

ANNO PRIMO

GULIELMI IV. REGIS.

****

CAP. XLVII.

An Act for consolidating and amending the Laws for facilitating the Payment of Debts out of Real Estate. [16th *July* 1830.]

WHEREAS an Act was passed in the Third and Fourth Years of King *William* and Queen *Mary*, intituled *An Act for the Relief of Creditors against fraudulent Devises*, 3 & 4 W. & M. c. 14. which was made perpetual by an Act passed in the Sixth and Seventh Years of King *William* the Third, intituled *An Act for continuing several Laws therein mentioned:* 6 & 7 W. 3. c. 14. And whereas an Act was passed by the Parliament of *Ireland*, in the Fourth Year of Queen *Anne*, intituled *An Act for Relief of Creditors against fraudulent Devises:* 4 Ann. c. 5. (I.) And whereas an Act was passed in the Forty-seventh Year of His late Majesty King *George* the Third, intituled *An Act for more effectually securing the Payment of Debts of Traders:* 47 G. 3. c. 74. And whereas it is expedient that the Provisions of the said recited Acts should be enlarged, and that the said recited Acts should be repealed, in order that all the Provisions relating to this Matter should be consolidated in One Act; be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and

Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That the said several recited Acts shall be and the same are hereby repealed, but so as not to affect any of the Provisions and Remedies of the said Acts, or any of them, to the Benefit of which any Persons are entitled, as against any Estate or Interest in any Lands, Tenements, Hereditaments, or other Real Estate, of any Person or Persons who died before the passing of this Act.

Recited Acts repealed.

For remedying Frauds committed on Creditors by Wills.

II. And whereas it is not reasonable or just that by the Practice or Contrivance of any Debtors their Creditors should be defrauded of their just Debts, and nevertheless it hath often so happened, that where several Persons having by Bonds, Covenants, or other Specialties bound themselves and their Heirs, and have afterwards died seised in Fee Simple of and in Manors, Messuages, Lands, Tenements, and Hereditaments, or had Power or Authority to dispose of or charge the same by their Wills or Testaments, have, to the defrauding of such their Creditors, by their last Wills or Testaments, devised the same or disposed thereof in such Manner as such Creditors have lost their said Debts; for remedying of which, and for the Maintenance of just and upright Dealing, be it therefore further enacted, That all Wills and Testamentary Limitations, Dispositions, or Appointments, already made by Persons now in being, or hereafter to be made by any Person or Persons whomsoever, of or concerning any Manors, Messuages, Lands, Tenements, or Hereditaments, or any Rent, Profit, Term, or Charge out of the same, whereof any Person or Persons, at the Time of his, her, or their Decease, shall be seised in Fee Simple, in Possession, Reversion, or Remainder, or have Power to dispose of the same by his, her, or their last Wills or Testaments, shall be deemed or taken, (only as against such Person or Persons, Bodies Politic or Corporate, and his and their Heirs, Successors, Executors, Administrators, and Assigns, and every of them, with whom the Person or Persons making any such Wills or Testaments, Limitations, Dispositions, or Appointments shall have entered into any Bond, Covenant, or other Specialty binding his, her, or their Heirs,) to be fraudulent, and clearly, absolutely, and utterly void, frustrate, and of none Effect; any Pretence, Colour, feigned or presumed Consideration, or any other Matter or Thing to the contrary notwithstanding.

Enabling Creditors to recover upon Bonds, &c.

III. And, for the Means that such Creditors may be enabled to recover upon such Bonds, Covenants, and other Specialties, be it further enacted, That in the Cases before mentioned every such Creditor shall and may have and maintain his, her, and their Action and Actions of Debt or Covenant upon the said Bonds, Covenants, and Specialties against the Heir and Heirs at Law of such Obligor or Obligors, Covenantor or Covenantors, and such Devisee and Devisees, or the Devisee or Devisees of such first-mentioned Devisee or Devisees jointly, by virtue of this Act;

and such Devisee and Devisees shall be liable and chargeable for a false Plea by him or them pleaded, in the same Manner as any Heir should have been for any false Plea by him pleaded, or for not confessing the Lands or Tenements to him descended.

If there is no Heir at Law Actions may be maintained against the Devisee.

