

scious product; any person who shall, after such prohibition, and with knowledge thereof, sell, or offer for sale, or use, or offer for use within this state any such prohibited product shall be liable to a penalty of one hundred dollars. Penalty.

240. SEC. 5. That any penalty incurred under any of the provisions of the first, second, third or fourth sections of this act may be recovered in an action upon contract, in any court of record within this state, for the use of the state of New Jersey. Penalty may be recovered by suit.

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.

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

Passed March 7, 1797.

Rev. 291.

R. S. 83.

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)

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 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. (b)

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

(a) An action of covenant will lie against heirs and devisees for the breach of a covenant against incumbrances contained in a conveyance of the ancestor. *New Jersey Ins. Co. v. Meeker*, 8 Vr. 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. An action at law may be brought against heirs and devisees under the statute, although the claim be not presented to the administrator, and there is sufficient personal property to pay the debt. *Stone v. Todd*, 20 Vr. 274. In a declaration under the statute against heirs and devisees it is not necessary to aver that the personal estate of the decedent is insufficient to pay his debts. *Dodson v. Taylor*, 24 Vr. 200. Where the remedy at law against the executors and devisees of a deceased surety on a bond is adequate, equity will, of course, not interfere. *Dixon v. Vandenberg*, 8 *Stew.* 47. The liability of an heir for the engagements of his ancestor is a legal liability, enforceable only by an action at law. *Mutual Life Ins. Co. v. Hopper*, 16 *Stew.* 387.

(b) The heir or devisee is still liable, although a bona fide purchaser from him will hold the land discharged. *Skellman v. Van Felt*, 8 *Stew.* 511. A mortgage by the heir is an alienation within the meaning of the act. *Dun v. Jaques*, 5 Hal. 269; reversed May Term, 1851, *Hal. Dig.* 634, § 11. In a suit on a bond

against the heir-at-law, who has aliened the descended lands before suit brought, the recovery will be only for the value of the lands in the condition in which they were at the time of the descent cast. *Fredericks v. Isenman*, 12 Vr. 212. In such a suit the improvements put on the land by the heir will not enter into the valuation of such land, nor will the heir be called on for the rents and profits, nor, on his side, can he claim for repairs. *Id.* Under this act a creditor of a deceased debtor may recover in an action against his heir or devisee (1) if defendant pleads properly a special judgment requiring the debt to be made only out of lands descended or devised, and which have not been bona fide aliened before the commencement of the action, or (2) if defendant fails to plead, or pleads falsely or improperly, a general judgment, as if for the debt of the defendant, or (3) if it is made to appear in the manner prescribed that such lands have been so aliened before action brought, a like general judgment, but only for the value of the lands. *Muldoon v. Moore*, 26 Vr. 410. A judgment against an heir or devisee for his individual debt, and levy of an execution issued thereon upon lands descended or devised prior to the commencement of an action against the heir or devisee upon a debt of the ancestor or testator, is not an alienation within the meaning of the act. *Id.* See *post*, ORPHANS' COURT, Sec. 70.

Pleadings, judgment, execution.

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.

Devises made liable in the same manner.

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 like judgments and executions as the heir and heirs-at-law. (1)

(1) For sections 5 and 6 under this title as printed in Revision, p. 477, see *post*, title PRACTICE. The act was "An act to regulate the practice of the courts of law" and not a supplement to the heirs and devisees act.

Herring.

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| 1. Of the packing of herring. Casks and brands. | 10. Term of office. |
| 2. What casks lawful. | 11. Casks branded. |
| 3. Examination by inspector. | 12. Not used twice. |
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| 5. Inspector's compensation. | 14. Penalty for offenses. |
| 6. Re-examination of casks. | 15. Reference of disputes. |
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| 8. Inspector, how commissioned. | 17. Foreign herring exempt. |
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Har. 14.

An act to regulate the packing of herring for exportation.

R. S. 1043.

Passed November 27, 1821.

In what condition herring must be packed, and in what casks.

1. That all herring designed for exportation, which shall be packed after the passing of this act, shall be sound and merchantable, well packed and well secured, with a proper quantity of salt and pickle, in tight casks, make of good, sound, well-seasoned white oak timber, hooped with at least fourteen good and substantial hoops, secured at each bilge with three pins, and at each head or chime hoop with at least three nails; and the casks shall be of the following dimensions, viz.: the length of the stave, when in the cask, shall be twenty-seven and a half inches; the head, seventeen and a half inches; the bilge, twenty inches; and to contain twenty-eight gallons, wine measure; and every half barrel containing herring designed for exportation shall be of the gauge of fourteen gallons of the measure aforesaid; and each and every barrel or half barrel of herring designed for exportation shall be branded with the initial letters of the Christian name, and the surname at full length, of the person or persons putting up the same, or of the person selling such herring, under the penalty of fifty cents for each and every barrel or half barrel sold and delivered, not branded as aforesaid; and in case the aforesaid barrels or half barrels of herring, not being branded as aforesaid, and after the fine being paid, the inspector appointed by virtue of this act may brand them with his name, in the manner hereafter described, for which he shall demand and receive from the person selling the same, the sum of six cents for each barrel or half barrel.

Dimensions of the casks.

To be branded.

What casks are legal.

2. That herring designed for exportation may be packed in tight casks made of any kind of timber, if sound and merchantable, well packed and