

ice, the person or persons so offending shall be deemed guilty of a misdemeanor, and being thereof convicted, shall be punished by a fine not exceeding one hundred dollars or imprisonment at hard labor not exceeding one year, or both.

Idiots, Lunatics and Drunkards.

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I. Idiots and lunatics.

An act concerning idiots and lunatics.

1. INQUEST OF IDIOCY AND LUNACY, AND APPOINTMENT OF GUARDIAN AND HIS DUTIES.

Revision—Approved March 27, 1874.

1. That all cases of idioy and lunacy shall be determined by an inquest, on a commission of idioy or lunacy, issued out of the court of chancery and returnable thereto, and the proceedings thereon shall be as heretofore practiced, and in cases of idioy or lunacy found, the chancellor shall cause to be transmitted to the orphans' court of the county where such idiot or lunatic may reside, a certified copy of all proceedings which may be had thereon, which shall be recorded and filed in the surrogate's office of said county; and the said orphans' court is hereby directed and required, on further application for that purpose, to appoint some fit and discreet

R. S. 552.

P. L. 1852, p. 91.
 " 1854, p. 517.
 " 1870, p. 14.

Proceedings in
 idioy and
 lunacy.

R. S. 552, § 1.

person or persons, guardian or guardians of such idiot or lunatic; and if it shall so happen that the orphans' court of said county shall not be then sitting, it shall and may be lawful for any one of the judges of the said orphans' court, forthwith to call an orphans' court, to be holden at the usual place of holding said court, and the said orphans' court so convened, shall and may proceed to appoint such person or persons as guardian or guardians of the said idiot or lunatic, who shall have the care and safe keeping of said idiot or lunatic, his or her lands, tenements, goods and chattels, that the said idiot or lunatic may live and be competently supported and maintained by and out of his or her goods, chattels and the profits of his or her lands and tenements, and that no waste or destruction of his or her lands or tenements be done or permitted, and such lands shall in no wise be aliened, saving that the same be done by authority of this or some other statute of this state, but shall, upon the death of any such idiot, descend and go to his or her heirs, and the residue of the goods, chattels and profits of said idiot, after payment of his or her just debts, shall go to and be distributed according to law among his or her next of kin; and in case any such lunatic shall come to his or her right mind, that the lands and tenements, with the residue of the goods, chattels and profits of such lunatic, be restored to him or her, and in case he or she shall die in his or her lunacy, such lands and tenements shall descend and go to his or her heirs, and the residue of the goods, chattels and profits, after payment of his or her just debts, shall go to and be distributed according to law among such lunatic's next of kin. (a)

Orphans' court to appoint guardian.

His duty.

Lands to descend at death, or restored, if he recover.

[See Sec. 34, *post.*]

2. [Amended by Sec. 37, *post.*]

3. That the said orphans' court, at the time and place mentioned in the said order, or at such other time and place as they may then appoint, shall hear and examine the allegations and proofs of the party making such application, and of other persons interested, if any shall apply to be heard; and if the court upon examination, shall be of opinion that letters of guardianship for the said idiot or lunatic ought to be issued, then the said court shall appoint such person or persons, as they may approve, guardian or guardians of the said idiot or lunatic. (b)

Guardian of non-resident lunatics appointed. *Ib.*, § 6.

4. [Amended by Sec. 31, *post.*]

(a) What the affidavits and petition should contain. *Dey's Case*, 1 *Stock*. 181. *Covenhoven's Case*, *Sax*. 19. The issuing of a commission is discretionary. *Chattin's Case*, 1 *C. E. Gr.* 496. It may issue in the case of an infant. *Ib.* What constitutes such imbecility as will justify a commission. *Collins' Case*, 3 *C. E. Gr.* 253. *Vanauken's Case*, 2 *Stock*. 186. *Den v. Vanclove*, 2 *South*. *660 (a). Reasonable notice of the time and place should be given to the lunatic. *Whitenack's Case*, 2 *Gr. Ch.* 252. A notice given on Saturday of an inquisition on the following Tuesday is insufficient. *Vanauken's Case*, 2 *Stock*. 186. An appearance by counsel is a waiver. *Ib.* If the lunatic be in an asylum, the commission should issue in the county where his residence or estate is. *Child's Case*, 1 *C. E. Gr.* 498. It may issue where he is non-resident or temporarily absent. *Ib.* It is not necessary that he appear before the jury. *Ib.* It need not be held at his dwelling-house. *Covenhoven's Case*, *Sax*. 19. The admission of hearsay evidence will not vitiate the proceedings where the examination was full as to the lunatic's state. *Dey's Case*, 1 *Stock*. 181. The evidence need not be written out and returned. *Covenhoven's Case*, *Sax*. 19. A refusal of a reasonable adjournment may be ground for setting aside the inquisition. *Jewell's Case*, 11 *C. E. Gr.* 298. A lunatic may traverse by attorney, but an idiot must appear in person. *Covenhoven's Case*, *Sax*. 19. If the lunatic applies to traverse the inquisition, the court may order him brought before it for examination. *Vanauken's Case*, 2 *Stock*. 186. The substitution of another commissioner without the chancellor's approval, is irregular. *Collins' Case*, 3 *C. E. Gr.* 253. A second inquisition may be ordered. *Ib.* The inquisition is competent, but not conclusive evidence. *Den v. Clark*, 5 *Hal. Ch.* 217. *Whitenack v. Stryker*, 1 *Gr. Ch.* 8. *Hunt v. Hunt*, 2 *Bens.* 161. After a personal examination of the lunatic, return of inquisition in lunacy set aside and a new commission ordered. *Fitzgerald's Case*, 3 *Stew.* 59. In a return to a writ *de lunatico inquirendo*, that the alleged lunatic "is a lunatic and of unsound mind, and does enjoy lucid intervals, so that he is not capable of the government of himself, his lands," &c., the phrase italicized, whether read parenthetically or not, is not objectionable either in form or fact. *Hill's Case*, 4 *Stew.* 203. An inquisition *de lunatico inquirendo* simply makes a *prima facie* case. *Hill v. Day*, 7 *Stew.* 150. An inquisition in the nature of a writ *de lunatico inquirendo* must show that the imbecility of mind is such as to render the imbecile unfit for the government of himself, as well as of his property. A return that the party "is not a lunatic, but that her mind is impaired by age and other causes, and

