

ment, actions upon the case for words, be, or at the time of any cause of such action, given or accrued, fallen or come, shall be within the age of twenty-one years, *feme covert*, *non compos mentis*, imprisoned or beyond sea, that then such person or persons shall be at liberty to bring the same actions, so as they take the same within such times as are hereby before limited, after their coming to, or being of full age, discoverture, of sound memory, at large, or returning into this province as other persons.

Passed March 27, 1712-13. Allowed to become a law by lapse of time in accordance with the proprietary charter, having been considered by the Lords Justices in Council July 21, 1719, and not acted upon. See Appendix IV, Section II, and the Acts of Assembly passed May 28, 1715, Chapter 207; April 3, 1781, Chapter 935; June 21, 1781, Chapter 945; April 4, 1798, Chapter 2009.

CHAPTER CXCVII.

AN ACT FOR ESTABLISHING ORPHANS' COURTS.

Whereas by certain laws of this province now in force, several matters of great importance are directed to be done by the Orphans' courts, which being discontinued by the repeal of the former law of courts, and not hitherto revived, nor effectually supplied by another law, divers orphans and persons concerned for them, or intrusted with their estates, labor under great inconveniencies:

[Section I.] Be it therefore enacted, by Charles Gookin, Esquire, by the Queen's royal approbation, Lieutenant-Governor under William Penn, Esquire, true and absolute Proprietary and Governor-in-Chief, of the Province of Pennsylvania, &c., by and with the advice and consent of the freemen of the said Province in General Assembly met, and by authority of the same, That the justices of the court of general quarter-sessions of the peace in each county of this province, or so many of them as are or shall be from time to time enabled to hold those

courts, shall have full power, and are hereby empowered, in the same week that they are, or shall be, by law directed to hold the same courts, or at such other times as they shall see occasion, to hold and keep a court of record in each of the said counties which shall be styled the Orphans' Court, and to award process, and cause to come before them, all and every such person and persons, who as guardians, trustees, tutors, executors, administrators, or otherwise, are, or shall be, intrusted with or anywise accountable for any lands, tenements, goods, chattels or estate belonging or which shall belong to any orphan or person under age, and cause them to make, and exhibit, within a reasonable time, true and perfect inventories and accounts of the said estates; and to cause and oblige the register-general, or such person or persons as for the time being shall have the power of probates of wills and granting letters of administration in this province, or their deputies, upon application made in that behalf, to bring or transmit into the said Orphans' court true copies or duplicates of all such bonds, inventories, accounts, actings, and proceedings whatsoever, now or hereafter remaining, or being in their respective offices, or elsewhere, within the limits of their authority, as do or shall concern or relate to the said estates, or any of them; and to order the payment of such reasonable fees for the said copies, and for all other charges, trouble and attendance, which any officer, or other person shall necessarily be put upon in the execution of this act, as they shall think equitable and just. And if upon hearing or examination thereof it appears to the justices of the said court that any of the said officers have misbehaved themselves to the prejudice of any minor, or others concerned for them as aforesaid, the said justices are hereby required to certify the same accordingly, which shall be good evidence for the party grieved to recover his damages at common law.

And where any letters of administration shall be granted, and no bond with sureties given, as the law in that case requires, such letters of administration shall be and are hereby declared to be void, and of none effect, and that the officer or person that grants 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. Or if, upon such examination, it appears that any of the said officers have not taken sufficient sureties, where the administrators may not be of ability to answer or make good the value of what the decedent's estate doth or shall amount to, then the said justices of the Orphans' court are hereby required and empowered to cause all such administrators to give better security to the register-general, [by bonds] in manner and form as the law prescribes and under such penalties and with such sureties as the said justices, after they have heard the objections of creditors or persons concerned (if any such be made [during the] sitting [of] the court) shall approve of. And if it appears that any of the said administrators have embezzled, wasted or misapplied or suffered so to be, any part of the decedent's estates, or shall neglect or refuse to give bonds, with sureties as aforesaid, then, and in every such case, the said justices shall forthwith, by their sentence, revoke or repeal the letters of administration granted them, and thereupon the said register-general, or other person then empowered to grant administrations as aforesaid, where such occasion happens, are hereby required to grant letters of administration to such person or persons (having right thereunto) as will give bonds in manner and form aforesaid, who may have their actions of trover or detinue for such goods or chattels as came to the possession of the former administrators, and shall be detained, wasted, embezzled, or misapplied by any of them, and no satisfaction made for the same.

