

Lunatics.

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An act concerning idiots and lunatics.

R. S. 552.

I. Inquest of idiocy and lunacy, and appointment of guardian and his duties.

P. L. 1852, p. 91.
 " 1854, p. 517.
 " 1870, p. 14.

Revision—Approved March 27, 1874.

1. That all cases of idiocy and lunacy shall be determined by an inquest, on a commission of idiocy or lunacy, issued out of the court of chancery and returnable thereto, and the proceedings thereon shall be as heretofore practiced, and in cases of idiocy or lunacy found, the chancellor shall cause to be transmitted to the orphans' court of the county where such idiot or lunatic may reside, a certified copy of all proceedings which may be had thereon, which shall be recorded and filed in the surrogate's office of said county; and the said orphans' court is hereby directed and required, on further application for that purpose, to appoint some fit and discreet person or persons, guardian or guardians of such idiot or lunatic; and if it shall so happen that the orphans' court of said county shall not be then sitting, it shall and may be lawful for any one of the judges of the said orphans' court, forthwith to call an orphans' court, to be holden at the usual place of holding said court, and the said orphans' court so convened, shall and may proceed to appoint such person or persons as guardian or guardians of the said idiot or lunatic, who shall have the care and safe keeping of said idiot or lunatic, his or her lands, tenements, goods and chattels, that the said idiot or lunatic may live and be competently supported and maintained by and out of his or her goods, chattels and the profits of his or her lands and tenements, and that no waste or destruction of his or her lands or tenements be done or permitted, and such lands shall in no wise be aliened, saving that the same be done by authority of this or some other statute of this state, but shall, upon the death of any such idiot, descend and go to his or her heirs, and the residue of the goods, chattels and profits of said idiot, after payment of his or her just debts, shall go to and be distributed according to law among his or her next of kin; and in case any such lunatic shall come to his or her right mind, that the lands and tenements, with the residue of the goods, chattels and profits of such lunatic, be restored to him or her, and in case he or she shall die in his or her lunacy, such lands and tenements shall descend and go to his or her heirs, and the residue of the goods, chattels and profits, after payment of his or her just debts, shall go to and be distributed according to law among such lunatic's next of kin. (a)

Proceedings in
 idiocy and
 lunacy.

R. S. 552, § 1.

Orphans' court to
 appoint guar-
 dian.

His duty.

Lands to descend
 at death, or
 restored, if he
 recover.

(a) What the affidavits and petition should contain, *Dey's Case*, 1 *Stock*. 181. *Covenhoven's Case*, *Sax.* 19. The issuing of a commission is discretionary, *Chattin's Case*, 1 *C. E. Gr.* 496. It may issue in the case of an infant, *Ibid.* What constitutes such imbecility as will justify a commission, *Colins' Case*, 3 *C. E. Gr.* 253. *Vanauken's Case*, 2 *Stock*. 186. *Den v. Vanclieve*, 2 *South*. *660, (a). Reasonable notice of the time and place should be given to the lunatic, *Whitenack's Case*, 2 *Gr. Ch.* 252. A notice given on Saturday of an inquisition on the following Tuesday, is insufficient, *Vanauken's Case*, 2 *Stock*. 186. An appearance by counsel is a waiver,

Ibid. If the lunatic be in an asylum the commission should issue in the county where his residence or estate is, *Childs' Case*, 1 *C. E. Gr.* 498. It may issue where he is non-resident, or temporarily absent, *Ibid.* It is not necessary that he appear before the jury, *Ibid.* It need not be held at his dwelling house, *Covenhoven's Case*, *Sax.* 19. The admission of hearsay evidence will not vitiate the proceedings where the examination was full as to the lunatic's state, *Dey's Case*, 1 *Stock*. 181. The evidence need not be written out and returned, *Covenhoven's Case*, *Sax.* 19. A refusal of a reasonable adjournment may be ground for setting aside

Case of non-resident lunatic.
Ib. § 5.

