of Almighty **GOD**, **CHRIST JESUS**, the **HOLY SPIRIT**, or the **SCRIPTURES** of **TRUTH**, and is legally convicted thereof, shall forfeit and pay the sum of ten pounds, for the use of the poor of the county, where such offence shall be committed, or suffer three months imprisonment at hard labour as aforesaid, for the use of the said poor.

1700. speaking, how to be punished.

Passed in 1700.—Recorded A. vol. I. page 34. (e)

(e) So much of this act as related to profane cursing and swearing, is repealed: and supplied by the second section of the act entitled "An act for the prevention of vice and immorality, and of unlawful gaming, and to restrain disorderly sports and dissipation," passed April 22d, 1794 (chap. 1746) which enacts, that if any person of the age of sixteen years, or upwards, shall profanely curse or swear, by the name of GOD, CHRIST JESUS, or the HOLYGHOST, every person so offending, being thereof, convicted, shall forfeit and pay the sum of 67 cents for every such profane curse or oath; and in case he or she shall refuse or neglect to pay the said forfeiture, or goods and chattels cannot be found whereof to levy the same by distress, he or she shall be committed to the house of correction of the proper county, not exceeding 24 hours for every such offence, of which such person shall be convicted: and whosoever of the age of sixteen years or upwards, shall curse or swear by any other name or thing than as aforesaid, and shall be convicted thereof, shall forfeit and pay the sum of 40 cents for every such curse or oath; and in case such offender shall neglect or refuse to satisfy such forfeiture, or no goods or chattels can be found whereof to levy the same by distress, he or she shall be committed to the house of correction of the proper county, not exceeding 12 hours, for every such offence.

CHAPTER XLVIII.

An **ACT** *for taking lands in execution for the payment of debts, where the Sheriff cannot come at other effects to satisfy the same.*

TO the end that no creditors may be defrauded of the just debts due to them by persons of this province or territories, who have sufficient real estates, if not personal, to satisfy the same, *Be it enacted*, That all lands and houses whatsoever, within this government, shall be liable to sale, upon judgment and execution obtained against the defendant, the owner, his heirs, executors or administrators, where no sufficient personal estate is to be found; with this due proviso, that the messuage and plantation, with its appurtenances, upon which the defendant is chiefly seated, shall not be exposed to sale before the expiration of one whole year after judgment is obtained; to the intent that the defendant, or any other on his behalf, may endeavour the redemption of the same: And before any such lands, messuages, or houses, or any other lands or houses whatsoever, taken in execution, shall be sold, they shall be duly appraised by twelve honest and discreet men of the neighbourhood; and that then it shall and may be lawful for the Sheriff to make sale of, and convey the same under his hand and seal, after which sale and appraisement made as aforesaid, such land and houses shall be and remain a free and clear estate to the purchaser or creditor, to whom they are so made over or sold, his heirs and assigns for ever, as fully and amply as ever they were to the debtor.

Real estates liable to be sold for payment of debts.

But to be first appraised.

II. *Provided always, and be it further enacted*, That lawful interest shall be allowed to the creditor for the sum or value he obtained judgment for, from the time the said judgment was obtained till the time of sale, or till satisfaction be made.

Interest on judgments.

1700. The chief message to be last taken in execution.

III. *Provided also*, That the chief plantation or messuage shall be the last taken in execution; and that where the appraisement of the lands taken in execution amounts to more than the debt, costs and damage, the creditor shall not be obliged in such case to take the whole, and pay the overplus, but shall only take so much as to satisfy the execution, and no more.

Passed in 1700.—Recorded A. vol. I. page 37. *(f)*

(f) The act for the appraisement of goods taken in execution, which had long been obsolete in practice, (chap. 40) was repealed by an act passed March 20th, 1810.

The act in the text is in a great measure supplied by the analagous provisions contained in the "Act for taking lands in execution for payment of debts," passed in 1705, (chap. 152,) which varies from this act, principally in the additional clause, that if the clear yearly profits will pay the debt in seven years, the land shall be delivered to the plaintiff upon a reasonable extent. *Graff* v. *Smith's* adm'rs. 1 Dallas, 481-2. *(Note to former ed.)*

This law, however, has never been repealed; nor is the second section supplied in any part of the act of 1705. The rule of construction therefore applies; that all acts in *pari materia*, are to be taken together, as if they were one law.

That part of this act, which provides that the home seat of a debtor shall not be sold till a year after judgment, (which provision is also carried into the 5th section of the act of 1705) is now obsolete, and not practised under. *Nisi Prius.* MSS. reports. Lesse of *Moorhead* and *Pearce. Westmoreland.* May 1799.

