

Power to create capital stock.
Ib. § 12.

members thereof, by their articles of association, to create a capital stock of not more than thirty thousand dollars, divided into shares of not more than fifty dollars each, and to provide that such shares shall be personal estate, and assignable and transferable in such manner, and according to such rules as the said association shall adopt; and that the owner or holder of each share shall be a member of such association, and entitled at all meetings thereof to give one vote, either in person or by proxy, for every such share by him or her owned or held; and that no person other than the owners or holders of such shares shall be admitted as members of such association, or entitled to vote at the meetings thereof; *provided*, that if the legislature shall at any time hereafter alter or repeal this section, any association which shall have been incorporated, or shall have acted under and by virtue of the same, shall be subject to and bound by such alteration or repeal.

Consent to be attested.

P. L. 1859, p. 255.

13. The signature of each member of the association to such agreement shall be attested by at least one subscribing witness, and it shall be the duty of the trustees of the association to have the same recorded in the clerk's office of the county in which such association shall be formed; *provided*, that it shall be first duly acknowledged before some officer authorized by law to take the acknowledgments and proofs of deeds by the several members so consenting, or proved by the subscribing witness or witnesses thereto.

Methodist or other educational institutions authorized.

P. L. 1850, p. 158.

Amended.

14. The members of the New Jersey annual conference of the Methodist Episcopal church or of any religious denomination, church or sect in this state, are hereby authorized and empowered, when in conference, assembly, convention, synod or other legislative meeting, according to the rules of such denomination, church or sect assembled, to found any institution or institutions in this state whose object shall be the promotion of learning, and for that purpose, when assembled as aforesaid, they are hereby further authorized and empowered from time to time to elect, from their own body or otherwise (with power at any time to fill vacancies), any number of persons, not exceeding eighteen nor less than nine, as trustees of such institution or institutions, who shall be divided into three classes, of which the first shall remain in office one year, the second two years, and the third three years, so that one class may be elected every year; which said trustees and their successors are hereby constituted a body politic and corporate, in fact, name and law, to all intents and purposes forever, by whatever name the trustees elected as aforesaid shall take and assume in the manner specified in the second section of this act, and by that name they shall have perpetual succession.

Duty of trustees, etc.

Ib. § 2.

15. It shall be the duty of the aforesaid trustees and their successors to lay before such conference, synod, or other legislative assembly aforesaid, respectively, who shall have founded such institutions, at each and every annual meeting thereof, the state of the institutions so founded, the situation of the funds, and the accounts and transactions of the preceding year, previous to the election of trustees.

Conferences, etc. subject to this act.

Ib. § 3.

16. Such conferences, conventions, synods and other legislative assemblies aforesaid, and the said trustees and their successors, shall be subject to the provisions of the act, so far as the same may be applicable and not inconsistent herewith.

Legacies.

1. Action to recover may be in supreme or circuit courts; abatement of; time allowed in which to pay.
2. Infant may sue by guardian or next friend.
3. Proceedings on plea of want of assets.
4. Costs, how awarded.
5. Demand to be made and refunding bond tendered or filed.
6. Abatement to be only of proportional part.
7. Creditors not to be prejudiced.
8. Security required from legatee for life or limited period.
9. Proceedings to set apart lands for the payment of contingent legacies.

An act concerning legacies.

Revision—Approved March 27, 1874.

