesting the same, shall reside out of this state, whose evidence may be deemed material, to issue a commission or commissions annexed to such will, and directed to the judge of any court of law, mayor, recorder, or other chief magistrate of any city, town, corporation or county where such witness may be found, authorizing the taking and certifying his, her, or their attestation; and if the person to whom any such commission shall be directed, shall certify in the manner such acts are usually authenticated by him, that the witness or witnesses personally appeared

before him and made oath or solemn affirmation, (as the case may require) that the testator or testatrix signed and published the writing annexed to such commission, as his or her last will and testament, and that at the doing thereof, the said testator or testatrix was of sound and disposing mind and memory, and that the said writing annexed, was also signed and published by the testator or testatrix in presence of the other subscribing witness or witnesses thereto, (if any) such oath or affirmation shall have the same operation, as if the same had been made before the surrogate, court or ordinary, who issued such commission.

TITLE X.  
CHAP. 10.

CHAPTER 10.

WILLS.

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|--|---|
| <ol style="list-style-type: none"> <li>1. Estates for another's life devisable.</li> <li>“ If not devised, to be assets.</li> <li>2. Devises, how revocable.</li> <li>3. Who incompetent to make will.</li> <li>4. Witness to, cannot take as devisee.</li> <li>5. Creditor admissible to prove.</li> <li>6. Rule as to proof by legatee.</li> <li>7. What witness not to take under.</li> <li>8. Certain clauses not to affect, whom.</li> <li>9. Father may dispose of child's custody,</li> <li>10. And guardian have custody of estate.</li> <li>11. Personal estate may be bequeathed.</li> </ol> | <ol style="list-style-type: none"> <li>12. Widow may bequeath crops.</li> <li>13. Nuncupative will, what good, proof of.</li> <li>14. And within what time.</li> <li>15. Letters testamentary of such will.</li> <li>16. Written will, how altered by verbal.</li> <li>17. Who may prove nuncupative.</li> <li>18. Rule as to soldiers and mariners.</li> <li>19. Of wills of personal estate.</li> <li>20. When will void.</li> <li>21. When after born children to take.</li> <li>22. When devise, etc., not to lapse.</li> <li>23. Act not retrospective.</li> </ol> |
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An Act concerning wills.

REV. 223.  
MAR. 90.

Revision....Approved April 15, 1846.

1. BE IT ENACTED *by the Senate and General Assembly of the State of New Jersey*, That all estates pur auter vie, shall be devisable by will in writing, signed and published by the party so devising the same in the presence of three subscribing witnesses, and proved and recorded in the manner prescribed in and by the act entitled, “An act for confirming of conveyances of lands made and to be made by wills and powers of attorney, and declaring what exemptions of records and other things shall be holden and received for good evidence of estates of inheritance, and for transferring of uses into possession,” passed the seventeenth day of March, in the year of our Lord one thousand seven hundred and thirteen–fourteen; and if no such devise thereof be made, the same or so much thereof as shall not be so devised, shall go to the executors or administrators of the party who had the estate thereof by virtue of the grant, and shall be assets in their hands, and be applied and distributed in the same manner as the personal estate of the testator or intestate.

Estates for another's life devisable.

TITLE XXII.

If not devised, to be assets for distribution.

TITLE X.  
CHAP. 10.Devises, how  
revocable.

2. *And be it enacted*, That no devise or bequest in writing, of any lands, tenements, hereditaments or other estates whatsoever in this state, or of any estate pur auter vie, or any clause thereof, shall be revocable, otherwise than by some other will or codicil in writing, or other writing declaring the same, or by burning, cancelling, tearing or obliterating the same by the testator himself or in his presence, and by his direction and consent; but all devises and bequests of any lands, tenements, hereditaments, or other estates whatsoever in this state, or of any estate pur auter vie, shall remain and continue in force until the same be burnt, cancelled, torn or obliterated by the testator or by his directions in manner aforesaid, or unless the same be revoked or altered by some other will or codicil in writing, or other writing of the devisor signed in the presence of three or more subscribing witnesses declaring such revocation or alteration.

Who incom-  
petent to  
make will.