that (or so that) she is not capable of managing her own affairs," is insufficient and should be quashed. *Lindsay's Case*, 17 *Stew.* 564. In the absence of proof that the alleged lunatic did not have notice of the inquisition and suffer prejudice for that reason, the inquisition will not be set aside for want of notice. *Lindsay's Case*, 1 *Dick.* 358. At a personal examination of an alleged lunatic by the commissioners and jurors, all other persons, including counsel, may be excluded, so that the commissioners and jurors may be at liberty to exercise their own observations. *Ib.* A traverse of an inquisition by an alleged lunatic cannot be demanded as a right in this state, but can be had only upon the exercise of sound judicial discretion by the court. *Ib.* The court of chancery has jurisdiction to issue a commission *de lunatico inquirendo* if the alleged lunatic, though non-resident, has real estate in this state, and if necessary appoint a receiver. *In re Devauxney*, 7 *Dick.* 502. The statutes of this state have made ample provision for the care of the estates of non-resident lunatics, and recourse should be had thereto unless there are insurmountable reasons for not doing so. *Ib.* The fact that only part of the jurors visited the alleged lunatic for personal examination of him, is not sufficient ground for setting aside the inquisition. *De Hart v. Condit*, 6 *Dick.* 611. If the jury find in favor of the incapacity of the alleged lunatic and, upon examination of the proceedings, there appears to be a reasonable doubt as to the propriety of their finding, he should be allowed to traverse the inquisition. *Ib.* Costs. *White's Case*, 2 *C. E. Gr.* 274. *Conover v. Conover*, 3 *Gr.* 420. *Child's Case*, 1 *C. E. Gr.* 498. *In re Farrell*, 6 *Dick.* 353.

(b) Proceedings in superseding guardian. *Rogers' Case*, 1 *Hal. Ch.* 46. *Price's Case*, 4 *Hal. Ch.* 563. *Weis' Case*, 1 *C. E. Gr.* 318. If he fail to return the lunatic's property, an action may be brought. *Shepherd v. Newkirk*, 1 *Zab.* 302. *Spren.* 343. In an action brought against the administrator of a lunatic for necessities furnished to the lunatic before and during the period of derangement—*Held*, (1) An action will lie against the lunatic while living, and afterwards against the representative. (2) An action will not lie against the guardian. (3) The lunatic, if personally sued, must appear by attorney. Practice as to matter of appointment of attorney. *Van Horn v. Hann*, 10 *Vr.* 207. The orphans' court has no authority to make an order directing in advance how much the guardian of a lunatic shall expend annually, for the support of the lunatic, out of his personal estate and the profits of his real estate. *Folter v. Berry*, 27 *Vr.* 45.

Report of sale of
land to be made.
Ib., § 3.

5. That after the lands, tenements and real estate of such idiot or lunatic so ordered to be sold, shall be sold, the said guardian or guardians shall make report in writing, of all proceedings thereon, to the next orphans' court after such sale.

Deed, what to set
forth.
Ib., § 4.

6. That the said guardian or guardians shall make a deed to the purchaser or purchasers, for the lands, tenements, hereditaments and real estate so sold, which deed shall set forth the said order at large, and shall vest in the purchaser or purchasers, as good and perfect an estate in the premises so sold, as the said idiot or lunatic shall be seized of or entitled to at the time of making said order by the court.

7. [Amended by Sec. 26, *post.*]

Report of sale of
land to be made to
chancellor, &c.
Ib., § 2.

8. That the guardian or guardians who may be ordered to sell any lands or real estate as aforesaid, shall, after making such sale, report the same in writing, under oath or affirmation, to the chancellor, either in term or vacation; and if the chancellor shall approve such sale, he shall confirm the same as valid and effectual in law, and shall direct the said guardian or guardians to execute good and sufficient conveyance in the law to the purchaser or purchasers for the lands and real estate so sold; which said conveyances, duly executed as aforesaid, shall vest in the purchaser or purchasers as good and perfect an estate in the premises so sold as the said idiot or lunatic shall be seized of or entitled to at the time of making said order by the chancellor.

Effect of sale.
Ib., § 3.

9. That no sale of any real estate, made pursuant to or by virtue of the provisions of this act, shall give to any person any other or greater interest in the proceeds of such sale than he or she had, or would have had, in the lands, provided the same had not been sold; but the said proceeds shall be considered, relative to the statutes of descents and distribution, and for every other purpose, as real estate of the same nature as the property sold.

Guardian to give
bond.
Ib., § 4.

10. That every guardian who may be ordered to sell any lands or real estate as aforesaid, shall, before or at the time of making the report of such sale, enter into bond to the ordinary of this state and his successors, with such security as the chancellor shall deem to be sufficient, and shall so adjudge and approve, in the order confirming said sale, conditioned for the faithful discharge of the trust committed to such guardian, which bond shall be filed in the office of the clerk of chancery; and in case the same shall become forfeited, it shall and may be lawful for the chancellor to order the same to be prosecuted in any court of record, at the request of any person aggrieved by such forfeiture.

Proceeds to be put
at interest.
Ib., § 5.

11. That the moneys arising from any sale made in pursuance of this act, after payment of the costs and expenses incident thereto, shall be put out at interest on good and sufficient security of unincumbered real estate, or, if the chancellor shall so direct, in public stock of the United States or of this state, and in no other way whatever.

Guardian to ac-
count in orphans'
court for proceeds.
Ib., § 6.

12. That it shall be the duty of every such guardian to render to the orphans' court from whom he received his appointment as guardian, a true account of the administration of the proceeds of the sale of any real estate ordered to be sold as aforesaid, at the times and in the manner such guardians are hereinafter directed to account.

Proceeds to be
applied in support
of lunatic.
P. L. 1854, p. 517,
§ 1.

