

On appeal prisoner may be discharged or re-committed.

54. The supreme court, and the court of errors and appeals in the last resort, shall respectively have the power to make such orders and to direct all such writs out of the supreme court, as may be necessary, for the discharge or recommitment of such prisoner, according to the judgment which shall be severally given by said courts; and generally to carry such judgment into effect.

Act not to apply to habeas corpus ad testificandum. To be liberally construed.

55. The provisions of this act shall not apply to the writ of *habeas corpus* when used to bring a prisoner before a court as a witness.

56. This act shall be liberally construed so as to secure, as far as possible, the liberty of the citizen.

IX. Fees.

Fees of officers for services.

57. The following fees shall be allowed for services performed under this act:

To sheriff or other officer for making return, two dollars;

Mileage for himself and prisoner going and returning, at the rate of four cents a mile for each;

Court of justice granting writ, two dollars;

Taking recognizance, one dollar;

To justice taking examination of witnesses on return of writ, three dollars per diem;

If same taken before a commissioner, the same fees as in like cases.

[If writ shall be granted by court or justice on their own motion, no fees shall be allowed].

Heirs and Devisees.

1. Creditors may maintain actions against heirs and devisees.
2. Heir liable for lands descended.
3. Pleadings, judgment, execution.

4. Devisees liable in like manner.
5. Proceedings in case of non-residence of heir and devisee.
6. Judgment against non-residents.

Rev. 291.

An act for the relief of creditors against heirs and devisees.

R. S. 83.

Passed March 7, 1797.

Creditors may maintain action on special and simple contracts against heirs and devisees.

1. That all and every creditor or creditors, whether by simple contract or specialty, and whether the heirs are mentioned therein or not, shall and may, by virtue of this act, have and maintain his, her and their action and actions, against the heir and heirs at law of any debtor who hath already died, or shall hereafter die intestate, seized of any messuages, lands, tenements or hereditaments, and against the heir and heirs at law, and devisee and devisees of such debtor, in case such debtor made any last will and testament; and such heir and heirs, devisee and devisees shall be liable and chargeable for a false plea by him, her or them pleaded in the same manner as any heir should have been for any false plea, by him pleaded, in any action of debt upon specialty, or for not confessing the lands or tenements to him descended; and, moreover, all such creditors shall be preferred as in actions against executors and administrators.^(a)

If the heir alien land descended to him before action brought, he shall be liable to the value of the land.

2. That in all cases, where any heir or heirs at law is, are, or shall be liable to pay the debt of his, her or their ancestor, in regard of any lands, tenements or hereditaments, descending to him, her or them, and shall sell, alien, or make over the same, before any action brought, or process sued out against him, her or them, such heir and heirs at law shall be answerable for such debt, to the value of the said lands, tenements or hereditaments, so by him, her or them sold, aliened or made over; in which cases, all creditors shall be preferred, as in actions against executors and administrators; and further, such execution shall be taken out upon any judgment so obtained, against such heir or heirs, to the value of the said lands, tenements

(a) An action of *covenant* will lie against heirs and devisees for the breach of a covenant against encumbrances contained in a conveyance of the ancestor, *New Jersey Ins.*

Co. v. Meeker, 8 Vt. 282. See 4 *Grif. Reg.* 1286-9. The heirs of a deceased heir having lands by descent, should be joined, *St. Mary's Church v. Wallace*, 5 Hal. 311.

or hereditaments, as if the same were his, her, or their own proper debt; but the lands, tenements and hereditaments, which were *bona fide* aliened before the action brought, shall not be liable to such execution.(a)

3. *Provided*, where any action shall be brought against any heir or heirs, such heir or heirs may plead *riens per descent* at the time of the original writ brought, or the bill filed against him, her or them; and the plaintiff in such action may reply, that such heir or heirs had lands, tenements or hereditaments from his, her or their ancestor before the original writ brought, or bill filed; and if, on issue joined thereupon, it be found for the plaintiff, the jury shall inquire of the value of the lands, tenements or hereditaments so descended, upon which judgment shall be given, and execution awarded as aforesaid; but if judgment be given against such heir or heirs, by confession of the action, without confessing the assets descended, or upon demurrer, or *nihil dicit*, it shall be for the debt and damages, without any writ to inquire of the lands, tenements and hereditaments so descended.

Pleadings, judgment, execution.

4. *Provided also*, all and every devisee and devisees, made liable by this act, shall be liable and chargeable in the same manner as the heir and heirs at law by force of this act notwithstanding the lands, tenements and hereditaments to him, her or them devised shall be aliened before the action brought, and shall be liable to the like judgments and executions as the heir and heirs at law.

Devisees made liable in the same manner.

Supplement.

Approved March 3, 1853.

P. L. 1853, p. 243.

5. SEC. 1. That when the heirs or devisees of land situated within this state, or any of them, against whom a summons shall issue in any suit against such heirs or devisees as such as shall reside out of this state, or cannot be found within the same in order to be served with such writ, the sheriff of the county in which the said land or any part thereof may lie, shall so return, and upon an affidavit being made to the satisfaction of the court out of which said summons issued, or of any judge thereof in vacation, showing the residence as nearly as may be of such absent defendant or defendants, a rule of the court shall be made, signed by said judge, if done in vacation, and filed, that the said absent defendant or defendants do appear to the said writ on or before a certain day to be prescribed by said court or judge, not less than two months from the time of making said rule, a copy of which rule shall be served on the absent defendant or defendants within thirty days from the time of making the same, or published for four weeks successively, once at least in each week, the first publication to be made within twenty days from the time of making such rule, in some newspaper published in the county where the said land or any part thereof lies, or if there be no such newspaper, then in any newspaper of this state, circulating in the said county, and also, if the court or judge shall so order, in such other newspaper of the United States, as the said court or judge shall direct.(b)

Proceedings in case of non-residence of heirs and devisees.

6. SEC. 2. That if the absent defendant or defendants do not appear within the time limited by the rule aforesaid, upon due proof of the service or publication thereof judgment by default shall be rendered against him, her or them, provided a declaration shall have been duly filed, which said judgment may be entered in vacation, and if the absent defendant or defendants do appear and enter an appearance in person, or by attorney, in the clerk's book, he, she, or they shall, the plaintiff having filed a declaration, plead thereto within thirty days from the expiration of the time limited by the said rule, or within such further time as the court or any judge thereof may think proper to grant, by a rule if done in vacation, signed by said judge and filed, and on failure thereof judgment by default shall be rendered, which said judgment may be entered in term or in vacation.

Judgment against non-residents.

(a) The heir or devisee is still liable, although a *bona fide* purchaser from him will hold the land discharged, *Skillman v. Van Pelt*, Sax. 511. A mortgage by the heir is not such alienation, *Den v. Jaques*, 5 Hal. 259, reversed May

Term 1831, Hal. Dig. 684, §11. See post ORPHANS' COURT, § 70. (b) If any defendant has been summoned the declaration should be against all and filed within thirty days, *Stillwell v. Thomlinson*, 7 Vr. 359.