

MAINE STATE LEGISLATURE

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L A W S

OF THE

STATE OF MAINE;

TO WHICH ARE PREFIXED

THE

CONSTITUTION OF THE U. STATES

AND OF SAID STATE,

IN TWO VOLUMES,

WITH AN APPENDIX.

.....
VOL. I.
.....

Published according to a resolve of the State, passed
March 8, 1821.

BRUNSWICK.

Printed by J. Griffin, for the State.

.....
1821.

ERRATA:

**The following leaf is
inserted because one or more pages
in this chapter have errors
noticed and corrected here.**

VOLUME THE FIRST.

Page.
 40 L. 12 of the page for 'preceding' read 'presiding'
 54 Sec. 4 L. 14 of Sec. for 'time' read 'term'
 55 7 2 for 'a' read 'or'
 55 7 9 before the word 'said' insert 'the'
 56 9 3 for 'the' read 'her'
 57 1 6 for 'to' read 'in'
 58 1 5 for 'and' after the word 'house'
 read 'or'
 61 in the title of the act, ch. vi. insert 'the' before the
 word 'crimes'
 62 Sec. 2 L. 9 of S. before the word 'offender' insert 'such'
 69 16 8 for 'Treasurer' read 'Treasury'
 73 1 15 after the word 'for' insert 'the'
 77 13 6 for 'to' read 'of'
 78 first line of the page, dele the word 'by'
 80 L. 2 of the p. after the word 'willingly' insert 'aid or'
 80 17 for 'counterfeited' read 'counterfeit'
 82 1 after the word 'in' insert 'all'
 82 Sec. 7 L. 4 of Sec. after the word 'devised' dele 'or'
 and insert '
 83 Sec. 7 L. last of S. for 'aggravations' read 'aggravation'
 84 10 6 for 'and' read 'or'
 90 1st L. of p. for 'Commissioner' read 'Commissioners'
 90 L. 20 before the word 'Commissioner' insert 'said'
 97 6 for 'assumst' read 'assumpsit'
 97 14 for 'cover, read 'covin'
 98 at the end of the act for 'January' read 'February'
 99 L. 17 of p. after the word 'year' dele ' ; ' & insert ' , and '
 100 15 at the end of the line insert 'the'
 105 at the end of the Act for '1820' read '1821'
 108 L. 14 of page, for 'nuisances' read 'nuisance'
 108 20 after the word 'each' insert 'one'
 111 25 after the word 'fail' insert 'of'
 113 11 for 'on' read 'or'
 144 last for 'performance' read 'performing'
 145 Sec. 2 L. 9 of Sec. after the word 'of' insert 'the'
 147 7 6 before the word 'release' for 'to'
 read 'a'
 150 Sec. 6 L. 2 of Sec. for 'in' read 'is'
 151 in the title, before the word 'Lands' insert 'reserved'
 153 1st line of the p. for 'whenever' read 'wherever'
 155 last before the word 'Court' for 'a' read 'any'
 156 Sec. 4 L. 26 of Sec. for 'notification' read 'notifications'
 159 9 8 for 'purpose' read 'purposes'
 167 14 5 for 'votes' read 'vote'
 193 4 10 dele 'such'
 199 17 1 for 'when' read 'where'
 202 22 6 after the word 'near, dele 'to'
 202 23 10 for 'be' read 'he'
 203 24 16 for 'of' read 'in'
 203 25 16 for 'meeting' read 'meetings'
 205 L. 18 of p. before the word 'estate' insert 'other'
 210 2 before the word 'tenement' insert 'other'
 215 4 before the word 'guardians' insert 'guard-
 dian or'
 226 Sec. 73 L. 6 of Sec. dele 'a'
 229 3 last for 'agreeably' read 'agreeable'
 230 7 19 for 'agreeably' read 'agreeable'
 231 8 6 for 'resided' read 'reside'
 242 2 5 for 'sentence' read 'sentences'
 245 7 3 after the word 'herein' insert 'be-
 fore'
 247 L. 7 of the act, ch. 56, after the word 'otherwise' in-
 sert 'interested'
 247 11 for 'statement' read 'statements'
 247 Sec. 1 L. 2 of Sec. for 'whenever' read 'wherever'
 248 3 1 for 'whenever' read 'wherever'
 248 3 14 for 'Justice' read 'Justices'

