

VII. Sale under.

31. No sale of any goods or chattels shall be made by virtue of any execution, unless previous notice of the time and place of such intended sale shall have been given by the officer making the levy, by advertisements, signed by himself, and put up in three or more of the most public places in the township where they were taken, at least five days before the time appointed for sale.

Advertisement of sale of goods.

P. L. 1858, p. 409, § 10.

VIII. Proceedings on claim of property.

32. In all cases where any sheriff shall by virtue of any writ of execution, issued out of any court in this state, levy on or take into his possession any goods or chattels, which shall be claimed by notice in writing, delivered to said sheriff, by any other person than the defendant, he shall, immediately upon such claim, delay his sale of the same for the space of ten days, that the said claimant may within the said term apply to one of the judges of the court of common pleas, in the county where the goods and chattels were so seized, for a venire to summon a jury of twelve men, to try the right of said claimant to said property; and it shall be lawful for such judge to issue the same, and direct a return thereof to be to him made, and to proceed therein as in other cases of trial by jury; but the claimant shall in all cases give at least eight days' previous notice in writing to the plaintiff or his attorney, of the time and place of the said trial; and either party shall be entitled to process of subpoena, out of the court from which such execution issued, to compel the attendance of witnesses; and the judge before whom such inquest may be held shall have power to adjourn, upon the application of either party, for a reasonable time, upon good cause shown for such adjournment.^(a)

On claim of property in writing, sheriff to adjourn and apply to a judge for a venire.

Ib. § 11.

How right tried.

33. The verdict of such jury shall be reduced to writing, and signed by the jury and judge before whom the matter shall be tried, and shall be filed in the office of the clerk of the court out of which the said execution issued; and the inquisition so taken shall protect the said sheriff from any action, for taking and seizing such property or delivery thereof to the claimant; and if the said property shall be found to belong to the claimant, the sheriff shall proceed no further with the same; but if it shall be found to belong to the defendant, he shall proceed to dispose thereof as is directed in such process; and the costs attending such trial shall be taxed by the said judge as in other cases, and shall be paid by the plaintiff at whose suit the said property was taken and seized, if the claimant obtain a verdict in his favor, and by such claimant, if the verdict is found against him; *provided*, that if the plaintiff, upon notice being given to him as aforesaid, shall indemnify the sheriff against the command of the claimant, then he shall suspend any further proceedings therein, and proceed to sell.

Verdict shall protect sheriff.

Ib. § 12.

Costs by whom paid.

Sheriff to sell, if indemnified.

^(a) The sheriff has authority to reject unlawful evidence, *Obart v. Latson*, 2 *Harr.* 78. See also *Harris v. Kirkpatrick*, 6 *Fr.* 392; 7 *Fr.* 526. *Cox v. Dunham*, 4 *Hal. Ch.* 594.

Executors and Administrators.

1. All bona fide acts of administrators, before notice of a will, good.
2. Executor of executor shall not represent first testator.
3. Of executors in their own wrong.
4. Executors and administrators may have trespass.
5. Action of trespass against.
6. Liability for waste or conversion.
7. Administrators to recover and be liable as executors.
8. Appointment of debtor executor, not discharge debt.
9. Administration in case intestate shall leave no relatives.
10. Power to sell to survive in case of executors.
11. And so of administrators with will annexed.
12. Sale directed, but no executor named.
13. Property which may be claimed by widow.

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

R. S. 345, 350, 358.

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

Revision—Approved March 27, 1874.

1. That all lawful acts done *bona fide*, by any administrator, before notice of a will, and all purchases made of such administrator *bona fide*, before such notice, shall remain good, and shall not be impeached or altered by any executor or executors, on such will afterwards appearing; R. S. 358, § 5.

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

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

provided always, that when at any time after such will shall appear, the executor or executors shall have the same remedy against such administrator or administrators, for the goods and chattels, rights and credits, remaining unadministered, as he, she, or they might have had before the making of this act.(a)

Executor of executor shall not represent first testator.

P. L. 1868, p. 1190.

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

Of executors in their own wrong.

R. S. 350, §9.

3. *And whereas* it is sometimes practiced to the defrauding of creditors, that such persons as are entitled to the administration of the goods of others dying intestate, if they require it, will not accept the same, but suffer or procure the administration to be granted to others of indigent circumstances, from whom they, or others, by their means, by deeds of gifts, or by letters of attorney, obtain the estate of the intestate into their hands, and yet be not subject to the payment of the debts of the intestate, and so the creditors cannot have or recover their just debts and demands; *therefore, be it enacted*, that all and every person and persons, who shall obtain, receive and have, any goods or debts of any person dying intestate, or a release, or other discharge of any debt or duty that belonged to the intestate, upon any fraud as aforesaid, or without such valuable consideration, as shall amount to the value of the said goods or debts, or near thereabouts (except it be in or towards satisfaction of some just debt, of the value of the same goods or debts, to him or her owing by the intestate at the time of his or her decease), shall be charged and chargeable as executor of his or her own wrong so far only, as all such goods and debts coming to his or her hands, or whereof he or she is released or discharged by such administrator, will satisfy; deducting, nevertheless, allowance of all just debts, upon good consideration, and without fraud, owing to him or her by the intestate, at the time of his or her decease, and all payments made by him or her, which lawful executors or administrators might and ought to have and pay by the laws of this state.

