

47. SEC. 6. That the said board of managers shall have power to appoint a superintendent, who shall, under the direction of the board, make all the rules and employ all the assistants necessary for the proper management of the home. Appointment of superintendent and assistants.

48. SEC. 7. That the sum of ten thousand dollars, or so much thereof as may be necessary, be and is hereby appropriated for the purchase and equipment of a suitable property for the said home, and that two thousand dollars additional be appropriated to aid in meeting the current expenses of the fiscal year; and that the treasurer of the state shall, on the warrant of the comptroller, pay the treasurer of the board of managers of the said home such sums as may be required for the purchase and equipment and maintenance of the said home; the said board of managers, in writing to the comptroller, first specifying in items the purposes for which such sums are required. Appropriations for home.
State treasurer to pay.

49. SEC. 8. That the governor shall send the feeble-minded women of this state to the said home in the manner and by the means provided in a supplement to an act entitled "An act for the instruction and maintenance of indigent deaf and dumb, blind and feeble-minded persons, inhabitants of this state," which supplement was approved March eighth, one thousand eight hundred and eighty-eight. [See Secs. 14 and 17, *ante*.] Governor to send feeble-minded women to home.

Death.

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| <ul style="list-style-type: none"> 1. Amended by section 9. 2. Amended by section 8. 3. Amended by section 4. 4. Proceedings for distribution of personal property given or bequeathed to persons presumed to be dead. 5. Proceedings for sale of lands devised to, or inherited by, persons presumed to be dead. 6. Proceeds of sale to be paid into court of chancery. Distribution, how made. | <ul style="list-style-type: none"> 7. Estate of dower or by the curtesy in such lands may be sold. 8. Proceedings for sale of land of persons presumed to be dead. 9. Death, when presumed. 10. When damages may be recovered. 11. Action, how brought. Amount recovered, for whose benefit. 12. Particulars of claim to be given. |
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An act declaring when the death of persons absenting themselves shall be presumed.

1. SEC. 1. [Amended by Sec. 9, *post*.]

Passed March 7, 1797. R. S. 781. 1185-1
39v-264

Supplement.

2. SEC. 1. [Amended by Sec. 8, *post*.]

Approved February 15, 1848. P. L. 1848, p. 43.

Supplement.

3. SEC. 1. [Amended by Sec. 4, *post*.]

Approved April 4, 1873. P. L. 1873, p. 139.

An act to amend an act entitled "A further supplement to an act entitled 'An act declaring when the death of persons absenting themselves shall be presumed,' passed March seventh, one thousand seven hundred and ninety-seven," approved April fourth, one thousand eight hundred and seventy-three.

Approved March 2, 1883. P. L. 1883, p. 55.

4. SEC. 1. That the first section of the act to which this is amendatory shall be and the same is hereby amended so that said section shall read as follows:

[That whenever any personal property or any interest therein has been or shall be given or bequeathed, in and by any last will and testament, either to or for the use of any person or persons for life, or for a term of years, or for any other limited period, or in remainder after the death of any other person or persons who shall have remained beyond the sea, or have been Proceedings for distribution of personal property given or bequeathed to persons presumed to be dead.

absent from or concealed in this state for seven years after the death of the testator or testatrix, it shall be lawful for the chancellor, in any proceeding to be had in the court of chancery upon the petition of any one interested in the matter, and after due proof of such absence or concealment, to order, adjudge and decree that the executor or executors of said will and testament, or the administrator or administrators cum testamento annexo, or otherwise, or the trustee or trustees having the charge or control of said personal property, shall pay and deliver such property or such interest therein, with any accumulations thereof, unto or for the use of the said person or persons so entitled to receive the same after the death of such other person or persons so absent or concealed, upon his, her or their giving to said executor or executors, administrator or administrators, trustee or trustees, a refunding bond or bonds, without any sureties whatever, but otherwise in the form or to the effect mentioned or prescribed in and by the seventeenth section of the act entitled "An act concerning executors and the administration and distribution of intestates' estates," approved April sixteenth, one thousand eight hundred and forty-six; and such bond or bonds shall be a full and complete protection to said executor or executors, administrator or administrators, trustee or trustees, in case said person or persons so absent or concealed, or his, her or their legal representatives, shall at any time afterwards appear and claim said property or interest therein, and said accumulations or any part thereof.]