Page.
 252 L. 3 of p. for 'where' read 'wherein'
 257 5 after the word 'have' insert 'his or'
 265 Sec. 39 L. 3 of Sec. for 'when' read 'where'
 271 L. 1 and 3 of p. for 'affect' read 'effect'
 271 Sec. 6 L. 2 of Sec. before the word 'execution'
 insert 'the'
 278 19 4 for 'on' read 'in'
 280 L. 2 of p. for 'have' read 'had'
 281 22 for 'of' read 'on'
 283 13 for 'lies' read 'lays'
 283 last before the word 'defendant' insert 'the'
 284 Sec. 32 L. 2 of Sec. for 'a' read 'any'
 288 5 18 for 'whenever' read 'wherever'
 291 9 4 for 'as' read 'or'
 292 L. 4 of p. for 'examinations' read 'examination'
 293 Sec. 13 L. 5 of Sec. after the word 'article' in-
 sert 'or articles'
 297 7 5 for 'and' read 'or'
 301 L. 8 of p. for 'he' read 'be'
 309 24 between the words 'the' and 'day' should
 be a '
 310 20 for 'debt' read 'debtor'
 311 2 for 'with' read 'and of'
 312 7 for 'summon' read 'summons'
 312 9 between the words 'our' and 'Court'
 should be a '
 318 31 for 'writs' read 'writ a'
 328 Sec. 8 L. 4 of Sec. for 'grieved' read 'aggrieved'
 353 L. 14 of p. at the end of the line insert 'the'
 361 Sec. 1 L. 18 of Sec. for 'cause' read 'case'
 370 3 10 for 'to' read 'of'
 371 2 7 dele 'to'
 373 L. 15 of p. before the word 'require' insert 'to'
 376 Sec. 1 L. 10 of Sec. dele 'the' before the word
 'payment'
 378 at the end of the act, for '17' read '20'
 378 in the title, for 'selection' read 'selecting'
 379 Sec. 4 L. 5 of Sec. before the word 'divide' in-
 sert 'shall'
 394 1 9 for 'part' read 'parts'
 395 1 8 for 'acceptances' read 'accep-
 tance'
 404 1 34 before the word 'authorized'
 insert 'hereby'
 407 7 4 dele 'the'
 414 last word of the 1st act on the page, for 'therein'
 read 'thereon'
 423 Sec. 3 L. 15 of Sec. after the word 'assignments'
 insert 'thereof, and also of the assignments'
 424 Sec. 6 L. 13 of S. after the word 'papers' insert 'as'
 425 L. 7 of p. before the word 'action' insert 'an'
 428 22 for 'twelve' read 'twenty'
 431 8 for 'fifteen' read 'fifty'
 432 first line of the page should be put after the third
 432 L. 5 of the p. dele 'entering'
 432 between the 28th and 29th lines of the p. insert
 'Every blank writ of attachment, with a sum-
 mons thereon, fifteen cents'
 432 L. 37 of p. for 'judgment' read 'jurymen'
 435 9 for 'appear' read 'appears'
 435 10 for 'make' read 'makes'
 435 18 for 'taking' read 'taxing'
 444 Sec. 1 L. 6 of Sec. before the word 'records' in-
 sert 'the'
 445 1 9 for 'within' read 'of'
 445 1 19 after the word 'escape' insert
 'sickness'
 455 11 1 after the word 'of' insert 'the'

CHAPTER LII.

An Act respecting Executors, Administrators and Guardians, and the conveyance of Real Estate in certain cases.

SEC. 1. *Be it enacted by the Senate and House of Representatives, in Legislature assembled,* That all the lands, tenements and hereditaments of which any person may die seized, in fee simple, or in fee tail general or special, and also all such estate which he had fraudulently conveyed, or of which he had been colourably or fraudulently disseized with intent to defraud his creditors, shall be liable for the payment of his debts, and may be recovered and applied thereto in the manner by law directed.

What real estate of persons deceased shall be liable for payment of their debts.

