

Legislative Council.

51^o VICTORIA, 1888.

A BILL

To consolidate and amend the law relating to Probate and Letters of Administration, and to the succession to Real Estate in cases of Intestacy, and for the preservation and management of the estates of deceased persons.

[SIR WILLIAM MANNING;—4 April, 1888.]

WHEREAS it is expedient to consolidate and amend the law relating to Probate and Letters of Administration, and to the succession to Real Estate in cases of Intestacy, and to the collection, management, and administration of the estates of deceased persons.
5 Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by authority of the same, as follows:—

1. In the construction of this Act, unless the context be inconsistent therewith, the following words and terms shall have and include the meanings severally set opposite to them and hereby assigned:—

“Administrator” includes the Curator of Intestate Estates.

15 “Administration” includes all letters of administration of the real and personal estate and effects of deceased persons whether with or without the will annexed, and whether granted for general, special, or limited purposes, also exemplification of letters of administration or such other formal evidence of the letters of administration purporting to be under the seal of

a Court of competent jurisdiction as shall in the opinion of the Court be deemed sufficient, and orders to the Curator to collect.

“The Court” means Supreme Court of New South Wales in its Probate Jurisdiction, or the Probate Judge. 5

“Governor” means Governor with the advice of the Executive Council.

“Probate” includes “Exemplification of probate” or any other formal document purporting to be under the seal of a Court of competent jurisdiction which shall in the opinion of the Court be deemed sufficient. 10

“Probate Judge” means the Judge for the time being authorized to administer this Act, or any Judge acting as such.

“Real Estate” shall include lands held under building leases or any lease for twenty-one years and upwards. 15

“Will”—Testament and all other testamentary instruments of which probate may now be granted.

Repeal.

2. The following Statutes are hereby repealed, that is to say, eleventh Victoria number twenty-four, fifteenth Victoria number eight, twenty-sixth Victoria number twenty, but such repeal shall not affect any proceeding commenced under the said Acts or any of them prior to the passing of this Act, and so far as the Act twenty-sixth Victoria number twenty is concerned the provisions of the said Act shall be applied to the case of any person who shall have died prior to the passing of this Act. 25

Division of Act.

3. This Act shall be divided into Parts, viz. :—

PART I.—*Jurisdiction of the Supreme Court in testamentary causes, and appointment of officers.*

PART II.—*Probate.*

PART III.—*Administration and distribution of Intestate Estates.* 30

PART IV.—*Administration generally.*

PART V.—*Curator of Intestate Estates.*

PART VI.—*Procedure.*

PART VII.—*General matters.*

and may be cited as the “ Probate Act of 188 .”

35

PART I.

Jurisdiction of the Supreme Court in Probate Jurisdiction, and appointment of Officers.

Jurisdiction of Supreme Court in causes testamentary.

4. The jurisdiction and authority heretofore vested in or exercised by the Supreme Court or by the Primary Judge in Equity in respect of the estates of deceased persons shall be vested in and exercised by the Supreme Court in Probate Jurisdiction and by the Primary Judge in Equity or such other Judge as may from time to time be permanently or temporarily appointed in that behalf by the Governor under the title of the Probate Judge or by any Judge of the Supreme Court acting for the said Probate Judge during his illness or absence or appointed by him. 40

Probate Judge may appoint a deputy.

5. The Probate Judge may appoint any other Judge of the Supreme Court to act, for or concurrently with him should he so desire.

Other Judges may sit with Probate Judge.
20 & 21 Vic. c. 77
s. 34.

6. The Probate Judge may sit with the assistance of any Judge or Judges of the Supreme Court who at his request may consent to attend for that purpose. Provided that where three Judges so sit the judgment 50

judgment of the majority, and where only two Judges so sit their unanimous judgment shall respectively be taken to be the judgment of the Full Court.

7. The Probate Judge may hear in Chambers such part of the business under this Act as can in his opinion be so heard with advantage to the suitors, and shall when so sitting have and exercise the same powers and jurisdiction as if in Court. Provided that the Judge while sitting in Chambers may adjourn for hearing in Court or when sitting in Court may adjourn for hearing in Chambers any case before him which he may think would be better heard in Court or Chambers as the case may be.

Judge may sit in Chambers.
21 & 22 Vic. c. 95
ss. 3, 5.

8. The Governor may appoint some fit and proper person to be the Registrar and if thought expedient Deputy Registrar of Probates of the Supreme Court, and such Registrar shall, subject to any rules to be made hereunder for his future guidance and direction, perform such duties as have heretofore been performed by the Prothonotary of the Supreme Court in reference to proceedings in the Ecclesiastical Jurisdiction of the Court and by the Ecclesiastical Clerk of the Supreme Court, and such other duties as may be prescribed by rule of Court or directed by the Probate Judge, and during his illness or absence the Probate Judge may appoint any Officer of the Supreme Court to act as Registrar.

Appointment of Registrar.

9. The Governor may appoint some fit and proper person to be Curator and if necessary Deputy Curator of Intestate Estates, and the present Curator of Intestate Estates shall be considered to have been appointed hereunder, and shall have, perform, and exercise all the powers, duties, and authorities by this Act conferred on the Curator.

Curator.

10. During the illness or absence of the Curator the Probate Judge may appoint some fit person to discharge the duties of the Curator, and such person shall during such illness or absence act in the stead of the Curator and sign and execute in his name all such documents as may require his signature or execution, and do, perform, and discharge all other acts, deeds, and duties pertaining to the office of Curator.

Appointment of Deputy Curator.

11. The Court shall have jurisdiction to grant probate of the will or administration of the estate of any deceased person leaving property, whether real or personal, within the Colony of New South Wales.

Probate or administration may be granted of real or personal estate.
Vict. Act No. 427 s. 5.

12. The Court may if it shall think fit grant probate to one or more of the executors named in any will, reserving leave to the other or others who have not renounced to come in and apply for probate at some future date.

Probate to one or more executors reserving leave to others to prove subsequently.

13. It shall be lawful for the Judges of the Supreme Court, if they shall see fit, by rule of Court in that behalf made, to delegate to the Master in Equity or Registrar the powers of the Court in and about the granting of probates and administration of estate not exceeding five hundred pounds in value where no contention has arisen, and also in and about the passing of the accounts of trustees, executors, and administrators, save in respect of the award of commission thereon. Provided that such Master or Registrar shall where any party interested shall so desire and in cases of doubt or difficulty refer the matter to the Probate Judge, and provided that no such administration shall empower the administrator to sell, mortgage, or otherwise deal with the real estate of the intestate unless such real estate shall be sworn to be of a less value than one hundred pounds, and the Master or Registrar shall think fit to make a special order in that behalf, and the said Master or Registrar when sitting in the above-named capacity shall be deemed to be and have and exercise all the powers and authorities of the Court.