13. That whenever after a sale so made under the order of the chancellor, and it shall become necessary to apply any of the proceeds of such sale (other than the interest thereof) to the support of such idiot or lunatic, it shall be lawful for the said guardian or guardians, by petition in writing, setting forth the facts showing such necessity and verified by the oath of such guardian or guardians, to apply to the orphans' court of the county in which such guardian or guardians reside, which court is hereby authorized and empowered, on due proof being made before them in addition to the oath of such guardian or guardians, to their satisfaction that it is necessary and proper to appropriate a portion of the principal of said proceeds to the support of such idiot or lunatic, to order and direct the said guardian or guardians to appropriate so much thereof as shall be necessary for such support from time to time, and to defray the expenses of said application, specifying in their order the amount per year which

said guardian or guardians may appropriate as aforesaid ; and also what amount he shall be allowed to appropriate thereof to defray the expenses of said application ; and the same fees shall be allowed to said orphans' court on such application as are now allowed by law in similar cases ; and such guardian or guardians shall be allowed by said court such reasonable costs and expenses of making such application, as said guardian or guardians shall have actually incurred ; the items of which shall be stated by said guardian or guardians in writing, and verified by oath, to said court and filed therein.

Fees.
Ib., § 2.

14. [Amended by Sec. 30, *post.*]

15. That every person appointed guardian as aforesaid shall, before he enters upon the duties of his appointment, enter into bond to the ordinary of this state, and his successors in office, with two or more sureties being freeholders, approved of by the orphans' court, in such sum as said court shall order and direct, conditioned that the said guardian shall well and truly take care of the person and estate of said idiot or lunatic, and of all writings and evidences touching his or her lands, and render the same to such person or persons as by law are or may be entitled to receive the same, and render a just and true account of the rents, issues and profits of the real estate of the said idiot or lunatic, and if any part should be ordered to be sold, that he or she will render a just and true account of the money arising on the sale thereof, and in the meantime improve the said lands and tenements to the best advantage, and that he or she commit no waste or destruction thereof or thereon, and also that he or she will render a true account of the expenditures and disbursements of the goods, chattels and personal estate of said idiot or lunatic, that shall come to his or her hands.

Guardian's bond.
R. S. 552, § 7.

16. That the orphans' court, when they shall know or have cause to suspect that the sureties of a guardian of any idiot or lunatic, or any of them, are or is failing, or in dubious circumstances, may require said guardian to give additional surety or sureties, and if he or she refuse or neglect so to do, may displace him or her and on application appoint another person guardian to said idiot or lunatic.

New sureties may
be required.
Ib., § 8.

17. That in case of the death of any guardian of any idiot or lunatic, appointed under this act, it shall be lawful for said orphans' court forthwith to appoint another guardian for such idiot or lunatic, if said court be then sitting ; and if the said orphans' court be not then sitting, it may be lawful for any one of the judges of said court to call a special orphans' court for that purpose, in the manner directed in the first section of this act.

In case of death,
new guardian ap-
pointed.
Ib., § 9.

18. That whenever a new guardian is appointed, as aforesaid, upon the death of a former guardian of any idiot or lunatic, the executor or executors, administrator or administrators of every such deceased guardian, shall account to such new guardian for all property of such idiot or lunatic in their possession or under their control ; or, if required, shall account for the same before the said orphans' court, upon a citation issued for that purpose, at the instance of such new guardian.

Representatives of
deceased guardian
to account.
Ib., § 10.

19. That it shall be the duty of every guardian of any idiot or lunatic once in three years, and oftener, in case the orphans' court shall so order and direct, to render to the orphans' court from whom he or she received his or her appointment as guardian, a true account of his or her administration of the estate of the said idiot or lunatic, and he or she may be cited by the said court to do the same, on the application of any one of the heirs or next of kin to the said idiot or lunatic ; and on the death of any such idiot or lunatic, or the coming of sane mind of any lunatic, the guardian of such idiot or lunatic may be compelled to render an account of his or her administration of the estate of such idiot or lunatic to the orphans' court, in the same manner as executors and administrators are compelled by law to render an account of the administration of the estate of testators and intestates ; and in case of the death of any idiot or lunatic, when the lands, tenements, hereditaments or real estate, or any part thereof, hath been sold by order of the orphans' court, and at his or her death personal estate shall remain in the hands of the guardian more than sufficient to

How, when and to
whom guardian to
account.
R. S. 552, § 11.

Residue of estate, how to devolve. pay the just debts of such idiot or lunatic, so much thereof as shall be equal in value to the real estate so sold, shall be deemed and taken to be real estate, and go to the heirs of the deceased; the personal estate and the rents, issues, and profits of the real estate being the funds first to be applied to the support and maintenance of the idiot or lunatic.

2. DISCHARGE OF IDIOTS AND LUNATICS FROM ARREST ON CIVIL PROCESS;
HOW RESTRAINED IF DANGEROUS.

Idiot or lunatic not to be imprisoned.
Ib., § 12.

20. That no idiot or lunatic during the time of his or her lunacy, shall be or stand committed or detained in prison for want of bail, or his or her body taken in execution in any civil action, or in any action for a penalty; and in case any idiot or lunatic shall be arrested and detained in custody in any civil suit, contrary to the true intent and meaning of this act, he or she shall be discharged, on motion, by the court out of which the process issued, on which he or she is so held in custody, or upon a writ of habeas corpus issuing out of the court of chancery or the supreme court, and allowed by the chancellor or one of the justices of the supreme court, returnable forthwith before the chancellor or any one of the justices of the supreme court.

Habeas corpus may issue.

Proceedings when lunatic dangerous if at large.
Ib., § 13.

21. That it shall and may be lawful for any two justices of the peace of the county in which any lunatic too furiously mad or dangerous to be permitted to go at large shall be found, by warrant under their hands and seals, directed to the overseer or overseers of the poor of the city or township in which such lunatic or mad person may be found, to cause such person to be apprehended and kept safely locked up, and chained, if necessary, in some secure place within such city or township, or within the county within which said city or township shall be situate, as such justices shall by their warrant direct and appoint, in case the last legal settlement shall be in a city or township in the said county; but in case the last legal settlement of such lunatic or mad person, shall not be in any city or township within the county where such person shall be found, then such person shall be sent to the place of his or her last legal settlement, in the manner directed in and by the laws relating to the poor, and shall be locked up and chained, if necessary, in some secure place, by warrant from two justices of the peace of the county, to which such person shall be sent in manner aforesaid; and in case the last legal place of settlement is not known, or cannot at the time be ascertained, it shall and may be lawful for any two justices of the peace in and for said county, by warrant under their hands and seals, directed to some one or more of the constables or overseers of the poor of the city or township within such county, to cause such person to be apprehended and conveyed to any place provided in said county for the reception of maniacs or lunatic persons; and in case no such place be provided in such county, to be conveyed to the jail of said county for safe keeping; and it shall be the duty of the sheriff of such county, and he is hereby required to receive into his custody such lunatic or mad person, and safely to keep him or her until the last legal place of his or her settlement shall be ascertained; and in case no such settlement can be discovered, then until some order on the subject shall be taken by the court of common pleas, whose duty it shall be to decide thereon, and the reasonable charges for apprehending, maintaining, keeping and removing such person, shall be made and levied of the goods and chattels of such person, by warrant of distress, from two justices of the peace of the county where such goods and chattels may be found; but in case sufficient goods and chattels of such lunatic or mad person cannot be found, the charges aforesaid shall be paid and satisfied by the overseers of the poor of the city or township in which such person shall be legally settled, in the manner in and by the poor laws directed for the maintenance and support of the poor; and in case the last legal settlement is not known or cannot at the time be ascertained, the said charges and expenses shall be paid and satisfied by the county wherein such person

