

1783. — Chapter 32.

[January Session, ch. 14.]

Chap. 32 AN ACT DIRECTING THE SETTLEMENT OF THE ESTATES OF PERSONS DECEASED, AND FOR THE CONVEYANCE OF REAL ESTATES IN CERTAIN CASES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same. That when the goods and chattels belonging to the estate of any person deceased, or that hereafter may decease, shall not be sufficient to answer the just debts which the deceased owed or legacies given, upon representation thereof, and the same being made to appear to the Supreme Judicial Court, at any term or sitting of the said Court, in any county in this Commonwealth, or the Court of Common Pleas in the county where the deceased person last dwelt, or in the county in which the said real estate lies, the said Courts are severally and respectively authorized to empower and licence the Executor or Administrator of such estate to make sale of all or any part of the houses, lands or tenements of the deceased, so far as shall be necessary to satisfy the just debts which the deceased owed at the time of his death, and legacies bequeathed in and by the last will and testament of the deceased, with incidental charges: And every Executor or Administrator being so licensed and authorized as aforesaid, shall and may, by virtue of such authority, make, sign and execute, in due form of law, deeds and conveyances for such houses, lands or tenements as they shall so sell, which instruments shall make as good a title to the purchaser, his heirs and assigns, forever, as the Testator or Intestate, being of full age, of sane mind and memory, in his or her life time, might or could for a valuable consideration. — *Provided always,* That the Executor or Administrator, before sale be made as aforesaid, give thirty days public notice, by posting up notifications of such sale in the town or plantation where the lands lie, as well as where the deceased person last dwelt, and in the two next adjoining towns, as also in the shire town of the county; and whosoever will give most, shall have the preference in such sale; and in case it be an insolvent estate, the whole produce of such sale shall be divided in due proportion to and among the creditors.

And whereas, by the partial sale of real estates for the payment of debts or legacies as aforesaid, it often happens that the remainder thereof is much injured:

Supreme Judicial Court empowered to licence Executors to make sale of lands, &c.

Proviso.

Be it therefore enacted by the authority aforesaid, That whenever it shall be necessary that Executors or Administrators shall be empowered to sell some part of the real estate of deceased Testators or Intestates, or for Guardians to sell some part of the real estate of minors or persons *non compos mentis*, for the payment of just debts, legacies or taxes, or for the support or legal expences of minors or persons *non compos mentis*, and by such partial sale the residue of such real estates would be greatly injured, and the same shall be represented and made to appear to the Justices of either of the aforesaid Courts, on petition and declaration filed, and duly proved therein, by the said Executors, Administrators, or Guardians, the Justices of the aforesaid Courts respectively, may authorize and empower such Executors, Administrators or Guardians, to sell and convey the whole or so much of such real estates, as shall be most for the interest and benefit of the parties concerned therein, at public auction, and good and sufficient deed or deeds of conveyance thereof to make and execute; which deed or deeds, when duly acknowledged and recorded in the registry of deeds for the county where the said real estate lies, shall make a compleat and legal title in fee to the purchaser or purchasers thereof: provided the said Executors, Administrators or Guardians, give thirty days public notice of such intended sale in manner and form hereinbefore prescribed; and provided also they first give bonds, with sufficient sureties, to the Judge of Probate for the county where the deceased Testator or Intestate last dwelt, and his estate inventoried, that he or she will observe the rules and directions of law for the sale of real estates by Executors or Administrators, and that the proceeds of the said sale, after the payment of just debts, legacies, taxes, and just debts for the support of minors, and other legal expences and incidental charges, shall be put on interest on good security, and that the same shall be disposed of agreeably to the rules of law.

Executors, &c.
empowered to
sell real estates
for payment of
debts.

And be it further enacted, That every representation to be made as aforesaid, shall be accompanied with a certificate from the Judge of Probate of the county where the deceased person's estate was inventoried, certifying the value of the real estate and the value of the personal estate of such deceased person, and the amount of his or her just debts; and also his opinion whether it be neces-

Representations
made to be ac-
companied with
a certificate of
the Judge of
Probate.

Justices to
notify the
parties con-
cerned.

In case.

sary that the whole or a part of the estate should be sold, or if part only, what part. And the said Justices, previous to their passing on the said representation, shall order due notice to be given to all parties concerned, or their guardians, who do not signify their consent to such sale, to shew cause, at such time and place as they shall appoint, why such licence should not be granted. And in case any person concerned in the said sale be not an inhabitant of this Commonwealth, nor have any Guardian, Agent or Attorney therein, who may represent him or her, the said Justices, may cause the said petition to be continued for a reasonable time; and the petitioner or petitioners shall give personal notice of the said petition to such absent person, his or her Agent, Attorney or Guardian, or cause the same to be published in some one of the *Boston* news papers, three weeks successively. And the said Justices, where they may think it expedient, may examine the said petitioner or petitioners, on oath, touching the truth of facts set forth in the said petition, and the circumstances attending the same.