Certain matters may be delegated to Master in Equity.

PART

PART II.

Probate.

Real estate to vest
in executors.
Vict. Act.
No. 427 s. 6.

14. Upon the grant of probate of the will of any deceased person after the commencement of this Act, all the real estate whether held by him beneficially or in trust shall vest as from the death of such person in the executor to whom such probate shall be granted for all the estate therein of such person, and if there shall be more than one such executor shall vest in them as joint tenants. 5

Real estate to be
assets for payment
of debts.
9 Geo. IV cap. 33
ss. 1 & 2.

15. The real estate of every deceased person shall be assets in the hands of his executor to whom probate shall have been granted for the payment of all duties and fees and for the payment of his debts in the ordinary course of administration, and it shall be lawful for such executor to sell or mortgage such real estate with or without a power of sale and to convey the same to a purchaser in as full and effectual a manner in law as the testator of such executor could have done in his lifetime. 10

In suits executor or
administrator to
represent real estate.
Vict. Act.
No. 407 s. 8.

16. In all suits in Equity concerning the real estate of a deceased person, his executor or administrator shall represent his real estate and the persons interested therein in the same manner and to the same extent as in suits concerning personal estate the executor or administrator represents such estate and the persons interested therein. 20

Real estate to be
held upon trusts of
will.
Ib. s. 9.

17. Subject to the provisions of this Act the real estate of every deceased person devising such estate by his will shall be held by the executor of such person according to the trusts and dispositions of such will. 25

Executor to have
same rights &c. as to
real estate as personal
estate.
Ib. s. 10.

18. The executor of any deceased person shall have the same rights and be subject to the same duties with respect to the real estate of such person that executors heretofore have had or been subject to with reference to personal assets.

Probate to be
evidence of will
concerning real
estate.
Ib. s. 11.

19. The probate of any will or letters of administration with the will annexed hereafter to be granted shall be evidence of such will upon all questions concerning real estate in the same manner and to the same extent as heretofore concerning personal estate, and every probate or administration shall be *prima facie* evidence of the death and the date of the death of the testator or intestate. 35

Place of deposit of
original wills.
20 and 21 Vic. c. 77
s. 66.

20. There shall be one place of deposit under the control of the Court at such place in Sydney as the Governor may by notice in the *Gazette* direct in which all the original wills brought into the Court or of which probate or administration with the will annexed is granted under this Act, and such other documents as the Probate Judge may direct shall be deposited and preserved and the same may be inspected under the control of the Court and subject to the rules and regulations to be made hereunder; and until any such direction as aforesaid such wills and other documents shall be deposited and kept in the places and manner at the present time set apart and used in that behalf. 45

Official copy of whole
or part of will may
be obtained.
Ib. s. 69.

21. An official copy of the whole or any part of a will or an official certificate of the grant of any letters of administration may be obtained from the Registrar or custodian on the payment of the fees fixed for the same by the rules and regulations now or hereafter to be in force in that behalf. 50

Will may be
deposited in the
office of the
Registrar-General
by testator in his
lifetime.
Vict. Act No. 213
s. 201.

22. Any person residing in New South Wales may deposit in the office of the Registrar-General his will enclosed in a sealed envelope or cover endorsed with the full name, description, and the then address of the testator or other means of ready identification, and also the names in full with descriptions and addresses of the executors named therein, and such will shall unless previously required to be given up by the testator remain in the said office in the custody of the
the

the Registrar-General until the death of the testator, and upon his death the Registrar-General shall deliver the same after examination to either of the executors named in the said will, or in case of doubt to such person as the Supreme Court or any Judge thereof may direct; Vict. Act No. 230 s. 14.
 5 and no probate of any will not so deposited or administration in any case shall be granted unless the application be supported by an affidavit that a search has been made in the proper office for a will of the deceased, and that no such will remains deposited with the officer for the time being authorized to have the custody of deposited wills or
 10 by a certificate from the Registrar-General to the like effect.

PART III.

Administration and Distribution of Intestate Estates.

23. The practice and proceedings hitherto in force with reference to granting administration of the personal estate of an intestate shall, Practice as to granting administration of real and personal estate.
 15 save as hereby altered and subject to the rules and orders to be made hereunder, be applicable to administration granted hereunder and so far as may be to administration of real estate, and administration of both real and personal estate may be granted in and by the same letters.
- 20 24. The Court may grant administration of the estate of an intestate person to the husband or widow or to one or more of the next of kin of the deceased person or to the husband or widow conjointly with one or more of the next of kin. Provided that any person to whom administration shall be granted shall be of the full age of twenty-one
 25 years. And in case there shall be no such person who shall be qualified as aforesaid or who shall be in the opinion of the Court fit to be so trusted or who shall when duly cited appear and pray for administration then administration may be granted to such person or persons whether creditors or not of the deceased as the Court shall think fit.
- 30 25. Every administration heretofore granted to any husband in respect of the estate of his deceased wife or to any widow in respect of the estate of her deceased husband shall be deemed to be and to have been valid to all intents and purposes, anything in the Charter of Justice to the contrary notwithstanding. Validation of administration heretofore granted in certain cases.
- 35 26. Every person to whom a grant of administration shall be made shall, previous to the issue of such administration, execute a bond to Her Majesty and her successors with one or more surety or sureties conditioned for duly collecting, getting in, and administering the personal estate or real and personal estate of the deceased, which bond shall be
 40 in such form as the Court shall by rule direct, and in the meantime shall be in the form heretofore in use. Provided that it shall not be necessary for the Curator or for any person obtaining administration to the use or for the benefit of Her Majesty to execute any such bond. Administration bond to be executed. 20 and 21 Vic. c. 77 s. 81.
- 45 27. Such bond shall be in a penalty equal to the amount under which the property of the deceased shall be sworn, but the Court may in any case dispense with the bond or with one or both of the sureties, or direct that such penalty shall be reduced in amount, and may also if it shall think fit direct that more bonds than one shall be given so as to limit the liability of any surety to such amount as the
 50 Court shall think reasonable, and may in place of such bond accept the security of any incorporated company or guarantee society approved of by the Court in such form and under such regulations as the Court shall by rule direct. Amount of penalty in administration bond. Ib. s. 82.

Administration may be revoked or further bond required.

28. The Court may at any time upon the motion of any person interested in the estate revoke the administration already granted or order the administrator to execute a further bond in such sum and within such time as may seem right with or without sureties as aforesaid, and upon default remove the administrator and appoint 5 an administrator *de bonis non* in his place, with power to sue or be sued upon any contract made by the removed administrator.

Order may be made to assign the bond. 20 and 21 Vic. c. 77 s. 83.