2. Where any person residing out of this state hath been or shall be duly found and proved to be an idiot or lunatic, according to the laws of the state, territory, nation, or kingdom, where such idiot or lunatic shall reside, it shall and may be lawful for the orphans' court of any county in this state, in which any property or estate of such idiot or lunatic may be found or situate, upon application made to them for that purpose, and upon exhibiting to the said court, and filing in the surrogate's office of such county an exemplified copy of the proceedings upon such inquest, or finding of idiocy or lunacy, to make an order, that cause be shown before them, at a certain time and place therein to be expressed, not less than thirty days nor more than six months from the time of making such order, why a guardian should not be appointed for the said idiot or lunatic; which order shall be served or published in such manner as the said orphans' court shall direct.

Guardian of such appointed.
Ib. § 6.

3. The said orphans' court, at the time and place mentioned in the said order, or at such other time and place as they may then appoint, shall hear and examine the allegations and proofs of the party making such application, and of other persons interested, if any shall apply to be heard; and if the court upon examination, shall be of opinion that letters of guardianship for the said idiot or lunatic ought to be issued, then the said court shall appoint such person or persons, as they may approve, guardian or guardians of the said idiot or lunatic.

Court may order lands sold if necessary.
Ib. § 2.

4. That if any such idiot or lunatic is justly indebted to any person or persons, beyond his or her ability to pay the same out of his or her personal estate, or in case the personal estate of such idiot or lunatic together with the profits of his or her lands and tenements, shall be insufficient for his or her support and comfortable maintenance, and that of his or her household, if any he or she shall have, it shall and may be lawful for the orphans' court of the county in which the lands and tenements of any such idiot or lunatic shall be situate, on full investigation of the situation and circumstances of the said idiot's or lunatic's real and personal estate, and of the just debts owing by him or her from time to time, to order the guardian of such idiot or lunatic, to sell so much of the timber growing or being upon the lands of said idiot or lunatic, or such parts of the said idiot or lunatic's lands, tenements, hereditaments and real estate, as the said court shall direct and judge sufficient, to pay his or her just debts, and proper and necessary for his or her support and maintenance, and for the support of his or her household, if any he or she have.

Report to be made.
Ib. § 3.

5. That after the lands, tenements and real estate of such idiot or lunatic so ordered to be sold, shall be sold, the said guardian or guardians shall make report in writing, of all proceedings thereon, to the next orphans' court after such sale.

Deed, what to set forth.
Ib. § 4.

6. That the said guardian or guardians shall make a deed to the purchaser or purchasers, for the lands, tenements, hereditaments and real estate so sold, which deed shall set forth the said order at large, and shall vest in the purchaser or purchasers, as good and perfect an estate in the premises so sold, as the said idiot or lunatic shall be seized of or entitled to at the time of making said order by the court.

Land sold by order of chancellor.
P. L. 1852, p. 91, § 1.

7. That whenever any idiot or lunatic shall be seized of any lands or real estate, and it shall be represented to the chancellor, on behalf of such idiot or lunatic, by his or her guardian or guardians, duly appointed in the manner prescribed in this act, that his or her interest requires that the said lands should be sold or disposed of, the chancellor may proceed in a summary manner, by reference to a master, to inquire into the merits of such application; and whenever and as often as it shall satisfactorily appear to the court that the interest of such idiot or lunatic requires, or will be substantially promoted by a sale of his or her lands or real estate, or of any part or parts thereof, the chancellor may order and direct the guardian or guardians of such idiot or lunatic to sell and dispose of the whole or

the inquisition, *Jewell's Case*, 11 C. E. Gr. 298. A lunatic may traverse by attorney, but an idiot must appear in person, *Covenhoven's Case*, Staz. 19. If the lunatic applies to traverse the inquisition the court may order him brought before it for examination, *Vanauken's Case*, 2 Stock. 186. The substitution of another commissioner without the chancellor's approval, is irregular, *Collins' Case*, 3 C. E. Gr. 273. A second inquisition may be ordered, *Collins' Case*, 3 C. E. Gr. 253.

