

1792. sioner to run and mark the same, as soon as may be after the passing of this act; and the expense of running and marking the said line to be paid equally by the counties of **Huntingdon** and **Mifflin**.  
 The expense how to be paid.

Passed 29th March, 1792.—Recorded in Law Book No. IV. page 307.

## CHAPTER MDCVII.

*An ACT to enable executors and administrators, by leave of court, to convey lands and tenements contracted for with their decedents, and for other purposes therein mentioned.*

**WHEREAS** it frequently happens that persons, having contracted for the sale of lands and tenements within this commonwealth, depart this life without making provision, by will, for the performance of such contracts, leaving their heirs within age, whereby executors and administrators are prevented from collecting and administering the purchase monies, and the purchasers are for a long time without titles: For remedy whereof,

Contract with deceased, how to be proved and carried into effect.

**SECT. I.** *Be it enacted by the Senate and House of Representatives of the commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That* from and after the publication of this act, any person or persons having any contract in writing, or other written evidence of contract, whereby any deceased person or persons hath or have covenanted, agreed, promised, or bound him, her or themselves, to convey any lands or tenements within this commonwealth, to him, her or them, or to any person or persons whom he, she, or they may represent, which contract had not been complied with in the life-time of the deceased, and no sufficient provision for the performance of such contract or contracts appears to have been made by the decedent in his life-time; such person or persons having such contract, or evidence of contract, whether in his, her, or their own right, or as attorney, agent, trustee or guardian for another or others, shall, before he, she or they bring any action or suit thereon, against the executors or administrators of the deceased, cause and procure the said contract to be proved in the supreme court of this commonwealth, or in the court of common pleas of the county wherein the lands or tenements contracted for shall lie, which probate being adjudged by the said court to be sufficient, the prothonotary of such court shall endorse on or annex the same to the said contract, or to a copy of the evidence thereof, and certify the same under his hand and the seal of the said court, and thereupon the same shall be recorded in the **Rolls-Office** of this commonwealth, or in the office for recording of deeds of the county wherein the lands and tenements contracted for shall lie; and thereupon it shall and may be lawful for the executors or administrators of the said deceased, or the survivors or the survivor of them, to present a petition to the said courts respectively, praying leave to make and execute a deed, conveying to the purchaser or purchasers, his, her, or their heirs or assigns, the said lands and tenements contracted for, with the appurtenances, for such estate or estates, and in such manner and form

as the said court shall judge to be consistent with the true intent and meaning of the contract; and the said court having considered the prayer of the said petition, and the contract or evidence of contract whereupon it is founded, and having adjudged the same to be obligatory between the parties, shall make an order, authorizing and empowering the said petitioner or petitioners to make and execute such conveyance as aforesaid, and the same being made and executed, and proved or acknowledged according to law, shall be of the same force and effect to pass and vest the estate intended, of and in the lands and tenements aforesaid, with the appurtenances, as if the same had been executed by the decedent or decedents in his, her or their life-time.

SECT. II. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful to and for the executors or administrators of any such decedent, having a counter part of such contract, or any other contract, or evidence of contract, for the payment of the consideration monies for any lands or tenements agreed to be sold, but not conveyed, by the decedent or decedents, in his, her or their life-time, to cause the same to be proved, and to present a petition in manner aforesaid, whereupon the same proceedings shall be had, and with the same force and effect, as is herein above directed, where the purchaser or his representative shall procure such contract to be proved: *Provided always, nevertheless,* That no deed, to be executed in pursuance of this act, shall discharge the lands and tenements to be thereby conveyed, from the lien of the consideration money therefor, until it shall be actually paid or secured, according to the terms of the contract.

The consideration money how to be recovered, &c.

SECT. III. *And be it further enacted by the authority aforesaid,* That if any person or persons shall commence or prosecute any action or suit against the executors or administrators of any person deceased, upon such contract, without first causing or procuring the same to be proved and recorded in manner aforesaid, and giving notice thereof to the defendant or defendants, and allowing him or them time, until six weeks after the next succeeding court, to apply for leave to execute a deed for the specific performance of the contract, in manner aforesaid, such plaintiff or plaintiffs shall not be entitled to recover damages or costs for the non-performance of such contract, if the defendant or defendants shall plead, and upon the trial prove, that he, she or they were always ready, on reasonable notice, to perform the same, and shall, before the trial, produce in court a deed of conveyance pursuant to the contract, duly made and executed, according to the forms by this act required.

How executors, &c. may be sued.

SECT. IV. And whereas great inconveniences are often sustained, in cases where lands, tenements or hereditaments are devised to be sold by executors, from the want of power in such executors to bring actions for the recovery of possession thereof, and against trespasses thereon, and otherwise manage such estates, for the benefit of those who may be interested therein: *Be it further enacted by the authority aforesaid,* That when, by the last will and testament of a decedent, a naked authority only to sell lands, tenements or hereditaments, shall be given to executors, they shall take and hold the same interest in such lands, tenements or hereditaments, and

Power of executors to sell lands, &c.

1792. have the same powers and authorities respecting the same, as if the said lands, tenements or hereditaments, were devised to them to be sold, saving always to every testator the right to direct otherwise. (d)

Passed 31st March, 1792—Recorded in Law Book, No. IV. page 308.