SEC. 2. *Be it further enacted,* That when the goods and chattels belonging to the estate of any person deceased, shall not be sufficient to answer his just debts and legacies, upon representation thereof, and the same being made to appear to the Supreme Judicial Court in any county in this State, or to the Circuit Court of Common Pleas, in the county where the deceased person last dwelt, or in the county in which the said real estate lies, the said Courts are severally and respectively authorized to empower and license the executor, or administrator of such estate, to sell all or such part of the houses, lands or tenements of the deceased, as may be necessary to satisfy his just debts and legacies, with incidental charges and charges of administration. And every executor or administrator being so licensed and authorized as aforesaid may make and execute in due form of law, deeds and conveyances of such houses, lands and tenements, as they shall so sell, and such deeds and conveyances shall make as good a title to the purchaser, his heirs and assigns forever, as the testator or intestate had therein. And the executor or administrator previous to such sale, shall give thirty days' notice thereof by posting notifications in some public place in the town or plantation where the real estate lies, in two adjoining towns, and in the town where the testator or intestate last dwelt; or by causing an advertisement thereof to be published three weeks successively, in such newspaper as the Court, who may authorize the sale, shall

When person at estate is insufficient to pay debts, &c. license to sell real estate may be granted by Sup. J. Court, or C. C. Com. Pleas.

Executor or administrator being licensed, may execute deeds;

must give 30 days notice previous to sale.

Courts to order notice previous to granting license.

order and direct: *Provided always*, That no such license shall be granted by either of the Courts aforesaid, until after personal notice or notice given by an advertisement for three weeks successively, in such newspaper as the Court shall order, to all persons, interested therein, of the time and place, at which they may be heard concerning the same: and if the said persons interested, or any of them shall give bond with sufficient sureties to pay such debts and legacies, with incidental charges, then such license shall not be granted.

If partial sale of estate, for payment of debts, &c. would greatly injure the rest, Courts may authorize a sale of the whole by executors administrators, guardians, &c.

SEC. 3. *Be it further enacted*, That whenever it shall be necessary that executors or administrators, shall be empowered to sell some part of the real estate of testators or intestates, or for guardians to sell some part of the real estate of minors or persons *non compos mentis*, for the payment of just debts, legacies or taxes, or for the support or legal expenses of minors or persons *non compos mentis*, and by such partial sale, the residue of such real estate would be greatly injured and the same shall be represented and made to appear to the Justices of either of the aforesaid Courts on petition, and declaration filed, and duly proved therein, by the said executors, administrators or guardians, the Justices of the aforesaid Courts respectively, may authorize and empower such executors, administrators or guardians, to sell and convey the whole, or so much of, such real estate, as shall be most for the interest and benefit of the parties concerned therein, at public auction, and good and sufficient deed or deeds of conveyance thereof to make and execute; which deed or deeds, when duly acknowledged and recorded in the Registry of Deeds for the county where the said real estate lies, shall make a complete and legal title in fee to the purchaser or purchasers thereof: *Provided*, The said executors, administrators or guardians give public notice of such intended sale in manner and form herein before prescribed: *And provided also*, They first give bonds, with sufficient sureties, to the Judge of Probate for the county where the testator or intestate last dwelt, and his estate was inventoried, that he or she will observe the rules and directions of law for the sale of real estate by executors or administrators, and that the proceeds of the said sale, after the payment of just debts, legacies, taxes, and just debts for the support of minors, and

Notice to be given.

Bond to the Judge of Probate to account, &c.

other legal expenses and incidental charges, shall be put on interest on good security, and that the same shall be disposed of agreeably to the rules of law.

SEC. 4. *Be it further enacted,* That the said Justices, where they may think it expedient, may examine the said petitioner or petitioners on oath, touching the truth of facts set forth in the said petition. And every representation made as aforesaid shall be accompanied with a certificate from the Judge of Probate of the county where the deceased person's estate was inventoried, certifying the value of the real estate, and the value of the personal estate of such deceased person, and the amount of his or her just debts; and also his opinion, whether it be necessary that the whole or a part of the estate should be sold, and if part only, what part.

Courts may examine petitioners for sale, &c. on oath.

Certificate required from Probate Court.