3. *And be it enacted*, That wills or testaments, made or to be made, of any lands, tenements or hereditaments or of any estate pur auter vie, by any woman covert, or person within the age of twenty-one years, or any idiot, lunatic or person of non-sane mind and memory, shall not be held or taken to be good or effectual in law.

Witness to  
will cannot  
take as de-  
visee, except  
to pay debts;

4. *And be it enacted*, That if any person hath attested the execution of any will or codicil, after the first day of March, in the year of our Lord one thousand seven hundred and fifty-three, or shall attest the execution of any will or codicil hereafter to be made, to whom any beneficial devise, legacy, estate, interest, gift or appointment of or affecting any real or personal estate, other than and except charges on lands, tenements or hereditaments, for the payment of any debt or debts, hath been or shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment, shall, so far only as concerns such person attesting the execution of such will or codicil, or any person claiming under him or her be utterly null and void, and such person shall be admitted as a witness to the execution of such will or codicil, notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will or codicil,

but may  
prove will.Creditormay  
be admitted  
as witness to  
a will.

5. *And be it enacted*, That in case by any will or codicil, made or to be made, any lands, tenements or hereditaments, are or shall be charged with any debt or debts, and any creditor whose debt is so charged, hath attested or shall attest the execution of such will or codicil, every such creditor notwithstanding such charge, shall be admitted as a witness to the execution of such will or codicil.

Rule as to  
legatees  
proving ex-  
ecution of a  
will

6. *And be it enacted*, That if any person hath attested the execution of any will or codicil, made on or before the said first day

of March, in the year of our Lord one thousand seven hundred and fifty-three, to whom any legacy or bequest is thereby given, whether charged upon lands, tenements or hereditaments, or not, and such person before he shall give his or her testimony concerning the execution of any such will or codicil, shall have been paid or have accepted or released, or shall have refused to accept such legacy or bequest upon tender made thereof, such person shall be admitted as a witness to the execution of such will or codicil, notwithstanding such legacy or bequest; and in case of such tender and refusal as aforesaid, such person shall in no wise be entitled to such legacy or bequest, but shall be for ever afterwards barred therefrom; and in case of such acceptance as aforesaid such person shall retain to his or her own use, the legacy or bequest, which shall have been so paid, satisfied or accepted, notwithstanding such will or codicil shall afterwards be adjudged or determined to be void for want of due execution, or for any other cause or defect whatsoever: *and further*, that in case any such legatee as aforesaid, who hath attested the execution of any will or codicil, made on or before the said first day of March, in the year of our Lord one thousand seven hundred and fifty-three, shall have died in the testator's lifetime, or before he or she shall have received or released, or refused on tender his legacy, such legatee shall be deemed a legal witness to the execution of such will or codicil, notwithstanding such legacy or bequest; *provided always*, that the credit of every such witness so attesting the execution of any will or codicil, in any of the cases in this act before mentioned, and all circumstances relating thereto, shall be subject to the consideration and determination of the court and jury or of the court of equity, before whom any such witness shall be examined, or his testimony or attestation made use of in like manner, to all intents and purposes, as the credit of witnesses in all other cases ought to be considered of and determined.

7. *And be it enacted*, That no person, to whom any beneficial estate, interest, gift or appointment, hath been or shall be given or made, which is hereby enacted to be null and void, or who shall have refused to receive any such legacy or bequest, or tender made as aforesaid, and who shall have been examined as a witness concerning the execution of such will or codicil, shall, after he or she shall have been so examined, demand or take possession of, or receive any profit or benefit of or from any such estate, interest, gift or appointment, so given or made to him or her, in or by any such will or codicil, or demand, receive or accept, from any person or persons whatsoever, any such legacy or bequest, or any satis-

TITLE X.  
CHAP. 10.

Credit of  
such wit-  
ness.

Who not to  
receive any  
benefit from  
the will.

TITLE X.  
CHAP. 10.

Who not to  
be affected  
by certain  
clauses in  
this act.

faction or compensation for the same, in any manner, or under any colour or pretence whatsoever.