To be sent to place of settlement.

shall have been apprehended ; *provided*, that if the last legal place of settlement of such lunatic or mad person shall be discovered and ascertained, then and in that case, the charges and expenses aforesaid shall be reimbursed to the county where such expenses may have occurred, by the city or township where such settlement may be ; *and provided always*, that this section, or anything therein contained, shall not extend to or be construed to restrain or abridge the power or authority of the chancellor, orphans' court or guardian, touching and concerning such lunatic or mad person, nor to prevent any of the friends or relations of such person from taking him or her under their own protection, so long as such friends and relations shall take care of and safe keep him or her.

22. It shall be the duty of the overseers of the poor of the several townships in each and every county in this state, to make out and furnish to the board of chosen freeholders of the county in which said townships are situated a list of all the poor lunatics and idiots within the bounds of their townships, stating the age of such lunatics or idiots, when such lunacy commenced, what means (if any) they have for support, with all other facts connected with each case, calculated to give information of their actual state and condition.

Overseers of poor to furnish lists of lunatics.
Ib., § 14.

23. That the said board of chosen freeholders shall, at their annual meeting, cause an examination to be made into the condition and circumstances of such idiots and lunatics ; and if it shall appear to them that there is reasonable ground to believe that any of such persons can be restored to their right mind, it shall be their duty to cause such persons, under a warrant, signed by the director of the board, to be taken to the state lunatic asylum.

When sent to asylum.
Ib., § 15.
Amended.

24. That it shall and may be lawful for such board of chosen freeholders to appoint a committee of said board to act in the intervals between the fixed and general meetings, if they shall deem it expedient so to do, of such number and with such powers as they shall deem proper.

Freeholders may act by committee.
Ib., § 16.

3. SUPPLEMENTS.

Supplement.

Approved April 17, 1884.

P. L. 1884, p. 214.

25. SEC. 1. That where a person, being a member of a copartnership firm, is or shall become a lunatic (and is duly adjudged to be such by an inquest issued out of the court of chancery), the chancellor may, by order made on the application of the partner or partners of the lunatic, or of such other person or persons as the chancellor shall think entitled to require the same, dissolve the partnership; and thereupon, or upon a dissolution of the partnership by decree of the court of chancery, or otherwise by due course of law, the guardian of the estate of said lunatic, in the name and on behalf of the lunatic, may join and concur with such partner or partners or such other person or persons in disposing of the partnership property, as well real as personal, in such manner and to such person or persons, and upon such terms as the chancellor shall order and direct, and may execute and do all such conveyances and things for effectuating this present provision as the chancellor may order and direct, and shall apply and dispose of the money or property received for, from or on account of the lunatic's share and interest in the copartnership, as the chancellor shall order and direct.

Chancellor may dissolve partnership when a member shall become a lunatic.

Guardian of lunatic may concur and join with partner in disposing of property.

Supplement.

Passed February 17, 1885.

P. L. 1885, p. 30.

26. SEC. 1. That section seven of the act entitled "An act concerning idiots and lunatics" [Revision], approved March twenty-seventh, one thousand eight hundred and seventy-four, be amended so as to read as follows :

[That whenever any idiot or lunatic shall be seized of any lands or real estate, and it shall be represented to the chancellor on behalf of such idiot or lunatic, by his or her guardian or guardians, duly appointed in the

Sale of land of idiot or lunatic.
Procedure.

manner prescribed in this act, that his or her interest requires that the said lands should be sold or disposed of, the chancellor may proceed in a summary manner, by reference to a master, to inquire into the merits of such application, and whenever and as often as it shall satisfactorily appear to the court that the interest of such idiot or lunatic requires, or will be substantially promoted by a sale of his or her lands or real estate, or of any part or parts thereof, the chancellor may order and direct the guardian or guardians of such idiot or lunatic to sell or dispose of the whole or any part or parts of such lands or real estate in such way and manner and with such restrictions as shall be deemed expedient; *provided, however*, that nothing in this act contained shall authorize the sale of any lands or real estate contrary to the provisions of any last will and testament, or of any conveyance by which the same were devised or granted to such idiot or lunatic.]

Proviso.

Supplement.

Approved March 25, 1885.

P. L. 1885, p. 158.

Certain cases of idiocy or lunacy may be heard by prerogative or orphans' court without costs.

27. SEC. 1. That in all cases of idiocy and lunacy of persons who have been or may be in the military, naval or marine service of the United States, their widows, children, mothers and fathers, said idiocy or lunacy may be summarily heard and determined without costs, except witness and jury fees, by the prerogative court or the orphans' court of the county in which such person resides, and said court is hereby authorized, on further application for that purpose, to appoint a guardian, also without costs, for the person and estate of said person; *provided*, said guardianship shall extend only to so much of said estate as may come or be derived from pension, bounty or other allowance due or to become due to such person from the United States.

Hearing and determination of such cases.

28. SEC. 2. That in hearing and determining such cases of idiocy and lunacy, said court shall call at least two respectable physicians and other credible witnesses, and fully investigate the facts of the case including said estate, and either with or without the verdict of a jury, at its discretion, shall decide said case and fix the amount of bond of such guardian; *provided*, that when such person is already an inmate of any lunatic asylum, under and by virtue of the twentieth and twenty-first sections of the act entitled "An act to provide for the organization of the state lunatic asylum, and for the care and maintenance of the insane," approved February twenty-three, one thousand eight hundred and forty-seven, said court may, on due proof thereof, appoint said guardian without further proceedings.