[Section II.] And be it further enacted, That when any complaint is made, to any of the said justices that an executrix, having minors of her own, or being concerned for others, is married, or like to be espoused to another husband, without securing the minors' portions or estates, or that an executor, or other person, having the care and trust of minors' estates, is like to prove insolvent, or shall refuse or neglect to exhibit true and perfect inventories, or give full and just accounts of the said estates come to their hands or knowledge, then and in

every such case the same justices are hereby required forthwith to call an Orphans' court, who shall cause all and every such executors and trustees, as also such guardians or tutors of orphans or minors as have been formerly appointed, or shall at any time hereafter be appointed by the said court, to give security to the orphans or minors, by mortgage or bonds, in such sums and with such sureties as the said courts shall think reasonable, conditioned for the performance of their respective trusts, and for the true payment or delivery to and for the use and behoof of such orphans as they are concerned for (or such as shall legally represent them) the legacies, portions, shares and dividends of estates, real and personal, belonging to such orphans or minors, so far as they have assets, as also for their maintenance and education, as the said court shall think fit to order, for the benefit and best advantage of such orphans, as is usual in such cases.

[Section III.] And be it further enacted, That any of the said executors, administrators, guardians or trustees, may by the leave and direction of the Orphans' court, put out their minors' money to interest, upon such security as the said court shall allow of; and if such security so taken *bona fide*, and without fraud, shall happen to prove insufficient, it shall be the minors' loss. But if no person who may be willing to take the said money at interest (with such security) can be found by the persons so as aforesaid concerned for the minors, nor by any others, then the said executors, administrators, guardians or trustees, shall, in such cases be responsible for the principal money only until it can be put out at interest as aforesaid.

Provided always, That the day of payment of the money so to be put out to interest, at any one time, shall not exceed twelve months from the date of the obligation, or other security given for the same, and so *toties quoties*, when and so often as the said money shall be paid in or come to the hands of the said executors, guardians or trustees.

Provided also, That no executors, administrators or guardians, shall be liable to pay interest, but for the surplusage of the decedents' estate remaining in their hands or power, and belonging to the minors, when the accounts of their administra-

tion are or ought to be settled and adjusted before the said Orphans' court or register-general respectively.

[Section IV.] And be it further enacted, That the justices of the said Orphans' court in the said respective counties, shall, by virtue of this act, have full power and authority to exercise all the powers, authorities and jurisdictions granted or mentioned, or intended to be granted to the Orphans' court, in and by a law of this province, entitled "An act for better settling [of] intestates' estates,¹ and to do, execute and perform all such matters and things, as the Orphans' court in the said act, or in any other act or law of this province mentioned, might or ought to have done or performed, according to the true intent and meaning thereof; with power also to admit orphans or minors, when and as often as there may be occasion, to make choice of guardians or tutors, and to appoint guardians, next friends or tutors, over such as the said court shall judge too young or incapable, according to the rules of the common law, to make choice themselves; and at the instance and request of the said executors, administrators, guardians or tutors, to order and direct the binding or putting out of minors' apprentices to trades, husbandry, or other employments as shall be thought fit. And that all guardians and *prochein amis*, which shall be appointed by any of the said Orphans' courts shall be allowed and received, without further admittance, to prosecute and defend all actions and suits relating to the orphans or minors, as the case may require, in any court or courts of this province.

And if any person or persons, being duly summoned to appear in any of the said Orphans' courts, ten days before the time appointed for their appearance, shall make default, the justices may send their attachments for contempts, and may force obedience to their warrants, sentences and orders concerning any matter or thing cognizable in the same courts, by imprisonment of body, or sequestration of lands or goods, as fully as any court of equity may or can do.

Provided always, That if any person or persons shall be aggrieved with any definitive sentence or judgment of the said

¹ Passed January 12, 1705-6, Chapter 135.

Orphans' court, it shall be lawful for them to appeal from the same to the supreme court; which appeal, upon security given, as is usual in such cases, shall be granted accordingly.

And if any of the said executors, administrators, guardians or trustees did or shall receive and give discharges for any sums of money, debts, rents or duties belonging to any orphan or minor for whom they were or are intrusted:

[Section V.] It is hereby declared and enacted, That all such discharges or receipts, shall be binding to and upon the orphan or minor, when he or she attains to full age, and shall be most effectual in law to discharge the person or persons that take the same.

