

tives of the deceased defendant, or others who may have become interested by the death of such decedent, party or parties to such suit, and cause the said suit to stand revived within such time as the court shall limit and appoint for that purpose, then and in every such case, the said suit shall be considered as at an end, and shall not be revived in the manner provided for by this act.(a)

Bills of revivor. 9. That nothing in this act contained shall prevent the reviving of any such suit in the court of chancery, as before mentioned, by bill of revivor, when the plaintiff or his representative or representatives, or others who may become interested by the death of such plaintiff, may prefer that course of practice, or when the court may deem it expedient to direct that course of practice to be pursued.(b)

Death between verdict and judgment. 10. That in all actions, real, personal, or mixed, the death of either party such judgment be entered within two terms after such verdict.(c)

Days between teste and return. 11. That in all actions of debt, and all other personal actions whatsoever, and in all actions of ejectment for lands and tenements, now depending, or which at any time hereafter shall be depending by original writ, in any court of record, after any issue joined therein, to be tried by a jury, and also after any judgment had or obtained, or to be had or obtained in any such court, in any such action as aforesaid, there shall not need to be fifteen days between the teste day and the day of the return of any writ or writs of venire facias, habeas corpora juratorum, or distringas juratores, or writs of fieri facias, or of capias ad satisfaciendum; and the want of fifteen days between the teste day and day of return of any such writ, shall not be, nor shall be assigned, taken, or adjudged to be any matter or cause of error.

(a) The court ordered judgment to be entered, where the plaintiff died after obtaining a rule to show cause why the verdict should not be set aside, and his executors failed to follow up the rule. *Lloyd v. Johnson*, 2 Har. 349. Where after an injunction had issued defendant died, and complainant had not revived the suit, the proper proceeding is by order that complainant revive within a specified time, or that the injunction be dissolved. *Cummins v. Cummins*, 4 Hal. Ch. 173. See *Hand v. Jacobus*, 4 C. E. Gr. 79.

(b) If a suit becomes abated and nothing but the death of the party is necessary to be established to show the liability of the survivors, a bill of revivor alone is sufficient. *Ross v. Hatfield*, 1 Gr. Ch. 363. Where a complainant filed a bill for the specific performance of an agreement for the conveyance of lands, and died before the decree was signed,

the heirs at law of complainant were held to be the proper persons to revive the suit. *Lanning v. Cole*, 2 Hal. Ch. 102. A bill of revivor will lie where the sole design of reviving the suit is that an appeal may be taken from the decree, if the parties have the right of appeal. *Peer v. Cookerow*, 2 Beas. 136. Wherever there has been a devise of the real estate in litigation, and the design is to revive the suit, either in favor of or against the devisee, the heir and devisee must both be made parties. *Peer v. Cookerow*, 1 McC. 361. *McCurdy v. Agnew*, 4 Hal. Ch. 728.

(c) Where an action was brought by the husband of a woman married previous to March 25th, 1852, and the husband died after verdict and before judgment, the suit would not abate, but might be continued and judgment entered by the administrator. *Teneick ads. Flagg*, 5 Dutch. 26.

Account.

1. Executors may have writ of.
2. Executors or guardians liable to.
3. Joint tenants and tenants in common.
4. Proceedings in actions of. Sheriff liable for escape.
5. Powers of auditors.
6. Proceedings in case defendant do not plead or demur.

Rev. 156.

An act concerning the action of account.

R. S. 46.

Passed December 1, 1794.

Executors may have a writ of account.

1. That from henceforth, executors shall have a writ of account, and the same action and process in the same writ, as the testator might have had, if he had lived.

Account may be brought against the executors of guardians.

2. That actions of account shall and may be brought and maintained against the executors or administrators of every guardian, bailiff and receiver.

One joint tenant or tenant in common may bring action of account against the other.