29. The Court may on application made on motion in a summary way and on being satisfied that the condition of any bond given hereunder has been broken order the Curator to assign the same 10 to some person to be named in such order, and such person, his executors or administrators shall thereupon be entitled to sue upon the said bond in his or their own name or names as if the same had been originally given to him, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in 15 respect of any breach of the condition of the said bond.

Lands of intestate or devised to vest in administrator or Curator in trust for next of kin.

Vict. Act No. 230 s. 8.

30. All real estate which any person shall hereafter die seised or possessed of or entitled to in the Colony of New South Wales intestate shall pass to and become vested in the administrator of the estate of such person as from the death of such person for his estate therein, or in 20 the case of a partial intestacy to and in the executor named in the will, or to and in the administrator with the will annexed, and such administrator or executor shall hold the said lands and the unapplied proceeds of such lands in case the same shall be sold as a trustee within the meaning of any Statute now or hereafter to be in force relating to 25 trusts and trustees upon trust for payment of the debts of the deceased, and subject thereto on trust for and as if the same had been devised to the same persons as tenants in common as would be entitled in the case of personal property, excepting only as mentioned in the next succeeding section. 30

Husband's interest in wife's estate and *vice versa*.

Vict. Act No. 427 s. 9. Queensland 41 Vic. No. 24 s. 13. No dower or courtesy title.

31. Any husband or wife shall be entitled on the death of the other intestate to the same share in the real or personal estate of the other as a wife is now by law entitled to in the personal estate of an intestate husband predeceasing her, and no estate by courtesy or right of dower or any equivalent estate shall arise after the passing of this 35 Act out of any real estate left by the intestate and passing to the administrator. Provided that any husband or widow so entitled to share in real estate shall be bound to accept the value thereof in lieu of partition if so desired by all the persons entitled jointly with him or her. 40

Lands held in trust or on mortgage to vest in administrator.

32. All real estate held by any person in trust or by way of mortgage passing under this Act shall as from the death of such person intestate vest in the administrator for all the estate therein of such person subject to the trusts and equities affecting the same.

Lands not to be sold without consent or order. Queensland 41 Vic. No. 24 s. 24.

33. No real estate to be administered under this Act shall be 45 sold or mortgaged or leased for a longer term than three years by the administrator without the consent of all persons beneficially interested or the order of the Court in that behalf which may impose such conditions as it shall think fit, subject however to appeal as herein provided. 50

Court may make special order. 26 Vic. No. 20 s. 3.

34. The Court may upon the application of the administrator or any person beneficially interested and after such previous notice to other parties and inquiry as shall seem fit order and direct the course of proceedings which shall be taken in regard to the time and mode of sale of any such real estate as aforesaid, the letting and 55 management thereof until sale, the application for maintenance or advancement or otherwise of shares or income of shares of infants, the expediency

expediency and mode of effecting a partition if applied for, and generally in regard to the administration of the real estate for the greatest advantage of all persons interested.

35. In any case wherein upon such inquiry the Court shall be
 5 satisfied that a partition of such real estate or any part thereof
 would be advantageous to the parties interested therein, it shall
 be lawful for such Court to appoint one or more arbitrators
 to effect such partition. And the report and final award of the
 arbitrators setting forth particulars of the land allotted to each
 10 party interested shall when signed by them and confirmed by
 the order of the Court and when also registered in the office of the
 Registrar-General be effectual without the necessity of any further
 conveyance to vest in each allottee the land so allotted, and an office
 copy of such award so signed, confirmed, and registered as aforesaid
 15 shall for all purposes be equivalent to an indenture of conveyance
 to each allottee of the lands allotted as aforesaid. And in the
 case of land subject to the provisions of the "Real Property Act"
 each such allottee shall be entitled to have issued to him a certificate
 of title for the land so allotted to him. And if such allotment be made
 20 subject to the charge of any money payable to any other party
 interested for equalizing the partition such charge shall take effect
 according to the terms and conditions in regard to time and mode of
 payment and otherwise which shall be expressed in such award without
 the necessity of any further instrument being made or executed. And
 25 in the case of land subject to the provisions of the Real Property
 Act the certificate of title shall issue, subject to such charge unless
 such charge shall be satisfied.

Court may order
 partition in a
 summary way.
Ib. s. 4.

36. No personal representative shall be required against his
 own consent to continue the duty of a trustee by managing the
 30 property during an enforced suspension of sale but shall be entitled
 upon such suspension being ordered to relinquish his trust to such
 person as the Court may appoint.

Personal
 representative not
 required to continue
 to act against their
 own consent.
Ib. s. 7.

PART IV.

Administration generally.

35 37. Where any person after the commencement of this Act
 renounces probate of the will of which he is appointed executor or one
 of the executors, and whenever an executor appointed in a will survives
 the testator but dies without having taken probate, and whenever an
 executor named in a will is personally cited to take probate and does
 40 not appear to such citation the right of such person in respect of the
 executorship shall wholly cease, and the representation to the testator
 and the administration of his effects shall without any further renun-
 ciation go, devolve, and be committed in like manner as if such person
 had not been appointed executor.

Executor renouncing
 probate or not acting
 or not appearing to a
 citation to be treated
 as if he had
 renounced.
 21 and 22 Vic. c. 95
 s. 16.

45 38. Where an infant is sole executor, administration with the
 will annexed may be granted to the guardian of such infant or to
 such other person as the Court shall think fit, until such infant shall
 have attained the full age of twenty-one years, with or without full
 or limited powers to act in the premises until probate shall have
 50 been granted to the said executor or administration to some other
 person.

Where an infant is
 sole executor adminis-
 tration to be granted
 to the guardian &c.
 38 Geo. III c. 87
 s. 6.

Who shall have the same power as where administration is granted *durante minore ætate* of the next of kin.
Ib. s. 7.

Probate or administration to be granted to attorney in certain cases.

Administration *pendente lite* and receiver.

20 & 21 Vic. c. 77 s. 70 71.

Power as to appointment of administrator.

Ib. s. 73.

Proceeding where executor neglect to prove will.
Vict. Act.

If executor or administrator out of jurisdiction special administrator may be appointed.
Ib.

Special administrator to make certain affidavits.

Ib.

39. The person to whom such administration shall be granted shall have the same powers vested in him as an administrator by virtue of an administration granted to him *durante minore ætate* of the next of kin.

40. When any person named as executor or any widow or the next of kin entitled to probate or administration shall be out of the jurisdiction but shall have some person within the jurisdiction of the Court appointed under power of attorney to act for him or her respectively, administration may be granted to such agent but on behalf of the person entitled thereto if the Court shall think fit.

