

Executors and Administrators.

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An act concerning executors, and the administration of intestate's estates.

Revision—Approved March 27, 1874.

R. S. 345, 350, 358.

P. L. 1855, p. 340.
" 1868, p. 1190.

1. That all lawful acts 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 afterwards 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. (a)

All *bona fide* acts of administrators, before notice of a will, good.
R. S. 358, § 5.

Provided executor may sue for goods, &c., unadministered.

2. That no executor of an executor shall, as such, be authorized to administer on the estate of the first testator, but on the death of the sole or surviving executor of any last will and testament, letters of administration with the will annexed of the assets of the first testator, left unadministered, shall be issued by the surrogate of the proper county to some proper person, who shall, before the issuing thereof, give bond to the ordinary of the state, with sufficient sureties, as in other cases of administration with the will annexed. (b)

Executor of executor shall not represent first testator.
P. L. 1868, p. 1190.

(a) Where letters of administration have been duly granted, and the administrator is properly before the court, a person claiming to be executor under a will which has been destroyed, cannot be recognized. *Annis v. Vandoren*, 1 *McCart*. 136. *Quidort v. Pergear*, 3 *C. E. Gr.* 472.

(b) A citation can issue from the orphans' court against an executor of an executor for an account. *Wood v. Tullman*, *Coxe* 153. By the statute of 25 Edw. III., executors of a deceased executor were the executors also of the first testator. *Crane v. Alling*, 2 *Gr.* 594. *Moore v. Smith*, 1 *Hal. Ch.* 649. *Annis v. Vandoren*, 1 *McCart*. 136. *Schenck v. Schenck*, 1 *C. E. Gr.* 174. But this does not include the power to sell land, which is a per-

sonal trust. *Chambers v. Tulane*, 1 *Stock*. 146. An administrator *de bonis non* cannot call an executor of an executor to account for that part of the estate converted into money. He is only entitled to such chattels and choses in action as still remain as they existed at the testator's death. *Carrick v. Carrick*, 3 *C. E. Gr.* 364. But not the administrators of such deceased executor. *Boulton v. Scott*, 2 *Gr. Ch.* 231. *Dickinson v. Brick*, *Pen.* *695. *Contra*, *Tucker v. Green*, 1 *Hal. Ch.* 380. Nor can the executors of a deceased administrator be called to account as representatives of the intestate. *Schenck v. Schenck*, *Pen.* *421. *Garret v. Stilwell*, 2 *Stock*. 313. See *Brownlee v. Lockwood*, 5 *C. E. Gr.* 239. *Betts v. Van Dyke*, 13 *Stew.* 149.

Of executors in their own wrong. R. S. 350, § 2.

3. And whereas it is sometimes practiced to the defrauding of creditors, that such persons as are entitled to the administration of the goods of others dying intestate, if they require it, will not accept the same, but suffer or procure the administration to be granted to others of indigent circumstances, from whom they, or others, by their means, by deeds of gifts, or by letters of attorney, obtain the estate of the intestate into their hands, and yet be not subject to the payment of the debts of the intestate, and so the creditors cannot have or recover their just debts and demands; therefore be it enacted, 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 aforesaid, or without such valuable consideration, as shall amount to the value of the said 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 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, 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 payments made by him or her, which lawful executors or administrators might and ought to have and pay by the laws of this state.

Executors, &c., may have action for trespass. R. S. 350, § 1. P. L. 1855, p. 340, § 1.

Action for trespass may be had against executors, &c. R. S. 351, § 2. P. L. 1855, p. 340, § 2.

Liability for waste or conversion. R. S. 350, § 3.

Administrators to recover and be liable as executors. *Ib.*, § 8.

Appointment of debtor executor, not to discharge debt. *Ib.*, § 24.

4. That executors and administrators may have an action for any trespass done to the person or property, real or personal, of their testator or intestate against the trespasser or trespassers, and recover their damages in like manner as their testator or intestate would have had if he or she was living. (a)

5. 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, or shall, in his or her lifetime, have committed any trespass to the person or property, real or personal, 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. (b)

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

7. That administrators, of whatever kind or description they may be, (c) 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 are, in case of testament, as well of the time past as of the time to come.

8. That the appointment of a debtor as executor or executrix shall not, unless otherwise expressed in the said will, be construed so as to discharge such executor or executrix from the payment of the debt, but the said

(a) See *Dickerson v. Stoll*, 4 Zab. 554, *Potts, J.* They have a discretionary right as to being substituted for their testator where he dies pending the suit. *Lloyd v. Johnson*, 2 Har. 349. An action for the seduction of a daughter, in the lifetime of the father, may be maintained by his personal representative. An action will also lie for enticing away a servant at will where a subsisting service is interrupted by the act of the defendant. *Noice, Adm. v. Brown*, 10 Vr. 569.