Refunding bond
to be given.

Supplement.

Approved February 25, 1889.

P. L. 1889, p. 28.

Proceedings for
sale of lands
devised to, or
inherited by,
persons presumed
to be dead.

5. SEC. 1. That in case any person who, if living at the death of any decedent, would take, as heir-at-law or devisee of such decedent, any lands and real estate within this state, shall or may, at the date of the death of such decedent, be presumed to be dead, pursuant to the provisions of the act to which this is a supplement, then any person or persons who would be entitled by law to take any interest in the said lands and real estate by descent or devise from such decedent, in case such person presumed to be dead were proved to be dead at the death of decedent, may present a petition, duly verified, to the chancellor of this state, praying for the sale of said lands and real estate, which petition shall describe said lands and real estate, and set out the name of the decedent last seized thereof, the time of his or her death, the name of the person presumed to be dead, and the time and place when and where he or she was last heard from, and the names of all persons known to be entitled by descent or devise from said decedent, to any interest or estate in said lands and real estate; thereupon the chancellor shall, by order, fix a time for hearing said petition, not less than four weeks thereafter, and shall direct service of notice of such hearing, describing the lands and real estate to be affected, upon such persons and in such manner as he shall think proper, and that said notice be published at least once a week in such newspapers, and for such number of weeks, not less than two, as he may specify, of which newspapers one shall be published in the county where the said lands and real estate are situated; and the chancellor, upon proof of the service and publication of said notice as by him directed, and upon being satisfied of the truth of the allegations of said petition, and having heard all parties interested who may appear at the time fixed for the hearing of said petition, may order said lands and real estate to be sold in such manner as he may deem advisable; and thereafter said person presumed to be dead, if he or she prove to be living, or his or her heirs or devisees, if he or she prove to have lived to be seized of or entitled to said lands and real estate, and all persons claiming any interest in said lands and real estate, by descent or devise from the decedent, shall be forever barred from any claim or title to said lands and real estate, and entitled only to the proceeds of the sale thereof, as hereinafter provided; and the purchaser or purchasers at such sale shall be seized of and hold as good and perfect a title to and estate in said lands and real estate as said decedent was seized of and held in his lifetime.

6. SEC. 2. That the proceeds of such sale, after the payment therefrom of the costs and expenses of the proceedings, as allowed by the chancellor, shall be paid into the court of chancery, and shall be distributed, upon the order of the chancellor, to such person or persons as he may adjudge to be entitled thereto as heirs or devisees of the decedent, upon such person or persons entering into bond to the state of New Jersey, with surety or sureties to be approved by the chancellor, in double the amount of the share or shares received by such person or persons, conditioned for the payment, on demand, of the amount of such share or shares to the person presumed to be dead, if he or she prove to be living, or to his or her heirs or devisees, if he or she shall prove to have lived to be seized of or entitled to said lands and real estate, which said bond shall be filed with the clerk of the court of chancery, and be assigned for prosecution by the order of the chancellor, in the name of the state of New Jersey, to the person or persons entitled to the benefit thereof.

Proceeds of sale to be paid into court of chancery. Distribution of, how made.

7. SEC. 3. That the chancellor may order any estate of dower or by the curtesy in such lands and real estate to be sold, and said lands and real estate discharged therefrom, and that a certain sum of money be paid in lieu thereof, to the person or persons entitled to such estate; or a certain share of the proceeds of the sale of said lands and real estate be invested for the benefit of the person or persons entitled to such estate, in the same manner as now provided for in the partition in chancery of lands held in common.