41. Pending any suit touching the validity of the will of any deceased person or for obtaining, recalling, or revoking any probate or any grant of administration, or during a contested right to administration, the Court may if it shall think fit appoint an administrator of the personal estate and the same or any other person to be receiver of the real estate of any deceased person with such full or limited powers and with or without a bond or sureties as the Court may think right, and may make such orders for the remuneration of such administrator or receiver out of the personal and real estate of the deceased as it may think right.

42. Where a person shall die wholly or partially intestate or leaving a will but without having appointed an executor thereof, or an executor willing and competent to take probate, or where the executor shall be resident out of the Colony the Court may if it shall think it necessary or convenient in any such case appoint some person to be the administrator of the estate of the deceased or of any part thereof upon his giving such security (if any) as the Court shall direct, and every such administration may be limited as the Court shall think fit.

43. In any case where the executor named in a will shall neglect or refuse to prove the same or to renounce probate thereof within six weeks from the death of the testator or from the time of such executor attaining the age of twenty-one years after a grant *durante minore ætate*, or where the executor is unknown or cannot be found the Court may upon the application of any person interested in the estate or of the Curator or of any creditor of the testator grant an order *nisi* calling upon the executor to show cause why probate of the said will should not be granted to such executor, or in the alternative why administration with such will annexed should not be granted to the applicant, and upon affidavit of service or of sufficient reasons for non-service of such order if the executor do not appear, or upon cause being shown it shall be lawful for the Court to make such order thereon for the administration of the estate and to make such order as to costs as shall appear just.

44. If at the expiration of six calendar months from the death of any person the executor to whom probate of the will or the administrator to whom administration of the estate and effects of such deceased person shall have been granted is then residing out of the jurisdiction, the Court may upon the application of any creditor, legatee, or next of kin grant to such creditor, legatee, or next of kin so applying special letters of administration of such deceased person, nevertheless to cease upon the return of the lawful executor or administrator within the jurisdiction of the said Court, and an order being made for the rescission thereof as hereinafter mentioned.

45. The person applying for any such special grant as aforesaid shall in addition to the oath usually taken by administrators make oath that the executor or administrator of such deceased person is resident out of the jurisdiction of the Court and that the applicant is thereby delayed in recovering or obtaining payment of moneys or the possession of goods and chattels to which he is by law entitled or that the estate is liable to loss or waste.

46. On the return within the jurisdiction of the Court of the executor or administrator to whom probate or administration shall originally have been granted such executor or administrator may apply to the Court by petition to rescind such special grant of administration, and the Court on the hearing of such petition upon being satisfied that such executor or administrator *bonâ fide* intends to remain within the jurisdiction of the Court until the estate of the deceased has been duly administered may make an order to rescind such special grant of administration upon such terms and conditions as to security, costs, or otherwise as to the Court may seem reasonable.
47. Upon any order being made by the Court for the rescission of any grant of special administration as aforesaid the special administrator shall be bound duly to account to the original executor or administrator and to pay over all moneys received by him as such special administrator, and then remaining in his hands undisposed of, as the Court may order.
48. If such executor or administrator shall neglect to apply for an order for the rescission of such special administration he shall, notwithstanding that such special administration remains unrescinded, be liable to answer and make good all claims and demands against the estate of the deceased to the extent of the assets which have come to his hands or which might have come to his hands but for his wilful neglect or default including the neglect herein mentioned.
49. Where before the revocation of any ordinary or temporary administration or the rescission of any special administration as aforesaid, any proceedings at law or in equity have been commenced by or against any administrator so appointed, the Court in which such proceedings are pending may order that a suggestion be made upon the record of the revocation or rescission of such administration and of the grant of probate or administration which shall have been made consequent thereon, and thereupon the proceedings shall be continued in the name of the new or original executor or administrator in like manner as if the proceedings had been originally commenced by or against such new or original executor or administrator, but subject to such conditions and variations if any as such Court may direct.
- On return of original executor or administrator special administration to be rescinded.
Ib.
- On order being made for rescission special administrator to account and pay over moneys.
Ib.
- Original executor or administrator liable although special administration not rescinded.
Ib.
- Revocation of temporary grants not to prejudice actions or suits.
20 & 21 Vic. c. 77 s. 76.

PART V.

Curator of Intestate Estates.

50. The Curator shall before entering upon the duties of his office give security to Her Majesty and her successors to the satisfaction of the Colonial Treasurer for the collection and due payment of and accounting for all moneys which shall come to his hands by virtue of his office. Provided that any surety found by him may withdraw from any future liability by giving the Colonial Treasurer three months written notice of his desire so to do, but such withdrawal shall not affect his liability for any breach which may have occurred prior to the date of actual withdrawal.
51. On the death, resignation, or removal of such Curator or of the successor in office of any such Curator, the successor of the Curator so dying, resigning, or removed shall immediately on his appointment and by virtue thereof become administrator of all the real and personal of every such deceased person as hereinafter mentioned left unadministered by any predecessor. And every such successor shall immediately upon his appointment and by virtue thereof become
- Curator to give security.
- Successors to have power of administrator *de bonis non*.

entitled to the possession of all books, accounts, letters, papers, and documents of every description used by or in the possession or under the control of any predecessor relating to any estate administered by him or to the office of Curator.

Proceedings by and
against Curator.

52. In all legal proceedings the Curator shall sue and be sued 5
as "Curator of Intestate Estates," and it shall not be necessary for him
or those suing him to prove his general authority to act as Curator,
but only to prove the order to collect in the specific estate to which
the proceedings relate. Whenever the office of Curator shall become
vacant by death, resignation, or removal from office or otherwise and 10
another person shall be appointed to the vacancy so created any action
or proceeding which may have been taken as aforesaid shall not abate
but shall be continued by or against the person so appointed as such
Curator, and no fresh order to collect shall be necessary.

Curator's agents.

53. The Curator may appoint any persons he may think fit to 15
act as his agents for the purpose of administering all estates in his
hands, and the clerks to the several Benches of Magistrates within
the Colony shall at his request act as such agents within their
respective districts. Every such agent not being a Clerk of Petty
Sessions shall give security to the satisfaction of the Curator for the 20
performance of his duties. Such agents shall in all respects act in the
management, collection, and getting in of such property under the
direction of the Curator who shall not be answerable for any act or
omission of any such agent not in conformity with any such direction
or which shall not have happened by the said Curator's own default or 25
neglect.

As to fees and com-
mission.

54. The Curator shall take and retain the fees set out in the
Schedule hereto and also a commission of five pounds per centum on all
moneys collected by him or by his agents and shall pay such moneys
into the Treasury for the public uses of the Colony after deducting 30
therefrom all expenses and an allowance of not exceeding three
pounds per centum by way of commission to his agents in respect of
all moneys collected by them or through or by reason of their agency.