(b) Trover lies against executors for the conversion of a bond and mortgage by their testator. *Terrune v. Bray*, 1 Har. 53. They are liable for wood and timber cut and carried away by their testator. *Cooper v. Crane*, 4 Hal. 173. See *Brewer v. Con-*

over, 3 Har. 214. An action in tort for negligence or deceit will lie against the personal representative of a deceased wrongdoer. *Tichenor v. Hayes*, 12 Vr. 193. *Dodd v. Wilkinson*, 14 Stev. 567. See, also, *Lippincott v. Barton*, 15 Stev. 272.

(c) For authority of an administrator *pendente lite*, see *Cole v. Wooden*, 3 Har. 15. *Bloomfield v. Ash*, 1 South. *314. Of an administrator *de bonis non*. *Carrick v. Carrick*, 3 C. E. Gr. 364. *Supra*, Sec. 2 (b) *Brownlee v. Lockwood*, 5 C. E. Gr. 289. An action will lie against an administrator *pendente lite* to recover for services rendered to the decedent in his lifetime. *Benson v. Wolf*, 14 Vr. 78.

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. (a)

9. [Amended by Secs. 18 and 28, *post.*]

10. [Amended by Secs. 16 and 17, *post.*]

11. [Repealed by Sec. 24, *post.*]

12. That whenever 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 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.

When will directs sale without naming executors, sale to be made by administrator. *Ib.*, § 21.

[For bond of such administrator, see ORPHANS' COURT.]

Supplement.

Approved March 9, 1877.

P. L. 1877, p. 224.

13. SEC. 1. That in any case where the executor of an estate hath died, or shall die, without having fully settled up and obtained an allowance, before the orphans' court of the county in which his letters testamentary were granted, or before other proper court, of his account of the administration of the estate of his testator, it shall be lawful for the executor or executors, administrator or administrators of such deceased executor, to exhibit to the surrogate of said county, in order to have the same duly settled and allowed, an account of the receipts and disbursements by said executor in his lifetime, of the assets of the estate of his said testator, or of so much thereof as may remain unsettled at the time of the death of said executor, and the account so exhibited to said surrogate shall be by him audited and stated in the same manner as required by law in regard to accounts of executors and administrators in other cases, and he shall place the same on file in his office, subject to the inspection of any person interested therein, for at least twenty days previous to the same being presented to said orphans' court for confirmation and allowance; and said surrogate shall report and present the same to said court for that purpose, in the same manner as by law he is directed to report and present the accounts of executors and administrators, audited and stated by him in other cases; and the said orphans' courts are hereby authorized and required to take cognizance of the said account, and to proceed and act thereon as is by law required in regard to the accounts of executors and administrators audited and reported to them by the surrogate in other cases, and to make all orders and decrees which said court may deem necessary for the purpose, and to confirm and allow said account in whole or in part, as the said court shall deem right and according to law; and the orders and decrees of said court in regard to the same shall be binding and conclusive upon all parties and persons in interest until the same shall be reversed or set aside according to law; and any person feeling aggrieved by any order or decree of said court in the premises may appeal therefrom to the same court, and in the same manner and under the same restrictions, as appeals may be taken from the orders and decrees of said court in regard to the settlement of accounts of executors and administrators in other cases.

Executor or administrator of deceased executor may settle account in proper court.

(a) A debt due by the executor to the testator is so far assets as to come within the jurisdiction of the orphans' court, and the appointment of the debtor as executor is not an extinguishment of the debt as against creditors or legatees. *Wood v. Tallman*, Case 153. So, where a note given to the testator by one who was subsequently appointed a co-executor, was inventoried by both executors and charged to themselves in their joint account,

they are both liable for its amount. *Wilson v. Fisher*, 1 Hal. Ch. 498. Where a trust fund established by a testator consists of a debt due him from his executor, which the executor has never paid into the estate, although he has paid the interest thereon, he is not entitled to commissions. *McKnight v. Walsh*, 8 C. E. Gr. 137.

Notice of such intended settlement to be given.

14. SEC. 2. That any executor or executors, administrator or administrators, intending to exhibit for settlement such account as is mentioned in the first section of this act, shall give notice of his intention so to do by advertisement, in the same manner and for the same length of time as is required by law in case of settlement of accounts of executors and administrators before the orphans' court in other cases, and due proof of such advertisement having been made, shall be made to said court when said account is submitted to them for settlement and allowance.

Supplement.

P. L. 1879, p. 28.

15. SEC. 1. [Amended by Sec. 20, *post.*]

Approved February 19, 1879.

