

lying and being within his county, by entering in fit books provided for that purpose the names of the mortgagor and mortgagee, the date of the mortgage, the mortgage money, and when payable, and the description and boundaries of the lands, tenements and hereditaments mortgaged.

5. That all such mortgages and all covenants and stipulations therein contained shall be assignable at law by writing in the same manner in which mortgages of freehold estates are assignable, and that the several county clerks and registers of deeds shall record such assignments in the same manner as they are now required to record assignments of mortgages of freehold estates, and that the record thereof shall have the same effect as is now given by law to assignments of mortgages of freehold estates.

6. That all acts and parts of acts now in force in relation to the conveyance and mortgaging of freehold estates, and in relation to the recording, registering and assignments thereof, and in relation to the duties of the several county clerks and registers of deeds in reference thereto and their fees therefor shall be applicable to the conveyances, assignments and mortgages of the above-mentioned leasehold estates.

7. That all such instruments in writing creating, assigning and mortgaging the leasehold estates hereinabove mentioned, and all assignments of such mortgages shall be recorded by the said clerks of the court of common pleas and registers of deeds as aforesaid in the books provided for the recording and registry of conveyances and mortgages of freehold estates, and that the assignments of mortgages of such leasehold estates shall be recorded in the books provided for recording assignments of mortgages on freehold estates, and that the same shall be recorded by the said clerks and registers in the order in which the same shall have been received by them, in their respective offices, in the same manner as if they were instruments relating to freehold estates.

8. That in case any instruments in writing, creating, mortgaging, assigning or assigning mortgages of any leasehold estates of the character mentioned in the preceding sections of this act, which shall have been heretofore recorded in the manner provided by this act, all such instruments of writing and the record thereof shall have the same force and effect for all purposes as if the same had been recorded under the provisions of this act and in accordance therewith, and shall be notice of the contents of such instruments to subsequent purchasers, mortgagees and creditors in the same manner and to the same extent as if the same had been recorded under the provisions of this act, and that the records of all such instruments, whether heretofore or hereafter made, and the transcripts of such records, certified to be true transcripts by the said clerks or registers, in whose office the record is kept, shall be received in evidence in any court of this state, and be as good, effectual and available in law as if the original instrument were then and there produced and proved; *provided, however*, that this act or anything contained in or provided for by it, shall not, in any manner, affect the rights of any person, persons or corporation acquired in such leasehold estates prior to the passage thereof.

Mortgages of leasehold estates may be assigned.

Assignments to be recorded.

Acts relating to the conveyance, &c., of freehold estates to be applicable to leasehold estates.

All instruments in writing, mortgaging, creating or assigning leasehold estates to be recorded.

Instruments in writing heretofore recorded to have same force and effect as if recorded under this act.

Copy of records to be evidence in courts.

Proviso.

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. Amended by sections 9 and 12.
9. Amended by section 12.
10. Superseded by section 13.
11. Superseded by section 14.
12. Security required from legatee for life or limited period.
13. Act to apply to cases where will has or shall be proved.
14. Repealer.
15. Proceedings to set apart lands for the payment of contingent legacies.

R. S. 359.

P. L. 1848, p. 154.

" 1872, p. 48.

Action to recover
may be in
supreme 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
appointed.

Report of.
May be excepted
to.

Judgment and
execution
thereon.

Costs, how
awarded.
Ib., § 4.

Demand to be
made and
refunding bond
tendered.
Ib., § 3.

By whom bond
executed.
P. L. 1848, p. 154,
§ 1.

An act concerning legacies.

Revision—Approved March 27, 1874.

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 the 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. (b)

2. That 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. That 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. (c)

4. That 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

(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. A legacy in the hands of an executor, who had no duty to perform in relation to it but to pay it over, and no discretion as to time of payment, may be recovered in an action at law. *Hardenburgh v. Blair*, 3 Stew. 666.

(b) Interest on a legacy given to a widow in lieu of dower is to be computed from one year after the testator's death. Interest on a legacy to a minor child, from the date of testator's death; interest on a legacy to an adult child, from one year after such death. On a legacy to grandchildren, from one year after such death. *Howard v. Francis*, 3 Stew. 444. The general rule, that interest is recoverable on a general legacy from the expiration

of one year from the testator's death, unless some other period is fixed by the will for the payment of the legacy, has not been changed or abrogated by this section, which allows executors one year after probate for the payment of legacies. *Davison v. Rake*, 18 Stew. 767, affirming S. C., 17 Stew. 506. See *Van Blarcom v. Dager*, 4 Stew. 783.