And when any of the said minors attain to their full age, and the person or persons so as aforesaid intrusted or concerned for them, having rendered their accounts to the Orphans' court according to the direction of this and the said other acts, and paid the minor their full due, then such minors shall acknowledge satisfaction in the said court. But in case any of them refuse so to do, then the said court shall certify how the said persons concerned, have accounted and paid; which shall be a sufficient discharge to the guardians or tutors, and to the trustees, executors or administrators who shall so account and pay, and thereupon all bonds entered into, for payment of such orphans' portions, shall be delivered up and cancelled.

[Section VI.] Provided always, and be it further enacted, That none of the said Orphans' courts shall have any power to order or commit the tuition or guardianship of any orphans or minors, or bind them apprentices to any person or persons, whose religious persuasion shall be different from what the parents of such orphan or minor professed at the time of their decease, or against the minor's own mind or inclination, so far as he or she has discretion and capacity to express or signify the same; or to persons that are not of good repute, so as others of good credit and of the same persuasion may or can be found.

Provided also, That the justices of the said courts, and all others concerned in the execution of this act, shall have due

regard to the direction of all last wills, and to the true intent and meaning of the testators, in all matters and things, that shall be brought before them concerning the same.

[Section VII.] And be it further enacted, That all such bonds or obligations as are by this act, or by any [other] law of this province, directed and required to be given to the register-general, and all such bonds, as by any law are directed to be given by the register-general, or by any other officers or persons in office whatsoever in this province, for the due execution of his or their respective offices or employments, are hereby declared to be to and for the use of and in trust for the person or persons concerned, and that the benefit thereof shall be extended, from time to time, for the relief and advantage, of the party grieved, by the misfeasance or nonfeasance of the officers that did, or shall, give the same.

And that when any of the said bonds shall be put in suit, and judgment thereupon obtained, the judgment shall remain in the same nature the bonds were, and that no execution issue out thereupon before the party grieved shall, by writ of *scire facias*, summon the person or persons against whom the said judgment is obtained, to appear and show cause why execution shall not issue upon the said judgment. And if the party grieved shall prove what damages he sustained, and thereupon a verdict be found for him, the court of common pleas where such suit is, shall award execution for so much as the jury shall then find, with costs, and no more; and the former judgment is hereby declared still to remain cautionary for the satisfaction of such others as shall legally prove themselves damaged, and recover their damages in manner aforesaid.

And the said register-general, and all others in whose hands the said bonds shall be deposited or lodged, are hereby required to give any person injured, that requests the same, a true copy of any of the said bonds, he paying three shillings for the same, and to produce the original in court, upon any trial that shall be had for the breach of any of them, if required by the court; and if the person in whose hands the said bonds shall be lodged, or come, shall refuse or delay to give copies thereof, and produce the original in court, as aforesaid, he or they shall forfeit and pay to the party grieved, treble damages, to be re-

covered against the officer that gave such bonds, or his sureties, by action of debt, bill, plaint or information, in any court in this province, where no essoin, protection or wager of law, or any more than one imparlance shall be allowed.