IV. And be it further enacted, That if in any Case there shall not be any Heir at Law against whom, jointly with the Devisee or Devisees, a Remedy is hereby given, in every such Case every Creditor to whom by this Act Relief is so given shall and may have and maintain his, her, and their Action and Actions of Debt or Covenant, as the Case may be, against such Devisee or Devisees solely; and such Devisee or Devisees shall be liable for false Plea as aforesaid.

Not to affect Limitations for just Debts, or Portions for Children.

V. Provided always, and be it further enacted, That where there hath been or shall be any Limitation or Appointment, Devise or Disposition, of or concerning any Manors, Messuages, Lands, Tenements, or Hereditaments, for the raising or Payment of any real and just Debt or Debts, or any Portion or Portions, Sum or Sums of Money, for any Child or Children of any Person, according to or in pursuance of any Marriage Contract or Agreement in Writing, *bonâ fide* made before such Marriage, the same and every of them shall be in full force, and the same Manors, Messuages, Lands, Tenements, and Hereditaments shall and may be holden and enjoyed by every such Person or Persons, his, her, and their Heirs, Executors, Administrators, and Assigns, for whom the said Limitation, Appointment, Devise, or Disposition was made, and by his, her, and their Trustee or Trustees, his, her, and their Heirs, Executors, Administrators, and Assigns, for such Estate or Interest as shall be so limited or appointed, devised or disposed, until such Debt or Debts, Portion or Portions, shall be raised, paid, and satisfied, any thing in this Act contained to the contrary notwithstanding.

Heir at Law to be answerable for Debts, although he may sell Estate before Action brought.

VI. And be it further enacted, That in all Cases where any Heir at Law shall be liable to pay the Debts or perform the Covenants of his Ancestors, in regard of any Lands, Tenements, or Hereditaments descended to him, and shall sell, alien, or make over the same, before any Action brought or Process sued out against him, such Heir at Law shall be answerable for such Debt or Debts, or Covenants, in an Action or Actions of Debt or Covenant, to the Value of the said Lands so by him sold, aliened, or made over, in which Cases all Creditors shall be preferred as in Actions against Executors and Administrators; and such Execution shall be taken out upon any Judgment or Judgments so obtained against such Heir, to the Value of the said Land, as if the same were his own proper Debt or Debts; saving that the Lands, Tenements, and Hereditaments, *bonâ fide* aliened before the Action brought, shall not be liable to such Execution.

VII. Pro-

Where an Action of Debt is brought against the Heir, he may plead Riens per descent.

VII. Provided always, and be it further enacted, That where any Action of Debt or Covenant upon any Specialty is brought against the Heir, he may plead Riens per descent at the Time of the original Writ brought or the Bill filed against him, any thing herein contained to the contrary notwithstanding; and the Plaintiff in such Action may reply that he had Lands, Tenements, or Hereditaments from his Ancestor before the original Writ brought or Bill filed; and if, upon the Issue joined thereupon, it be found for the Plaintiff, the Jury shall inquire of the Value of the Lands, Tenements, or Hereditaments so descended, and thereupon Judgment shall be given and Execution shall be awarded as aforesaid; but if Judgment be given against such Heir by Confession of the Action, without confessing the Assets descended, or upon Demurrer or Nihil dicit, it shall be for the Debt and Damage, without any Writ to inquire of the Lands, Tenements, or Hereditaments so descended.

Devisees to be liable the same as Heirs at Law.

VIII. Provided always, and be it further enacted, That all and every the Devisee and Devisees made liable by this Act, shall be liable and chargeable in the same Manner as the Heir at Law by force of this Act, notwithstanding the Lands, Tenements, and Hereditaments to him or them devised shall be aliened before the Action brought.

Traders Estates shall be Assets to be administered in Courts of Equity.