Supplement.

P. L. 1879, p. 56.

16. SEC. 1. [This section, amending Sec. 10, *ante*, is amended by Sec. 17, *post.*]

Approved February 26, 1879.

Supplement.

P. L. 1881, p. 125.

17. SEC. 1. That the tenth section of the act to which this is a supplement, as amended by the act entitled "A supplement to an act entitled 'An act concerning executors and administrators of intestates' estates," approved March twenty-seventh, one thousand eight hundred and aeventy-four," and approved February twenty-sixth, one thousand eight hundred and seventy-nine, be and the same is hereby amended so that the said amended section shall be and read as follows :

Approved March 17, 1881.

Surviving executor authorized to prove will and execute trusts thereof.

[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 or directed 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 die, or resign the executorship or remove out of this state and refuse to act, or have died, or resigned the executorship or removed out of this state and refused to act, or shall be or have been discharged or removed from office by any court of competent jurisdiction, then and in any of such cases the trusts in said will shall vest in the other executor or executors in said will named who shall prove, or heretofore hath or have proved said last will, and in the survivor or survivors of them, unless it shall be or is 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 or acted and joined in such sale.](a)

Supplement.

P. L. 1885, p. 289.

18. SEC. 1. [This section, amending Sec. 9, *ante*, is amended by Sec. 28, *post.*]

Approved April 20, 1885.

(a) When a will gives to the executors a discretionary power to sell lands, and one is removed from the office, the power to sell survives, and can be executed by the remaining executor. *Weimer v. Fath*, 14 Vr. 1. *Clark v. Denton*, 9 Stew. 419. S. C.

affirmed, 9 Stew. 534. See, also, *Corlies v. Little*, 2 Gr. 373. *Coykendall v. Rutherford*, 1 Gr. Ch. 360. *Den, Cain v. McCann*, Pen. *438. *Chambers v. Tulane*, 1 Stock. 146.

Supplement.

Approved March 17, 1887.

P. L. 1887, p. 27.

19. SEC. 1. That where executors and administrators heretofore have and shall hereafter become purchasers of lands, tenements or hereditaments covered by any mortgage forming a part of the assets of the estate in their hands at a sale upon a foreclosure of any such mortgage, the conveyance of the title to the lands, tenements or hereditaments so purchased shall be construed to have vested and to vest an estate in joint tenancy in such executors or administrators, and the lands, tenements or hereditaments so conveyed shall be assets in their hands and may be sold and conveyed by them without any order of court, and they shall be accountable for and pay over the proceeds of such sales as other estate moneys in their hands, and where any executor or administrator shall have died or been removed from office by any court of competent jurisdiction, or shall hereafter die or be removed from office by any court of competent jurisdiction, then and in every such case, any sale or conveyance of such lands, tenements or hereditaments made by the surviving or acting executor or executors, administrator or administrators, shall be construed to have vested and to vest in the purchaser or purchasers, grantee or grantees, the title to such lands, tenements or hereditaments in the same manner and as fully, to all intents and purposes, as if all had been living or acting and had joined in such conveyance.

Conveyances of lands, &c., to executors and administrators to vest an estate in joint tenancy.

Lands so conveyed may be sold without order of court.

Lands sold by surviving executor, &c., title to, vested in the purchaser.

An act to amend "A supplement to an act entitled 'An act concerning executors and the administration of intestates' estates' [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four," which supplement was approved February nineteenth, one thousand eight hundred and seventy-nine.

Approved April 9, 1887.

P. L. 1887, p. 154.

20. SEC. 1. That the first section of the supplement mentioned in the title of this act [see Sec. 15, *ante*] be and the same is hereby amended so that the same shall read as follows :

[That any executor or administrator, by virtue of letters obtained in another state, may prosecute any action or sue out execution upon any judgment or decree in any court of this state, as if his letters had been granted in this state; *provided*, that such executor or administrator shall first file in the office of the clerk of the court in which he is about to proceed an exemplified copy of his letters; *provided, also*, that security for costs may be required from such executor or administrator as if he were a non-resident of this state.]

Foreign executors or administrators may prosecute actions in this state.

Proviso.

Proviso.

A supplement to an act entitled "An act concerning executors and the administration of intestates' estates" [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four, regulating the sale of lands by administrators with the will annexed, or by administrators de bonis non with the will annexed, and defining their powers.

Approved April 6, 1888.

P. L. 1888, p. 395.

21. SEC. 1. That any deed of conveyance heretofore made and delivered, or which may hereafter be made and delivered, by any administrator or administrators with the will annexed, (a) 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 such administrator or administrators with the will annexed, and the survivors or survivor of them, shall have the same powers and authority with respect to the sale of the lands of the testator as were given to or vested in the

Conveyance by administrator with will annexed valid.

