

CHAPTER CCCLXXIV.

AN ACT FOR AMENDING THE LAWS RELATING TO THE PARTITION AND DISTRIBUTION OF INTESTATES' ESTATES.

Whereas an act of general assembly of this province was passed in the fourth year of the late Queen Anne, entitled "An act for the better settling intestates' estates,"¹ which act is on experience found to require explanations and amendments:

And to these purposes we, the representatives of the freemen of said province, do pray that it may be enacted:

[Section I.] And be it enacted by the Honorable James Hamilton, Esquire, Lieutenant-Governor of the Province of Pennsylvania, and of the counties of Newcastle, Kent and Sussex on Delaware, under the Honorable Thomas Penn and Richard Penn, Esquires, true and absolute Proprietors of the said Province and counties, 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, if after the death of any father and mother any of their children shall die intestate in their minority, unmarried and without issue, but not otherwise, the lands, tenements, hereditaments and estates, real and personal, of every such intestate shall be equally divided amongst the surviving children and the representatives of any child or children then dead, those representatives taking only such part or share as should have passed to the child or children they represent respectively had they been living, to hold to them, their heirs, executors or administrators respectively, in severalty forever; but if the mother of any intestate child or children shall be living, then and in such cases the personal estate shall be equally divided between such mother and the surviving children of her deceased husband and the representatives of any child or chil-

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

dren then dead in manner above mentioned, share and share alike.

[Section II.] And be it further enacted by the authority aforesaid, That the shares or purparts of intestates' real estates which (by the act for settling intestates' estates aforesaid) are given to widows shall be construed and understood to be estates for their natural lives respectively and not otherwise.

And to prevent any doubts which may hereafter arise concerning the manner in which the partition of intestates' estates may be made:

[Section III.] Be it further enacted by the authority aforesaid, That it shall and may be lawful to the justices of the Orphans' court of the county in which the lands and tenements of intestates shall be, upon a petition to them presented by any of their children if of age, or by his, her or their guardian or guardians or next friends if under age, to appoint four or more persons indifferently chosen on behalf of the parties; or where the parties cannot agree, to award an inquest to make partition according to the purport and true meaning of the act for settling intestates' estates hereinbefore mentioned; but so, nevertheless, that due regard be had to the amendments made by this act: And upon the return to them made by the persons so to be appointed or of the inquisition so to be awarded, to give judgment that the partition thereby made do remain firm and stable forever, and that the costs arising on such suit or suits be paid by all the parties concerned.

Provided nevertheless, That where any estate in lands, tenements and hereditaments cannot be divided amongst all the children of the intestate without prejudice to or spoiling of the whole, the same being so represented and made appear to the Orphans' court of the county where the same lands or tenements shall be, then the said court may, but not otherwise, order the whole to the eldest son if he shall accept it, or any other of the sons successively upon the eldest son's refusal, he or they or some friend for him or them paying to the other children of the intestate their equal and proportionable parts of the true value of such lands, tenements or hereditaments as upon a just appraisal thereof, pursuant to the act for settling intestates'

estates aforesaid is directed; or giving good security for the payment thereof in some reasonable time, as the said Orphans' court shall limit and appoint; and the person or persons to whom or for whose use payment or satisfaction shall be so made for their respective parts or shares of the deceased's lands by the heir at law or others in manner aforesaid, shall be forever barred of all right, title or demand of, in, to or out of the intestates' lands and tenements aforesaid.

[Section IV.] And be it further enacted by the authority aforesaid, That so much of the act of assembly hereinbefore recited as is herein and hereby altered or is repugnant to the provisions made by this act shall be and is hereby repealed, made null and void, anything in the same act contained to the contrary thereof notwithstanding.

Provided nevertheless, That this act, and the matters herein contained, shall be deemed, construed and understood to extend to the estates of persons who shall die intestate after the publication hereof and not otherwise.

[Section V.] And be it further enacted by the authority aforesaid, That where any person shall at any time hereafter make his last will and testament and afterwards marry or have a child or children not named in any such will and die, although such child or children be born after the death of their father, every such person, so far as shall regard the wife after married or the child or children after born, shall be deemed and construed to die intestate; and such wife, child or children shall be entitled to like purparts, shares and dividends of the estate, real and personal, of the deceased as if he had actually died without any will.

Passed February 4, 1748-49. Confirmed by the King in Council, March 29, 1750. See Appendix XVII, Section I, and note to the Act of Assembly passed January 12, 1705-6, Chapter 135. The Act in the text was repealed by the Act of Assembly passed March 23, 1764, Chapter 512.