In *Morris's* Executors and *M'Connaughy.* 2 Dallas, 189--190. The court considered real property in *Pennsylvania*, as *assets* for the payment of debts; and always, in case of the deficiency of personal property, to be applied to discharge such debts.

This point had been previously fully considered in the above recited case of *Graff* and *Smith's* administrators, by a judge of great experience, who held, that real and personal estates, are both funds for the payment of debts. A fund, however, that does not actually go into the hands of the executor or administrator, *as assets in the ordinary way*; but, made such, by positive law, in another form; that is, creditors may issue executions, and sell it for payment of debts, on a judgment against the executor or administrator; for it is not necessary, nor has it been usual, to bring the action against the heir. They are made a fund for payment of all debts, and must necessarily have been intended by the legislature to be a certain and not a precarious fund; for since it is declared, that the creditors may take them in execution on a judgment against the executor or administrator, it must be meant that they should have the fruit of that execution; and as there is the same reason under the law, that they should be equally liable with the personal estate from the death of the debtor, they must necessarily be liable in such manner, as to be answerable at all events, which can no otherwise be, than by considering them as *specifically* liable in *whosoever hands they may be*.

Lands of deceased persons, therefore, have always been considered as liable to be taken in execution for debt, in the hands of a purchaser from the heir or devisee.

And it has also been decided, that though a widow's right of dower, commences with her marriage, and is held so sacred a right, that no judgment, recognizance, mortgage, or any incumbrance whatever, made by the husband after the marriage, can, at *common law*, affect her right of dower; yet, under these acts of assembly, for making lands, chattels for the payment of debts, that as to lands taken in execution after the death of the debtor, the widow is barred of her dower. 1 Dallas, 483, 484, and see 2 Dallas, 127-8.

In the same case, page 486. It is held, that on a sale of lands under an order of the orphan's court, the purchaser will not be affected by the claims of creditors. The administrators sell by the words of a positive law, which gives jurisdiction to the Orphan's Court. And this point is recognized in *Spear,* v. *Hannum* and *Harlam.* Chester, April 1794. *Nisi Prius* MSS. Reports, and now see the intestate act of 19th April, 1794, sect. 21.

The case of *Hannum* v. *Spear,* came before the High Court of Errors and Appeals, at August Sessions 1795, and was finally decided by *Chew,* President. *Shippen, Smith* and *Biddle,* Justices.

The question is stated to have arisen on the will of *Elizabeth Ring,* who had given power to her executors to sell lands, for payment of legacies; and two points were made. 1st. Whether the power to sell, given by the will, was, in fact, for the payments of debts, or of

legacies ? and, 2d, whether by the laws of *Pennsylvania,* the creditors of the testatrix had such a lien on her lands, as could not be defeated by the sale, which the executors had made, by virtue of the power in the will.

All the Court held, that if the power had been to sell for the payment of debts, the purchaser would have held the lands discharged of the debts.—*Chew,* President, added, That it has been the constant usage (and usage is the best interpreter of laws) to give, by will, the power to sell lands for the payment of debts. The titles of purchasers under such powers, has never, heretofore, been called in question; and they ought not now to be undermined. *Shippen, J.* said, There can be no satisfactory reason, why a testator should not have a power to order a sale of lands for the payment of his debts, provided the exercise of it does not militate with the general principle of the *lien,* which the law has given to creditors: or, as is said, by *Biddle, J.* a *bona fide* sale would be good against creditors and all the world.

The Court also held, that a sale by the executors, under a power to sell for the payment of *legacies,* is not valid against creditors. That the proceeds of the land, when disposed of, under a power to sell for the payment of legacies, cannot be considered as assets in the hands of the executor; so that if the sale were valid against creditors, they would be deprived of the security, which the policy, and positive provision of our law, meant to give them.

In this case at *Nisi Prius,* the case of *Morris's Lessee* v. *Smith* (MSS. Rep. Sup. Court) was cited, which determined, that lands aliened *bona fide,* by the heir, were subject to the debts of the ancestor; which follows and supports the same principle in *Graff* v. *Smith's* administrators. S. C. 4 Dallas, 119.

In closing this note, it may not be useless to trace these politic and moral laws to their source.

In the laws agreed upon in *England,* May 5th, 1682. §.14. it is stipulated "That all lands and goods shall be liable to pay debts, except where there is legal issue, and then all the goods, and one *third* of the lands only."

This liability was extended by an act entitled, "How lands and goods shall pay debts"—chap. 5th, which enacts, "That all lands and goods shall be liable to pay debts, except where there shall be legal issue, and then all the goods, and one *half* of the land only, in case the land was bought before the debts were contracted."