Administrators vested with same powers, in respect to sale of lands, as executors named in will.

(a) Not at common law. *Den, McDonald v. King, Coxe* 482. Where lands were devised to be sold by executors if the devisees could not agree upon a division, the fact that some of the

devisees were then infants and consequently legally unable to agree to a division, authorizes the sale by an administrator *cum testamento annexo*. *Howell v. Sebring, 1 McCart.* 84.

Except where will confides power to persons other than the executors.

Administrators de bonis non vested with same powers.

Sales not valid until approved by orphans' court.

Court to require administrator to give additional security before confirming sale.

Purchaser of lands not required to look to the application of purchase-money.

Repealer.

executor or executors named in said will, whether such powers and authority constitute or shall constitute a naked power to sell lands or constitute or shall constitute a special continuing trust, and whether the discharge of the duties of such trust involves or shall involve the exercise by said executors or executor of any discretion either in point of time or method, or not, unless where such will does now or shall hereafter provide by express designation that, in any contingency, some persons or person other than the persons or person named as executors or executor therein, shall exercise such powers and authority; and in case of the death or incapacity either before or after the passage of this act of the executor or executors named in such will before the complete execution of any special trust therein declared and vested in him or them, or 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, with respect to the sale of the lands of the testator, shall be considered as vested in him or them, and the survivors or survivor of them, as were vested in the executor or executors in said will named; and such administrator or administrators de bonis non with the will annexed, and the survivors or survivor of them, shall have and may exercise all the power, with respect to the sale of the lands of the testator, that the original executor or executors have had or shall have, either as executors or trustees, under said will, except where such will shall expressly confide the exercise of such power of sale to some person or persons named therein other than the executors or executor of said will. (a)

22. SEC. 2. That no sale of lands hereafter made by an administrator or administrators with the will annexed, or by an administrator or administrators de bonis non with the will annexed, shall be valid until the terms thereof shall have been submitted to the orphans' court of the county in which the lands proposed to be sold lie or shall lie, and approved by said court, and it shall be the duty of such court, upon any application by an administrator or administrators with the will annexed, or the survivors or survivor of them, or by an administrator or administrators de bonis non with the will annexed, or the survivors or survivor of them, for an order confirming the terms of any sale made or to be made by him or them under any power of sale contained in such will, before confirming such sale, in their discretion, to require such administrator or administrators with the will annexed, and such administrator or administrators de bonis non with the will annexed, to give such additional security, by bond to the ordinary, as said court shall deem advisable, having regard to the value of the real estate ordered, directed or authorized to be sold in said will, for the proper distribution of the proceeds of the sale of such real estate. [See Sec. 41, *post.*]

23. SEC. 3. That in case of any sale of lands by an administrator with the will annexed, or by an administrator de bonis non with the will annexed, ordered, directed or authorized, in such will, whether the proceeds of such sale be, by the terms of such will, impressed with a special trust or not, the purchaser of the lands so sold shall not be required to look to the application of the purchase-money.

24. SEC. 4. That section eleven of the act to which this act is supplementary, be and the same is hereby repealed.

Supplement.

Approved April 23, 1888.

P. L. 1883, p. 473.

Executor or administrator appointed in another state or territory may become party in any suit in this state.

25. SEC. 1. That any executor or administrator appointed by letters obtained in another state or territory of the United States or District of Columbia may, on his or her application, become a party plaintiff or complainant in any suit in any court of this state in which his or her testator

(a) This section amends and enlarges the powers of administrators as they were contained in Rev., p. 398, § 11. Section 11 of the original act is now repealed by section 24, *post.* For decisions relating to the powers and authority under the original section 11, see *Howell v. Sebring*, 1 *McCurt.* 84. *Brush v. Young*, 4 *Dutch.* 237. *Aldridge v. McClelland*, 7 *Stew.* 242. *Lanning v.*

Sisters of St. Francis, 3 *Stew.* 392. *Naundorf v. Schumann*, 14 *Stew.* 14. *Giberson v. Giberson*, 16 *Stew.* 116. The general rule is that when a power of sale is given simply *ratione officii*, it may be exercised by anyone who may succeed to the office. *Griggs v. Veghte*, 2 *Dick.* 187.

or intestate was such a party, in place of such testator or intestate, in the same manner and to the same effect as if such letters had been obtained in this state, and whether before or after judgment or decree; *provided*, that on making such application such executor or administrator shall file in such suit, in the office of the clerk of the court wherein such suit shall be pending, an exemplified copy of the record of such appointment; *and provided, also*, that such executor or administrator, if non-resident, may be required to give security for costs as in other cases of non-resident plaintiffs or complainants.