55. The Court may on the application of the Curator grant to
the Curator an order to collect the estate of any deceased person 35
leaving real or personal estate within the jurisdiction of the Court
in any of the following cases—

- (I) Where the person shall have died testate but leaving no
executor or no executor who may be willing and capable of
acting in execution of his will and no widow or next of kin 40
or no such person willing and capable as aforesaid resident
within the jurisdiction of the Court or where he shall have
died intestate and leaving no widow or next of kin resident
within such jurisdiction.
- (II) Where the person shall have died either testate or intestate 45
and probate or administration shall not have been applied for
within three months after the death of such person.
- (III) Where the person shall by his will have appointed the
Curator to act.
- (IV) Where the estate or any portion thereof is liable to waste, and 50
the executor appointed by the will or widow or lawful next
of kin shall be absent from the locality of the said estate
or is not known or has not been found, or shall request the
Curator in writing to apply for such order.
- (V) Where the executors named in the will of the deceased have 55
renounced probate or all the persons primarily entitled to
administration have by writing filed in the office of the
Registrar declined to apply for administration.

(VI)

(VI) Where the estate or any portion thereof is of a perishable nature or is in danger of being lost or destroyed, or where great expense may be incurred by reason of delay.

5 (VII) Where after the expiration of thirty days from the decease of any person there is no reasonable probability of probate or administration being obtained within the period of three months from such decease.

Provided that the Court may in any case require the Curator to give such notices or cite such persons or produce such evidence as it may
10 think fit before granting the order applied for or may make a temporary order for collection and protection only or generally or limited to a portion of the estate or otherwise.

56. An order to collect the estate of any deceased person shall give to the Curator the same powers, rights, and obligations in
15 respect of such estate, except as hereby enacted, as he would have had if administration had been granted to him as next of kin to such person intestate; and all laws now or hereafter in force in reference to the administration of the estates of deceased persons shall apply to the administration of estates by the Curator.

20 57. Notwithstanding any order which shall have been made authorizing the Curator to collect under this Act the Court may grant probate of the will or administration of the estate of such deceased person to any person in such manner and subject to such limitations or conditions as it shall think proper, but no application
25 for any such grant shall be made until seven days after notice in writing of the intention to apply for the same shall have been left at the office of the Curator.

58. Immediately on the grant of any such probate or administration all the interest, powers, rights, and duties of the Curator (except
30 such rights as are conferred by this section) in regard to the estate of the deceased person whose estate shall be affected by such grant, and all liabilities of the Curator under any contract or agreement entered into by him in relation to such estate or any part thereof shall cease, and (subject to and on the allowance and payment of all money due
35 for the commission of the Curator as aforesaid and the necessary outlay, disbursements, costs, charges, and expenses in relation to such estate, including all costs of appearing on the application for such probate or letters of administration or rule and consequent thereon, and subject also to the provisions of this section) such portion of the estate of
40 such deceased person as shall be left unadministered by the Curator, and all rights and obligations of the Curator in respect thereof shall vest in the executor or administrator obtaining such probate or administration. Provided always that nothing herein contained shall be held to relieve the Curator from any liability in respect of his management of
45 the estate up to the time of such probate or administration.

59. Whenever it shall be made to appear to the Court that there is reasonable ground to suppose that any person has died out of the jurisdiction of the Court intestate but leaving property within such jurisdiction the Court may order and empower the Curator to collect and
50 manage the estate of such person both real and personal, and every such order shall be valid until revoked and shall empower the Curator to collect, manage, and administer the personal estate, and enter upon and receive the rents and profits and otherwise manage the real estate of such supposed deceased person, and to pay and discharge the debts and
55 liabilities of such person in like manner as if he were certainly dead and the Curator had obtained an order to collect the estate of such person under the preceding provisions. Provided that the Curator shall not proceed to any distribution of the assets without an order of the Court specially authorizing him to make such distribution.

Notice of rule to be published.

60. Within fourteen days after any order to collect shall have been granted the Curator shall, unless the Court shall otherwise order, cause notice of the fact that such order has been granted to be published twice in some newspaper published in the city of Sydney; and if the person of whose estate the Curator shall have been appointed Curator did not reside in such city then twice in some newspaper published in the town or place where such person resided, or if there shall be no newspaper published in such town or place then twice in some newspaper circulating in or near to such town or place.

Like notices to next of kin.

61. The Curator shall cause like notices to be published in newspapers published or circulating in the town or place where the next of kin are known or supposed to reside, and in the case of foreigners he shall give notice to the Consul of the country where the next of kin are supposed to reside, unless the Court shall in any case otherwise order.

Court to have summary jurisdiction over Curator.

62. Any person interested as creditor, next of kin or otherwise in the real or personal estate of any deceased person which the Curator has been ordered to collect may, on the neglect or refusal of the Curator to do any act in relation to the administration of such estate or on his doing or threatening to do any act in breach of his duty with reference to the said estate, apply *ex parte* upon affidavit to the Probate Judge in chambers for an order calling upon the Curator to show cause upon a day not less than two days from the service of such order upon him before the Court why he should not do or abstain from doing such act, and for an interim order in the nature of an injunction if warranted by the facts of the case; and any such order may be granted subject to such conditions as to giving security for costs as the Court may impose.

Applications how heard.

63. Upon the hearing of any such complaint the Court may receive proof of the matters in relation thereto orally or by affidavit, and may make such order thereon as the circumstances of the case may require and as to payment of costs by the complainant or by the Curator personally or from the estate administered by him as in his discretion shall seem just, and such orders shall have the same effect and be enforceable by the same process as if made by the Court sitting in equity in a suit between the parties to such complaint.

Curator to act as the Court shall direct.

64. In all cases where an order to collect shall have been made or shall be made under this Act it shall be lawful for the Court on the petition of the Curator or any person interested in the estate to make such orders touching the collection, sale, investment, and disposal of the estate as to the Court shall seem meet.

Mode of proceeding under this Act.

65. In every case in which the estate of any deceased person shall be administered by the Curator under this Act all disputes and matters touching the collection, management, or administration of the same within the provisions of this Act, and all claims and demands thereon except as hereinafter provided shall be decided by the Court on petition. Provided nevertheless that in any case in which it shall appear to be not desirable that the matter in question should be so decided the Court may direct such proceedings to be instituted as shall appear proper for the due decision thereof.

Payment of debts.

66. The Curator shall at such times as he shall think fit cause advertisements to be published in the *Gazette* and such other public papers as he shall deem expedient, calling upon the creditors of the persons whose estates he shall have been ordered to administer to come in and prove their debts before him, on or before a time to be fixed in such notice. He may allow any claim which may be made before him upon the affidavit of the claimant alone or where he shall think fit to call for further evidence upon such further evidence

evidence as he shall require. He shall as soon after the expiration of the time allowed for proof of debts as he conveniently can, pay the debts proved if the whole thereof can be paid, and if not shall declare and pay a dividend thereon; and if he shall collect any further assets after making such payment he shall in case any part of the debts proved remain unpaid pay the same and any debts subsequently proved before him (or a dividend thereon as the case may be), but such debts as shall be subsequently proved shall first be paid a dividend in proportion to their amount equal to the dividend paid to creditors having previously proved their debts. After payment of all debts, fees, and expenses incident to the collection, management, and administration of such estate he shall pay over the residue to the personal representative of the intestate or testator (as the case may be) so soon as such representative shall have been duly constituted.