Then the act entitled, "How the estate of any person shall be disposed of at his death," authorizes a particular disposition, "*his* debts being first paid." Chap. 119.

The act of 1688, chap. 189, provides "that all lands whatsoever, and houses, shall be *liable* to sale upon judgment and execution against the defendant, his heirs, executors and administrators:" but this act was limited in its duration to one year, and until 20 days after the rising of the next General Assembly. This law was continued, under the administration of Governor *Fletcher,* June 1st, 1693, in consequence of the petition of the freemen of the Province in General Assembly, and was afterwards re-enacted, in the same words in 1694. The act of 1700 followed, in the same terms, with the additional words, "where no sufficient personal estate is to be found." The acts of 1700 and 1705, are now in force.

It is, however, provided, by the 4th section of the supplement to the intestate act, passed April 4th, 1797, (post. chap. 1938,) That no debts, except they be secured by mortgage, judgment, recognizance or other record, shall remain a *lien* on the lands and tenements of deceased persons, longer than seven years after the decease of such debtor, unless an action for the recovery thereof be commenced and duly prosecuted against his or her heirs, executors or administrators, within the said period of seven years; or a copy or particular written statement, of any bond, covenant, debt or demand, where the same is not payable, within the said period of seven years, shall be filed within the said period, in the office of the prothonotary, where *the lands lie;* with the usual saving in cases of infants, femes covert, *non compotes mentis,* or absence out of the *United States:* in which cases the *lien* shall remain on the said lands and tenements (notwithstanding the said term be expired) until four years after the disability is removed. And a similar provision in the original act of April 19th, 1794, but which saved the *lien* in case of a *demand* made within seven years, though no suit be commenced, is repealed.

The above provision was made merely for the protection of *bona fide purchasers.*

The second section of this act is not incorporated with the act of 1705: on this head the following decisions have been made.

Shippen, C. J. An act of the General Assembly has declared, "that lawful interest shall be allowed to the creditor

1700.

for the sum or value he obtained judgment for, from the time judgment was obtained, till the time of sale, or till satisfaction be made." Interest is therefore, generally speaking, a legal incident of every judgment. *Fitzgerald* v. *Caldwell's* executors. 4 Dallas, 252.—See pa. 289. (*Ibid.*)

Interest is due for the sum awarded, on a parol award. (MSS. Reports Sup. Court.) Where judgments are affirmed upon writ of error, the execution may include the interest from the date of the original judgment. 2 Dallas, 256. See ibid. 303.

See the rules for computing interest on a decree of reversal or affirmance in the Supreme Court of the *United States*. 3 Dallas, 88-103. 338. 356.

The rule for computing interest on a judgment given as a security for what might be recovered on a trial, 3 Dallas, 506.

CHAPTER XLIX.

An **ACT** *for the better regulation of servants in this province and territories.*

No servant to be sold out of this government, without his consent.

FOR the just encouragement of servants in the discharge of their duty, and the prevention of their deserting their masters or owners service, *Be it enacted*, That no servant, bound to serve his or her time in this province, or counties annexed, shall be sold or disposed of to any person residing in any other province or government, without the consent of the said servant, and two justices of the peace of the county wherein he lives or is sold, under the penalty of ten pounds; to be forfeited by the seller.

Nor assigned over, except before a justice.

II. *And be it further enacted*, That no servant shall be assigned over to another person by any in this province or territories, but in the presence of one Justice of Peace, of the county, under the penalty of ten pounds; which penalty, with all others in this act expressed, shall be levied by distress and sale of goods of the party offending.

Servants dues.

III. *And be it enacted*, That every servant that shall faithfully serve four years, or more, shall, at the expiration of their servitude, have a discharge, and shall be duly clothed with two complete suits of apparel, whereof one shall be new, and shall also be furnished with one new axe, one grubbing-hoe, and one weeding-hoe, at the charge of their master or mistress.

Penalty on servants running away.

IV. And for prevention of servants quitting their masters service, *Be it enacted*, That if any servant shall absent him or herself from the service of their master or owner for the space of one day or more, without leave first obtained for the same, every such servant shall, for every such day's absence, be obliged to serve five days, after the expiration of his or her time, and shall further make such satisfaction to his or her master or owner, for the damages and charges sustained by such absence, as the respective County Court shall see meet, who shall order as well the time to be served, as other recompence for damages sustained.

The reward for taking them up.

V. And whosoever shall apprehend or take up any runaway servant, and shall bring him or her to the Sheriff of the county, such person shall, for every such servant, if taken up within ten miles of the servant's abode, receive ten shillings, and if ten miles or upwards, twenty shillings reward, of the said Sheriff, who is hereby required to pay the same, and forthwith to send notice to the master or owner,