Proviso.

Proviso.

26. SEC. 2. That any payment by any resident or citizen of this state to any executor or administrator appointed by letters obtained in another state or territory of the United States or District of Columbia, of or on account of any debt due to his or her testator or intestate, made before letters testamentary or of administration shall be actually granted in this state, shall be as valid and effectual as if made to an executor or administrator duly appointed in this state; and such foreign executor or administrator may, before any letters shall be actually granted in this state, release and discharge any lands or other security from any mortgage, judgment or other lien or incumbrance which was held by [his] or her testator or intestate, as fully and to the same effect as if he or she had been duly appointed in this state.

Payment to foreign executor or administrator before letters granted in this state, valid.

27. SEC. 3. That if any person shall desire to have the appointment of any administrator appointed by letters obtained in another state or territory of the United States or District of Columbia recorded in this state, for the purpose of manifesting the authority of such administrator to release or discharge any lands in the state from any mortgage, judgment or other lien or incumbrance which was held by his or her intestate, it shall be lawful for any surrogate of any county in this state wherein such land shall be, upon an exemplified copy of the record of the appointment of such administrator being presented to him, to record the same and file the said copy in his office, and such record or certified copies thereof shall be received as evidence in all courts of this state.

Surrogate may record letters of administrator appointed in another state or territory.

Supplement.

Approved June 20, 1890.

P. L. 1890, p. 505.

28. SEC. 1. That the ninth section of the act to which this is a supplement, as amended by the act entitled "A supplement to the act entitled 'An act concerning executors and the administration of intestates' estates," [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four," and approved April twentieth, one thousand eight hundred and eighty-five [see Secs. 9 and 18, *ante*], be and the same is hereby amended so that the amended section shall be and read as follows:

[That whenever any person has died or shall die intestate within this state, and has left or shall leave no relations justly entitled to the administration of his or her personal estate, or who, if so entitled, has not claimed or shall not claim the same within fifty days after the death of such person so dying intestate, it shall be lawful for the ordinary or the orphans' court to grant letters of administration on such decedent's estate to any fit person or persons applying therefor, taking his, her or their bond for the faithful execution of the trust reposed in him, her or them; (a) and such administrator or administrators 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 at interest, and pay the net interest or income thereof annually to the treasurer of the township or city in which said intestate has so died or shall so die, to and for the use of the poor of said township or city, and shall, whenever

Grant of letters of administration where deceased has left no relations, or where no application for letters has been made within fifty days.

Duties of such administrator.

(a) Where letters were granted within fifty days after the death of the intestate to one not of kin to the intestate, without ascertaining whether some of the next of kin would not administer, they were declared null and void. *Einehart v. Einehart*, 12 C. E. Gr. 475. Where there is no husband or widow, admin-

istration must be granted to the next of kin of the intestate, if any of them are fit and competent and will accept. Where one of several next of kin applies for administration, ten days' notice of the application must be given to the others. *Sayre v. Sayre*, 3 Duck. 287. *Gans v. Dabergott*, 13 Stew. 184.

EXECUTORS AND ADMINISTRATORS.

applied to for that purpose, pay the principal of such personal estate, if thereto required by the judgment or decree of any court of competent jurisdiction 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 him, her or them for the same; and 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 as aforesaid to such administrator or administrators for the said principal, he, she or they so entitled shall forever 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 treasurer of the township or city in which said intestate died, to and for the use of the poor of the said township or city; (a) *provided, always*, that the right of foreigners, by treaty or otherwise, shall not be affected by anything in this section contained.] [See Sec. 29, *post.*]

Administrator empowered to pay principal and interest to townships or cities when claim is not made therefor, within seven years.

Proviso.

Supplement.

Approved May 15, 1894.

P. L. 1894, p. 338.

Power of surrogate to grant such letters.

29. SEC. 1. That all the powers and duties conferred upon the ordinary under the act to which this is a supplement, relative to the grant of letters of administration on the estate of any person dying intestate within this state, and leaving no relatives justly entitled to the administration of his or her personal estate, may also be exercised and performed by the surrogate of the county in which the person so dying intestate resided at the time of his or her death.

An act for the relief of widows, in certain cases.

Approved March 12, 1851.

P. L. 1851, p. 201.

Property which may be claimed by widow.