The inquisition is competent, but not conclusive evidence, *Den v. Clark*, 5 Hal. 217. *Whitnack v. Stryker*, 1 Gr. Ch. 8. *Hunt v. Hunt*, 2 Beas. 161. Proceedings in superseding guardian, *Roger's Case*, 1 Hal. Ch. 46. *Price's Case*, 4 Hal. Ch. 553. *Wells' Case*, 1 C. E. Gr. 318. If he fail to return the lunatic's property an action may be brought, *Shepherd v. Newkirk*, 1 Zab. 302; *Spem*, 343. Costs, *White's Case*, 2 C. E. Gr. 274. *Conover v. Conover*, 3 Gr. 420. *Childs' Case*, 1 C. E. Gr. 498.

any part or parts of such lands or real estate at public auction, to the highest bidder, in such manner and with such restrictions as shall be deemed expedient; *provided, however*, that nothing in this act contained shall authorize the sale of any lands or real estate contrary to the provisions of any last will or testament, or of any conveyance, by which the same were devised or granted to such idiot or lunatic.

8. The guardian or guardians who may be ordered to sell any lands or real estate as aforesaid, shall, after making such sale, report the same in writing, under oath or affirmation, to the chancellor, either in term or vacation; and if the chancellor shall approve such sale, he shall confirm the same as valid and effectual in law, and shall direct the said guardian or guardians to execute good and sufficient conveyance in the law to the purchaser or purchasers for the lands and real estate so sold; which said conveyances, duly executed as aforesaid, shall vest in the purchaser or purchasers as good and perfect an estate in the premises so sold as the said idiot or lunatic shall be seized of or entitled to at the time of making said order by the chancellor.

Report of sale to be made to chancellor, etc.
Ib. § 2.

9. No sale of any real estate, made pursuant to or by virtue of the provisions of this act, shall give to any person any other or greater interest in the proceeds of such sale than he or she had, or would have had, in the lands, provided the same had not been sold; but the said proceeds shall be considered, relative to the statutes of descents and distribution, and for every other purpose, as real estate of the same nature as the property sold.

Effect of sale.
Ib. § 3.

10. Every guardian who may be ordered to sell any lands or real estate as aforesaid, shall, before or at the time of making the report of such sale, enter into bond to the ordinary of this state and his successors, with such security as the chancellor shall deem to be sufficient, and shall so adjudge and approve, in the order confirming said sale, conditioned for the faithful discharge of the trust committed to such guardian, which bond shall be filed in the office of the clerk of chancery; and in case the same shall become forfeited, it shall and may be lawful for the chancellor to order the same to be prosecuted in any court of record, at the request of any person aggrieved by such forfeiture.

Guardian to give bond.
Ib. § 4.

11. The moneys arising from any sale made in pursuance of this act, after payment of the costs and expenses incident thereto, shall be put out at interest on good and sufficient security of unencumbered real estate, or, if the chancellor shall so direct, in public stock of the United States or of this state, and in no other way whatever.

Proceeds to be put at interest.
Ib. § 5.

12. It shall be the duty of every such guardian to render to the orphans' court from whom he received his appointment as guardian, a true account of the administration of the proceeds of the sale of any real estate ordered to be sold as aforesaid, at the times and in the manner such guardians are hereinafter directed to account.

Guardian to account in orphans' court for proceeds.
Ib. § 6.

13. Whenever after a sale so made under the order of the chancellor, and it shall become necessary to apply any of the proceeds of such sale (other than the interest thereof) to the support of such idiot or lunatic, it shall be lawful for the said guardian or guardians, by petition in writing setting forth the facts showing such necessity and verified by the oath of such guardian or guardians, to apply to the orphans' court of the county in which such guardian or guardians reside, which court is hereby authorized and empowered, on due proof being made before them in addition to the oath of such guardian or guardians, to their satisfaction that it is necessary and proper to appropriate a portion of the principal of said proceeds to the support of such idiot or lunatic, to order and direct the said guardian or guardians to appropriate so much thereof as shall be necessary for such support from time to time, and to defray the expenses of said application, specifying in their order the amount per year which said guardian or guardians may appropriate as aforesaid; and also what amount he shall be allowed to appropriate thereof to defray the expenses of said application; and the same fees shall be allowed to said orphans' court on such application as are now allowed by law in similar cases; and such guardian or guardians shall be allowed by said court such reasonable costs and expenses of making such application, as said guardian or guar-

Proceeds to be applied in support of lunatic.

