

granting the same, and his sureties, shall be, *ipso facto*, liable to pay all such damages, as shall accrue to any person or persons by occasion of granting such administration. And the party to whom the same shall be so granted, may be sued as executor in his own wrong, and shall be so taken and deemed, in any suit to be brought against him for or by reason of his said administration, and the stat. 43 Eliz. (chap. 8,) which also extends to *Pennsylvania*, after reciting, "That it is often put in ure, to the defrauding of creditors, that such persons as are to have the administration of the goods of others dying intestate committed to them, if they require it, will not accept the same, but suffer or procure the administration to be granted to some stranger of mean estate, and not of kin to the intestate, from whom themselves, or others, by their means, do take deeds of gifts, and authorities by letter of attorney, whereby they obtain the estate of the intestate into their hands, and yet stand not subject to pay any debts owing by the same intestate, and the creditors for want of knowledge of the place of habitation of the administrator cannot arrest him, nor sue him; and if they fortune to find him out, yet for lack of ability in him to satisfy of his own goods, the value of that he hath conveyed away of the intestate's goods, or released of his debts by way of wasting, the creditors cannot have or recover their just and due debts, it enacts, "That every person and persons that hereafter shall obtain, receive and have any goods or debts of any person dying intestate, or a release or other discharge of any debt or duty that belonged to the intestate, upon any fraud, as is aforesaid, or without such valuable consi-

deration, as shall amount to the value of the same goods or debts, or near therabouts, (except it be in, or towards satisfaction of some just and principal debt, of the value of the same goods, or debts to him owing by the intestate at the time of his decease,) shall be charged and chargeable as executor of his own wrong; and so far only as all such goods and debts coming to his hands, or whereof he is released or discharged by such administrator, will satisfy, deducting nevertheless to and for himself, allowance of all just, due and principal debts upon good consideration, without fraud, owing to him by the intestate at the time of his decease, and of all other payments made by him, which lawful executors and administrators may and ought to have and pay by the laws and statutes of this realm."

1705.

Letters of administration granted under seal, in a sister state, are a sufficient authority to maintain an action in this State. This has been uniformly understood, both before and since the Revolution; and such has been the practice without regard to the particular intestate laws of the State where they have been granted. But the act has never been considered to extend further than to the provinces in this country at the time it was passed, and *Grime v. Harris*, ante. p. 38, turned upon that ground. There may be great inconveniences from the law, but it lies with the Legislature to remedy them. 1 Binney, 63. S. C. 4 Dallas, 292.

Husbands may demand, and have administration of the rights, credits, and other personal estate of *femes covert*, who die intestate, and recover and enjoy the same. Act of March 21st, 1772, (post. chap. 669,) sect. 5.

CHAPTER CXXXVIII.

An ACT for selling beer and ale by wine-measure.

WHEREAS by a law of this province, for regulating the dimensions of casks, &c. it is enacted, among other things, That a barrel shall contain thirty-one gallons wine-measure. And whereas by another law of this province, for regulating of weights and measures, it is, amongst other things, enacted, That none shall sell beer or ale by retail, but by beer-measure, according to the standard of England; by reason whereof the retailers of beer and ale are obliged to sell the same by far greater measure than they buy it: For remedy whereof, *Be it enacted*, That from and after the publication of this act, all persons which now are, or which at any time or times hereafter shall be licensed to keep any tavern, inn, ale-house or victualling-house, within this province, shall sell beer and ale by

Taverns to sell beer or ale by wine-measure in their houses and beer.

1705.
measure out
of doors.

wine-measure to all persons as drink it in their houses, and by beer-measure to all such persons as carry the same out of their houses, under the penalty of ten shillings, to the use of the poor for every county where the offence is committed, any law, custom or usage, to the contrary in any wise notwithstanding.

Repeal of a
part of a
former law.

II. *Provided always, and be it further enacted*, That the above recited law, entitled, *An act for regulating weights and measures*, and every part and proviso therein contained, except the last clause thereof, relating to selling beer and ale by beer-measure, shall be and remain in full force, any thing herein contained to the contrary notwithstanding.

Passed in 1705.—Recorded A. vol. I. page 184.

See ante. (chap. 73,) pa.19. The act for regulating the dimensions of casks, &c. herein recited, was repealed March 20th, 1810.

CHAPTER CXXXIX.

An ACT for the more easy and effectual collecting of the Proprietary's quitrents.

Writs of replevin grantable.... So by the 22d section of the act of May 22, 1722, (post. chap. 255.)

XII. *AND be it further enacted*, That it shall and may be lawful for the Justices of each county in this province to grant writs of replevin in all cases whatsoever, where replevins may be granted by the laws of England, taking security as the said law directs, and make them returnable to the respective Courts of Common Pleas, in the proper county, there to be determined according to law.

Passed in 1705.—Repealed (in part) 27th November, 1779.—Recorded A. vol. I. page 185. (y)

(y) By an act of the 3d of April, 1779, (chap. 826,) it is provided that goods taken in execution or by distress, under the authority of the State, shall not be replevied. For the law respecting distresses and replevins in cases of rent; [and of the avowry, and making consurance, and how replevin bonds are to be taken by the Sheriff, see the act of March 21, 1772, (post. chap. 645,) and in what cases, and to what extent the Sheriff is liable for the sufficiency of the security, see 1 Dallas, 341, 349, 439, 440.]

The judicial writ, *de proprietate probanda*, cannot issue here in the case of a replevin. 1 Dallas, 156. The act in the text seems to have made a very considerable alteration in the proceedings in replevin: for, 1st. It does not recognize two kinds of replevin, one by plaint, and the other by writ; 2d. Replevins are made always returnable writs, and the party's appearance required on the return: and 3dly. They are directed to be *there* determined; that is, in the Court of Common Pleas. *Ibid.*

Before the goods are removed on a

replevin, the Sheriff ought to allow a reasonable time for the defendant to find security on a claim of property; which, in the practice of Pennsylvania, supplies the place of a writ *de proprietate probanda*. 1 Dallas, 225.

Goods taken in execution cannot be replevied; an action of trespass is the proper remedy for a wrongful levy. 1 Dallas, 312-13. [Replevin lies, in Pennsylvania, wherever a man claims goods in the possession of another. 1 Dallas, 156, and see 2 Dallas, 54. In replevin, bail for defendant, on a claim of property, are liable to the extent of the penalty of their bond. Where the goods are delivered to plaintiff, the Court will not give him leave to discontinue. Replevin will not lie for goods seized for non-payment of the city water tax. MSS. Reports, Sup. Court. Nor where plaintiff has no property in the thing replevied. See 4 Dallas, 342. See also the notes to chap. 645, post. Actions of replevin must be commenced within six years after cause of action. Act of March 27th, 1713, (post. chap. 195.)]