SEC. 5. *Be it further enacted,* That the guardian or guardians of any person or persons who shall spend or waste their estates by excessive drinking, gaming, idleness or debauchery, are hereby authorized and enjoined to pay the debts of such person or persons, and to provide for their maintenance and the support of their families out of their real estate, when their personal estate shall be insufficient, and for these purposes may sell so much of the real estate of their wards, as shall be necessary therefor, in the way and manner, and under the conditions, restrictions and limitations, under which executors and administrators are empowered to sell the estate of deceased persons; such guardians first obtaining a license therefor from the Supreme Judicial Court, or from the Circuit Court of Common Pleas, of the county where the real estate shall be, who are hereby respectively empowered to grant the same: *Provided however,* That no such license be granted, unless the person applying for the same shall produce to the Court a certificate, under the hands of the overseers of the poor of the town, in which said idle, gaming person has gained a legal settlement, giving their consent and approbation of the sale of such a proportion of the real estate of such person as such overseers shall be satisfied is necessary to discharge the *bona fide* debts of such idle person, excluding all debts contracted by gaming.

Guardians of spendthrifts, &c. may be licensed to sell real estate for payment of their debts, and support, &c.

in what manner, &c.

Certificate of overseers to accompany petition for sale.

Supreme Judicial Court may authorize sale of whole of such spend-thrifts' real estate, when sale of part would greatly injure the rest.

SEC. 6. *Be it further enacted,* That the Justices of the Supreme Judicial Court be, and they are hereby authorized and empowered to grant license to, and authorize guardians of persons given to excessive drinking, idleness, gaming or debauchery, to sell and convey the whole or so much of the real estate of such persons, as shall be most for their interest and benefit, when by a partial sale thereof, the remainder would be greatly injured, in the same way and manner, and under the same restrictions, as they are authorized to grant license to administrators, executors and guardians of minors and persons *non compos mentis*, to sell real estate in such cases: *Provided however,* That no such license shall be granted unless the certificate of overseers of the poor required to be produced, shall also contain their consent and approbation of such sale, and their opinion that by a partial sale of the real estate, the remainder thereof would be greatly injured.

Certificate of overseers of poor required in such cases.

Supreme Judicial Court may authorize sale of real estate of minors, in certain cases, and proceeds to be put on interest.

SEC. 7. *Be it further enacted,* That when it shall fully appear to the Justices of the Supreme Judicial Court, aforesaid, by the petition and representation of the friends or guardians of minors interested in the real estate of any testator or intestate, that it would be for the benefit of such minors, or persons *non compos mentis*, that their interest therein should be disposed of, and the proceeds thereof be put out and secured to them on interest, the said Justices last mentioned, after a full examination on the oath of the petitioner or otherwise, may authorize some suitable person or persons to sell and convey such estate or part thereof, by deed or deeds duly acknowledged and recorded in the Registry of Deeds as aforesaid: *Provided,* Such person or persons first give bond with sufficient sureties, to the Judge of Probate for the county where the said deceased person last dwelt, to observe the rules and directions of law in the sale of real estates by executors or administrators in the second enacting clause herein prescribed, and to account for and make payment of the proceeds of the said sale, agreeably to the rules of law: *Provided,* That the said Judge of Probate shall certify that the whole or a part of the said estate is, in his opinion, necessary to be sold, and if part only, what part.

Bond to be given to Judge of Probate.

Certificate of Judge of Probate as to necessity of sale.

SEC. 8. *Be it further enacted,* That the Supreme Judicial Court, and the Circuit Court of Common Pleas be, and they are hereby authorized and empowered to grant license to, and authorize executors of the last will and testament, and administrators upon the estate of persons deceased, who resided out of this State owning real estate within the same, at the time of their decease; and also guardians of minors, persons *non compos mentis*, or persons given to excessive drinking, idleness, gaming or debauchery; such minors, or other persons not living within this State, but owning real estate within the same, to sell and convey such real estate lying within this State, in the same way and manner, and under such conditions, restrictions and limitations, as are herein provided by law, for the sale of real estate by executors, administrators and guardians, within this State; and all proceedings necessary to be had before any Judge of Probate within this State respecting such sale, shall be had before the Judge of Probate, within and for the county where such real estate may be situated.

S. J. Court and C. C. C. Pleas may license executors administrators and guardians, &c. to sell real estate lying within this State, of persons who lived out, &c.

Restrictions and limitations.