P. L. 1854, p. 517, § 1.

Fees.
Ib. § 2.

dians shall have actually incurred; the items of which shall be stated by said guardian or guardians in writing, and verified by oath, to said court and filed therein.

Order may be made to turn over proceeds of sale or property to non-resident guardian.

P. L. 1870, p. 14.

14. That whenever any such sale shall have been made by order of the chancellor as aforesaid, or whenever any idiot or lunatic shall be entitled to property of any description in this state, and such idiot or lunatic shall be a non-resident, and shall have a guardian in the state or place of his or her residence, and such non-resident guardian shall produce an exemplification from under the seal of the office (if there be a seal) of the court in the state or place of his residence, containing all the entries on record in relation to his appointment and giving bond, and authenticated as required by the act of congress in such cases, the chancellor, or the ordinary or orphans' court of the proper county in this state, may cause suitable orders to be made, authorizing the delivering and passing over the proceeds of any such sale, or any property in this state to which such idiot or lunatic may be entitled, to such non-resident guardian, and discharging any resident guardian, executor, administrator or trustees, and requiring receipts to be passed and recorded if deemed advisable; *provided*, that thirty days' notice shall be given to the resident guardian, executor, administrator or trustee of the intended application for the order of removal, unless it shall appear to the court that such notice has been waived, and the court may reject the application and refuse such order, whenever it is satisfied that it is for the interest of such idiot or lunatic that such removal shall not take place.

Guardian's bond.

R. S. 552, § 7.

15. Every person appointed guardian as aforesaid shall, before he enters upon the duties of his appointment, enter into bond to the ordinary of this state, and his successors in office, with two or more sureties being freeholders, approved of by the orphans' court, in such sum as said court shall order and direct, conditioned that the said guardian shall well and truly take care of the person and estate of said idiot or lunatic, and of all writings and evidences touching his or her lands, and render the same to such person or persons as by law are or may be entitled to receive the same, and render a just and true account of the rents, issues and profits of the real estate of the said idiot or lunatic, and if any part should be ordered to be sold, that he or she will render a just and true account of the money arising on the sale thereof, and in the meantime improve the said lands and tenements to the best advantage, and that he or she commit no waste or destruction thereof or thereon, and also that he or she will render a true account of the expenditures and disbursements of the goods, chattels and personal estate of said idiot or lunatic, that shall come to his or her hands.

New sureties may be required. Ib. § 8.

16. The orphans' court, when they shall know or have cause to suspect that the sureties of a guardian of any idiot or lunatic, or any of them, are or is failing, or in dubious circumstances, may require said guardian to give additional surety or sureties, and if he or she refuse or neglect so to do, may displace him or her and on application appoint another person guardian to said idiot or lunatic.

In case of death new guardian appointed. Ib. § 9.

17. In case of the death of any guardian of any idiot or lunatic, appointed under this act, it shall be lawful for said orphans' court forthwith to appoint another guardian for such idiot or lunatic, if said court be then sitting; and if the said orphans' court be not then sitting, it may be lawful for any one of the judges of said court to call a special orphans' court for that purpose, in the manner directed in the first section of this act.

Representatives of deceased guardian to account. Ib. § 10.

18. Whenever a new guardian is appointed, as aforesaid, upon the death of a former guardian of any idiot or lunatic, the executor or executors, administrator or administrators of every such deceased guardian, shall account to such new guardian for all property of such idiot or lunatic in their possession or under their control; or, if required, shall account for the same before the said orphans' court, upon a citation issued for that purpose, at the instance of such new guardian.