15 67. After the expiration of three calendar months from the time fixed by the advertisement for creditors to come in and prove their debts, if no debt shall be proved or no creditor having proved his debt shall remain unpaid, it shall be lawful for the Curator with the approval of the Court to pay any sum not exceeding one hundred pounds to any person claiming to be a party in distribution or to be a legatee under a will without letters of administration having been obtained or the will being proved, and upon such evidence of the right or title of the party so claiming as the Court may under the circumstances deem sufficient.

Payment to relatives &c. in petty cases.

25 68. The Curator shall have the same right to require a release and discharge upon winding up any estate in his charge and handing over the property which may be in his hands to the person or persons entitled thereto as any executor, administrator, or any other trustee now has in the like circumstances.

Discharge to Curator on winding up estate.

30 69. The Curator shall make or cause to be made an inventory or list of all the estates of the persons which he shall have been ordered to administer, and shall retain the same in his office and shall keep an account of all his receipts, payments, and dealings in every such estate, and shall retain all letters received and copies of all letters written by him and all deeds, papers, and writings of and relating to such estates, and shall permit all persons to inspect and take copies of the same and of all proceedings relating thereto at all reasonable hours, or shall furnish office copies thereof on payment of the fees mentioned in the Schedule hereto annexed. The Curator shall with due diligence sell or mortgage such lands as he may be authorized to deal with and convert into money all such other estate as shall not consist of money unless otherwise ordered by the Court, and shall forthwith pay all moneys received by him as such Curator into some Bank to be approved of by the Court and the Colonial Treasurer to the credit of an official account to be operated on by him as such Curator.

Accounts to be kept &c.

70. The receipts in writing of the said Curator for any moneys payable to him under this Act shall be sufficient discharges for the same to the persons paying the same who shall not afterwards be liable for any misapplication thereof.

Receipt of Curator sufficient discharge.

50 71. The Curator shall in the months of January, April, July, and October in every year transmit to the Colonial Treasurer a return of all moneys received and paid by him or any agent or agents for him during the three months immediately preceding in respect of the estates intrusted to him to collect, distinguishing the particular estate in which the same have been so received or paid. And shall at the same time furnish a separate and distinct return of all balances or sums whatsoever then in his hands to the credit of each of such estates: And shall keep proper books of account in reference thereto, which shall

Quarterly returns to Treasurer and accounts.

shall once in every three months or oftener if necessary be examined and passed by the Colonial Treasurer or some officer appointed by him in that behalf.

The Curator to invest moneys after expiration of twelve months.

72. The Curator shall after the expiration of six months from the date of the order for collection of any estate in the months of 5 January and July in each year invest all moneys then standing to the credit of each such estate as the Court may by any general or special rule or order direct, and until and subject to any such order or rule may be made in accordance with the rule for the time being in force with reference to the investment of suitors moneys under the charge 10 or control of the Court of Equity.

Curator or his agents not liable for acts done in the performance of their duties.

73. Neither the Curator nor any of his agents shall be personally liable to any person in respect of goods or chattels in the possession of any intestate at the time of his death which shall be sold by the Curator or any such agent as the goods of such intestate, unless such 15 Curator or agent shall know or have actual notice before the sale that such goods or chattels were not in fact the property of such intestate, nor for any act done *bond fide* in the performance of their duties respectively unless it shall be shown that such act was done not only illegally but wilfully or with gross negligence. 20

Proceeds of property of third person to be handed over to him.

74. In case of any sale by the Curator or his agents of goods or chattels belonging in fact to any third person the amount realized by such sale thereof shall be paid over by him or them to the owner upon proof by him of such ownership, unless the same shall have been applied in the payment of the debts of the deceased or shall have been 25 distributed according to any will of the deceased or in the ordinary course of administration whilst the said Curator or any such agent was in ignorance, and without actual notice of the claim of such person to the goods or chattels so sold.

Conveyance of escheated lands and disposal of proceeds of sale.

75. If it shall appear on office found that any real estate vested 30 in the Curator has escheated to Her Majesty, the net proceeds of sale of such estate shall be paid by the Curator to the Colonial Treasurer and be by him carried to the credit of the Consolidated Revenue Fund: And the Curator's conveyance of such real estate to the purchaser thereof shall operate to pass the right, title, and interest of the deceased 35 intestate to such purchaser as in any other case.

Payment to Colonial Treasurer after six years.

76. The Curator shall in the first week in January in each year cause all sums of money which shall on the first day of that month have been invested as aforesaid and lying to the credit of any intestate estate for the term of six years then next preceding to be paid to the 40 Colonial Treasurer for the public service of the Colony, subject to the provisions hereinafter contained.

Parties entitled may apply subsequently.

77. It shall be lawful for the Court at any time upon the petition of any person claiming to be entitled to the said moneys so paid over to the Colonial Treasurer or any part thereof, and upon being 45 satisfied by affidavit or other sufficient evidence adduced in support thereof that such person is so entitled to make an order for the payment of such moneys or any portion thereof, but without interest thereon from the time of payment to the Colonial Treasurer as aforesaid, and after deducting any costs and expenses which may have been 50 incurred by the Curator or otherwise in respect of such application; and the Colonial Treasurer on being served with such order shall within a reasonable time in that behalf pay the amount mentioned therein to the person therein named, and the receipt of such person shall be a sufficient voucher for such payment. 55

PART VI.

Procedure.

78. Subject to any rules or orders to be made hereunder, and except where otherwise provided by this Act the practice of the Supreme Court in Probate Jurisdiction shall be regulated so far as the circumstances of the case will admit by the practice of the Court in its Equitable Jurisdiction.

Practice until otherwise ordered to be as at present existing.

79. Subject to the rules and orders to be made hereunder, the witnesses and where necessary the parties in all matters where their attendance can be had shall be examined orally in open Court, whether the trial or proceeding be with or without a jury. Provided always that by the permission of the Court in every case the parties may verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall on the application of the opposite party be subject to be cross-examined by or on behalf of such opposite party orally in open Court as aforesaid, and upon such cross-examination may be re-examined orally in open Court as aforesaid by or on behalf of the party by whom such affidavit was filed.

Mode of taking evidence.
20 and 21 Vic. c. 77 s. 31.