SEC. 9. *Be it further enacted,* That the bond, required by law, to be given to the Judge of Probate by executors, administrators and guardians, previous to the sale of real estate, shall and may be given to the Judge of Probate for the county in which the real estate is situated, in all cases, where the deceased person to whom such estate belonged, was not an inhabitant within this State, at the time of his decease.

Bonds on sale of real estate to be given to Judge of Probate for the county where estate lies.

SEC. 10. *Be it further enacted,* That whenever any executor, administrator or guardian, has been duly appointed and approved by any Judge of Probate, or any Court having Probate Jurisdiction in any other State, a certified copy of such appointment and approval, filed in any Probate office in this State, shall be sufficient evidence of such appointment and approval, and entitle such executor, administrator or guardian, to all the rights and powers incident to such appointment, as far as it respects the sale of real estate as aforesaid, which he might or could have, if he was appointed and approved as executor, administrator or guardian, by a Judge of Probate in this State.

What shall be evidence of appointment of executor, administrator or guardian by Courts of Probate out of the State.

Executor, administrator, &c. may adjourn sale, not exceeding 14 days.

SEC. 11. *Be it further enacted,* That any executor, administrator, guardian or other person, licensed by either of said Courts, to make sale of real estate, may adjourn such sale, if expedient, for any space of time not exceeding fourteen days.

Licenses for sale of real estate to be in force for one year, from time of granting.

SEC. 12. *Be it further enacted,* That no such license as aforesaid, for the sale of real estate, granted by either of the Courts aforesaid, shall be in force for a longer term of time than one year from the time when such license shall have been granted. And no action by any heir or other person, interested for the recovery of any real estate, sold under such license, shall be sustained, unless such action shall be brought within the term of five years after the execution and delivery of the deed given under such license: *Provided always,* That minors and other persons under legal disabilities, and persons out of the State, at the time of such sale, may maintain such action at any time within the term of five years from the removal of their disabilities, or from their return to the State, as the case may be.

Actions by persons interested to defeat such sales, limited to 5 years: excepting as to minors, &c.

And whereas it may be often necessary to enable the representatives of persons deceased, to perform the engagements entered into by such deceased persons for the transfer of real estate:

S. J. Court or C. C. Pleas may authorize executors or administrators to make deeds in order to complete or carry into effect, contracts or covenants made by their testators or intestates.

SEC. 13. *Be it further enacted,* That whenever it shall be represented and made to appear to the Justices of either of the aforesaid Courts, in form aforesaid, by any person or persons, contracted with by bond, covenant or other contract, under seal, that a testator or intestate in his or her life time, entered into such bond, covenant or contract, to convey some real estate to him or her, but was prevented by death; and that such person or persons, contracted with as aforesaid, have, on his, her, or their part, performed, or stand ready to perform the conditions of such bond, covenant or contract, made with the said testator or intestate, the said Justices may, after due notice given to all concerned as aforesaid, in form aforesaid, and a full hearing had, grant license to, and empower the executors or administrators of such deceased obligor, covenantor, or contractor, to make and execute such conveyance or conveyances to such person or persons, contracted with as aforesaid, as it shall ap-

pear the said obligor, covenantor or contractor would by his bond, covenant or contract, be obliged to make and execute, in case he, she or they were living at the time of the performance of the conditions of the bond, covenant or contract by the contractees on their part, making reasonable allowances for any alteration, improvements or injuries, that may be made or done in the same estate since such contract was made, as the said Justices may award; which conveyance or conveyances when the instruments thereof are duly acknowledged and recorded in the Registry of Deeds for the county where such estate shall lie, shall be good and valid; and the monies or consideration paid for such estate, if not paid to the deceased contractor in his life time, shall be assets in the hands of the said executors or administrators, and be apportioned among the representatives of the deceased as other personal estate.

SEC. 14. *Be it further enacted,* That when it shall appear to the said Justices, on examination, that the said petition or petitions in any of the foregoing applications, are unreasonable, the said Justices may award costs to such respondents as shall appear and object thereto.

Courts may award costs to respondents when petitions &c. are unreasonable.