And whereas it may be often necessary to enable the representatives of persons deceased, to perform the engagements entered into by such deceased persons for the transfer of real estates:

Justices to
grant licence to
Executors or
Administrators
to convey real
estate in certain
cases.

Therefore be it further enacted, That whenever it shall be represented and made to appear to the Justices of either of the aforesaid Courts, in form aforesaid, by any person or persons, contracted with by bond, covenant or other contract under seal, that a deceased Testator or Intestate in his or her life time, entered into such bond, covenant or contract, to convey some real estate to him or her, but was prevented by death; and that such person or persons, contracted with as aforesaid, have on his, her or their part performed, or stand ready to perform, the conditions of such bond, covenant or contract made with the deceased, the said Justices may, after due notice given to all concerned as aforesaid, in form aforesaid, and a full hearing had, grant licence to, and impower the Executors or Administrators of such deceased obligor, covenantor or contractor, to make and execute such conveyance or conveyances, to such person or persons contracted with as aforesaid, as it shall appear the said obligor, covenantor or contractor, would by his bond, covenant or contract, be obliged to make and execute, in case he, she or they,

were living at the time of the performance of the conditions of the bond, covenant or contract, by the contractees on their part making reasonable allowances for any alteration, improvements or injuries, that may be made or done in the same estate since such contract was made, as the said Justices may award: which conveyance or conveyances, when the instruments thereof are duly acknowledged and recorded in the registry of deeds for the county where such estate shall lie, shall be good and valid; and the monies or consideration paid for such estate, if not paid to the deceased contractor in his life time, shall be assets in the hands of the said Executors or Administrators, and be apportioned among the representatives of the deceased as other personal estate.

Be it further enacted by the authority aforesaid, That when it shall fully appear to the Justices of the Supreme Judicial Court aforesaid, by the petition and representation of the friends or guardians of minors interested in the real estate of any deceased Testator or Intestate, that it would be for the benefit of such minors, or persons *non compos mentis*, that their interest therein should be disposed of, and the proceeds thereof be put out and secured to them on interest. the said Justices last mentioned, after a full examination on the oath of the petitioner or otherwise, may authorize some suitable person or persons to sell and convey such estate or part thereof, by deed or deeds duly acknowledged and recorded in the registry of deeds as aforesaid; provided such person or persons first give bond, with sufficient sureties, to the Judge of Probate for the county where the said deceased person last dwelt, to observe the rules and directions of law in the sale of real estates by Executors or Administrators in the first enacting clause herein prescribed; and to account for and make payment of the proceeds of the said sale, agreeable to the rules of law. *Provided,* That the said Judge of Probate shall certify that the whole or a part of the said estate is, in his opinion, necessary to be sold, or if part only, what part.

And be it further enacted, That when it shall appear to the said Justices, on examination, that the said petition or petitions, in any of the foregoing applications, are unreasonable, the said Justices may award reasonable costs to such respondents as shall appear and object thereto.

And be it further enacted, That the real estate of any Testator or Intestate, is and shall be liable to be taken and

Justices of the Supreme Judicial Court, after full examination on the oath of petitioners, may authorize persons to sell and convey estates.

Proviso.

Justices to award reasonable costs.

Real estates liable to be taken and levied

upon execu-
tions issuing.

levied upon by any execution issuing upon judgments recovered against Executors or Administrators, in such capacity, being the proper debts of the Testator or Intestate, and that the method of levying, appraising and recording, shall be the same as by law is provided respecting other real estates levied upon and taken in execution, and may be redeemed by the Executor, Administrator or Heir, in like time and manner.

Executors, &c.
neglecting to
raise money.

And be it further enacted. That when any Executor or Administrator shall neglect or unreasonably delay to raise money out of the Testator's or Intestate's estate, by collecting the debts due to such estate, and by selling the personal estate, or the real estate, if need be, (and he has power or can obtain licence to sell the same) or shall neglect to pay what he has in his hands, and by such neglect or delay shall subject the Testator's or Intestate's real or personal estate to be taken in personal execution, the same shall be deemed waste and unfaithful administration in such Executor or Administrator.

To be deemed
waste, &c. in
such Executor.

How writs of
attachment and
executions shall
run.

And be it further enacted. That all writs of attachment and executions, shall run only against the goods or estate of the party deceased, in the hands of Executors or Administrators, and not against their bodies, nor shall any Executor or Administrator be held to special bail upon mesne process, nor his own proper goods or estate be attached, or his person be arrested or taken in execution for the debts or legacies of the Testator or Intestate, but upon suggestion of waste, founded on a return made by the Sheriff, that he could not find any goods or estate of the Testator or Intestate; in which case a writ commonly called *scire facias*, shall be issued out of the Clerk's office of the same Court, against such Executor or Administrator, which writ being duly served and returned, if the Executor or Administrator make default of appearance, or coming in, shall not shew cause sufficient to the contrary, execution shall be adjudged and awarded against him of his own proper goods and estate to the value of such waste, where it can be ascertained, otherways for the whole sum recovered; and for want of goods or estate, against the body of such Executor or Administrator.