How, when and to whom guardian to account. R. S. 552, § 11.

19. It shall be the duty of every guardian of any idiot or lunatic once in three years, and oftener, in case the orphans' court shall so order and direct, to render to the orphans' court from whom he or she received his

or her appointment as guardian, a true account of his or her administration of the estate of the said idiot or lunatic, and he or she may be cited by the said court to do the same, on the application of any one of the heirs or next of kin to the said idiot or lunatic; and on the death of any such idiot or lunatic, or the coming of sane mind of any lunatic, the guardian of such idiot or lunatic may be compelled to render an account of his or her administration of the estate of such idiot or lunatic to the orphans' court, in the same manner as executors and administrators are compelled by law to render an account of the administration of the estate of testators and intestates; and in case of the death of any idiot or lunatic, when the lands, tenements, hereditaments or real estate, or any part thereof, hath been sold by order of the orphans' court, and at his or her death personal estate shall remain in the hands of the guardian more than sufficient to pay the just debts of such idiot or lunatic, so much thereof as shall be equal in value to the real estate so sold, shall be deemed and taken to be real estate, and go to the heirs of the deceased; the personal estate and the rents, issues, and profits of the real estate being the funds first to be applied to the support and maintenance of the idiot or lunatic.

Residue of estate
how to devolve.

II. Discharge of idiots and lunatics from arrest on civil process; how restrained if dangerous.

20. That no idiot or lunatic during the time of his or her lunacy, shall be or stand committed or detained in prison for want of bail, or his or her body taken in execution in any civil action, or in any action for a penalty; and in case any idiot or lunatic shall be arrested and detained in custody in any civil suit, contrary to the true intent and meaning of this act, he or she shall be discharged, on motion, by the court out of which the process issued, on which he or she is so held in custody, or upon a writ of *habeas corpus* issuing out of the court of chancery or the supreme court, and allowed by the chancellor or one of the justices of the supreme court, returnable forthwith before the chancellor or any one of the justices of the supreme court.

Idiot or lunatic
not to be im-
prisoned.
Ib. § 12.

Habeas corpus
may issue.

21. That it shall and may be lawful for any two justices of the peace of the county in which any lunatic too furiously mad or dangerous to be permitted to go at large shall be found, by warrant under their hands and seals, directed to the overseer or overseers of the poor of the city or township in which such lunatic or mad person may be found, to cause such person to be apprehended and kept safely locked up, and chained, if necessary, in some secure place within such city or township, or within the county within which said city or township shall be situate, as such justices shall by their warrant direct and appoint, in case the last legal settlement shall be in a city or township in the said county; but in case the last legal settlement of such lunatic or mad person, shall not be in any city or township within the county where such person shall be found, then such person shall be sent to the place of his or her last legal settlement, in the manner directed in and by the laws relating to the poor, and shall be locked up and chained, if necessary, in some secure place, by warrant from two justices of the peace of the county, to which such person shall be sent in manner aforesaid; and in case the last legal place of settlement is not known, or cannot at the time be ascertained, it shall and may be lawful for any two justices of the peace in and for said county, by warrant under their hands and seals, directed to some one or more of the constables or overseers of the poor of the city or township within such county, to cause such person to be apprehended and conveyed to any place provided in said county for the reception of maniacs or lunatic persons; and in case no such place be provided in such county, to be conveyed to the jail of said county for safe keeping; and it shall be the duty of the sheriff of such county, and he is hereby required to receive into his custody such lunatic or mad person, and safely to keep him or her until the last legal place of his or her settlement shall be ascertained; and in case no such settlement can be discovered, then until some order on the subject shall be taken by the court of common pleas, whose duty it shall be to decide thereon, and the reasonable charges for apprehending, maintaining, keeping and removing such person, shall be made and levied of the goods

Proceedings
when lunatic
dangerous if at
large.
Ib. § 13.