SEC. 15. *Be it further enacted,* That the affidavit of any executor, administrator, guardian or other person, who has been, or hereafter may be duly licensed to sell real estate, or of any person employed by any of them, taken within eighteen months, next following the sale of such real estate, and filed in the Probate Court, and recorded together with one of the original advertisements of the time, place and estate to be sold, or a copy of such advertisement, are hereby declared to be one mode of perpetuating the evidence that such notice was given, and also to make the originals or copies thereof, from the Register of the Probate Court, admissible evidence in any Court of law. And when the person employed by the executor, administrator or guardian to post up such notifications, or cause them to be printed as aforesaid, resides more than ten miles distant from such Probate Court, his deposition respecting that matter, taken before a Justice of the Peace, and filed in such Probate Court within eighteen months as aforesaid, shall have the same

Mode of perpetuating notice of sale of real estate, by executors, administrators & guardians, &c.

force and effect, as if the same was taken before the Probate Court.

Lands set off on execution to executors or administrators; or recovered on foreclosing mortgage, to be for the use of widow and heirs: and may be divided as other estate, &c.

SEC. 16. *Be it further enacted,* That wherever any executor or administrator shall recover judgment for any sum of money, whereon execution shall issue, and lands, tenements, or hereditaments shall be set off to the said executor or administrator, in discharge of the said execution, the said executor or administrator shall be seized and possessed of the whole estate in the lands, tenements or hereditaments so set off to the sole use and behoof of the widow and heirs of the deceased intestate, or to the residuary legatee or legatees of the testator, as the case may be; and the Court of Probate may make distribution of the same, as well as of lands and tenements mortgaged to testators or intestates, of which seizin and possession shall have been recovered by executors or administrators as of personal estate, accordingly; unless the lands, tenements or hereditaments so set off on the said execution, or of which seizin and possession shall have been recovered, shall be necessary for the payment of debts, legacies, annuities or charges of administration; and in that case, the said executor or administrator, having obtained license in manner as herein provided, shall have full right, power and authority to dispose and make sale of the whole or part of the lands, tenements or hereditaments aforesaid, subject however to the right of redemption, in case such sale be made before such right shall be extinguished.

unless necessary to be sold for the payment of debts, &c.

Executors or administrators to receive money from persons entitled to redeem estate set off, &c. and to discharge and release the same.

SEC. 17. *Be it further enacted,* That after executors or administrators shall become seized and possessed of lands, tenements or hereditaments, by having the same set off in discharge of an execution as aforesaid, and before conveyance or assignment thereof in manner aforesaid, if the person, his heirs, executors, administrators or assigns, whose estate has been levied upon as aforesaid, shall within the time limited, redeem the same, the executors or administrators shall, in every instance, be entitled to receive the said redemption money, and are hereby authorized, empowered and directed to discharge the said estate, levied upon, by release, quitclaim, or other legal conveyance: *Provided,* That nothing in this and the sixteenth sections of this Act con-

Provided.

tained, shall be construed to control any last will or testament, or any part thereof.

SEC. 18. *Be it further enacted,* That no executor or administrator shall be compelled in any Court of law to defend any suit that shall be commenced or instituted against him, in said capacity, within the term of twelve months next after his taking upon him that trust, unless the same shall be instituted for the recovery of a demand that will not be affected by the insolvency of the estate, or the suit shall be instituted for the purpose of ascertaining a claim that is contested. And all suits brought within one year as aforesaid (except for the purposes aforesaid) shall be continued at the plaintiff's expense, until that term from the time the executor or administrator gave bond in the Probate Court, for the faithful discharge of his trust, shall be fully expired, and in case the executor or administrator pay the demand, or will bring sufficient money into Court for that purpose, and there leave the same for the plaintiff's use, or shall make a legal tender thereof to the plaintiff within the year, he shall recover his costs.

No executor to be sued within 12 months—
unless, &c.

Proceedings in case of suits brought against administrator, within the year.

