

ORPHANS COURTS

Act of Oct. 13, 1840, Special Session 1, P.L. 1, No. 258 Cl. 42
AN ACT

Relating to Orphans' Courts, and for other purposes.

Section 1. (1 repealed June 7, 1917, P.L.447, No.193)

Section 2. Election to demise premises at valuation;
venditioni exponas in case of refusal

Upon the return of a writ of fieri facias levied upon real estate of the defendant, with the inquisition assessing the value of the yearly rents and profits thereof, the plaintiff may, at his election, instead of suing out a writ of liberari facias for the purpose of having the said real estate delivered to him at the valuation and appraisement, permit the defendant or defendants, or any other person or persons, claiming under him or them, by demise or title subsequent to the judgment upon which the said fieri facias issued, to retain the possession of the said real estate at the annual valuation and appraisement, so as aforesaid made by the inquest. and the said plaintiff or his attorney shall signify his election, so to permit the said defendants, or other persons so claiming, to the sheriff, who may have the said writ of fieri facias in his hands for execution, within ten days after the holding of the inquisition, and it shall be the duty of the said sheriff to notify the said defendant, or other person so claiming thereof, within ten days after said notice shall be given to him by the plaintiff. And it shall be the duty of the said defendant, or other person so claiming, within ten days thereafter, to notify the said sheriff of his willingness to retain the said real estate at the annual valuation and appraisement so as aforesaid made in pursuance of the act entitled "an act relating to executions, " passed the 16th day of June, 1836, and upon his neglect or refusal to do so, the plaintiff may have a writ of venditioni exponas, to sell the said real estate, for the payment of his debt. All which notices required by this act shall be in writing, signed by the parties or their attorneys, and shall be served, by delivering a copy to the party plaintiff, or defendant, or to the person in possession of the real estate, or leaving the same at his residence with an adult member of his family, and of all which the said sheriff shall make return according to law, and be entitled to mileage as in other cases. 1840, Oct. 13, P.L., (1841) 1, Sec. 2.

Section 3. Rent to be paid half-yearly; if not paid,
venditioni exponas may issue

If the said defendant, or defendants, or other person claiming the said real estate, as aforesaid, shall signify his or their willingness to retain the same at the valuation and appraisement in pursuance of the second section of this act, he or they shall thereby become liable to pay to the plaintiff the amount of the said annual valuation and appraisement in half-yearly instalments, until the debt, interest and cost of the said fieri facias by fully paid; the first of said instalments to be paid in six months from the day the defendant, or person claiming, as aforesaid, shall deliver notice to the sheriff declaring his or their willingness to retain the said real estate, which date the sheriff is hereby required to endorse on said notice, and on failure to make payment for a period of thirty days after any half-yearly instalment shall become due, it shall be lawful for the plaintiff, his agent, or attorney, upon making affidavit thereof, and filing the same

in the prothonotary's office, to issue a writ of venditioni exponas, for the sale of said real estate, as fully and with like effect as though a condemnation thereof had taken place.

1840, Oct. 13, P.L.)1841) 1, Sec. 3.

Section 4. Distribution of payments

On the return by the sheriff of the notices and proceedings prescribed by the second and third sections of this act, it shall be lawful for the court out of which the fieri facias issued, on the application of any creditor, to make an order directing the manner in which the money arising from such half-yearly instalments shall be distributed among the different lien creditors according to the priority of their liens, in the same manner and with like effect as in case of distribution of money arising from sheriffs' sales; and it shall be the duty of the defendant or person in possession of said estate to pay said instalments to the plaintiff or party entitled to receive the same under such decree, or to his or their agent or attorney, or to the sheriff of the proper county, when such plaintiff or person, his or their agent or attorney, reside out of said county. 1840, Oct. 13, P.L. (1841) 1, Sec. 4.

Section 5. Where real estate has heretofore been extended on a writ of fieri facias, and no writ of liberari facias issued to take possession thereof, it shall be lawful for the plaintiff to either issue out his writ of liberari facias or give the defendant thirty days notice of his election, to permit the defendant to retain possession of the same, and the defendant shall within twenty days thereafter notify the plaintiff whether he will retain the same or deliver over said premises to the plaintiff at the annual valuation, and on failure so to do, or on failure to pay said valuation half yearly, like proceedings shall be had for the sale of said premises as is prescribed by the second and third sections of this act. The notices to be served and returns thereof made in the manner before prescribed.

Section 6. Sequestrator to be appointed

Whenever an estate for life, in any improved lands or tenements, yielding rents, issues or profits, shall hereafter be taken in execution, the court shall, upon the application of any lien creditor, award a writ to sequester the rents, issues and profits of such estate, and appoint a sequestrator to carry the same into effect. 1840, Oct. 13, P.L. (1841) 1, Sec. 6.