30. SEC. 1. The widow of any person who shall die testate or intestate, shall be entitled to demand and receive from the executor or executors, administrator or administrators, of such person, all such goods and chattels, choses in action, or other personal property, which at, or immediately before the coverture, between the deceased and his said widow belonged to her, or which, during coverture, came to her by bequest, gift or inheritance, and which at the time of the death of the deceased remained in his possession; *provided*, that this act shall not be construed to affect the claims of creditors, whose debts shall have been contracted previous to the time this act shall take effect. (b)

An act relating to the payment of money to executors, administrators or trustees under a trust or power, and discharge on payment thereof.

Approved February 19, 1884.

P. L. 1884, p. 20.

Receipt or acknowledgment of executor, administrator or trustee for money received shall be a full discharge thereof.

31. SEC. 1. That the receipt, or acknowledgment in writing, whether by deed or otherwise, heretofore given, or which may hereafter be given, by any executors or executor, administrators or administrator with the will annexed, trustees or trustee, for any money heretofore paid, or that may hereafter be paid to, and received by, them or him, by reason, or in the exercise or execution, of any trust or power, shall be full and sufficient discharge for the money therein expressed to be received, and shall effectually exonerate the person who has heretofore paid, or may hereafter pay, such money, and his or her legal representatives, from seeing to the application

(a) This section originally provided that the payment, after the expiration of seven years, should be made to the overseers of the poor instead of the treasurer. It was held in the Warren circuit court that such payment should be made for the use of the poor of the township. See *In re Estate of John Jones*, 8 N. J. L. J. 310.

(b) The widow cannot recover the amount collected by her husband in his lifetime on a bond belonging to her. *Vreeland v. Vreeland*, 1 C. E. Gr. 513. *Horner v. Webster*, 4 Fr. 390.

thereof, or from being answerable for any loss or misapplication thereof, unless the contrary shall be expressly declared by the instrument creating such trust or power.

An act concerning executors.

Approved April 14, 1887.

P. L. 1887, p. 167.

32. SEC. 1. That it shall be lawful for any executor or executors of any last will and testament to whom letters testamentary have heretofore been granted, to carry into effect the terms and conditions of any agreement for the purchase or sale of any lands, tenements, hereditaments and real estate made and entered into by the testator or testatrix; and any subsequent agreement made and entered into by the executor or executors in relation thereto shall be as binding and effectual on all parties as if made by the testator or testatrix; and it shall be lawful for the said executor or executors to take title to the lands, tenements, hereditaments and real estate in said agreement named, at such times and upon such terms and conditions as he or they shall deem for the best interest of the estate, although by the provisions of the said last will and testament there is given no power to the executor or executors to receive and take title to lands, tenements, hereditaments and real estate.

Executors authorized to carry into effect agreements for purchase of lands, &c.

Supplement.

Approved March 2, 1891.

P. L. 1891, p. 68.

33. SEC. 1. That any administrator cum testamento annexo shall have the same power as is given to any executor under the provisions of said act to which this is a supplement.

Administrators with will annexed given same powers as executors.

An act regulating the continuance of investments by executors, guardians and trustees.

Approved April 4, 1889.

P. L. 1889, p. 169.

34. SEC. 1. That whenever any bonds, mortgages, stock-shares or other security shall come, or shall have come into the hands of any executor, guardian or trustee, as part of the assets which he is to administer, or as part of the estate and fund he is to control or manage, it shall be lawful for such executor, guardian or trustee to present a petition to the court by which he was appointed, or to the court by law authorized to pass on his accounts, setting forth the nature and amount of such bonds, mortgages, stock-shares and other securities that have so come into his hands and to pray the direction of said court as to the sale and conversion of such bonds, mortgages, stock-shares and other securities, or as to their retention as an investment, and the said court, upon a consideration of all the circumstances of the case and the evidence produced, may make such order touching the sale or retention of such bonds, mortgages, stock-shares and other securities, or any part thereof, as in the judgment and discretion of the said court will be most advantageous to the trust fund and to the interest of the persons entitled to share therein; and any executor, guardian or trustee continuing to hold any such bonds, mortgages, stock-shares or other securities as an investment, in pursuance of such order and direction, shall be fully protected thereby, and shall not be accountable for any loss by reason of such continuance; that no notice of any such application under this act shall be necessary, unless the court to whom the same is made shall otherwise order, and in that case such notice shall be given as said court shall then direct; *provided, however,* that nothing herein contained shall apply to cases where the deed of trust or the last will and testament of any testator, or the court having jurisdiction of the matter, specially directs in what manner the trust funds shall be invested.

Court may order sale or continuance of investments coming into hands of executors, guardians and trustees.

Proviso.

An act empowering executors and trustees, under certain circumstances, to sell or mortgage real estate.

P. L. 1890, p. 139.

Approved March 31, 1890.

Repealer.

