

O. H. A. P. XXIV. Courts may require new security, &c.

VI. AND BE IT FURTHER ENACTED, When and as often as the justices of the county courts shall find it necessary to oblige any guardian, or other person in possession of any orphan's estate, to give new or better security for such estate, that in case of refusal to comply with their order therein, it shall and may be lawful for the said justices, and they are hereby required, immediately to remove the person and estate of such orphan into other hands; and in case the guardian, or other person as aforesaid, shall not obey such order of removal, that then and in such cases the said justices shall and may issue attachment, or other process against such guardian, or other person, to answer his or her contempt, and to commit him or her to prison, there to remain until the order of the said justices shall be fully complied with; and that when and as often as it shall appear to the justices of the county courts that the guardians of orphans, and sureties for their estates, are insolvent, and that no persons will undertake the guardianship of such orphans, and give security for their estates, it shall and may be lawful for the said justices, and they are hereby empowered and required, to take the said estates into their own hands, to sell and dispose thereof, (except negroes and plate,) for the best price they can, and also to dispose of the money and tobacco arising by such sale, and the negroes and plate, to the orphan's best advantage, and to take good security for the same, and also to demise any lands or tenements that shall belong to any such orphan.

N. B. County courts are invested with the same powers in regard to guardians chosen by orphans, by 1753, ch. 3, section 4.

Persons trespassing to pay, &c.

VII. AND, whereas several persons, not being guardians, have got into the possession of lands belonging to orphans, and demised or occupied the same, and received the profits thereof, BE IT ENACTED, That it shall not be lawful for any person whatsoever, not being guardian, or not having licence from a guardian, to enter into, possess or occupy, any lands or tenements belonging to any orphan or orphans, without first applying to the county court, and obtaining leave from them, for such rents as they shall think just and reasonable to be paid to such orphan or orphans, on pain of being trespassers, and paying treble damages, and full cost to such orphan or orphans, to be recovered by the guardian during the orphan's minority, or by the orphan when at full age.

Guardians to account, &c.

VIII. AND BE IT LIKEWISE ENACTED AND DECLARED, That guardians ought to render an account to their wards of the surplus of the profits of their real estates, beyond what shall be necessarily expended in the maintenance and education of such ward, and to secure the same, as this act directs other parts of orphans estates to be secured.

If convict of waste, to give security, &c.

IX. AND BE IT FURTHER ENACTED, That when and as often as any county court shall, by the presentment of any grand jury, or otherwise, be informed of any waste being done by any guardian upon any orphan's estate, to issue their warrant to cause such guardian to appear before them, and if, upon the said guardian's appearance before them, and being heard in his or her defence, or refusal to appear, being summoned, such information shall appear to be true, the said justices shall order the sheriff, with all possible speed, to summon a jury upon the place where the waste shall be committed, to inquire upon their oath into the same, and of what damage such waste shall be to such orphan, which being returned to the said justices, they are hereby required to oblige the guardian to give security for double the damages that shall be assessed by such jury, and in case of refusal to commit such guardian to prison, there to remain until he or she will comply with their order therein.

In case of a devise of personal estate, wife to make her election, &c.

X. AND, whereas some doubts have arisen concerning the rights of widows to the real and personal estates of their deceased husbands; for avoiding all such doubts, BE IT ENACTED, by the authority aforesaid, by and with the advice and consent aforesaid, That in such case, where the testator bequeaths or devises a considerable part of his personal estate to his wife, and it appears not in any part of his will or codicil that he intended the said devise as a legacy only to his wife, and that she might nevertheless, have a third part of his remaining estate, it shall be at the election of such wife, widow or relict, within forty days after the probat of such will, to make her election before the judge for probat of wills, or the respective deputy-commissaries in each respective county, whether she will be content with such devise, or will have her thirds, and release the devise, and if she make choice to have what is so bequeathed or devised to her, then, by that choice, she shall be for ever barred from claiming her third part aforesaid, and if she renounce what is so bequeathed and devised, she shall then have her third part aforesaid, and be barred of her devise, but shall not claim or have both; but in case such widow shall neglect to make such election within the time aforesaid, she shall then be concluded by what shall be bequeathed to her by her husband, and shall not have or claim any more of his personal estate than shall be so bequeathed; provided always, that such part of the personal estate or estates so bequeathed shall be liable to pay the debts of the deceased, as other part of the estate is or ought to be.

N. B. By this clause an alteration is made in 1715, ch. 39, section 35.

XI. AND,