8. *And be it enacted*, That the clauses in this act concerning the competency or credibility of the witnesses to wills or codicils made on or before the said first day of March, in the year of our Lord one thousand seven hundred and fifty-three, shall not extend or be construed to extend, to the case of any heir at law, or of any devisee in a prior will or codicil of the same testator, executed and attested according to the law of this state, or any person claiming under either of them respectively, who was in quiet possession on the said first day of March, in the year of our Lord one thousand seven hundred and fifty-three, as to such lands, tenements or hereditaments, whereof he was then in quiet possession as aforesaid; nor to any will or codicil, the validity or due execution whereof hath been contested in any suit in law or equity, commenced by the heir of such devisor, or the devisee in any such prior will or codicil, for recovering the lands, tenements or hereditaments mentioned to be devised in any will or codicil so contested, or any part thereof, or for obtaining any other judgment or decree relative thereto, and which has been already determined in favour of such heir at law, or devisee in such prior will or codicil, or any person claiming under them respectively, which is consistent with, or may be warranted by or under any will or codicil, attested according to the law of this state; or where the estate descended, or might have descended to such heir at law, till a future or executory devise, by virtue of any will or codicil attested according to the law of this state, should or might take effect, shall be deemed to be a possession within the intent of this clause of this act.

Father may  
dispose of  
the custody  
of his child.

9. *And be it enacted*, That when any person hath or shall have any child or children, under the age of twenty-one years, and not married at the time of his death, it shall and may be lawful to and for the father of such child or children, whether born at the time of the decease of the father, or at that time in ventre sa mere, or whether such father be within the age of twenty-one years, or of full age, by his deed executed in his lifetime, or by his last will and testament in writing, signed and published by such father in the presence of three subscribing witnesses, and proved and recorded in the manner prescribed by the laws of this state, to dispose of the custody and tuition of such child or children, for and during such time as he, she or they shall respectively remain under the age of twenty-one years, or any less time, to any person or persons, in possession or remainder; and such disposition of the custody of such child or children made, or hereafter to be made, shall be good and effectual against all and every person or persons,

claiming the custody or tuition of such child or children, as guardian in socage, or otherwise; and such person or persons, to whom the custody of such child or children hath been, or shall be so disposed or devised as aforesaid, shall and may maintain an action of ravishment of ward, or trespass, against any person or persons, who shall wrongfully take away or detain such child or children, for the recovery of such child or children; and shall and may recover damages for the same in the said action, for the use and benefit of such child or children.

TITLE X.  
CHAP. 10.

Guardian  
may have  
action, etc.

10. *And be it enacted*, That such person or persons, to whom the custody of such child or children hath been, or shall be so disposed or devised, shall and may take into his, her or their custody, for the use of such child or children, the profits of all lands, tenements and hereditaments of such child or children; and also the custody, tuition and management of the goods, chattels and personal estate of such child or children, till his or her, or their respective age of twenty-one years, or any less time, according to such disposition aforesaid; and may bring such action or actions in relation thereto, as by law a guardian in common socage might do.

Guardian to  
have custody  
of estate.

11. *And be it enacted*, That it shall and may be lawful to and for all and every person and persons, by his, her or their testament or last will in writing, to give, bequeath or dispose of all his, her or their goods, chattels and personal estate, in the same manner as he, she or they lawfully might do before the passing of this act.

Personal estate  
may be  
bequeathed.

12. *And be it enacted*, That it shall and may be lawful for widows to bequeath the crop of their ground, as well of their dowers as of their other lands and tenements.

Widows may  
bequeath  
crops.

13. *And be it enacted*, That no nuncupative will heretofore made or hereafter to be made, shall be good, where the estate thereby bequeathed shall exceed the value of eighty dollars, unless the same be proved by the oaths of three witnesses at the least, who were present at the making thereof, nor unless it be proved that the testator, at the time of pronouncing the same, did bid the persons present or some of them, bear witness, that such was his or her will or words to that effect, nor unless such nuncupative will was made in the time of the last sickness of the deceased, and in the house of his or her habitation or dwelling, or where he or she hath been resident for the space of ten days or more, next before the making of such will, except where such person was surprised or taken sick, being from his or her own home, and died before he or she returned to the place of his or her dwelling.