- 35. SEC. 1.** [Amended by Sec. 37, *post.*]
36. SEC. 2. That all acts or parts of acts inconsistent herewith be and the same are hereby repealed, and that this act shall take effect immediately.

Amendatory act.

P. L. 1891, p. 391.

Approved April 14, 1891.

37. SEC. 1. That section one of the act to which this is amendatory be and the same is hereby amended so as to read as follows :

Executors and trustees may be empowered to sell or mortgage real estate under certain circumstances.

[That whenever by any last will or testament lands and real estate are devised to, or whenever by any deed lands are conveyed to or held by any executor or executors, trustee or trustees, in trust for any person or persons for life or until the happening of some event in such will or deed named, and said lands so devised or conveyed shall, at the time of the taking effect of such devise or conveyance, be incumbered with any mortgage, or charged with the payment of any legacy, or subject to any judgment, tax or assessment, or shall thereafter become chargeable with or subject to any judgment, tax or assessment, for the payment of which mortgage, legacy, judgment, tax or assessment and interest thereon no adequate provision is made in such will, or afforded by the estate of the testator or provided for in such deed, except out of the income from said lands and real estate; and the same have been sold for such tax or assessment by virtue of any laws of this state, or shall be liable to be sold to raise, pay, satisfy and discharge such mortgage, legacy, judgment, tax or assessment, or interest thereon, whereby the interest of the cestuis que trust, or of the owners or owner of the particular estate, or of the estate in remainder or reversion in said lands may be injured or impaired, it shall be lawful for the court of chancery, upon application made to it by petition by the executors or executor, trustees or trustee named in said will or deed, or the survivors or survivor of them, or any duly-appointed or otherwise legally-authorized person standing and acting in their place, or by any cestuis que trust, or by any one of the owners aforesaid, and upon consideration of the circumstances of the case and notice to all the parties in interest, to order and decree said executors or executor, trustees or trustee, or the survivors or survivor of them, or any duly-appointed or otherwise legally-authorized person standing and acting in their place, to sell and convey or mortgage said lands, or a part thereof, whichever, under the circumstances of the case, shall appear to said court to be most beneficial to the parties in interest, for the purpose of raising money to pay, satisfy and discharge said mortgage, legacy, judgment, tax or assessment and interest thereon, together with the costs and expenses attending said sale or the procurements of said mortgage loan; and whenever such decree shall be made, the said executors or executor, trustees or trustee, or the survivors or survivor of them, or duly-appointed or otherwise legally-authorized person standing and acting in their place, may sell and convey or mortgage said lands, or such part thereof as may be necessary for the purpose aforesaid, for such price or in such an amount as said court shall in and by said decree direct; and such sale or mortgage of said lands shall be free, clear and discharged of any interest of said cestuis que trust and of said owners therein; and the surplus arising therefrom, in case of a sale, after paying said mortgage, legacy, judgment, tax or assessment, and accrued interest thereon, together with the costs and expenses attending said sale, shall be held by said executors or executor, trustees or trustee, subject to the provisions of said will or deed relating to said lands, in such manner as the chancellor shall direct.]

An act to validate sales and conveyances heretofore made by administrators or executors for the payment of debts.

Approved April 7, 1890. P. L. 1890, p. 186.

38. SEC. 1. That no sale of land heretofore made by any executor or administrator, by virtue of an order of the orphans' court for the sale of lands for payment of debts of a decedent, shall be invalidated by reason of the omission of the order of sale to recite the amount of the deficiency necessary to be made; but every sale heretofore made by virtue of an order of the orphans' court, for payment of debts, shall be deemed valid and effectual notwithstanding such omission; and every conveyance made in pursuance thereof shall be deemed and taken to convey the same title and estate that would have been conveyed if the order of sale had recited the amount of the deficiency; *provided*, the said sale shall have been confirmed by the court making the order.

Certain sales of lands by executors and administrators validated.

Proviso.

An act empowering executors and trustees, holding land and real estate in trust for minor children, to mortgage the same and apply proceeds to the improvement and erection of buildings on said land.

Approved February 18, 1891. P. L. 1891, p. 31.

39. SEC. 1. That whenever any land or real estate is devised by will to any executor or executors, trustee or trustees, in trust for the benefit of minor children until such time, or until the happening of some event in said will named, and it shall be made to appear to the chancellor by petition of said executor or executors, trustee or trustees named in said will, or the survivor or survivors of them, or any duly-appointed person standing and acting in their place, that the land devised as aforesaid is occupied in whole or in part by buildings that are insecure, dilapidated or in need of repair, or that said land is occupied by a building or buildings that is or are incapable of producing an income proportionate with the value of the land, and that it would be to the advantage of said minor children that additions, repairs and improvements be made to said buildings, or that a new building or buildings should be erected, or both, it shall be lawful for the chancellor to order and direct that the petitioner or petitioners as aforesaid, be authorized to enter into a contract or contracts for the improvement of the buildings already on said land or for the erection or erections of such new building or buildings as may be deemed advisable by the chancellor, or both; and it shall be lawful for the chancellor to order and direct that the petitioner or petitioners as aforesaid, borrow on bond secured by mortgage on said land held in trust for said minor children as aforesaid, such sum or sums of money as shall be sufficient in amount to pay for the improvements and additions made to the buildings already on said land or for the erection of new buildings, or both.