Proviso.

Supplement.

Approved April 5, 1886.

P. L. 1886, p. 175.

Counsel may address commissioners and jurors.

29. SEC. 1. That from and after the passage of this act it shall and may be lawful for counsel on each side to address the commissioners and jurors upon the inquisition.

Supplement.

Approved April 21, 1887.

P. L. 1887, p. 177.

Order may be made to turn over proceeds of sale or property to non-resident guardians.

30. SEC. 1. That section fourteen of the act entitled "An act concerning idiots and lunatics" [Revision], approved March tenth, one thousand eight hundred and seventy-four, be amended so as to read as follows:

[That whenever any such sale shall have been made by order of the chancellor as aforesaid, or whenever any idiot or lunatic shall be entitled to property of any description in this state, and such idiot or lunatic shall be a non-resident, and shall have a guardian in the state or place of his or her residence, and such non-resident guardian shall produce an exemplification from under the seal of the office (if there be a seal) of the court in the state or place of his residence, containing all the entries on record in relation to his appointment and giving bond, or of appointment only, when the said non-resident guardian is a corporation duly qualified to act as guardian without giving bonds, and authenticated as required by the act of congress in such cases, the chancellor, or the ordinary, or orphans'

court of the proper county in this state may cause suitable orders to be made, authorizing the delivering and passing over the proceeds of any such sale, or any property in this state to which such idiot or lunatic may be entitled, to such non-resident guardian, and discharging any resident guardian, executor, administrator or trustee, and requiring receipts to be passed and recorded if deemed advisable; *provided*, that thirty days' notice shall be given to the resident guardian, executor, administrator or trustee of the intended application for the order of removal, unless it shall appear to the court that such notice has been waived, or that the application is made by the resident guardian, and the court may reject the application and refuse such order whenever it is satisfied that it is for the interest of such idiot or lunatic that such removal shall not take place.]

Proviso.

Supplement.

Approved April 24, 1888. P. L. 1888, p. 540.

31. SEC. 1. That section four of an act entitled "An act concerning idiots and lunatics" [Revision], approved March twenty-seventh, anno domini one thousand eight hundred and seventy-four, be and the same is hereby amended so as to read as follows :

[That if any such idiot or lunatic is justly indebted to any person or persons, or if any person or persons shall have advanced moneys, purchased necessaries or rendered services on account of any such idiot or lunatic, for his or her care, support or maintenance, or for the preservation or benefit of his or her estate, beyond the ability of any such idiot or lunatic, to pay the same out of his or her personal estate, or in case the personal estate of such idiot or lunatic, together with the profits of his or her lands and tenements, shall be insufficient for his or her support and comfortable maintenance, and that of his or her household, if any he or she shall have, it shall and may be lawful for the orphans' court of the county in which the lands and tenements of any such idiot or lunatic shall be situate, or for the chancellor, on full investigation of the situation and circumstances of the said idiot's or lunatic's real and personal estate, and of the just debts owing by him or her, and of the advances which have been made on his or her account, and of the services rendered for him or her or for his or her estate, from time to time, to order the guardian of such idiot or lunatic to sell so much of the timber growing or being upon the lands of said idiot or lunatic, or to sell such parts of the said idiot's or lunatic's lands, tenements, hereditaments or real estate, as said court, or the chancellor, shall direct and judge sufficient to pay his or her just debts and the advances as above mentioned, and proper and necessary for his or her support and maintenance, and for the support of his or her household, if any he or she have.]

Orphans' court or chancellor may order lands sold if necessary.

Supplement.

Approved April 2, 1889. P. L. 1889, p. 148.

32. SEC. 1. That if the lands of any idiot or lunatic, or any part thereof, shall be subject to an estate by the curtesy or in dower, or to an estate for life or years, devised to any woman in lieu of dower and the person entitled to such estate shall consent, in writing, to accept in lieu of his or her right or estate in such lands, either a gross sum to be approved by the chancellor, or the investment of a reasonable sum with like approval, in such manner as that the interest thereof be made payable to the person entitled to such estate by the curtesy, in dower, or for life or years, during the period for which such estate would, by its own limitation, continue, the chancellor may, after such consent in writing has been filed in the office of the clerk in chancery, direct the payment of such sum in gross, or the investment of such sum as he shall deem reasonable, and shall be acceptable to the person entitled to such estate, in manner aforesaid ; which sum so paid or invested shall be taken out of the proceeds of the sale of the real estate of such idiot or lunatic, so subject to such estate as aforesaid ; *provided, however*, before any such sum shall be paid, or such investment

Persons entitled to estate in lands of idiots and lunatics may accept gross sum in lieu thereof.

Chancellor may order payment, &c.

Proviso.

made, the chancellor shall be satisfied that an effectual release of such estate or right has been executed.

Married women may execute release of rights in estate of idiots and lunatics.

33. SEC. 2. That if any woman entitled to dower, or to an estate devised for life or years, in lieu of dower, in the real estate of any idiot or lunatic, sold under the provisions of this act, shall be a married woman, it shall be lawful for such married woman to execute a release of her right, interest and estate in such real estate, without her husband joining in or executing the deed of such release, and to receive and hold for her own separate use, the moneys ordered by the court to be paid to her, or the interest on the sum invested for her benefit, for such release; and such deed of release, when executed and given as aforesaid, shall have the same force and effect as if her husband had joined in said deed, or as if she were sole and unmarried.

Supplement.

Approved April 7, 1890.

P. L. 1890, p. 182.

Court authorized to appoint guardian without commission issuing out of the court of chancery in certain cases, &c.

34. SEC. 1. That whenever any person or persons have been adjudged insane, or may hereafter be adjudged insane, by a judge of the court of common pleas, as now provided by law, and have been or may hereafter be, on the certificate of such judge or judges, committed to or confined in any lunatic asylum in this state, at the expense of any county therein, and it shall appear that such person or persons are seized or possessed of any property, real or personal, or entitled to any interest therein, it shall be lawful for the orphans' court of the county at whose expense the lunatic or lunatics are maintained to appoint some fit and discreet person or persons as guardian or guardians of such lunatic or lunatics, in the manner as provided in the first section of the aforesaid act, without its being necessary to have the idiocy or lunacy determined by an inquest on a commission to be issued out of the court of chancery and a certified copy of the proceedings thereof filed and recorded in the office of the surrogate, as is now required by said act; *provided*, the estate of which said lunatic or lunatics are so seized, possessed or entitled to shall not exceed the sum of one thousand dollars, to be determined by said orphans' court.