Charged, but

Just set-off allowed them.

Executors, &c., may have action for trespass.

R. S. 350, § 1.

P. L. 1855, p. 340, § 1.

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

Action for trespass may be had against executors, &c.

R. S. 351, § 2.

P. L. 1855, p. 340, § 2.

5. Where any testator or intestate shall, in his or her lifetime, have taken or carried away or converted to his or her use, the goods or chattels of any person or persons, or shall, in his or her lifetime, have committed any trespass to the person or property, real or personal, of any person or persons, such person or persons, his or her executors or administrators, shall have and maintain the same action against the executors or administrators of such testator or intestate as he, she or they might have had or maintained against such testator or intestate, and shall have the like remedy and process for the damages recovered in such action as are now had and allowed in other actions against executors or administrators.(d)

Liability for waste or conversion.

R. S. 350, § 3.

6. Every executor or administrator of any person or persons, who, as executor, either of right, or in his or her own wrong, or as administrator hath wasted or converted, or hereafter shall waste or convert any goods,

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

(b) A citation can issue from the orphan's court against an executor of an executor for an account, *Wood v. Tallman*, *Coze* 153. By the statute of 25 Edw. III, executors of a deceased executor were the executors also of the first testator, *Crane v. Alling*, 2 *Gr.* 594. *Moore v. Smith*, 1 *Hal. Ch.* 649. *Annin v. Vandoren*, 1 *McCart* 136. *Schenck v. Schenck*, 1 *C. E. Gr.* 174. But this does not include the power to sell land, which is a personal trust, *Chambers v. Tulane*, 1 *Stock* 146. An administrator *de bonis non* can not call an executor of an executor to account for that part of the estate converted into money. He is only entitled to such chattels and choses in action as still remain as they

existed at the testator's death, *Carrick v. Carrick*, 8 *C. E. Gr.* 364. But not the administrators of such deceased executor, *Boulton v. Scott*, 2 *Gr. Ch.* 231. *Dickinson v. Brick*, *Pen.* *695. *Contra, Tucker v. Green*, 1 *Hal. Ch.* 380. Nor can the executors of a deceased administrator be called to account as representatives of the intestate, *Schenck v. Schenck*, *Pen.* *421. *Garret v. Sitwell*, 2 *Stock* 313. See *Brownlee v. Lockwood*, 5 *C. E. Gr.* 239.

(c) See *Dickerson v. Stoll*, 4 *Zab.* 554. *Potts, J.* They have a discretionary right as to being substituted for their testator where he dies pending the suit, *Lloyd v. Johnson*, 2 *Harr.* 349.

(d) Trover lies against executors for the conversion of a bond and mortgage by their testator, *Terhune v. Bray*, 1 *Harr.* 53. They are liable for wood and timber cut and carried away by their testator, *Cooper v. Crane*, 4 *Hal.* 173. See *Brewer v. Conover*, 3 *Harr.* 214.

chattels, estate or assets of any person deceased, to his or her own use, shall be liable and chargeable, in the same manner as his or her testator or intestate would have been, if living.

7. Administrators, of whatever kind or description they may be, (a) shall have actions to demand and recover, as executors, the debts due to the person deceased, and shall answer to others, to whom such deceased person was holden and bound, in the same manner as executors shall answer, and shall be accountable as executors are, in case of testament, as well of the time past as of the time to come.

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

8. The appointment of a debtor as executor or executrix shall not, unless otherwise expressed in the said will, be construed so as to discharge such executor or executrix from the payment of the debt, but the said debt shall be considered assets in his or her hands, to be accounted for in the same manner as any other part of the personal estate. (b)

