

and charged in execution for the said debt in the same manner as if the said Samuel Wallis had never been in execution or discharged before, and shall ever after be barred of any benefit of this act.

Passed March 23, 1764. Referred for consideration by the King in Council, February 10, 1766, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXIV, Section VIII.

CHAPTER DXII.

A SUPPLEMENT TO THE ACT, ENTITLED "AN ACT FOR THE BETTER SETTling INTESTATES' ESTATES,"¹ AND FOR REPEALING ONE OTHER ACT OF GENERAL ASSEMBLY OF THIS PROVINCE, ENTITLED "AN ACT FOR AMENDING THE LAWS RELATING TO THE PARTITION AND DISTRIBUTION OF INTESTATES' ESTATES."²

Whereas an act of general assembly of this province was passed in the fourth year of Queen Anne, entitled "An act for the better settling intestates' estates,"¹ which, by one other act, passed in the twenty-second year of His late Majesty, King GeorgetheSecond,² was in some parts thereof altered, explained and amended; and forasmuch as some further explanations and amendments are found necessary, therefore, and in order to reduce the laws relating to intestates' estates into as few acts as may be and repealing such as shall thereby become of no further service:

[Section I.] Be it enacted by the Honorable John Penn, Esquire, Lieutenant-Governor under the Honorable Thomas Penn and Richard Penn, Esquires, true and absolute Proprietaries of the Province of Pennsylvania and counties of Newcastle, Kent and Sussex upon 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 fourth day of February, one thousand seven hundred and forty-eight, if, after the death of any

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

² Passed February 24, 1748-49, Chapter 374.

father and mother, any of their children hath died or [at any time after the passing of this act] 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] in severalty forever. But if any child, either of age or in his or her minority, having or being entitled to any personal estate under such father shall, after the passing of this act, die intestate, unmarried and without issue, during the life of his or her mother, all such personal estate shall be equally divided between such mother of the deceased and his or her brothers and sisters and their legal representatives, in case any such brother or sister be then dead, they, the said representatives, only taking the share that should have passed to his, her or their parents had he or she been living.

[Section II.] And be it further enacted by the authority aforesaid, That the shares and 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 enacted by the authority aforesaid, That it shall and may be lawful to and for 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 the widow or relict or by any child or children of such intestate, if of age, or by his or her or by their guardian or guardians or next friends, if under age, to appoint four or more persons indifferently chosen on behalf and with consent 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 taken 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 the children or widow and 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 of the other sons successively upon the eldest son's refusal; or if there be no son or all the sons refuse, then to the eldest daughter of the said intestate, and on her refusal to any other of the said daughters successively, he or they or some friend for him, her 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 appraisement 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 in manner aforesaid shall be forever barred of all right, title or demand of, in, to or out of the intestate's lands and tenements aforesaid. But where the wife is living and the whole premises shall be adjudged and ordered to the heir at law or any other of the children, the wife of the person so deceased shall not be entitled to the sum at which her purpart or share of the estate so as aforesaid ordered to the heir at law or any of the children shall be valued, but the same, together with the interest thereof, shall be and remain charged upon the premises, and the interest thereof shall be regularly and annually paid by the heir at law or such other child to whom the same shall be adjudged, his or her heirs or assigns, holding the said lands to be recovered by such mother by distress or otherwise as rents in this province are usually

recovered to his or her said mother during her natural life, which the said mother shall accept and receive in lieu and full satisfaction for her dower at common law; and at the decease of the said mother the said principal sum so as aforesaid valued and adjudged shall be paid by the said heir at law or other child aforesaid to whom the same shall be adjudged, his or her heirs or assigns holding the premises, and shall be distributed and divided by the said court to and among the said children of her husband and their representatives according to the directions of the act of assembly hereinbefore mentioned made in the fourth year of Queen Anne, allotting two shares to the eldest son or to his representative or representatives.

[Section IV.] And be it further enacted by the authority aforesaid, That where any person, from and after the fourth day of February, one thousand seven hundred and forty-eight, hath made or hereafter shall make his or her last will and testament and afterwards hath married or had or after the passing of this act shall marry or have a child or children not provided for 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 child or children after born, shall be deemed and construed to die intestate, and such child or children shall be entitled to like purparts, shares and dividends of the estate, real and personal, [of the deceased] as if he or she had actually died without any will; and in such cases the justices of the respective Orphans' courts, so far as regards the wife after married or child or children after born, shall have the same power and authority to make partitions, or where partitions cannot be made without prejudice to or spoiling the whole of that part of the estate devised to any child or children aforesaid, in that case to value, adjudge and order the premises to the devisee or devisees of such part of the estate as cannot be divided as aforesaid, and on the refusal of such devisee or devisees to the children successively, as they may or can do where a person dies wholly intestate; and the devisee or devisees or the child or children to whom the premises shall be adjudged shall pay the money or give sufficient security for the same, as is herein directed where the person dies intestate as aforesaid.

[Section V.] And be it further enacted by the authority aforesaid, That so much of the act of assembly hereinbefore recited, entitled "An act for the better settling of intestates' estates,"¹ 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 said act contained to the contrary thereof notwithstanding.

[Section VI.] And be it further enacted by the authority aforesaid, That the act hereinbefore mentioned, passed in the twenty-second year of the late King George the Second, entitled "An act for amending the laws relating to the partition and distribution of intestates' estates,"² and every part thereof shall be and is hereby declared to be repealed and made null and void to all intents and purposes whatsoever.

Provided nevertheless, That nothing in this act contained shall be deemed, construed or taken to bar, defeat or destroy any right, title or interest heretofore arisen or accrued to any person or persons of, in or to any estate, real or personal, or to alter or make void any settlements or partitions of intestates' estates made in virtue of the act herein last before recited and hereby repealed.

Passed March 23, 1764. Referred for consideration by the King in Council, February 10, 1766, and allowed to become a law by lapse of time in accordance with the proprietary charter. See Appendix XXIV, Section VIII, and the notes to the Acts of Assembly passed January 12, 1705-6, Chapter 135; February 4, 1748-49, Chapter 374. Repealed by the Act of Assembly passed April 19, 1794, Chapter 1751.

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

² Passed February 24, 1748-49, Chapter 374.