Proviso.

Provisions of act applicable to guardians.

35. SEC. 2. That the provisions of the aforesaid act and the supplements thereto shall be applicable to any guardian or guardians after the appointment is made by any orphans' court as above prescribed, in the same manner as is now applicable to any guardian or guardians appointed under the provisions of the aforesaid act.

Repealer.

36. SEC. 3. That all acts or parts of acts inconsistent with this act be and the same are hereby repealed, and this act shall take effect immediately.

Amendatory act.

Approved June 20, 1890.

P. L. 1890, p. 507.

Proceedings to appoint guardian in case of non-resident lunatics.

37. SEC. 1. That section two of said act be amended so as to read as follows:

[That when any person residing out of this state hath been or shall be duly found and proved to be an idiot or lunatic, according to the laws of the state, territory, nation or kingdom where such idiot or lunatic shall reside, it shall and may be lawful for the orphans' court of any county in the state in which any property or real estate of such idiot or lunatic may be found or situate, or for the ordinary of this state, upon application made to them for that purpose, and upon exhibiting to the said court and filing in the surrogate's office of such county, or with the register of the prerogative court, an exemplified copy of the proceedings upon such inquest or finding of idiocy or lunacy, or upon proof being made that an inquest has found the said person to be an idiot or lunatic, and that such person is yet an idiot or lunatic, to make an order that cause be shown before the court to whom such application may be made, 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 guardian should not be appointed for the said idiot and lunatic, which order shall be served or

published in such manner as the said court shall direct; *provided*, that when it shall appear to the court that the person making such application for the appointment of guardian has been appointed guardian, trustee or committee of such idiot or lunatic in the state or kingdom where the said person may have been found by an inquest an idiot or lunatic, in that case the said court may at once appoint the person making the application guardian of such idiot or lunatic, without the order to show cause as above stated.] (a)

Amendatory act.

Approved March 22, 1894.

P. L. 1894, p. 24.

38. SEC. 1. That whenever any person or persons residing in this state shall be entitled to receive any legacy or distributive share of any estate not exceeding two hundred dollars, and such person or persons shall have been for at least five years insane, and by reason of insanity not able to receive such legacy or distributive share, and no inquisition of lunacy shall have adjudged such person or persons an idiot or lunatic, it shall be lawful for any one of the next of kin of such lunatic to present a petition to the chancellor of this state, which petition shall set forth the name or names, residence and age of such person or persons entitled to such legacy or distributive share, the amount of such legacy or distributive share, and the estate from which the same is due, and the length of time next preceding the date of such petition that such person or persons may have been, to the knowledge of the petitioner, a lunatic, and said petition shall be duly verified by the oath of the petitioner, and shall also be accompanied by the affidavit of a regular practicing physician of this state, which last-named affidavit shall set forth how long such physician shall have known the alleged lunatic, and how long such person or persons may have been a lunatic; said chancellor shall, upon the reading of said petition and affidavits thereto annexed, appoint the said petitioner, or any other fit or proper person, guardian or guardians of such lunatic or lunatics, without it being necessary to have the idiocy or lunacy determined by an inquest, on a commission to be issued out of the court of chancery, and a certified copy of the proceedings thereof filed and recorded in the office of the surrogate, as is now required by said act; *provided*, said person or persons so appointed shall enter into bond to the ordinary of this state, with two sufficient sureties, in double the amount of the legacy or distributive share to which the said lunatic may be entitled, as set forth in said petition, which bond shall be approved by the said chancellor, if the bond be accompanied with an affidavit that the parties therein bound are each freeholders and worth double the amount of the penalty of said bond, which bond shall be filed, with said petition and affidavits, with the clerk of the court of chancery.

When the chancellor may, on petition of next of kin of lunatic entitled to legacy or distributive share, appoint guardian to receive the same.

What petition shall set forth.

Inquest not required.

Certified copy of proceedings shall be recorded in surrogate's office. *Provido.*

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

Repealer.

Supplement.

Approved March 22, 1895.

P. L. 1895, p. 500.

40. SEC. 1. That it shall be lawful for the guardian or guardians of any idiot or lunatic appointed under the act to which this is a supplement, by petition in writing, setting forth the fact on which the application is founded, presented in the court of chancery, and verified by the oath of such guardian or guardians, to apply for an order directing what amount may be expended yearly by such guardian or guardians for the support and maintenance of said idiot or lunatic, or that of his or her household, out of his or her personal estate, and the income thereof, and the profits of his or her lands and tenements, or directing the payment of any debt or debts of said idiot or lunatic, or otherwise directing such guardian or guardians in relation to the management or care of the said idiot or lunatic, or his or her estate, and the chancellor is hereby authorized on investigation of the matter

Court of chancery may direct guardian in management of estate of idiot or lunatic.

(a) See *In re Devausney*, 7 Dick. 502.

alleged in the said petition, to make such order or decree in the premises as he shall deem equitable and just, and to direct that the cost of the application shall be paid out of the estate of the said idiot or lunatic; and the chancellor shall, by order, direct what notice, if any, shall be given to the heir or next of kin of the said idiot or lunatic, of the proceedings to be had or taken under the said petition.

4. MISCELLANEOUS.

An act in relation to the temporary custody of dangerous lunatics.

P. L. 1888, p. 218.

Approved March 23, 1888.

Board of freeholders to provide suitable place for detention of dangerous lunatics.

41. SEC. 1. That it shall be the duty of the board of freeholders of every county in this state to provide some safe and convenient place in which lunatics or persons of unsound mind, who may be considered dangerous to the public, may be temporarily confined, until proper inquiry can be made touching the insanity or unsoundness of mind and the legal settlement of such lunatics as now provided by law, and make provision for the proper care and maintenance of such persons so confined, until their lunacy and places of legal settlement shall be determined, but in no case shall such confinement exceed the period of ten days, unless the period of confinement is extended as hereinafter provided; and in case no order shall be made for the removal of such lunatic to a lunatic asylum within said period of ten days, then and in such case such lunatic shall be discharged from such temporary confinement, unless the court of common pleas, or a judge thereof, shall, by order, extend such period of confinement.