Chancellor may order estate of dower or curtesy in lands to be sold, &c.

An act to amend an act entitled "A supplement to the act entitled 'An act declaring when the death of persons absenting themselves may be presumed,'" approved March seventh, one thousand seven hundred and ninety-seven, which supplement was approved February fifteenth, one thousand eight hundred and forty-eight.

Approved April 3, 1891.

P. L. 1891, p. 313.

8. SEC. 1. That the first section of the act of which this is amendatory [see Sec. 2, *ante*], and which is in the words following [see P. L. 1848, p. 43], be and the same is hereby amended to be and read in the words following, to wit:

[That in case the heirs or devisees of any person who is or may be presumed to be dead, pursuant to the provisions of the act to which this is a supplement, or any purchaser mediately or immediately from such heirs or devisees shall desire to sell any land or real estate to which said person would be entitled, if living, it shall be lawful for said heirs or devisees, or said purchaser from them, to present a petition to the court of chancery; and thereupon the said court, upon being satisfied of the truth of the facts, that it will be just and equitable, and upon proper security being given, by bond, to the state of New Jersey, for double the value of said land or real estate, that the proceeds of the sale shall be paid on demand, with interest, to the said person presumed to be dead, or to his or her lawful issue, in case he, she or they shall appear and claim the same, to order the said land or real estate to be sold, as the court may deem advisable; and that the said person so presumed to be dead, and his or her lawful issue, if he, she or they shall prove to be living, shall be forever thereafter barred from any claim or title to said land or real estate, and entitled only to the proceeds thereof; and in such case the purchaser shall hold and be seized of as good and perfect estate in the said land or real estate as if the said person presumed to be dead had conveyed the same.]

Proceedings for sale of land of persons presumed to be dead.

Amendatory act.

Approved March 28, 1895.

P. L. 1895, p. 751.

9. SEC. 1. That the act [see Sec. 1, *ante*] to which this is amendatory be and the same is hereby amended so as to read as follows:

[That any person, whether a resident of this state or not, who shall remain beyond sea or absent himself or herself from this state, or from the place of his or her last-known residence, or conceal himself or herself in this state, or in the place of his or her last-known residence, for seven years successively, shall be presumed to be dead, in any case wherein his

Death, when presumed.

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or her death shall come in question, unless proof be made that he or she were alive within that time; but an estate recovered in any such case, if in a subsequent action or suit, the person so presumed to be dead shall be proved to be living shall be restored to him or her who shall have been evicted; and he or she may also demand and recover the rents and profits of the estate during such time as he or she shall have been deprived thereof with costs of suit; *provided, however*, that any executor or administrator who may pay over any legacy or distributive share to which such person, if living, would be entitled, shall be fully discharged from any and all liability to such person upon filing with the surrogate of the proper county the releases of the persons who would be entitled to such legacy or distributive share if the person so presumed to be dead were actually dead. (a)

Proviso.

An act to provide for the recovery of damages in cases where the death of a person is caused by wrongful act, neglect or default.

Approved March 3, 1848.

P. L. 1848, p. 151.

When damages may be recovered.

10. SEC. 1. That whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, then and in every such case the person who, or the corporation which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony. (b)

Action, how brought. Amount recovered for benefit of widow and next of kin.

11. SEC. 2. That every such action shall be brought by and in the names of the personal representatives of such deceased person; and the amount recovered in every such action shall be for the exclusive benefit of the widow and next of kin of such deceased person, and shall be distributed to such widow and next of kin in the proportions provided by law in relation to the distribution of personal property left by persons dying intestate; and in every such action the jury may give such damages as they shall deem fair and just, with reference to the pecuniary injury resulting from such death to the wife and next [of] kin of such deceased person; *provided*, that every such action shall be commenced within twelve calendar months after the death of such deceased person. (c)

Particulars of claim to be given.