Passed March 27, 1712-13. Allowed to become a law by lapse of time in accordance with the proprietary charter, having been considered by the Lords Justices in Council July 21, 1719, and not acted upon. See Appendix IV, Section II, and the Acts of Assembly passed March 4, 1763, Chapter 486; March 14, 1777, Chapter 748; August 31, 1778, Chapter 804; September 22, 1785, Chapter 1194; March 10, 1787, Chapter 1271; April 13, 1791, Chapter 1575; April 19, 1794, Chapter 1751; April 4, 1797, Chapter 1949; March 20, 1799, Chapter 2032; April 2, 1802, P. L. 133; April 2, 1804, P. L. 459; April 1, 1805, P. L. 205; February 24, 1806, P. L. 334; April 7, 1807, P. L. 155; March 26, 1808, P. L. 144; April 1, 1811, P. L. 198; February 25, 1813, P. L. 81; March 13, 1815, P. L. 173; February 22, 1821, P. L. 50; March 30, 1821, P. L. 153; February 18, 1824, P. L. 25; April 8, 1826, P. L. 255; April 14, 1828, P. L. 484; April 3, 1829, P. L. 122; March 15, 1832, P. L. 135; March 29, 1832, P. L. 190; April 6, 1833, P. L. 207; February 24, 1834, P. L. 70; April 14, 1834, P. L. 341; April 14, 1835, P. L. 275; (the two acts of) June 16, 1836, P. L. 682, 785; April 13, 1838, P. L. 362; April 13, 1840, P. L. 319; October 13, 1840, P. L. 1841, 1; March 12, 1842, P. L. 66; July 16, 1842, P. L. 374; February 3, 1843, P. L. 8; April 4, 1843, P. L. 131; April 24, 1843, P. L. 359; April 6, 1844, P. L. 214; April 29, 1844, P. L. 527; February 27, 1845, P. L. 69; April 10, 1845, P. L. 353; April 15, 1845, P. L. 453; April 20, 1846, P. L. 411; (the two acts of) April 21, 1846, P. L. 426, 430; April 22, 1846, P. L. 483; March 3, 1847, P. L. 197; March 13, 1847, P. L. 319; March 16, 1847, P. L. 474; February 8, 1848, P. L. 27; (the two acts of) April 9, 1849, P. L. 511, 524; (the three acts of) April 10, 1849, P. L. 591, 597, 619; April 25, 1850, P. L. 569; April 26, 1850, P. L. 577; April 3, 1851, P. L. 305; April 14, 1851, P. L. 612; February 2, 1853, P. L. 31; February 23, 1853, P. L. 98; April 18, 1853, P. L. 503; February 20, 1854, P. L. 89; April 12, 1855, P. L. 214; April 27, 1855, P. L. 368; May 3, 1855, P. L. 415; May 4, 1855, P. L. 430; April 17, 1856, P. L. 386; April 21, 1856, P. L. 495; April 22, 1856, P. L. 532; April 13, 1858, P. L. 254; March 22, 1859, P. L. 207; April 7, 1859, P. L. 406; (the two acts of) April 13, 1859, P. L. 559, 611; April 15, 1859, P. L. 670; May 1, 1861, P. L. 680; April 1, 1863, P. L. 205; April 11, 1863, P. L. 341; April 23, 1864, P. L. 550; April 27, 1864, P. L. 641; August 25, 1864, P. L. 1029; March 27, 1865, P. L. 45; November 27, 1865, P. L. 1866, 1227; March 22, 1866, P. L. 297; May 17, 1866, P. L. 1096; January 7, 1867, P. L. 1367; February 13, 1867, P. L. 160; April 15, 1867, P. L. 86; February 6, 1868, P. L. 124; April 2, 1868, P. L. 3; April 14, 1868, P. L. 97; April 28, 1868, P. L. 105; February 26, 1869, P. L. 4; March 18, 1869, P. L. 409; March 30, 1869, P. L. 15; April 13, 1869, P. L. 28; (the two acts of) April 17, 1869, P. L. 70, 72; February 26, 1870, P. L. 256; May 23, 1871, P. L. 274; June 10, 1871, P. L. 385; March 6, 1872, P. L. 208; March 26,

1873, P. L. 48; March 27, 1873, P. L. 49; May 19, 1874, P. L. 206; March 4, 1875, P. L. 5; (the two acts of) March 18, 1875, P. L. 28, 29; May 8, 1876, P. L. 140; May 13, 1876, P. L. 172; May 24, 1878, P. L. 131; May 1, 1879, P. L. 40; June 5, 1885, P. L. 78; April 13, 1887, P. L. 22; April 28, 1887, P. L. 72; June 6, 1887, P. L. 359; April 4, 1889, P. L. 23; April 25, 1889, P. L. 52; May 7, 1889, P. L. 102; May 9, 1889, P. L. 146; June 12, 1893, P. L. 461; June 16, 1893, P. L. 464; March 28, 1895, P. L. 31; (the two acts of) May 22, 1895, P. L. 99, 114; May 23, 1895, P. L. 114.

CHAPTER CXCVIII.

AN ACT FOR AMENDING DIVERS LAWS THEREIN MENTIONED.

Forasmuch as the several laws, hereinafter mentioned, want alteration and amendment in some branches thereof:

[Section I.] Be it therefore enacted by Charles Gookin, Esquire, by the Queen's royal approbation, Lieutenant-Governor under William Penn, Esquire, true and absolute Proprietary and Governor-in-Chief of the Province of Pennsylvania, &c., by and with the advice and consent of the freemen of the said Province in General Assembly met, and by authority of the same, That all the courts of common pleas in the respective counties of Philadelphia and Chester shall begin on the day called Wednesday, next after the day appointed by the law entitled "An act to establish courts of judicature in this province,"¹ for the quarter-sessions to begin on, in each of the said counties. And that the courts of quarter-sessions for the county of Bucks, shall begin on the third Tuesday in every of the months called March, June, September and December. And that the courts of common pleas for the said county of Bucks shall be held at Bristol on the third Wednesday in every of the same months, anything in the said act to the contrary notwithstanding; and that two at least of the justices of the court of common pleas for the county of Philadelphia (on the day six weeks next after the first day of the said courts of

¹ Passed February 28, 1710-11, Chapter 168.