To be sent to
place of settle-
ment.

and chattels of such person, by warrant of distress, from two justices of the peace of the county where such goods and chattels may be found; but in case sufficient goods and chattels of such lunatic or mad person cannot be found, the charges aforesaid shall be paid and satisfied by the overseers of the poor of the city or township in which such person shall be legally settled, in the manner in and by the poor laws directed for the maintenance and support of the poor; and in case the last legal settlement is not known or cannot at the time be ascertained, the said charges and expenses shall be paid and satisfied by the county wherein such person shall have been apprehended; *provided*, that if the last legal place of settlement of such lunatic or mad person shall be discovered and ascertained, then and in that case, the charges and expenses aforesaid shall be reimbursed to the county where such expenses may have occurred, by the city or township where such settlement may be; *and provided always*, that this section, or anything therein contained, shall not extend to or be construed to restrain or abridge the power or authority of the chancellor, orphans' court or guardian, touching and concerning such lunatic or mad person, nor to prevent any of the friends or relations of such person from taking him or her under their own protection, so long as such friends and relations shall take care of and safe keep him or her.

Overseers of poor to furnish lists of lunatics.
Ib. § 14.

22. It shall be the duty of the overseers of the poor of the several townships in each and every county in this state, to make out and furnish to the board of chosen freeholders of the county in which said townships are situated a list of all the poor lunatics and idiots within the bounds of their townships, stating the age of such lunatics or idiots, when such lunacy commenced, what means (if any) they have for support, with all other facts connected with each case, calculated to give information of their actual state and condition.

When sent to asylum.
Ib. § 15.
Amended.

23. The said board of chosen freeholders shall, at their annual meeting, cause an examination to be made into the condition and circumstances of such idiots and lunatics; and if it shall appear to them that there is reasonable ground to believe that any of such persons can be restored to their right mind, it shall be their duty to cause such persons, under a warrant, signed by the director of the board, to be taken to the state lunatic asylum.

Freeholders may act by committee.
Ib. § 16.

24. It shall and may be lawful for such board of chosen freeholders to appoint a committee of said board to act in the intervals between the fixed and general meetings, if they shall deem it expedient so to do, of such number and with such powers as they shall deem proper.

Lunatic Asylums.

I. TRENTON ASYLUM.

1. Managers. Successors how appointed.
2. Powers and duties of managers.
3. Managers to appoint officers of asylum.
4. To determine salaries of officers.
5. May take and hold land.
6. Managers to make by-laws.
7. Duties and powers of superintendent.
8. Officers exempt from jury and militia duty.
9. Book of minutes to be kept.
10. Visits of managers to asylum.
11. Officers to exhibit books, etc., to managers.
12. Duties of treasurer.
13. Treasurer may compel payment of expenses of lunatic.
14. Moneys due how recovered.
15. Duties of steward.
16. Managers to give notice of completion of asylum.
17. Application for admission of patients.
18. Record of admissions to be kept.
19. Proportion of patients from each county.
20. Proceedings in case of insane paupers.
21. Proceedings in case of indigent insane persons, not paupers.
22. Extension of time of patients in asylum.
23. No patient admitted for less than six months.
24. Admissions in case of vacancies.
25. County officers sending patients to provide clothing.
26. Proceedings in case of persons acquitted of crime on ground of insanity.
27. Proceedings in case of insane persons in confinement.
28. On acquittal for misdemeanor on ground of insanity.
29. Price of keeping indigent patients fixed annually by managers.
30. Who liable for expenses of patients.
31. Expenses, clothing, etc., of patients sent by county, how paid.
32. Expenses of removal from asylum, how paid.
33. Expenses how recovered.
34. Authority of court of chancery.
35. Discharge of patients.
36. Discharge of criminal patients.
37. Clothing, etc., to be furnished on discharge.
38. Managers to receive no compensation for services.
39. Purchases for asylum how made.
40. Certain terms, etc., defined.
41. Treasurer not required to be a resident officer.