(c) Where a plea of not sufficient assets is set up, the plaintiff ought not to reply, but apply to the court to appoint auditors. *Beiterjeau v. Kotts*, 1 South. *359. After a reference, the executors cannot set up in bar a settlement in the orphans' court. *Brown v. Martin*, Case 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.

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

Condition of.

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.

Abatement to be only of proportional part. R. S. 359, § 6.

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.

Creditors not to be prejudiced. *Ib.*, § 8.

8. [Amended by Secs. 9 and 12, *post.*]

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

Amendatory act.

Approved February 28, 1893.

P. L. 1893, p. 63.

9. SEC. 1. [This section amends Sec. 8, *ante*, which is again amended by Sec. 12, *post.*]

10. SEC. 2. [Superseded by Sec. 13, *post.*]

11. SEC. 3. [Superseded by Sec. 14, *post.*]

Amendatory act.

Approved May 17, 1894.

P. L. 1894, p. 398.

12. SEC. 1. That section eight of the act above mentioned, to which this act is amendatory, be and the same hereby is amended to read as follows:

[That 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 to 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 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 or administrator shall not have filed any security, such life tenant or other person having such limited interest or estate as aforesaid shall not be required to give security in a greater sum than fifty thousand dollars; *provided, however*, in every case where the executor or administrator is the person to whom any such life interest or other interest as aforesaid is bequeathed, then such executor or administrator, before receiving into his possession such personal property, unless by the will it is or may be provided that no security shall be required of such executor, shall file with the surrogate of the county in which the will shall be or has been proved or letters granted, a bond to the ordinary of this state, in double the amount of money or the value of the property to be received, with two sufficient sureties, to be approved by the orphans' court, conditioned for the faithful conservation of said property, and until such a bond shall be filed it shall not be lawful for such executor or administrator to receive such money or personal property, but the orphans'

Security required from legatee for life or limited period. P. L. 1872, p. 48.

Amount of such security.

Proviso.

(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. 432. It must be filed before suit brought, even where the accounts have been settled and a sufficiency of assets appears. *Ib.* *Wood-*

ward v. Woodward, 4 Hal. 118. *Henry* ads. *Dilley*, 1 Dutch. 302. But not before filing a bill in chancery. *Vandyne v. Vanmess*, 1 Hal. Ch. 493. See *Matter of Green*, 4 Hal. Ch. 550. See *Betts v. Van Dyke*, 13 Stew. 149. 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*, *Spencer*, 680.

court may, upon petition presented by any person in interest, and upon ten days' notice in writing to such executor or administrator, appoint some other fit person to receive and administer such property as trustee, upon such security being given for the faithful discharge of his duties as to the said court shall seem proper.] [See Sec. 9, *ante.*]

Act to apply to cases wherein will has or shall be proved.

13. SEC. 2. That the aforesaid provisions of this act shall be held to apply as well to all cases where any will has already been proved as where it shall be proved; *provided, however,* that any such executor has not already received such personal property in his possession. [See Sec. 10, *ante.*]

Repealer.

14. SEC. 3. That all acts and parts of acts, general, special or local, inconsistent with the provisions of this act, be and the same are hereby repealed, and that this act shall take effect immediately. [See Sec. 11, *ante.*]

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.

Approved March 20, 1860.

P. L. 1860, p. 430.
Proceedings to set apart lands for the payment of contingent legacies.

15. SEC. 1. That 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)

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

Legal Holidays.

1. Amended by section 6.
2. Amended by section 7.
3. Amended by section 8.
4. Amended by section 9.
5. Service of legal process on Saturday afternoons authorized.
6. Legal holidays specified. Provisions concerning commercial paper.
7. When any of said days specified fall on Sunday, next Monday to be holiday.
8. Act not to affect business of any person or corporation.
9. Repealer.
10. Cities may appropriate money for celebration of certain holidays.
11. Appropriation for Decoration day in townships, towns and boroughs.
12. Appropriation to be paid to grand army post.
13. Commercial paper falling due on Saturday to be payable on next business day.
14. Repealer.
15. Sales of land and personal property on Saturday authorized.
16. Repealer.