Section 7. Powers of sequestrator

The sequestrator so appointed shall have power, according to the direction of the court, to rent or sell such lands or tenements, for such term during the life of the persons upon whom such estate therein shall depend, as shall be sufficient to satisfy all the liens against the same; together with all charges for taxes, repairs, and expenses which shall be incurred during the said term, and he shall apply the proceeds thereof, under the direction of the court, in the payment of such liens according to their priority. 1840, Oct. 13, P.L. (1841) 1, Sec.

Section 8. Security and accounts

The court shall have power, if they deem it necessary, to require from such sequestrator a bond with sufficient security for the faithful execution of his trust, and to compel him to account from time to time, as they shall think necessary; and they may make all such orders, allowances and decrees in the premises, and enforce the same in like manner, and as fully and effectually, as a court of chancery might do in the like case.

1840, Oct. 13, P.L. (1841) 1, Sec. 8.

Section 9. The fifty-second, fifth-third, fifty-fourth, fifty-fifth, fifty-sixth, fifty-seventh, sixty-fifth, sixty-seventh, sixty-eighth, sixty-ninth, seventieth and seventy-first section of the act last recited, are hereby repealed; except in such cases as may have already occurred, and so far as the same may be necessary to complete a proceeding commenced under the same.

Section 10. That the seventy-eighth section of the act entitled "An act relative to the organization of the courts of justice," passed the fourteenth day of April, one thousand eight hundred and thirty-four, shall not be construed to authorize "the court of general sessions for the city and county of Philadelphia," to appoint a greater number of tipstaves, and special constables together than twelve, nor shall the said court have power to appoint any special or high constable, except the number provided for in the act entitled "An act to establish a court for the trial of crimes and misdemeanors committed in the city and county of Philadelphia," passed the twenty-fifth day of February, eighteen hundred and forty. And the said court shall divide the ward and township constables of the city and county of Philadelphia, as near as may be into twelve divisions: one for each month, and the said court may if necessary employ all or any number, of any one of said divisions during one month, but shall in no case employ at any one time, more of said constables than is comprised in one division; the constables and other officers appointed by, and attendant upon the court of general sessions for the city and county of Philadelphia, shall be, and they are hereby empowered and required under the direction of the said court, to execute such process as may be directed to them, and all fees and costs for such service shall be taxed by, and paid to the clerk of the said court, who shall account for, and pay the same to the treasurer of the county of Philadelphia, for the use of the county.

Section 11. (11 repealed June 4, 1901, P.L.404, No.231)

Section 12. Appeal from judgment to common pleas allowed (12 repealed Oct. 9, 2009, P.L.494, No.49)

Section 13. (13 repealed Oct. 13, 1959, P.L.1288, No.432)

Section 14. (14 repealed Oct. 13, 1959, P.L.1288, No.432)

Section 15. (15 repealed Oct. 13, 1959, P.L.1288, No.432)

Section 16. (16 repealed Oct. 13, 1959, P.L.1288, No.432)

Section 17. (17 repealed Oct. 13, 1959, P.L.1288, No.432)

Section 18. (18 repealed Oct. 13, 1959, P.L.1288, No.432)

Section 19. Accounts; powers and jurisdiction of chancery; proceeding in equity or at common law; certificate

The Supreme Court, the several district courts and courts of Common Pleas, within this Commonwealth, shall have all the powers and jurisdiction of courts of chancery in settling partnership accounts, and such other accounts and claims, as by the common law and usages of this Commonwealth, have heretofore been settled by the action of account render; and it shall be in the power of the party desirous to commence such action, to proceed either by bill in chancery, or at common law, but no bill in chancery shall be entertained, unless the counsel filing the same shall certify that, in his opinion, the case is of such a nature that no adequate remedy can be obtained at law, or that the remedy at law will be attended with great additional trouble, inconvenience or delay.

Section 20. The act entitled "An act concerning the action of account render," passed the fourth day of April, one thousand eight hundred and thirty-one, be and the same is hereby repealed.

Section 21. The several recorders of deeds within this Commonwealth heretofore authorized to take the acknowledgment of deeds and other writings, shall have power and are hereby authorized to take and certify the separate examination and acknowledgment of any feme covert of or concerning any instrument of writing relating to lands, tenements or hereditaments, as fully and with like force and effect, as any judge or justice of the peace of this Commonwealth might or could do.

Compiler's Note: Section 28 of Act 207 of 2004 provided that any and all references in any other law to a "district justice" or "justice of the peace" shall be deemed to be references to a magisterial district judge.