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

9. Whenever any person shall die intestate within this state, and leave no relations justly entitled to the administration of his or her personal estate, or, if so entitled, shall not claim the same within fifty days after the death of such person, so dying intestate, it shall be lawful for the ordinary, or surrogate, to grant letters of administration on such decedent's estate to any fit person or persons applying therefor, taking his, her or their bond for the faithful execution of the trust reposed in him, her or them; and such administrator or administrators shall, at the expiration of one year after the death of such intestate, put the surplus of said estate, after payment of debts and necessary expenses, out at interest, and pay the interest thereof annually to the overseers of the poor of the township in which such intestate shall so die, to and for the use of the poor of the said township; and shall, whenever applied to for that purpose, pay the principal of such personal estate, if thereto required, within seven years next after the decease of such intestate, to his or her legal representative or representatives applying for the same, by assigning to him, her or them the bond or other security therefor, or by otherwise satisfying them for the same; and if no person or persons legally entitled to the personal estate of such intestate shall, within the said seven years next after his or her decease, make application to such administrator or administrators for the said principal, he, she or they so entitled shall, forever thereafter, be debarred from all right, title or claim to such decedent's personal estate; and the said administrator or administrators shall, immediately after the expiration of the said seven years, pay the whole of the said principal, with the interest that may then be due thereon, to the overseers of the poor of the township in which such intestate died, to and for the use of the said township; *provided always*, that the right of foreigners, by treaty or otherwise, shall not be affected by anything in this section contained.

In case intestate shall leave no relations, or administration not claimed within fifty days.

R. S. 345.

Surplus to be put at interest payable to overseer of poor.

If not applied for within seven years, principal to be paid to overseer of poor.

10. Where any lands, tenements or hereditaments have been or shall be given or devised by any last will, executed in due form of law, to the executors therein named, or any of them, to be sold, or have been or shall be thereby ordered to be sold by the executors therein named, or any of them, and one or more of said executors shall die or have died in the lifetime of the testator, or if living at the death of the testator, shall refuse or neglect to prove the said last will of the testator, or shall die, or if, having proved said last will and taken upon himself, herself or themselves the execution thereof, shall have died or shall die, then, and in either case, the said trusts in said will shall vest in the other executor or executors in said will named, who shall prove or shall have proved said will, and in the survivor or survivors of them, unless it shall be otherwise expressed in said will; and it shall be lawful for such acting or surviving

Power to sell to survive in case of executors.

R. S. 350, § 19.

(a) For authority of an administrator *pendente lite*, see *Cole v. Wooden*, 3 *Harr.* 15. *Bloomfield v. Ash*, 1 *South.* *314. Of an administrator *de bonis non*, *Carrick v. Carrick*, 8 *C. E. Gr.* 364; *supra* § 2, (b); and *Brownlee v. Lockwood*, 5 *C. E. Gr.* 239.

(b) A debt due by the executor to the testator is so far assets, as to come within the jurisdiction of the orphans' court, and the appointment of the debtor as executor, is not an extinguishment of the debt, as against creditors or legatees, *Wood v. Tallman*, *Coxe* 153. So, where a note given

to the testator by one who was subsequently appointed a co-executor, was inventoried by both executors, and charged to themselves in their joint account, they are both liable for its amount, *Wilson v. Fisher*, 1 *Hal. Ch.* 493. Where a trust fund established by a testator consists of a debt due him from his executor, which the executor has never paid into the estate, although he has paid the interest thereon, he is not entitled to commissions, *McKnight v. Walsh*, 8 *C. E. Gr.* 137.

executor or executors to sell and convey the said lands, tenements and hereditaments of the testator, in the same manner, to all intents and purposes, as if all had been living and joined in such sale.(a)

And so of administrators with will annexed. *Ib.* § 20.

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

Will directing sale without naming executors, sale to be made by administrator. *Ib.* § 21.

12. Whenever any will hath heretofore been duly made and executed, or shall hereafter be duly made and executed, authorizing or directing any lands, tenements, hereditaments or real estate, mentioned therein, to be sold, and no executor or executors hath or have been or shall be named in said will, and letters of administration with the will annexed have been or shall be granted thereon, any deed or conveyance heretofore made and delivered, or which may hereafter be made and delivered, by such administrator or administrators with the will annexed, or the survivors or survivor of them, for said lands, tenements, hereditaments or real estate, pursuant to any power or direction in the said will, shall be as good, valid and effectual as if the same were made and delivered by any executor or executors who might have been, or might be named in said will.

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

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

Approved March 12, 1851.

P. L. 1851, p. 201.

Property which may be claimed by widow.

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

(a) *Covilles v. Little*, 2 Gr. 373. *Coykendall v. Rutherford*, 1 Gr. Ch. 360. See *Den. Cain v. McCann*, Pen. *438. *Chambers v. Tulane*, 1 Stock. 146.

(b) Not at common law, *Den. McDonald v. King*, Coxe 432. Where lands were devised to be sold by executors if the devisees could not agree upon a division, the fact that some of the devisees were then infants and consequently legally

unable to agree to a division, authorizes the sale by an administrator *cum testamento annexo*, *Howell v. Sebring*, 1 *McCart*, 81.

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