SEC. 19. *Be it further enacted,* That all writs of attachment and executions shall run only against the goods or estate of the party deceased, in the hands of executors or administrators, and not against their bodies; nor shall any executor or administrator be held to special bail upon mesne process, nor his own proper goods or estate be attached or his person be arrested or taken in execution for the debts or legacies of the testator or intestate, but upon suggestion of waste, founded on a return made by the Sheriff, that he could not find any goods or estate of the testator or intestate; in which case a writ commonly called *scire facias*, shall be issued out of the Clerk's office of the same Court, against such executor or administrator, and if upon said writ being duly served and returned, such executor or administrator shall make default of appearance, or coming in shall not show cause sufficient to the contrary, execution shall be adjudged and awarded against him, of his own proper goods and estate, to the value of such waste, where it can be ascertained; otherwise for the whole sum recovered, with interest thereon from the time when the first judgment was ren-

Writs and executions to run against goods and estate of party deceased—not against executor or administrator's body or estate.

Proceedings on suggestion of waste.

dered; and for want of goods or estate, against the body of such executor or administrator.

Administrator
de bonis non,
may become
party to suit
commenced
by previous
administrator
or executor—

SEC. 20. *Be it further enacted,* That whenever any executor or administrator shall die, or be removed from office, during the pendency of any suit brought by, or against him, in said capacity, the same suit may be prosecuted by, or against any administrator *de bonis non*, who shall thereupon be appointed, and process may thereupon issue in due form of law, to compel any such administrator *de bonis non* to become a party to the suit; and if such administrator *de bonis non* shall, after due service of such process, neglect or refuse to become a party to the suit, judgment may be rendered against him in the same manner as if he had voluntarily come in and become a party to the suit, and had therein been defaulted or nonsuited. And when judgment shall be had in any suit in which an executor or administrator is a party, and such executor or administrator shall afterwards die or be removed from office, in such case a *scire facias* may be sued and execution taken out upon such judgment, either by or against any administrator *de bonis non*, who shall be thereupon appointed, and any execution, which may have duly issued upon such judgment, may be perfected by either of said parties respectively; and a writ of error to correct any errors in such judgment may be brought in manner prescribed by law, either by, or against such administrator *de bonis non*, in like manner as might have been by, or against the original executor or administrator who was a party to such judgment.

and have scire
facias to com-
plete judg-
ments, and
may perfect
executions,
&c.

and may bring
and defend
writs of error.

In case of
death of either
party after ap-
peal and be-
fore sitting of
Court appeal-
ed to, or be-
fore final judg-
ment, the ex-
ecutor or ad-
ministrator
may prosecute
and defend,
&c. if cause of
action survive.

SEC. 21. *Be it further enacted,* That in case of the death of any party, either the appellant or appellee, before the sitting of the Court appealed unto, or where any action or suit is or shall be depending either in the Circuit Court of Common Pleas, or in the Supreme Judicial Court in any County of this State, and it so happen that either party be taken away by death before final judgment, the executor or administrator of such deceased party, who was plaintiff, complainant or defendant (in case the cause of action doth by law survive) shall have full power to prosecute or defend any such suit or action from Court to Court until final judgment; and the defendants or appellees are hereby ob-

liged to answer to such actions accordingly; and the Justices of the Circuit Court of Common Pleas and Supreme Judicial Court respectively, before whom such causes are or may be triable and depending, are hereby empowered and directed to hear and determine all such causes, proceed to judgment, and award execution accordingly: and if it shall so happen, that the executor or administrator of the deceased, hath not suitable time in the judgment of the Court where such action or suit shall be pending, and doth by law survive as aforesaid, to prepare for managing the cause, or to become duly qualified to prosecute or defend the same; in such case it shall and may be lawful for the Court to suspend the hearing and trying thereof until the next term. And if by the verdict of a Jury, or by the default or neglect of the executor or administrator, in prosecuting or defending such suit, after the executor or administrator shall have appeared and undertaken in his capacity to prosecute or defend the suit, judgment pass against the executor or administrator, the Supreme Judicial Court and Circuit Court of Common Pleas are hereby respectively authorized, empowered and directed, to enter up judgment for or against the estate of the deceased in their hands and under their administration, as the case may require.

Court may continue such actions in certain cases.

Judgment how rendered in such cases.

Sec. 22. *Be it further enacted*, That all actions pending in the Supreme Judicial Court or in any Circuit Court of Common Pleas in this State, by appeal, continuance or otherwise, where the plaintiff or defendant, appellant or appellee, complainant or respondent shall die before final judgment, and the executor or administrator of the deceased party, after taking upon himself the said trust, shall neglect or refuse to become a party to the suit, the Court before whom such cause shall be pending, in case the cause of action does by law survive, may enter up judgment against the goods and estate of the deceased party, in the same way and manner judgment might have been, in case the executor or administrator had voluntarily after such death made himself a party to the suit: *Provided always*, That such executor or administrator be duly served with a notification from the Clerk of the Court where such suit is pending, fourteen days before the sitting thereof.