IX. And be it further enacted, That from and after the passing of this Act, where any Person being, at the Time of his Death, a Trader, within the true Intent and Meaning of the Laws relating to Bankrupts, shall die seised of or entitled to any Estate or Interest in Lands, Tenements, or Hereditaments, or other Real Estate, which he shall not by his last Will have charged with or devised subject to or for the Payment of his Debts, and which would be Assets for the Payment of his Debts due on any Specialty in which the Heirs were bound, the same shall be Assets to be administered in Courts of Equity for the Payment of all the just Debts of such Person, as well Debts due on Simple Contract as on Specialty; and that the Heir or Heirs at Law, Devisee or Devisees of such Debtor, and the Devisee or Devisees of such first-mentioned Devisee or Devisees, shall be liable to all the same Suits in Equity, at the Suit of any of the Creditors of such Debtor, whether Creditors by Simple Contract or by Specialty, as they are liable to at the Suit of Creditors by Specialty in which the Heirs were bound: Provided always, that in the Administration of Assets by Courts of Equity, under and by virtue of this Provision, all Creditors by Specialty, in which the Heirs are bound, shall be paid the full Amount of the Debts due to them before any of the Creditors by Simple Contract or by Specialty, in which the Heirs are not bound, shall be paid any Part of their Demands.

Creditors by Specialty to be paid first.

Parol shall not demur by or against Infants.

X. And be it further enacted, That from and after the passing of this Act, where any Action, Suit, or other Proceeding for the Payment of Debts, or any other Purpose, shall be commenced or prosecuted by or against any Infant under the Age of Twenty-one Years,

Years, either alone or together with any other Person or Persons, the Parol shall not demur, but such Action, Suit, or other Proceeding shall be prosecuted and carried on in the same Manner and as effectually as any Action or Suit could before the passing of this Act be carried on or prosecuted by or against any Infant, where, according to Law, the Parol did not demur.

Infants to make Conveyances under Order of the Court.

XI. And be it further enacted, That where any Suit hath been or shall be instituted in any Court of Equity, for the Payment of any Debts of any Person or Persons deceased, to which their Heir or Heirs, Devisee or Devisees, may be subject or liable, and such Court of Equity shall decree the Estates liable to such Debts, or any of them, to be sold for Satisfaction of such Debt or Debts, and by reason of the Infancy of any such Heir or Heirs, Devisee or Devisees, an immediate Conveyance thereof cannot, as the Law at present stands, be compelled, in every such Case such Court shall direct, and, if necessary, compel such Infant or Infants to convey such Estates so to be sold (by all proper Assurances in the Law) to the Purchaser or Purchasers thereof, and in such Manner as the said Court shall think proper and direct; and every such Infant shall make such Conveyance accordingly; and every such Conveyance shall be as valid and effectual to all Intents and Purposes as if such Person or Persons, being an Infant or Infants, was or were at the Time of executing the same of the full Age of Twenty-one Years.

Persons having a Life Interest may convey the Fee, if the Estate is ordered to be sold.

XII. And be it further enacted, That where any Lands, Tenements, or Hereditaments hath been or shall be devised in Settlement by any Person or Persons whose Estate under this Act, or by Law, or by his or their Will or Wills, shall be liable to the Payment of any of his or their Debts, and by such Devise shall be vested in any Person or Persons for Life or other limited Interest, with any Remainder, Limitation, or Gift over, which may not be vested, or may be vested in some Person or Persons from whom a Conveyance or other Assurance of the same cannot be obtained, or by way of executory Devise, and a Decree shall be made for the Sale thereof for the Payment of such Debts or any of them, it shall be lawful for the Court by whom such Decree shall be made to direct any such Tenant for Life, or other Person having a limited Interest, or the first executory Devisee thereof, to convey, release, assign, surrender, or otherwise assure the Fee Simple or other the whole Interest or Interests so to be sold to the Purchaser or Purchasers, or in such Manner as the said Court shall think proper; and every such Conveyance, Release, Surrender, Assignment, or other Assurance shall be as effectual as if the Person who shall make and execute the same were seised or possessed of the Fee Simple or other whole Estate so to be sold.

Not to repeal Act 33 G. 1. (I.) relating to Debts due to Bankers.

XIII. And be it further enacted, That nothing in this Act shall extend or be deemed or construed to extend to repeal or alter an Act made by the Parliament of *Ireland*, in the Thirty-third Year of the

the Reign of King *George* the First, intituled *An Act for the better securing the Payment of Bankers Notes, and for providing a more effectual Remedy for the Security and Payment of the Debts due by Bankers.*

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