3. That actions of account shall and may be brought and maintained by one joint tenant or tenant in common, his or her executors or administrators, against the other, as bailiff, for receiving more than comes to his or her just share or proportion, and against the executor or administrator of such joint tenant or tenant in common.(a)

(a) Where one tenant in common actually receives the rents, issues and profits, he may be compelled to account. *Izard v. Bodine*, 3 Stock. 403. *Davidson v. Thompson*, 1 C. E.

Gr. 83. *Barrell v. Barrell*, 10 C. E. Gr. 173. Account lies where a partner is excluded from the business of the firm by the illegal act of his co-partner. *Hartman v. Woehr*, 3

4. That where any person is or shall be bound or liable to account as guardian, bailiff, receiver, or otherwise, to another, and will not give account willingly, and the party, to whom such account ought to be made, shall sue out a writ of account, if the person, against whom such writ is issued, being summoned, do not appear at the return of the writ, or if it be returned, that the defendant hath nothing, then the defendant shall be attached, by his or her body, to come and make his or her account; and when such accountant shall appear in court, and submit or be adjudged to account, auditors shall be assigned by the court to take his or her account, and if such accountant shall be found in arrears, and cannot pay the arrears and the costs of suit forthwith, then a fieri facias de bonis et terris, or a capias ad satisfaciendum shall be awarded; and if such accountant shall neglect or refuse to account before the auditors, he or she shall be committed to jail, there to be kept under safe custody until he or she shall satisfy the plaintiff of his or her demand, with costs; and further, if it shall be found that there is a surplusage due on such account, from the plaintiff to the defendant, then the defendant shall have judgment to recover such surplusage, with costs of suit, against the plaintiff, unless where the suit is brought by executors or administrators, in right of their testator or intestate; in which case, the defendant shall not recover costs against them; and the defendant shall or may have such execution for the same as he or she might have had, if he or she had recovered such surplusage by action of debt; and moreover, if any sheriff or jailer shall suffer any such prisoner to go out of prison, without the assent of the plaintiff, he shall be answerable to the plaintiff for the debt, or damages done to him or her by such accountant, according as it may be found by the country, and the party, at whose suit such prisoner was committed, shall have his or her recovery by action of debt, or by bill or plaint, in any court of record.

Proceedings in actions of account.

Sheriff who shall suffer prisoner to escape, to be answerable for the debt, or damages.

5. That the auditors appointed by the court, where any action of account shall be depending, shall be and hereby are empowered to administer an oath, and to examine the parties on oath, touching the matters in question; and for their pains and trouble in auditing and taking such account, shall have such allowance as the court shall adjudge to be reasonable, to be paid by the party in whose favor the balance shall be found, and to be allowed to him or her in the costs to be taxed against the opposite party, where costs are recoverable.^(a)

Auditors may examine witnesses.

Compensation to auditors.

6. That when a defendant in the action of account shall be summoned to appear, the plaintiff may file his declaration as in other actions; and if the defendant do not plead or demur, as in other cases, the plaintiff, without proceeding to attach him, may enter judgment against him that he account, and the court or a judge may thereupon assign auditors to take the account; and no pleas shall in any case be allowed before auditors in the action of account, but they shall proceed as referees are required to do in other cases; and if the defendant does not plead to the action, or shall neglect or refuse to account before the auditors, the plaintiff may prove his account against the defendant before the auditors, who shall investigate and report thereon as if the parties had both appeared before them.

Proceedings if the defendant do not plead or demur, as in other cases.

Act March 17, 1855
P. L. p. 288, 282.

C. E. Gr. 388. *Hargrave v. Conroy*, 4 *C. E. Gr.* 281. *Gordon v. Hammell*, 4 *C. E. Gr.* 216. See *Young v. Brick*, *Pen.* *664. One who is next of kin, or a legatee, or creditor, cannot file a bill against the surviving partner of a testator or intestate for

the sole purpose of compelling him to account and settle with the personal representative of the deceased partners. *Harrison v. Righter*, 3 *Stock* 389.

(a) Proceedings by auditors. *Willson v Willson*, 2 *South.* *791.