Executors and trustees empowered to mortgage real estate of minors for improvement of the same.

40. SEC. 2. That all acts or parts of acts inconsistent with the provisions of this act, be and the same are hereby repealed, and that this act shall take effect immediately.

Repealer.

An act confirming, validating, and legalizing deeds of conveyance of or for lands, tenements, hereditaments, or real estate heretofore made and delivered by any administrators or administrator with the will annexed, or by any administrators or administrator de bonis non with the will annexed, or by the survivors or survivor, or successors or successor of them, him or her, and making the record of said deeds admissible in evidence.

Approved April 14, 1891. P. L. 1891, p. 408.

41. SEC. 1. That any deed or deeds of conveyance, heretofore made and delivered by any administrators or administrator with the will annexed, or by any administrators or administrator de bonis non with the will annexed, or by the survivors or survivor, or successors or successor of them,

Certain deeds of conveyance made by administrators or their successors or survivors, validated.

him or her, of or for any lands, tenements, hereditaments, or real estate sold pursuant to the power, permission or direction in the said will annexed, given to or vested in the executors or executor named in the said will annexed, is and are hereby confirmed, validated, legalized and declared to be, and is, and are, and shall be as good, legal, valid and effectual, and the record thereof admissible in evidence, and fully and completely as if the said deed or deeds of conveyance had been, or was, or were made and delivered by the executors or executor named in the said will (although the terms of the said sale have not been submitted to the orphans' court of the county in which the said lands or real estate lie, or have not been approved by said court, or the second section of the act entitled "A supplement to an act entitled 'An act concerning executors and administrators of intestates' estates' [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four, regulating the sale of lands by administrators with the will annexed, or by administrators de bonis non with the will annexed, and defining their powers," approved April sixth, one thousand eight hundred and eighty-eight [see Sec. 22, *ante*], or any part of said second section has not been complied with), except where said will has expressly confided the exercise of said power of sale to some other persons or person named therein other than the executors or executor named in said will.

Fairs and Exhibitions.

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| 1. No fair to be hereafter held. | 6. How and by whom paid. |
| 2. Owners of stud farms may hold fairs, &c. | 7. Sum to be paid. |
| 3. Good order, how preserved. Appointment of special constables. | 8. Penalty for violation. |
| 4. Powers of special constables. | 9. Money, to whom paid. |
| 5. Menageries, &c., must be licensed. | 10. Penalty, how collected. |

Rev. 265.

R. S. 566.

No fairs to be hereafter held.

An act to suppress fairs.

Passed January 27, 1797.

1. That no fair or fairs shall hereafter be held at any city, town or place in this state.

An act to authorize the owner or owners of stud farms within this state to hold fairs or exhibitions upon said farms.

Passed June 1, 1886.

P. L. 1886, p. 392.

Owners of stud farms may hold fairs, exhibitions, &c.

2. SEC. 1. That it shall and may be lawful for the owner or owners of any stud farm or farms used for the breeding of fancy trotting or racing stock in the state of New Jersey to hold upon the said farm, from time to time, and as often as such owner or owners may deem proper, fairs or exhibitions for the development of speed or other desired qualities, and, to encourage competition, may offer premiums and rewards for stock exhibited and for superiority in the objects sought for, and to ask, demand and receive, for his or their own use, reasonable fees for admittance.

Owners to have police jurisdiction on their grounds. Selling of liquors and gambling prohibited on grounds.

3. SEC. 2. That for the purpose of preserving good order, peace and decorum upon and about farms or exhibition grounds and among the visitors and spectators to the same, the said owner or owners shall have police jurisdiction within the boundaries of any of their said grounds; and they shall not sell or permit to be sold upon their said grounds any vinous, spirituous or malt liquors, nor shall they gamble or permit gambling in any form whatever upon their said grounds; and it shall also be lawful for the said owner or owners of such stud farms to appoint, from time to time, one or more fit, proper and discreet person or persons, who shall take and subscribe before one of the judges of the court of common pleas or one of the justices of the peace of the county, where the said farm or

Owners may appoint persons to act as constables, &c.