

HOUSE No. 510

By Mr. Di Vitto of Milford, petition of William R. Di Vitto relative to the citation of executors and administrators of deceased defendants in certain personal actions and to the time of bringing such actions against said fiduciaries. Legal Affairs.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Forty-Nine.

AN ACT RELATIVE TO THE CITATION OF EXECUTORS AND ADMINISTRATORS OF DECEASED DEFENDANTS IN PERSONAL ACTIONS THE CAUSE OF WHICH SURVIVES AND TO THE TIME OF BRINGING CERTAIN OF SUCH ACTIONS AGAINST EXECUTORS AND ADMINISTRATORS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 228 of the General Laws, as amended by
2 acts of 1937, chapter 406, section 1, is hereby further
3 amended by striking out section 5 of chapter 228 of
4 the General Laws (Ter. Ed.) and inserting in place
5 thereof the following:—

6 *Section 5.* Such citation shall be returnable at
7 such time as the court may order and shall be served
8 fourteen days at least before the return day; but
9 it shall not issue after the expiration of one year
10 from the time such executor or administrator has
11 given bond, except that if the supreme judicial court,

12 upon a bill in equity filed by a plaintiff or former
13 plaintiff in a personal action the cause of which
14 survives and who had a right to take out such a
15 citation against the executor or administrator of a
16 sole defendant but who did not do so within the time
17 limited in this section, deems that justice and equity
18 require it and that such party is not chargeable with
19 culpable neglect in not taking out such citation within
20 the time so limited, it shall order such executor or
21 administrator to appear in that action and defend
22 the same and shall order that any finding, verdict,
23 order, judgment or other act therein rendered or done,
24 which otherwise would prevent the prosecution of
25 the cause to determination on its merits, be vacated,
26 and upon the filing therein of a copy of the decree
27 ordering the vacation thereof such finding, verdict,
28 order, judgment or other act shall stand vacated,
29 and it may make further orders, all so that said action
30 may proceed to final determination on its merits as
31 though such executor or administrator had been
32 cited in within the time limited by this section. If
33 at the hearing of such a bill in equity it shall be made
34 to appear to said court that the legal representative
35 of the deceased person within nine months of his
36 appointment failed to notify in writing the petitioner
37 of such death and failed within said nine months
38 duly to suggest such death in such action, such facts
39 shall be sufficient ground for granting the relief herein
40 authorized. Neither such relief nor the final de-
41 termination of such action shall affect any payment
42 or distribution not concerned with said action which
43 was made before the filing of such bill in equity.