R. S. 359.

P. L. 1849, p. 154.
" 1872, p. 48.

1. That any person to whom any legacy or bequest of any money or personal goods or chattels has been or may be made by any last will duly executed and proved, may maintain an action of debt, action on the case or detinue against the executor or administrator *cum testamento annexo*, in the supreme court or any of the circuit courts of this state, (a) for the recovery of such legacy after it becomes due; and if it shall appear in such action that such legacy is due, and that there are sufficient assets in the hands of such executor or administrator to satisfy the debts of the testator, and the legacy or legacies bequeathed, the plaintiff shall be entitled to recover his legacy with costs of suits; but in case there shall be assets to discharge all the debts of the testator, with an overplus not amounting to a sum sufficient to discharge all the legacies that may be given, then an abatement shall be made in proportion to the legacies so given; *provided*, that if no time is fixed in the will for the payment of such legacy, the said executor or administrator shall have one year after probate to pay and satisfy the legacies given therein.
2. Any legatee, being an infant, under the age of twenty-one years, may maintain an action, by his guardian or next friend, to recover any legacy bequeathed to him.
3. In any action upon a plea of want of assets to pay the debts of the testator and all the legacies, the court shall appoint auditors to examine the account of the executor and administrator *cum testamento annexo*, who, after full hearing upon notice to the parties to such suit or their attorneys, shall report how the accounts of such executor or administrator do stand, and how much assets will remain after payment of debts, and what part of the remainder is the proportion that ought to go towards paying of the plaintiff's legacy; which report the said court is empowered, upon exception of either party and hearing of the parties, to correct or amend in any errors or mistakes that may appear in the account so reported or in the conclusion of the auditors therefrom; and judgment shall be entered in such suit accordingly, and the execution issued thereon shall issue only for the proportion of the legacy which is so as aforesaid ascertained to be payable to the plaintiff; but such judgment shall remain a security for the payment of the residue of such legacy and costs out of assets which may thereafter come to the hands of such executor or administrator. (b)
4. The court in which such action is brought, upon consideration of the report of the auditors, shall, according to justice and equity, either award no cost or costs out of the testator's estate; or if the defendant has delayed the payment of such legacy or a proportional part thereof without sufficient excuse, the court may award costs to be paid by such defendant out of his own estate.
5. *Provided always*, that no suit shall be maintained for the recovery of any legacy or bequest until after a reasonable demand made of the executor or administrator *cum testamento annexo*, who ought to pay the same, and a tender of a bond to such executor or administrator signed and executed by the legatee, or by the guardian, if such legatee be an infant under the age of twenty-one years, in double the amount or value of such legacy or bequest with condition, that if any part or the whole of such legacy or bequest shall at any time thereafter appear to be wanting to discharge any debt or debts, legacy or legacies, which the said executor or administrator may not have other assets to pay, that then and in such case, he, the said legatee, will return his said legacy, or such part thereof as may be necessary for the payment of the said debts, or for the payment of a proportional part of the said legacies; and if the said executor or administrator shall not accept such bond, the plaintiff shall file the same in the

Action to recover
may be in su-
preme or circuit
courts.R. S. 359, §§ 1 & 7.
Amended.

Abatement of.

Time allowed in
which to pay.Infant may sue
by guardian or
next friend.
Ib. § 1.Proceedings on
plea of want of
assets.
Ib. § 2.

Amended.

Auditors ap-
pointed.

Report of.

May be excepted
to.Judgment and
execution
thereon.Costs, how
awarded.
Ib. § 4.Demand to be
made and re-
funding bond
tendered.
Ib. § 3.By whom bond
executed.P. L. 1849, p. 154,
§ 1.

Condition of.

(a) The claim to a legacy being an equitable one is not altered by making it recoverable in the common law courts, *King v. Berry*, 2 Gr. Ch. 44. *Frey v. Demarest*, 1 C. E. Gr. 236. See *Smith v. Moore*, 3 Gr. Ch. 485; 1 Hal. Ch. 649.

(b) Where a plea of not sufficient assets is set up, the plaintiff ought not to reply, but apply to the court to appoint auditors, *Bellerjeau v. Kolls*, 1 South. *359. After a

reference, the executors cannot set up in bar a settlement in the orphans' court, *Brown v. Martin*, *Coe* 207. Nor can the auditors review or alter such account; but they may allow the executors for disbursements made after such settlement, *Meeker v. Vanderveer*, 3 Gr. 392. On exceptions to their report, if sustained, it may be set aside, *Gill v. Drummond*, 1 South. *295.

said court before suing out process in such action, and for want thereof the action shall abate.^(a)

Abatement to be only of proportional part.

R. S. 359, § 6.

Creditors not to be prejudiced. Ib. § 8.

Security required from legatee for life or limited period.