Section 22. That the commissioners of the county of Dauphin be, and they are hereby authorized to borrow any sum of money not exceeding thirty thousand dollars, for the purpose of erecting a new county prison with appertinent buildings, and making payment of the purchase money of any additional ground adjoining the present site on which said building is to be erected.

Section 23. The commissioners of the township of Moyamensing, in the county of Philadelphia, be and they are hereby authorized and invested with full power to borrow, upon the faith of the corporation, the sum of fifteen thousand dollars, to enable them to pay certain permanent and temporary loans, and other debts, now due by said corporation.

Section 24. It shall be the duty of the commissioners of the township of Moyamensing, to set apart each and every year, out of the proceeds of the taxes or other revenues of said township, the sum of one thousand dollars, to constitute a sinking fund to extinguish the present debt of the said township, and said fund to be immediately applied to the purchase of said debt; or if it cannot be purchased at par, or for a less price, the said Commissioners are hereby authorized to invest said funds in stocks of the State of Pennsylvania; the county of Philadelphia, or the city of Philadelphia, to be used and applied to the payment of the debts of said township, as they may be purchased as above directed or become due.

Section 25. From and after the first day of January, 1841, it shall be lawful for the commissioners of the district of Southwark, and their successors, to collect all the income and rents issuing from the public landings, wharves and market houses, in the said district, together with such other rents, issues or income derived from any other source other than taxes, and after deducting therefrom the expense of keeping the said landings and market houses in repair and order, forthwith set apart the said rents and income, and hold them inviolably in trust for the following purposes and uses, and for no other use or purpose whatever; that is to say, they, the said commissioners or their successors, shall, as soon as can be, appropriate the said moneys to the payment of the debt of said district, as it becomes due, or to the purchase of the same at par, or at a less price, and when this cannot be done, the said moneys shall be invested in the debt of the city or county of Philadelphia, or in the debt of the Commonwealth of Pennsylvania, and the interest thereon shall be suffered to grow and accumulate; which said fund so to be invested from time to time, as aforesaid, together with the interest, profit or income, accumulated therein and re-invested, as hereinbefore directed, shall be exclusively set apart and denominated the sinking fund of the district of Southwark, and shall be solely

appropriated and applied to the extinguishment of the principal or capital sum of the funded debt of the said district, as it may become due, or be purchased at par or for less price, and to and for no other use or purpose whatever.

Section 26. It shall be the duty of the commissioners of the district of Southwark, and the commissioners of the township of Moyamensing, hereafter, annually, to cause to be levied upon the property and persons made taxable by law, within the said district and township, a sum sufficient with the other revenues, to pay all the annual expenditures of said district or township, the interest on all loans made for the use of the said district or township, and a sum sufficient to form the sinking funds hereinbefore created.

Section 27. That from and after the passage of this act, it shall not be lawful for the commissioners of the district of Southwark, or the commissioners of the township of Moyamensing, to borrow on loan for a greater period than ninety days, any sum or sums of money exceeding in amount the one-fifth part of the taxes levied in any one year, in the said district or township, without first obtaining the sanction and consent of the Legislature of this Commonwealth, for authority to contract such loan. And the said sum or sums of money which it may be lawful for them to borrow, without the consent of the Legislature, shall not be borrowed for a period more than ninety days, and shall not exceed in amount the one-fifth part of the taxes aforesaid.

Section 28. That before making application for authority to borrow on loan, for a greater period than ninety days, any sum or sums of money, exceeding in amount the one-fifth part of the amount of taxes levied in the said district of Southwark, or the township of Moyamensing, the said commissioners shall publish in at least three of the daily papers published in the city of Philadelphia, twice in each week, for six months before the meeting of the Legislature, public notice of their intention so to apply for authority to contract such loan: Provided, however, That nothing contained in this act, shall be taken or construed to impair, or in anywise to alter or abridge the power and authority or the commissioners of the district of Southwark, or the commissioners of the township of Moyamensing, without the sanction and consent of the Legislature, to renew and to extend from time to time, as they may deem proper, the time of payment of the several loans already contracted, at the different periods of time at which they may severally become payable.

Section 29. That the street commissioners of the borough of Towanda be, and they are hereby authorized and required, to lay out and open an alley eleven feet wide, from Spruce street to South, in said borough, two hundred and eleven feet west of Main street, and parallel with the same, and in conformity with an agreement between the original proprietors of the lots through and along which the said alley will pass. And in case any person shall consider himself damaged or aggrieved, by the act hereby required to be done, he may, on complaint to the chief burgess, and due notice given to the persons interested, have a hearing before the said burgess and town council of the said borough, and if dissatisfied with their decisions, may bring suit in the court of common pleas of said county, against said borough, for the recovery of such damages as he shall sustain by reason of the premises.