(d) By an act passed 12th of March, 1800, (chap. 2120,) in all cases wherein testators have devised, or may hereafter devise their real estates, or any part thereof, to their executors, to be sold, or have authorized and directed, or may hereafter authorize and direct such executors to sell and convey such real estates, or have directed, or may hereafter direct such real estates to be sold, without naming or declaring who shall sell the same, if one or more of such executors is, or are since dead, or shall hereafter die, it shall and may be lawful for the surviving executor or executors to bring actions for the recovery of possession thereof, and against trespasses thereon, to sell and convey such real estates, or manage the same for the benefit of the persons interested therein, as fully and completely as he, she or they, together with his, her or their co-executor or co-executors, would be empowered to do, if he, she or they, were still living.

Sect. 2. That in all those cases wherein such devises have been or shall be made, or such authority and direction given, if one or more of such executors hath or have refused, or shall hereafter refuse, or hath or have renounced, or shall renounce, it shall and may be lawful for the acting executor or executors, to sell and convey such real estates, and otherwise act respecting the same, as fully and completely as he, she or they, together with such refusing or renouncing executor or executors, would be empowered to do, if he, she or they, had not refused or renounced.

Sect. 3. That if where such devises as aforesaid have been or shall be made, or authorities and directions given, such executor or executors are deceased, or shall hereafter die, or have refused, or hereafter shall refuse, or have renounced, or shall renounce, and letters of administration with the will annexed, have been or shall be granted, it shall and may be lawful for such administrators with the will annexed, to sell and convey such real estates, and otherwise act, respecting the same, as fully and completely as if such deceased, refusing or renouncing executor or executors, might, or could have done, were he, she or they, still liv-

ing, or had he, she or they, accepted the execution of the last wills and testaments of such testators, or had not renounced.

Sect. 4. That if where such devises as aforesaid have been made, or shall be made, or authorities and directions given, such executor or executors, shall have been, or hereafter may be dismissed, or otherwise discharged, the executor or executors remaining, shall have like power to sell and to execute the said trusts and authorities, as fully and amply as if all the executors named had joined therein; or if all the executors have been, or hereafter shall be dismissed, or the letters testamentary have been, or shall be in any case vacated, and new letters awarded, it shall and may be lawful for the administrators, with the will annexed, or the administrator *de bonis non*, or other person or persons, to whom letters of administration shall legally issue, to sell, and to execute the said powers and authorities mentioned and contained in any last will and testament, as fully and amply as if all the executors named had joined therein.

Sect. 5. Nothing in this act shall be deemed or taken to prevent any testator, from directing by his or her last will and testament, otherwise than is herein declared and enacted.

And, by act of 14th of April, 1794, (chap. 1730,) in cases of contracts for land with persons afterwards becoming *non compos mentis*, they may in like manner be enforced against the *custodes*, &c. who may also, in like manner, proceed to recover the purchase money.

And, by an act passed 2d of April, 1802, (chap. 2268,) in all cases hereafter, where a sale shall be duly made according to law, by virtue of an order of Orphans' Court, enabling the administrator of any intestate, to make sale of the real estate of such intestate, or any part thereof; and the administrator selling the same, under such order, shall happen to die before a deed of conveyance is made to the purchaser or purchasers, it shall be lawful to or for an administrator "of the goods not administered on," of such intestate, when such administration shall be granted, to and for the executor or administrator of the person or persons so

dying to make and execute to the purchaser or purchasers of any such estate, a deed or deeds of conveyance for the same.

Sect. 2. (A similar provision for cases previously existing.)

Sect. 3. In all cases where any administrator or administrators, having sold lands by order of Orphans' Court, as aforesaid, shall die intestate, not having executed a conveyance thereof, and no person shall within three months thereafter, be appointed administrator "of the goods not administered on," or apply and be appointed to administer the estate of such administrator or administrators so dying as aforesaid, it shall thereupon be the duty of the Or-

phans' Court of the proper county, on petition to be presented by the purchaser, setting forth the original proceedings, under the order of the court, to direct the sheriff of the county, for the time being, to make and execute the necessary deed or deeds of conveyance to such petitioner.

Sect. 4. Every deed made in pursuance of, and agreeably to the provisions of this act, shall vest the property therein described, as fully and effectually, as if the same had been made by the person or persons who may hereafter sell, or heretofore have sold, any such estates circumstanced as aforesaid.

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### CHAPTER MDCVIII.

*An ACT for annexing the Loganian Library to the library belonging to the Library Company of Philadelphia, and for other purposes therein mentioned.*

Passed 31st March, 1792.—Private Act.—Recorded in Law Book No. IV. page 311.

### CHAPTER MDCX.

*An ACT for dividing the fourth election district in Bedford county into two separate election districts.*

WHEREAS the inhabitants of Quemahoning, Brothers valley, and Elk-lick townships, Turkey-foot, and Milford, in Bedford county, have by their petitions set forth, that they labour under great inconvenience on account of the distance they live from the place of holding their general elections: For remedy whereof,

SECT. I. *Be it enacted by the Senate and House of Representatives of the commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That the freemen of the townships of Quemahoning, Brothers valley, and Elk-lick, in the county of Bedford, shall, from and after the passing of this act, meet, and hold their general elections at the house now occupied by Robert Philson, in the town of Berlin, in the township of Brothers valley, in the county aforesaid, any law to the contrary notwithstanding.*

(Now in Somerset county.)

An election district in Bedford county erected.

SECT. II. *And be it further enacted by the authority aforesaid, That the townships of Turkey-foot and Milford, in Bedford county, shall, from and after the passing of this act, be erected into a separate election district, to be called the fifth district in the county aforesaid; and the freemen of said district, hereby erected, shall hold their general elections at the house now occupied by Jesse Brakins, in Turkey-foot township, in the county aforesaid.*

Another in the same county.

Passed 2d April, 1792.—Recorded in Law Book No. IV. page 315.