P. L. 1872, p. 48.

Amount of such security.

6. *Provided, also*, that where there are several legatees, and a return of part of the said legacy shall afterwards appear necessary, in such case each legatee shall only be compelled to return a proportional part of his legacy, so as to make up the whole sum wanting.

7. *Provided, also*, that nothing in this act contained shall be construed to enforce the payment of any legacy to the prejudice of creditors or to give effect to any last will not warranted by the laws of this state.

8. Whenever personal property is bequeathed to any person for life, or for a term of years, or for any other limited period, or upon a condition, or any contingency, the executor or administrator *cum testamento annexo* shall not be compelled to pay or deliver the property so bequeathed to the person having any such life interest, or other interest as aforesaid, until security shall be given in the orphans' court, having jurisdiction of such executor's or administrator's accounts in such sum and form as in the judgment of the said court shall sufficiently secure the interest of the person or persons entitled in remainder, whenever the same shall accrue or vest in possession; but in no case or event, where the person or persons next immediately in remainder shall be the lineal descendant of any such life tenant, or person having any limited estate as aforesaid, and such executor and administrator shall not have filed any security, shall such life tenant or other person having such limited interest or estate as aforesaid, be required to give security, as herein provided, in a greater sum than fifty thousand dollars.

[For proceedings to recover legacies in orphans' court, see ORPHANS' COURT].

An act to provide for the payment of contingent legacies, and to set apart sufficient lands, charged or to become chargeable therewith, and to discharge the residue.

P. L. 1860, p. 430.

Approved March 20, 1860.

Proceedings to set apart lands for the payment of contingent legacies.

9. SEC. 1. Wherever a legacy or legacies, payable on a contingency which shall not have happened, shall be, or may become chargeable in law or equity, upon lands heretofore or hereafter to be devised, it shall be lawful for any person in possession of any part of said lands, to apply to any justice of the supreme court to have a sufficient portion or portions of said lands set apart for the payment of such contingent legacy or legacies; and the said justice shall be and he is hereby empowered, upon such notice to the parties in interest as is now required to be given in case of application for partition of real estate, to appoint three disinterested commissioners to set apart such sufficient portion of said lands; and said commissioners having taken an oath or affirmation to perform their duties faithfully and impartially, shall, upon such notice to the parties in interest, as said justice shall direct, set apart by metes and bounds so much of the lands devised so charged, or which may become so chargeable, as will be sufficient for the payment of such legacy or legacies, when the same shall be payable, and make report of their action to said or any other justice of the supreme court; and if the said justice to whom such report shall be made, shall approve of the said report, the lands so set apart by said commissioner shall become charged or chargeable with such contingent legacy or legacies, and the residue of said lands shall thereupon be entirely discharged from all lien, charge or liability to be charged, claim or demand, or liability existing or thereafter to arise for or on account of said contingent legacy or legacies; and said application, appointment, notices, report, and order approving the same shall be filed and recorded in the clerk's office of the county where the lands lie, and shall be plenary evidence of the lien of said lands so set apart, and of the discharge of said residue of said lands.⁽¹⁾

^(a) Where there are two executors a tender to one is sufficient, *Wier v. Lum*, 2 South. *823. Query. Whether the objection that a refunding bond has not been filed, must be pleaded in abatement, or is cured by pleading over, *Woodruff v. Woodruff*, 1 South. *375. *379. See *Cowell v. Oxford*, 1 Hal. 482. It must be filed before suit brought, even where the accounts have been settled and a sufficiency of

assets appears, *Ibid.* *Woodward v. Woodward*, 4 Hal. 118. *Henry ads. Dilley*, 1 Dutch. 302. But not before filing a bill in chancery, *Vandyne v. Vanness*, 1 Hal. Ch. 493. See *Matter of Green*, 4 Hal. Ch. 550. The debts for which the legatee is bound are debts of the decedent only, and not claims by the executors for commissions or expenses, *Lloyd v. Rowe*, Spen. 680.

⁽¹⁾ See Supplement to "An act concerning wills," (P. L. 1875, p. 95), *post*.