In case of the
death of an ap-
pellant or
appellee, before
the sitting of
the Court
appealed unto.

And be it further enacted. That in case of the death of any party, either the appellant or appellee, before the sitting of the Court appealed unto, or where any action or suit is or shall be depending, either in the Court of Com-

mon Pleas, or in the Supreme Judicial Court, in any county of this Commonwealth, and it so happen that either party be taken away by death before final judgment, the Executor or Administrator of such deceased party, who was plaintiff, complainant or defendant, (in case the cause of action doth by law survive) shall have full power to prosecute or defend any such suit or action from Court to Court, until final judgment; and the defendants or appellees are hereby obliged to answer to such actions accordingly; and the Justices of the Court of Common Pleas and Supreme Judicial Court respectively, before whom such causes are or may be triable and depending, are hereby impowered and directed to hear and determine all such causes, proceed to judgment and award execution accordingly: And if it shall so happen that the Executor or Administrator of the deceased hath not suitable time in the judgment of the Court where such action or suit shall be pending and doth by law survive as aforesaid, to prepare for managing the cause, or to become duly qualified to prosecute or defend the same; in such case it shall and may be lawful for the Court to suspend the hearing and trying thereof until the next term. And if by the verdict of a Jury, or by the default or neglect of the Executor or Administrator, in prosecuting or defending such suit, after the Executor or Administrator shall have appeared and undertaken in his capacity to prosecute or defend the suit, judgment pass against the Executor or Administrator, the Supreme Judicial Court and Court of Common Pleas are hereby respectively authorized, impowered and directed, to enter up judgment for or against the estate of the deceased, in their hands and under their administration, as the case may require.

And be it further enacted, That each Judge of Probate within his county be, and hereby is, fully authorized and impowered, to call before him and to examine upon oath, any person suspected and complained of by any Executor or Administrator, Heir, Creditor, Legatee or other person, having lawful right or claim to the estate of any person deceased, to have concealed, embezzled or conveyed away any of the money, goods or chattels left by the Testator or Intestate, for the discovery of the same. — And if the person suspected and complained of as aforesaid, shall refuse to be examined, or to answer interrogatories, upon oath, respecting the estate which he or she may be suspected of concealing, embezzling or conveying away, it shall and

Judges of Probate impowered to examine upon oath persons suspected and complained of by Executors or Administrators.

may be lawful for, and the said Judge is hereby impowered to commit such person so refusing to be examined or answer interrogatories upon oath as aforesaid, unto the common goal of the county, there to remain until he or she shall consent to be examined and answer interrogatories upon oath as aforesaid, or be released by the consent of the person suspecting and complaining against him or her, or by order of the Supreme Judicial Court.

Judges of Probate impowered to convene before them any person entrusted with any estate of Testators or Intestates.

And be it further enacted, That the several Judges of Probate be, and hereby are impowered, to convene before them any person that has been or may hereafter be intrusted by any Executor or Administrator with any part of the estate of the Testator or Intestate (and to be assisting to such Executor or Administrator in the execution of their trust) who shall refuse, upon a citation issued from the Judge of Probate for that purpose, to appear before him, and render a full account, upon oath, of any money, goods or chattels, and of any bonds, accounts or other papers belonging to the estate of the Testator or Intestate, which he shall have taken into his hands or custody; and of his proceeding for and in behalf of such Executor or Administrator in his capacity as such. And if such person shall refuse to render account as aforesaid, such Judge may proceed against him in the way and manner before directed for persons suspected of concealment, who refuse to answer interrogatories upon oath.

Witnesses refusing to appear.

And be it further enacted, That when any person shall be cited to appear as a witness before the Judge of Probate in any cause or hearing, and such person shall refuse to appear or give evidence, he or she shall be liable to the like penalty or damage as such person would be liable unto for refusing to appear or give evidence in any Court of Common Pleas.

Penalty.

In cases where appraisers, &c. have been appointed.

And be it further enacted, That in all cases where the appraisers, commissioners or dividers, appointed by the Judge to perform any service respecting the estate of any person deceased, or persons appointed to set off the widow's dower therein, and are by law directed to be under oath, or sworn by the Judge of Probate, they may be sworn before a Justice of the Peace; and in case there be no Justice of the Peace in the same town, they may be sworn before the Town Clerk; a certificate of such oath to be returned to the Probate Office from whence the warrant or commission appointing them issued.

March 4, 1784.