Length of confinement and when discharged.

Custody of lunatic when confined.

42. SEC. 2. That all lunatics so temporarily confined shall be under the custody, control and direction of such officer as shall be designated for that purpose by the boards of chosen freeholders of the several counties.

Officers authorized to apprehend.

43. SEC. 3. [Amended by Sec. 48, *post.*]
44. SEC. 4. That the constables and police officers in the several townships, cities and other municipalities, shall be authorized to apprehend any lunatic or person of unsound mind, who shall on inspection be deemed to be dangerous to the public, and they shall immediately take such person or persons so apprehended before the nearest justice of the peace or police justice, who shall in a summary way inquire and determine whether such person or persons is or are of unsound mind and dangerous to the public, and if so found, the said justice of the peace or police justice shall forthwith commit such person or persons to the custody of the person in charge of such place of temporary confinement, until discharged or removed therefrom as herein provided.

45. SEC. 5. [Amended by Secs. 46 and 49, *post.*]

Amendatory act.

P. L. 1891, p. 85.

Approved March 9, 1891.

Repealer.

46. SEC. 1. [This section, amending Sec. 45, *ante*, is amended by Sec. 49, *post.*]

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

Amendatory act.

P. L. 1893, p. 393.

Approved March 17, 1893.

Application for admission of lunatic into asylum, &c., who to make in certain cases.

48. SEC. 1. That section three of an act entitled "An act in relation to the temporary custody of dangerous lunatics," approved March twenty-third, one thousand eight hundred and eighty-eight, be and the same hereby is amended so as to read as follows:

[That in case there shall be no friends or relatives of such lunatic who will make application to the court or a judge thereof for the admission of such lunatic into a lunatic asylum, or the removal to their places of legal settlement, it shall be the duty of the city attorney or the officer acting in

that capacity in cities, and of the chairman of the township committee in townships in which such dangerous lunatics may be apprehended, or supposed to have a legal settlement, immediately after the temporary confinement of such lunatic, to make application to the court or a judge thereof for the admission of such lunatics into a lunatic asylum, or their removal to their places of legal settlement; and such proceedings shall be had thereon as are now provided by law.]

An act to amend an act entitled "An act to amend an act entitled 'An act in relation to the temporary custody of dangerous lunatics,' approved March twenty-third, one thousand eight hundred and eighty-eight," which amendatory act was approved March ninth, one thousand eight hundred and ninety-one.

Approved May 14, 1894. P. L. 1894, p. 288.

49. SEC. 1. That section one of an act entitled "An act to amend an act entitled, 'An act in relation to the temporary custody of dangerous lunatics,' approved March twenty-third, one thousand eight hundred and eighty-eight," which amendatory act was approved March ninth, one thousand eight hundred and ninety-one [see Secs. 46 and 45, *ante*], be and the same is hereby amended to read as follows :

[That section five of the said act of which this act is amendatory, be and the same is hereby amended to read as follows:

That the expense of confining such lunatic temporarily while making the application for his or her admission to a lunatic asylum, or removing him or her thereto, or to the place of his or her legal settlement, shall be chargeable to and borne by the city, borough, township or other municipality in which such dangerous lunatic may have been found at the time of his or her temporary confinement; *provided, however*, that if in any case such confinement is continued beyond the term or period of ten days, and then in every such case, the expense incurred after the termination of said period, shall be charged to and paid by the county in which such city, borough, township or other municipality is situated, unless the city attorney or officer acting in that capacity in cities, boroughs or other municipalities, or the chairman of the township committee in townships in which such dangerous lunatic may be apprehended, neglect to apply to the court or a judge thereof for the admission of such lunatic into the state or county lunatic asylum, as the case may be, in the manner prescribed by law, and in case of such neglect, such city, borough, township or other municipality shall be chargeable in the same manner in which it is chargeable during the said term or period of ten days; *and provided, further*, that nothing in this act shall prevent the transfer of such dangerous lunatic to his or her legal settlement in case the same shall be subsequently ascertained.]

Expense of confining lunatic temporarily to be borne by municipality.

Proviso.

County shall pay after ten years.

Upon failure to apply for admission, municipality still chargeable.

Proviso.

II. Drunkards.

An act relative to habitual drunkards.

Approved March 3, 1853. P. L. 1853, p. 237.

50. SEC. 1. [Amended by Sec. 58, *post*.]

51. SEC. 2. That upon the death of any such habitual drunkard, intestate or without any will, except such as was executed during the existence of said inquisition, his personal estate shall be distributed according to law among his next kin, and his land shall descend and go to his heirs.

Property, how distributed on death.

52. SEC. 3. That the like powers are hereby conferred on the orphans' courts, and the like proceedings shall be had relative to a sale of timber or lands of an habitual drunkard, as are required in the act entitled "An act concerning idiots and lunatics," aforesaid.

Sale of lands.

53. SEC. 4. That after such inquisition found as aforesaid, and until the same be determined, such habitual drunkard shall be divested of all power and control over and legal estate in his property, real, personal, or in

After inquisition, control of property in guardian.

IDIOTS, LUNATICS AND DRUNKARDS.

action, and the same shall be vested in his guardian in trust for him, and no contracts made by him shall bind either his person or estate. (a)

Petition of wife or child not received.

54. SEC. 5. That no petition for an inquisition as aforesaid, by a wife against her husband, or by a child against his or her parent, shall be received or acted on.

Penalty for selling intoxicating liquors to drunkard.

55. SEC. 6. That if any innkeeper, distiller, grocer, or other person, shall receive notice from the guardian of the estate of an habitual drunkard, not to furnish or supply him with intoxicating liquor and shall after such notice sell, or in any manner furnish or supply any intoxicating liquor to such drunkard, or any person for him, every person so selling or furnishing shall forfeit and pay the sum of ten dollars, for each and every time he or they may sell or furnish the same, to be recovered in an action of debt, one-half to any person who shall sue for the same, and one-half to the overseers of the poor of the township in which suit may be brought.

Proceedings, when and how superseded and determined.