80. Where a witness in any contested matter is out of the jurisdiction of the Court, or where by reason of his illness or otherwise the Court shall not think fit to enforce the attendance of the witness in open Court, it shall be lawful for the Court to order a commission to issue for the examination of such witness on oath upon interrogatories or otherwise, or if the witness be within the jurisdiction of the Court to order the examination of such witness on oath upon interrogatories or otherwise before any officer of the said Court or other person to be named in such order for the purpose; and all the powers now vested in the Supreme Court in its equitable jurisdiction with reference to the issuing of commissions and ordering the examination of witnesses and generally in connection therewith shall extend to and be applicable to the Court in its probate jurisdiction.

Court may issue commission or give orders for examination of witnesses abroad or who are unable to attend.
Ib. s. 32.

81. The Court may direct any question of fact arising in any suit or proceeding under this Act to be tried by a special or common jury.

Questions of fact may be directed to be tried before the Court or before a jury.

82. When any question shall be so directed to be tried such question shall be reduced into the form of an issue and shall be tried before the Probate Judge or one of the other Judges of the Supreme Court and a jury of four or twelve men on and at such time and place as the Court may direct, and thereupon the matter shall proceed as in the case of issues directed to be tried by the Court in its equitable jurisdiction.

Ib. s. 35.
Question to be stated.
Ib. s. 37 38.

83. Any person considering himself aggrieved by any final or interlocutory decree or order of the Probate Judge may appeal therefrom to the full Court in the same way and with and subject to the same powers, orders, rules, and regulations as are now in force with reference to appeals from the decisions of the Primary Judge in Equity, save that the Court may consist of two Judges only if more convenient.

Appeal.

84. The Probate Judge may on the application of any party or at his own discretion, and on such terms (if any) as he shall think fit to impose, direct a rehearing by the Full Court of any cause, petition, motion, or matter before him; and in such case it shall not be necessary to give any notice of appeal, but nothing herein shall prejudice the right of any party to appeal when the Judge shall not give any such direction.

Judge may direct rehearing.
Eq. Act s. 77.

85. Any person may lodge with the registrar a caveat against any application for probate or administration at any time previous to such

Caveat may be lodged.
Vict. Act.
No. 427 s. 29.

such probate or administration being granted; and every such caveat shall set forth the name of the person lodging the same, and an address within the city of Sydney at which notices may be served on him.

Where a caveat lodged Court may grant order *nisi*.

Ib. 30.

86. In every case in which a caveat shall be lodged the Court may upon motion on behalf of the person applying for probate 5 or administration supported by affidavits upon which if there had been no caveat, probate or administration would have been granted, make an order *nisi* for the grant of probate or administration to the person applying; and every such order shall name a time for showing cause against the same, and the Court may enlarge such order from time to 10 time.

Service of order *nisi*.

Ib. 31.

87. Every such order *nisi* and every order enlarging the same may be served on the caveator by delivering a copy of the same at the address mentioned in his caveat.

Proceeding where caveator does not appear.

Ib. 32.

88. If upon the day named in the order *nisi* or upon the day 15 to which such order shall have been enlarged the caveator do not appear such order *nisi* may be made absolute upon an affidavit of service, but if the caveator appear the matter shall proceed as a contested matter and be heard before the Probate Judge alone upon affidavit or oral evidence or by a jury as the Court may direct. 20

Powers of the Court to enforce orders.

20 & 21 Vic. c. 77 s. 25.

89. The Court shall have the like powers, jurisdiction, and authority for requiring and enforcing the production of documents and the attendance of persons as witnesses and otherwise, and for punishing persons failing, neglecting, or refusing to produce such documents, or to appear or to be sworn or make affirmation or declaration, or to give 25 evidence, or guilty of contempt, and generally for the trial or determination of questions of fact, and for enforcing all orders, decrees, and judgments made or given by the Court under this Act, and for the taxation of costs, and otherwise in relation to the matters to be inquired into and done under this Act or by or under the orders of the Court under 30 this Act as are or shall be by law vested in the Supreme Court in equity for such purposes in relation to any suit or matter depending in such Court in equity.

Order to produce any instrument purporting to be testamentary.

Ib. s. 26.

90. The Court may on motion or petition or otherwise in a summary way whether any suit or other proceeding shall or shall not 35 be pending in the Court with respect to any probate or administration, order any person to produce and bring into the registry any paper or writing, being or purporting to be testamentary or otherwise material to the matter before the Court which may be shown to be in the possession or under the control of such person, and if it be not shown 40 that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined in open Court or upon interrogatories respecting the 45 same, and such person shall be bound to answer such questions or interrogatories, and (if so ordered) to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories or not bringing in such paper or writing as he would have 50 been subject to in case he had been a party to a suit in the Court and had made such default, and the costs of any such motion, petition, or other proceeding shall be in the discretion of the Court.

PART VII.

General matters.

91. From and after the decease of any person dying intestate and until letters of administration or an order to collect shall be granted in respect of his estate the real and personal estate of such deceased person shall be deemed to be vested in the Chief Justice of New South Wales, or if there shall be no Chief Justice then in the senior Puisne Judge for the time being in the same manner and to the same extent as aforesaid the personal estate and effects vested in the Ordinary in England.

Property of intestate to vest in Chief Justice. 21 & 22 Vic. c. 95 s. 19.

92. When any probate or letters of administration to be granted by any Court of competent jurisdiction in any portion of Her Majesty's Dominions shall be produced to and a copy thereof deposited with the Registrar by any person being the executor or administrator therein named, or by any person duly authorized by power of attorney in that behalf under the hand and seal of such executor or administrator, such probate or letters of administration may be sealed with the seal of the Court, and shall when so sealed have the like force and effect and have the same operation in New South Wales, and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities as if such probate or letters of administration had been originally granted by the Supreme Court of New South Wales in its Probate Jurisdiction. Provided always that the Court may on application in that behalf require any such executor or person authorized as aforesaid to give security for the due administration of the estate in respect of matters or claims within the Colony.

Probates and letters of administration granted in other Colonies or the United Kingdom to be of like force as if granted to New South Wales on being resealed. S. A. Act.

93. The seal of the Court shall not be affixed to any such probate or letters of administration until all such probate, stamp, and other duties if any have been paid as would have been payable if such probate or letters of administration had been originally granted by the Supreme Court of New South Wales, and further such letters of administration shall not be so sealed until such bond has been entered into as would have been required if such letters had been originally granted by the last-mentioned Supreme Court.

Seal not to be affixed till duty is paid. 1b.

And as to administration till bond is entered into.

94. Every such executor or administrator as last aforesaid, and every executor or administrator appointed under this Act shall be deemed to be resident within the Colony of New South Wales, and where not actually so resident he shall before the issue or sealing of any probate or administration file with the Registrar an address within the city of Sydney at which notices and processes may be served upon him, and all services at such registered address shall be deemed personal service.