12. SEC. 3. That on request by the defendant, or the defendant's attorney, the plaintiff on the record shall be required to deliver to the defendant, or to the defendant's attorney, a particular account in writing, of the nature of the claim in respect to which damages shall be sought to be recovered.

(a) A widow, whose husband has been absent from the state for seven years, may have an action of dower. *Wambaugh v. Schenck, Pen.* 229. A mother may recover for the services of her son, an infant living with her, where the father has been absent sixteen years. *Osborn v. Allen, 2 Dutch.* 388. On a bill stating that a legatee had left the state more than seven years before filing the bill, the answer admitted the absence, but set up that he had been heard from during that time. *Held*, that defendants must prove that he was alive within the seven years. *Smith v. Smith, 1 Hal. Ch.* 484. Where a legatee was last heard of three years before the death of a testatrix, the presumption of his death not arising until four years later, prevents his legacy from lapsing. *Clarke v. Campbell, 2 McCurt.* 119. See, also, *Hamilton v. Rose, 3 Hal. Ch.* 465. *Souder v. Stout, 2 Stock.* 377. *Matter of Hall, 1 Wall. Jr.* 85. A person who absents himself from the state for seven successive years is presumed to be dead, and the party asserting that he is living must prove it. *Hoyt v. Neubold, 16 Vr.* 219. There should be something more than similarity of names to overcome the presumption of death raised by the statute. *Id.* The identity of the person should be proved. *Id.* See *Phune v. Howard Savings Inst., 17 Vr.* 211. The statutory presumption of death of a person will not arise until all reasonable doubt of his death at a given time is removed. *Smith v. Combs, 4 Dick.* 420.

(b) The term "corporation," as contained in this section, includes within its meaning the boards of chosen freeholders of the respective counties as public corporations having, by the act of 1880 (*ante*, p. 307), imposed upon them a liability for damages for personal injuries occasioned by their neglect to erect, rebuild or repair bridges. *Murphy v. Board of Chosen Freeholders, 28 Vr.* 245.

(c) This statute is intended for the benefit of all the next of kin. *Pawmter v. Erie E. R. Co., 5 Vr.* 152. If the deceased leave no widow him surviving, an action may be maintained by

his personal representatives for the benefit of the next of kin. *Haggerty v. Central E. R. Co., 2 Vr.* 349. It is sufficient to allege that the deceased left a widow or children, without naming them. *McGlone v. New Jersey E. R. Co., 8 Vr.* 304. It is proper, although perhaps not indispensable, to allege that such widow or next of kin has sustained some pecuniary loss. *Id.* Only such loss or injury as has been sustained by the plaintiff can be allowed, and in estimating that the chances of health and life are to be considered in connection with the value of services. *Telfer v. Northern E. R. Co., 1 Vr.* 189. Administrators are not liable for costs in a suit brought by them, on a judgment for the defendants. *Kinney v. Central E. R. Co., 5 Vr.* 278. Damages recoverable for the death of any person are limited by the statute to such as arise from pecuniary injury, resulting from the death, to the widow and next of kin. *Demarest v. Little, 18 Vr.* 28. Injury received by some of the next of kin, by the dissolution of a partnership relation between them and deceased, is not within the scope of the statute. *Id.* Injury claimed to arise by the deprivation of such services and counsel as a father might probably give to his children, must be limited to such services and counsel as would be of pecuniary advantage. *Id.* In determining the probability of accumulations by deceased if he had continued in life, no account should be taken of the income derivable from his investments. *Id.* An action to recover damages for causing death by negligence is not within rule 16 of the supreme court, requiring certain actions to be styled in the process and pleadings, actions of tort. *Van Blarcom v. D., L. & W. E. R. Co., 20 Vr.* 179. By the common law no action would lie for an injury caused by the death of a human being. The modification of the rule contained in the act of 1848 does not extend to injuries suffered by a husband as the result of the immediate killing of his wife. *Grosso v. D., L. & W. E. R. Co., 21 Vr.* 317.

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