When executor or administrator refuses to become party to suits, in cases aforesaid, what proceedings shall be had.

Executor or administrator to be duly notified.

Executors and Administrators not bound to plead specially.

SEC. 23. *Be it further enacted,* That executors, administrators and guardians shall not be compelled to plead specially to any action or suit at law, brought against them in their said capacity; but may under the general issue give any special matter in evidence.

Mode of levying executions on estates of persons deceased,

SEC. 24. *Be it further enacted,* That the real estate of any testator or intestate is and shall be liable to be taken and levied upon by any execution issuing upon judgments recovered against executors or administrators in such capacity, being the proper debts of the testator or intestate, and that the method of levying, appraising and recording, shall be the same as by law is provided respecting other real estate levied upon and taken in execution, and may be redeemed by the executor, administrator or heir, in like time and manner.

and of redeeming such estate.

Estate, &c. of deceased debtor or on joint contract to be liable, as if joint and several, for payment of such contract, &c.

SEC. 25. *Be it further enacted,* That the goods and estate of each deceased debtor in every joint contract, whether obligation, covenant or other instrument under seal, promissory note; memorandum in writing, or any other contract express or implied, or in any judgment on any contract, shall be liable in the hands of his executors and administrators for the payment thereof, in like manner; and the creditor shall have the same remedy, and may have and maintain an action against such executors and administrators in the same manner as if such contract had been joint and several.

Actions against executors and administrators limited to 4 years.

SEC. 26. *Be it further enacted,* That no executor or administrator shall be held to answer to any suit that shall be commenced against him in that capacity, unless the same shall be commenced within the term of four years from the time of his accepting that trust: *Provided,* Such executor or administrator shall give public notice of his appointment to that office in the manner directed by law, and filing a claim with the commissioners upon an estate represented insolvent, shall be esteemed equivalent to originating a suit against executors or administrators, within the meaning of this Act.

Provided notice of appointment be given according to law. What shall be equivalent to originating a suit.

Provision for case of demand on contract, &c. not due until after

SEC. 27. *Be it further enacted,* That when any demand against the estate of any person deceased, arising from covenant, contract or agreement shall become due after the said term of four years, and which could not, by virtue of such

covenant, contract or agreement, be claimed until after the said term, in such case, the claimant may, at any time within the said term of four years, file such demand at the Probate office where administration was granted, or the will was approved; and the Judge of Probate shall direct the executor or administrator to retain in his hands assets (if sufficient there be) to answer said demand, unless the heirs to such estate, or devisees thereof, or some one or more of them, shall give good and sufficient security, in the opinion of the Judge of Probate, for such executor or administrator to respond such demand; and when security is so given, such executor or administrator shall not be allowed to retain in his hands assets for the purpose aforesaid; the estate of the said deceased shall however be liable, in the hands of the said heirs or devisees, or their heirs or assigns, to answer the said demand.

4 years; and proceedings therein.

SEC. 28. *Be it further enacted*, That where demands against the estate of any person deceased, arise by virtue of any covenant, contract or agreement that could not be claimed until after the said term of four years, the claimant in such case, unless he shall have filed the same in the Probate Court, as aforesaid, may have his remedy against those who inherit the estate of such person, or devisees thereof, against whom the demand lies, if such claim be made within one year from the time of its becoming due, and not against the executor or administrator: *Provided always*, That nothing in this Act shall operate to bar any action that may be commenced against an executor or administrator with the will annexed, for the recovery of a legacy, bequest, gift or annuity, arising, accruing or becoming due by virtue of any last will and testament, but the same may be commenced and prosecuted in the same time, way and manner, as they might have been, had this statute never been made.

When demands arise on covenant, &c. after expiration of the 4 years, they may be enforced against the heirs, if prosecuted or claimed within one year.

Proviso as to actions by devisees, legatees, &c.

[Approved March 21, 1821.]