Every executor &c. to be deemed resident in the Colony.

95. Any person may lodge a caveat against the sealing of any such probate or letters of administration, and such caveat shall have the same effect and shall be dealt with in the same manner as a caveat against the grant of probate or administration.

Caveat.

96. The seal of the Court shall not be affixed as aforesaid except upon an affidavit that notice of the intention to apply in that behalf has been published twice in one or more Sydney daily newspapers fourteen days before the making of such affidavit, and that no caveat has been lodged in respect thereof up to the morning of such application.

Notice of intention to apply.

97. The above provision as to sealing shall not apply to any Public Officer or to the Curator of Intestate Estates.

Not to apply to Public Officer or Curator. Oaths.

98. The Registrar and Commissioners of the Supreme Court shall have power to administer oaths under this Act.

99. In the administration of the estate of every person who shall die after the passing of this Act no debt or liability of such person shall

All specialty and simple contract debts to stand in equal degree. 32 and 33 Vic. cap. 46.

shall be entitled to any priority or preference by reason merely that the same is secured by or arises under a bond, deed, or other instrument under seal or is otherwise made or constituted a specialty debt or is due to an executor or administrator, but all the creditors of such person as well specialty as simple contract shall be treated as standing in equal degree and be paid accordingly out of the assets of such deceased person whether such assets are legal or equitable, any statute or law to the contrary notwithstanding. Provided always that this Act shall not prejudice or affect any lien, charge, or other security which any creditor may hold or be entitled to for payment of his debt. 5 10

Payments under
revoked probates or
administrations
valid.

Ib. s. 77.

100. Where any probate or administration is revoked or rescinded under this Act all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation or rescission thereof shall be a legal discharge to the person making the same, and the executor or administrator who shall have acted under any such revoked or rescinded probate or administration may retain and reimburse himself or shall be entitled to be reimbursed in respect of any payments made by him which the person to whom probate or administration shall be afterwards or was originally granted might have lawfully made. 15 20

Persons &c. making
payments upon
probates granted for
estate of deceased
person to be
indemnified.

Ib. s. 78.

101. All persons and corporations making or permitting to be made any payment or transfer *bonâ fide* upon any probate or administration or order granted in respect of the estate of any deceased person under the authority of this Act shall be indemnified and protected in so doing notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or letters of administration or order not then known to such persons or corporations. 25

Executor or
administrator to pass
accounts.

102. Every person to whom probate or administration shall be granted shall file an inventory of the estate of the deceased and pass his accounts relating thereto within such time and in such manner as may be fixed by any rule or order under this Act or as the Court may specially order, and until then in accordance with the rules hitherto in force: And shall be subject to any special order that the Court may on the motion of any person interested make as to the production and verification of his accounts, but no such passing of accounts shall affect the rights of parties to dispute the same other than the applicant. 30 35

Executors &c.
may be allowed
commission.

103. It shall be lawful for the Court to allow out of the assets of any deceased person to his executor, administrator, or trustee for the time being in passing his accounts, such commission or percentage for his pains and trouble as shall be just and reasonable, and subject to such notices if any as he may direct. No such allowance shall be made to any executor, administrator, or trustee who shall neglect or omit without good reason or a special order of a Judge to pass his accounts pursuant to any general or special rule or order of the Court. 40 45

Registrar to keep
record of probates &c.

104. The Registrar shall cause entries to be made in a book to be kept for that purpose of all grants of probate and administration, and of the filing, passing, and allowance of the accounts of all executors and administrators, and of any special order extending the time for passing such accounts; and such book shall set forth the dates of such grants, the names of the testators or intestates, the place and time of death, the names and description of the executors or administrators, the sworn value of the estates, and the dates of the filing, passing allowance of, and special orders with reference to the said accounts. 50

If accounts not
exhibited Registrar
to summon adminis-
trator before Judge
who may inflict
penalty.

105. In case any such executor or administrator shall neglect to file such inventory or to pass such accounts as aforesaid for the space of one calendar month after the expiration of the period fixed it shall be the duty of the Registrar to cause such executor or administrator to be notified of such neglect, and in case of further neglect for the period 55

period of one calendar month he shall cause him to be summoned before the Court to show cause why he should not be ordered to file such inventory or to exhibit such account to the Court forthwith. And if at any time any such executor or administrator after being specially ordered to render an account of his administration shall neglect to make and exhibit the same duly verified for the space of one calendar month after the date appointed for that purpose, the person on whose application such order was made may cause such administrator to be summoned in like manner, and in case such executor or administrator after being duly served with such summons in either of the above cases shall not attend before the Court at the time and place mentioned therein, or shall not show any reasonable cause to the contrary, the Court may order the executor or administrator to file and pass or exhibit such inventory or account verified as aforesaid, either forthwith or within such further time as the Court shall think fit to allow; and if such executor or administrator shall not within the prescribed time or within such further time as shall be allowed him by a Judge, file, pass, or exhibit such inventory or account in manner aforesaid he shall be liable to attachment in accordance with the practice of the Court of Equity.

106. Proceedings being taken under the last preceding clause shall not prejudice the right to proceed against the executor or administrator for an account and administration or prevent the Court from ordering the assignment of the bond to any person with a view of enforcing the penalty thereof as hereinbefore mentioned.

107. The Court may make such order with reference to the distribution or application of any moneys which the executor or administrator or Curator may have in hand or as to the residue of the estate as it may think fit. Provided that no final order for distribution shall be made except upon notice to all the parties entitled.

108. In all matters under this Act the question of costs and how they shall be paid shall be in the discretion of the Court subject to appeal as aforesaid.

109. It shall be lawful for the Judges of the Supreme Court or any three of them, of whom the Probate Judge shall be one, to make rules and orders for carrying into effect the purposes of this Act; and all such rules and orders shall be published in the *Government Gazette* and shall be laid before both Houses of Parliament within thirty days of their being promulgated, or if Parliament be not then sitting, within the like time after Parliament shall thereafter assemble for the despatch of business.

SCHEDULE.

	£	s.	d.
For every order to administer where effects shall appear to be above £50...	0	7	6
Where effects shall appear to be £50 or under	0	2	6
45 For every order to pay money if £10 and under £20	0	5	0
If £20 and under £50	0	10	0
If £50 and under £100	0	2	6
And on every £100 above the first	0	2	6
For every common order	0	2	6
50 For every special order	0	5	0
For every office copy 6d. per folio.			
On every audit of accounts including the direction to invest assets if the amount which shall have been in the Curator's hands be under £20 ...	0	5	0
If £20 and under £50	0	7	6
55 If £50 and under £100	0	10	0
For every £100 above the first	0	2	6