56. SEC. 7. That it shall be lawful for the chancellor, on petition by the party setting forth that he is reformed and has become habitually sober, and has continued so for one year next preceding, to take proof of the fact, and if he shall be satisfied of the truth of the allegation in such petition, to make an order that the commission issued, and inquisition taken thereon, and proceedings relating thereto, be altogether superseded and determined; and in case the inquisition aforesaid shall be superseded and determined, his estate shall be restored to him. (b)

Supplement.

Approved March 20, 1857.

P. L. 1857, p. 474.

Jurisdiction and power of chancellor as to lands, &c.

57. SEC. 1. That all the jurisdiction and powers conferred upon the chancellor and the court of chancery, as to the lands and real estate of idiots and lunatics, by the act entitled "A supplement to an act entitled an act concerning idiots and lunatics," approved February twenty-sixth, eighteen hundred and fifty-two, shall be and hereby are conferred upon the chancellor, and the court of chancery, as to the lands and real estate of any person who has been, or shall be found an habitual drunkard in accordance with the provisions of the act to which this act is a supplement; and, for the sale and conveyance of the lands or real estate of any habitual drunkard, the same proceedings and practice shall be pursued and had as are by law required to be had and pursued, to make sale and conveyance of the lands of an idiot or lunatic.

Amendatory act.

Approved March 25, 1881.

P. L. 1881, p. 236.

Court of chancery authorized to issue commission to inquire into the habitual drunkenness of person.

58. SEC. 1. That section one of the act entitled "An act relative to habitual drunkards," approved March third, one thousand eight hundred and fifty-three, be and the same is hereby amended so as to read as follows:

Orphans' court required upon application, to appoint guardian.

[That it shall be lawful for the court of chancery to issue a commission in the nature of a writ de lunatico inquirendo, as heretofore practiced and allowed, and returnable thereto, to inquire into the habitual drunkenness of any person in this state, and in case of habitual drunkenness found, by reason of which such habitual drunkard has become incapable of controlling or managing himself or his estate, or is wasting his estate, the chancellor shall cause to be transmitted to the orphans' court of the county where such habitual drunkard may reside, a certified copy of all proceedings which may be had thereon, which shall be recorded and filed in the surrogate's office of said county, and thereupon the said orphans' court, upon application for that purpose, is hereby directed and required to appoint a guardian or guardians for such habitual drunkard, who shall have the same power over the person and estate of such habitual drunkard, and perform the same duties and be subject to the same liabilities, as are conferred on and required of the guardian or guardians of an idiot

(a) Suit on a note made by such drunkard before the appointment of his guardian, must be brought against the drunkard. *Coombs ads. Janvier*, 2 Vr. 240.

(b) The practice is substantially the same as in cases of lunacy. *Matter of Weis*, 1 C. E. Gr. 318.

or lunatic by the act entitled "An act concerning idiots and lunatics," approved April sixteenth, one thousand eight hundred and forty-six; that it shall be lawful for the chancellor, on application of the guardian or guardians of any such habitual drunkard, to make such order for the safe keeping of such habitual drunkard as he may deem necessary, with a view to his reformation, and from time to time to alter or modify the same, and to that end may authorize the guardian or guardians to place such habitual drunkard in a state asylum for lunatics, or in such other proper retreat as the chancellor may order; and when such order is made for the keeping of such habitual drunkard in a state asylum, such guardian or guardians shall be required to give security in such amount and form as the chancellor shall direct, for the payment of the expense of keeping such habitual drunkard therein.](a)

Chancellor, upon application of guardian, may make order for safe keeping of drunkard.

III. Miscellaneous acts.

An act concerning idiots, lunatics, habitual drunkards and persons alleged to be lunatics by reason of their minds being so unsound as to render them incapable of controlling themselves and their property.

Approved March 23, 1887.

P. L. 1887, p. 48.

59. SEC. 1. That from and after the passage of this act it shall and may be lawful for the sheriff in all cases of idiocy, lunacy, habitual drunkenness, and persons who are alleged to be lunatics by reason of unsoundness of mind so as to render them incapable of managing their property and themselves (and in all cases in which a commission has been issued and not yet been executed), to summon twelve jurors, instead of twenty-four as now provided by law, who shall inquire into and determine and find the truth of the matters alleged in the commission or inquisition, and whose verdict, when found, shall be as legal and binding as if found by twenty-four jurors, and that in all cases in which a commission shall hereafter issue, or has been issued and not yet been executed, it shall be lawful for the chancellor to allow to the master who may preside at such commission, and also to the other commissioners, such compensation as under the circumstances may be reasonable and proper, and to the jurors who may be summoned the same compensation as is now allowed by law to jurors in the circuit courts of this state; the same to be paid out of the estate of the person who is the subject of the inquisition. (b)

Sheriff to summon twelve jurors in cases of idiocy, lunacy, &c.

Chancellor to allow compensation to master and commissioners.

(a) The orphans' court has the necessary control over the guardians of an habitual drunkard, to secure fidelity in the discharge of their duties and protection, not only to the estates committed to their hands, but to their sureties also. *Dickerson v. Dickerson*, 4 *Stew.* 652. A guardian may be required to furnish additional surety or sureties, or may be removed for refusal to account or for waste. *Id.*

(b) The unanimous verdict of a jury of twelve men upon a

lunacy inquest, although agreeably to the provisions of this act, only twelve jurors being summoned, is sufficient. *Lindsay's Case*, 1 *Dick.* 358. This act does not authorize the charge of the fees of jurors and commissioners upon the estate of the alleged lunatic if he shall be found to be of sound mind. *In re Farrell*, 6 *Dick.* 353. This statute is constitutional. *De Hart v. Condit*, 6 *Dick.* 611.

Impeachment.

1. Expenses of trials of impeachment to be paid by state treasurer.
2. Witness fees and mileage.

3. Comptroller to draw warrants upon state treasurer, &c.
4. Court may order board and maintenance of indigent witnesses paid.

An act to provide for the payment of the expenses of trials of impeachment.

Approved March 30, 1886.

P. L. 1886, p. 143.

1. That the expenses incurred by the senate, sitting as a court of impeachment, upon the trial of any impeachment, and such expenses as may be incurred under the direction of such court by any officer of the court, or by the managers appointed by the house of assembly to conduct the trial of such impeachment, the fees and expenses of witnesses on behalf of the

Expenses of trials of impeachment to be paid by state treasurer.