What nuncu-  
pative will  
good, and  
how proved.

14. *And be it enacted*, That after six months passed after the speaking of the pretended testamentary words, no testimony shall be received to prove any nuncupative will, except the said testi-

And within  
what time.

TITLE X.  
CHAP. 10.

mony or the substance thereof were committed to writing within six days after the making of the said will.

When let-  
ters testa-  
mentary of  
such will  
granted.

15. *And be it enacted*, That no letters testamentary or probate of any nuncupative will, shall pass the seal of any court, till fourteen days at least after the decease of the testator shall be fully expired; nor shall any nuncupative will be at any time received to be proved, unless process hath first issued to call in the widow or next of kindred to the deceased, to the end that they may contest the same, if they please.

Written will  
altered by  
verbal will.

16. *And be it enacted*, That no will or testament in writing, concerning any goods or chattels or personal estate, shall be repealed, nor shall any clause, devise or bequest therein be revoked, altered or changed, by any words or will by word of mouth only, except the same be in the lifetime of the testator, committed to writing, and after the writing thereof, read unto the testator, and allowed and approved of by him or her, and proved to be so done by three witnesses at the least.

Who may  
prove nuncu-  
pative  
will.

17. *And be it enacted*, That all such witnesses as are and ought to be allowed to be good witnesses upon trials at law, by the laws of this state, shall be deemed good witnesses to prove any nuncupative will or any thing relating thereto.

Of soldiers  
and mari-  
ners.

18. *And be it enacted*, That notwithstanding this act, any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his moveables, wages and personal estate, as he might have done before the making of this act.

Wills of per-  
sonal estate,  
how proved  
and record-  
ed.

19. *And be it enacted*, That all last wills and testaments, which touch and concern the personal estate only of the testator, shall, after the same have been duly proved, be recorded in the like manner as last wills and testaments, which touch and concern the lands, tenements and real estate of the testator, are directed to be recorded by the laws of this state.

When will  
void.

20. *And be it enacted*, That every last will and testament made when the testator had no issue living, wherein any issue he might have is not provided for or mentioned, if, at the time of his death he leave a child, children or issue, or leave his wife ensient of a child or children which shall be born, such will shall be void, and such testator be deemed to die intestate.

After born  
children,  
when to suc-  
ceed to por-  
tion of fa-  
ther's estate.

21. *And be it enacted*, That if a testator having a child or children born at the time of making and publishing his last will and testament, shall at his death, leave a child or children born after the making and publishing of his said last will and testament, or any descendant or descendants of such after born child or children, the child or children so after born, or their descendant or descendants respectively, if neither provided for by settlement nor disinherited

by the said testator, shall succeed to the same portion of the father's estate, as such child or children or descendants as aforesaid, would have been entitled to, if the father had died intestate; towards raising which portion or portions, the devisees and legatees or their representatives, shall contribute proportionably out of the part devised and bequeathed to them by the same will and testament.

TITLE X.  
CHAP. 10.

22. *And be it enacted*, That whensoever any estate of any kind shall or may be devised or bequeathed by the testament and last will of any testator or testatrix, to any person being a child or other descendant of such testator or testatrix, and such devisee or legatee shall, during the life of such testator or testatrix, die testate or intestate, leaving a child or children, or one or more descendants of a child or children who shall survive such testator or testatrix, in that case, such devise or legacy to such person so situated as above mentioned, and dying in the lifetime of the testator or testatrix shall not lapse, but the estate so devised or bequeathed shall vest in such child or children, descendant or descendants of such legatee or devisee, in the same manner as if such legatee or devisee had survived the testator or testatrix and had died intestate; but this provision shall not apply where the testator or testatrix shall, by the said will or codicil thereto, or other instrument, have otherwise directed in regard to the children or descendants of the said devisee or legatee dying as aforesaid.

When devise  
or bequest  
not to lapse.

23. *And be it enacted*, That nothing in this act contained shall affect any case where the testator or testatrix, named in any testament, shall have died before the passing of this act, but such case shall be determined as if this act had not been passed.

Act not re-  
trospective.