

case the person harboring or entertaining such sick and distempered person shall be poor or allege he or she is not of ability to pay the said fine of ten pounds, such indigent person shall be confined to the workhouse or prison for any time not exceeding one month, as the magistrate or magistrates of the respective county may direct.

Passed February 3, 1742-43. See Appendix XV, Section I, and the Acts of Assembly passed January 22, 1774, Chapter 691; February 28, 1780, Chapter 878. Repealed by the Act of Assembly passed April 22, 1794, Chapter 1759.

CHAPTER CCCLVIII.

AN ACT FOR THE MORE EASY RECOVERY OF LEGACIES WITHIN THIS PROVINCE.

Forasmuch as the laws of this province relating to the recovery of legacies are defective:

Therefore for remedying thereof:

[Section I.] Be it enacted by the Honorable George Thomas, Esquire, with the King's royal approbation Lieutenant-Governor under the Honorable John Penn, Thomas Penn and Richard Penn, Esquires, true and absolute Proprietors of the Province of Pennsylvania and of the counties of Newcastle, Kent and Sussex on Delaware, by and with the advice and consent of the representatives of the freemen of the said Province in General Assembly met, and by the authority of the same, That from and after the publication of this act it shall and may be lawful for any person or persons to whom any legacy or bequest of any sum or sums of money or other goods or chattels have been or may be made by the last will and testament of any other person or persons legally made to commence, sue and prosecute an action for debt, detinue or account render as the case may require for such legacy after it becomes due in any of the county courts for holding of pleas in any of the counties within this province. And if it shall appear that the legacy or legacies is or are due and there be sufficient assets in the hands of

the executors or administrators with testaments annexed to discharge the [just] debts of the testator and the legacy or legacies bequeathed, the plaintiff or plaintiffs shall recover with costs of suit, any law, usage or custom to the contrary notwithstanding.

Provided always, That where it shall so happen that there are assets in the hands of any executors or administrators with testaments annexed to discharge all the debts of the testator with an overplus not sufficient to discharge all the legacies which may be given, then an abatement shall be made in proportion to the legacies so given unless it shall otherwise be provided by the will; and where any legatee or legatees are or may be under age at the time when such legacy or legacies shall become due, in such case such legatee or legatees shall and may maintain an action for their respective legacies by guardian or next friends as fully, amply and largely as by law they may do in any other actions whatsoever.

[Section II.] And be it further enacted by the authority aforesaid, That the respective courts where the said actions shall be commenced upon the plea of the want of assets to pay all the debts and legacies shall appoint auditors to examine the accounts of the executors and administrators with testaments annexed, who after full hearing of the parties at such times and places as by them the said auditors shall be appointed, with notice to the parties, shall report how the accounts of the executors or administrators do stand, what assets will remain after payment of all the debts and what part of the remainder is the proportion that ought to go towards paying of the plaintiff's legacies, for which proportion only unless it shall be otherwise provided by the will the court shall then award execution upon the judgment to be had in the said suit, which judgment shall remain a security for the payment of the remainder of the said legacies and costs when sufficient assets for the payment thereof come to the executor's or administrator's hands. And where any exceptions shall be taken by either of the parties to the report of the auditors, it shall and may be lawful for the court in which the action shall be depending on hearing of the parties to correct and amend any

mistakes or errors which may happen in the accounts so to be reported.

Provided always, That no such suit shall be maintained for any such legacy until reasonable demand made of the executor or executors or administrators with wills annexed who ought to pay the same, and an offer made of two sufficient sureties to the said executor or executors, administrator or administrators aforesaid, who, if they think proper to accept thereof, shall become bound to them the said executor or executors, administrator or administrators aforesaid, in double the sum of the legacy given, with condition underwritten that if any part or the whole thereof shall at any time after appear to be wanting to discharge any debt or debts, legacy or legacies, which the said executor or executors, administrator or administrators, shall not have other assets to pay, that then he the said legatee will return his said legacy or such part thereof as shall be necessary for the payment of the said debts or the payment of a proportional part of the said legacies. And if the said executors or administrators shall not think proper to accept of such bond, then the said legatees shall file the same with the clerk of the court before obtaining any process against the executor or executors, administrator or administrators, otherwise and in default thereof the process issued shall abate.

[Section III.] And be it further enacted by the authority aforesaid, That the justices of the courts aforesaid respectively upon consideration of the report of the accounts of the executors or administrators shall, according to justice and equity, either award no costs or costs out of the testator's estate; or in case the executors or administrators have been faulty in delaying to pay the legacy demanded or a proportional part thereof without sufficient excuse, then out of the proper estate of the executor or executors, administrator or administrators, anything herein contained to the contrary notwithstanding.

Provided also, That where there are or may be several legatees and a return of part of the said legacy sued for appears 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.

Provided also, That where no time in and by any last will and testament is limited for the payment of any such legacies, that then and in such case the said executors or administrators shall have the space of one year to discharge the same.

[Section IV.] And be it enacted by the authority aforesaid, That this act shall continue in force for the term of seven years and from thence to the end of the next session of assembly and no longer.

Passed February 3, 1742-43. See Appendix XV, Section I, and the Acts of Assembly passed January 27, 1749-50, Chapter 385; March 17, 1757, Chapter 419; September 20, 1765, Chapter 529.

CHAPTER CCCLIX.

AN ACT FOR NATURALIZING SUCH FOREIGN PROTESTANTS AS ARE SETTLED OR SHALL SETTLE WITHIN THIS PROVINCE, WHO, NOT BEING OF THE PEOPLE CALLED QUAKERS, DO CONSCIENTIOUSLY REFUSE THE TAKING OF ANY OATH.

Whereas by an act of Parliament passed in the thirteenth year of the reign of our present sovereign, King George the Second, entitled "An act for naturalizing such foreign Protestants and others therein mentioned as are settled or shall settle in any of His Majesty's colonies in America,"¹ it is amongst other things provided and enacted that from and after the first day of June in the year of our Lord one thousand seven hundred and forty all persons born out of the ligeance of His Majesty, his heirs or successors, who have inhabited and resided or shall inhabit and reside for the space of seven years or more in any of His Majesty's colonies in America, and shall not have been absent out of some of the said colonies for a longer space than two months at any one time during the said seven years, and shall take and subscribe the oaths and make, repeat and subscribe the declaration appointed by an act made in the first year of the reign of his late Majesty, King George the First, entitled "An act for the further security of His Majesty's person and

¹ 6 Ruffhead, 384.