

Legislative Council.

53<sup>o</sup> VICTORIÆ, 1889.

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## A BILL

To give effect in New South Wales to Probates and Letters of Administration granted in the United Kingdom or any of the other Australasian Colonies.

[MR. HEYDON ;—4 December, 1889.]

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**B**E it 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 the authority of the same, as follows:—

5     1. This Act may for all purposes be cited as the "Probate Act, 1889." Short title.

2. In this Act and for the purpose of all proceedings there-  
under, the following terms shall, unless inconsistent with the subject  
matter or context, have the meanings hereinafter respectively assigned  
10 to them (that is to say):—

"Australasian Colonies" shall mean all Colonies for the time being  
on the main land of Australia other than New South Wales, Australasian  
Colonies.  
and shall also include the Colonies of New Zealand, Tasmania,  
and Fiji, and any other British Colonies or possessions in  
Australasia, now existing or hereafter to be created, which  
15 the Governor in Council may from time to time declare to be  
Australasian Colonies within the meaning of this Act.

"Letters of administration" shall include "exemplification of  
letters of administration." Letters of admini-  
stration.

- Person. "Person" shall include companies incorporated by Act of Parliament.
- Probate. "Probate" shall include "exemplification of probate."
- Registrar. "Registrar" shall mean the Registrar of Probates of the Supreme Court of New South Wales. 5
- United Kingdom. "United Kingdom" shall include the Channel Islands.
- Probates and administrations granted in United Kingdom or any Australasian Colony, to be of like force as if granted in New South Wales on copy being filed and sealed.
3. When probate of the will or letters of administration to the estate of any deceased person who has left any property, whether real or personal, within the Colony of New South Wales, has or have been granted by any Court of competent jurisdiction in the United Kingdom or any of the Australasian Colonies— 10
- The executor or administrator therein named, whether he be within the jurisdiction of the Supreme Court of New South Wales or not, may either personally or by some proctor on his behalf, produce the same to the Registrar, and file a verified copy thereof in his office; or 15
- Any person duly authorized by power of attorney under the hand and seal of such executor or administrator may, either personally or by some proctor on his behalf, produce such probate or letters of administration and power of attorney accompanied by an affidavit that such power of attorney has not been revoked to the Registrar, and may file verified copies thereof in his office. 20
- When such documents have been produced and verified copies thereof deposited as aforesaid by or on behalf of such executor or administrator or person so authorized by power of attorney, such probate or letters of administration shall be sealed with the seal of the Supreme Court of New South Wales, and shall have the like force and effect and the same operation in New South Wales as if it or they had been originally granted in New South Wales; and every such executor of any such will and administrator of any such estate and person authorized by power of attorney as aforesaid shall perform the same duties and shall have the same rights, and every such executor and administrator and person authorized by power of attorney as aforesaid, and the estate of every such deceased person shall be subject to the same liabilities and obligations as if such probate or letters of administration had been originally granted by the Supreme Court of New South Wales. 35
4. The seal of the Supreme Court of New South Wales shall not be affixed to any such probate or letters of administration until after the publication of an advertisement by such executor, administrator, or person authorized by power of attorney or by some proctor on his behalf in one of the Sydney daily newspapers, of the intention of such executor, administrator, or person to apply for the same to be duly affixed, nor until an affidavit has been filed stating that such advertisement was duly published at least fourteen days before the making of such affidavit, and that no caveat has been lodged up to the morning of the application. 45
5. Any person may lodge with the Registrar 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 if it were a caveat against the granting of probate or of letters of administration. 50
6. The seal of the Supreme Court of New South Wales shall not be affixed to any such probate of the will or letters of administration until such statements of the estate of such deceased person are filed, and 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. 55
- Intention to apply for seal of Court to be advertised and after fourteen days affidavit to be made.
- Caveat may be lodged.
- Seal not to be affixed till duty is paid.

- New South Wales. No such letters of administration shall be so sealed until such affidavits have been filed and such bond has been entered into as would have been required if such letters had been originally granted by the said Supreme Court: Provided that notwithstanding  
 5 any law or rule to the contrary, any such statement may be made and verified by the executor or administrator (as the case may be), or by some person on his behalf, and any such bond may be entered into by such administrator outside New South Wales before any Commissioner of the Supreme Court for taking affidavits.
- 10 7. Upon the sealing of any such probate or letters of administration to the estate of any deceased person as aforesaid, every such executor or administrator therein named, or person by such executor or administrator duly authorized by power of attorney, under his hand and seal (as the case may be), shall be and be deemed to be for every  
 15 purpose the executor or administrator of the estate of such deceased person within the jurisdiction of the Supreme Court of New South Wales.
8. For the purpose of the verification of any probate or letters of administration granted by any Court of competent jurisdiction in  
 20 the United Kingdom or in any of the Australasian Colonies, the Registrar shall be deemed to be a person having by law, authority to hear, receive, and examine evidence within the meaning of section seven of the Act to amend the Law of Evidence passed in the sixteenth year of the reign of Her Majesty Queen Victoria and numbered  
 25 fourteen.
9. Any reference in this Act to probate or letters of administration to the estate of any deceased person shall be deemed to include a confirmation of the executor of any person granted in any Sheriff Court in Scotland.
- 30 10. The Judges of the Supreme Court of New South Wales shall from time to time make such rules as may appear necessary for regulating the duties of the Registrar and Prothonotary under this Act, and generally for regulating the procedure under this Act, and for carrying the same into effect, and may at any time repeal, amend, or  
 35 alter any such rules as to them may seem fit.
- All rules to be made under this Act shall be published in the *Government Gazette*, and shall be laid before both Houses of Parliament within ten days after their being promulgated, or if Parliament be not then sitting within the like time after Parliament shall there-  
 40 after assemble for the despatch of business.

And as to administration till affidavits made and bond entered into.

Executor or administrator or attorney to become executor or administrator as to property within jurisdiction.

Registrar to have powers under Act 16 Vic. No. 14 s. 7.

Scotch confirmation of executor's personal estate.

Power to make rules of practice.

The first of these is the fact that the  
 general public have not had much  
 idea as to what is really going on  
 in the country and what the  
 result of the various measures  
 is. It is not until the  
 end of the year that the  
 government publishes its  
 annual report and then  
 only in a form which is  
 not very accessible to  
 the general public.

The second of these is the fact that  
 the various departments of  
 the government are not  
 very well organized and  
 their work is not very  
 efficient. This is due to  
 the fact that the  
 government has not had  
 time to develop a  
 system of public  
 administration which  
 is based on the  
 principles of  
 efficiency and  
 economy.

The third of these is the fact that  
 the government has not  
 been able to secure  
 the necessary  
 funds to carry out  
 its various  
 policies. This is  
 due to the fact  
 that the  
 government has  
 not been able to  
 raise the  
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The fourth of these is the fact that  
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- The executor or administrator therein named, whether he be within the jurisdiction of the Supreme Court of New South Wales or not, may either personally or by some proctor on his behalf, produce the same to the Registrar, and file a verified copy thereof in his office; or 15
- Any person duly authorized by power of attorney under the hand and seal of such executor or administrator may, either personally or by some proctor on his behalf, produce such probate or letters of administration and power of attorney accompanied by an affidavit that such power of attorney has not been revoked to the Registrar, and may file verified copies thereof in his office. 20
- When such documents have been produced and verified copies thereof deposited as aforesaid by or on behalf of such executor or administrator or person so authorized by power of attorney, such probate or letters of administration shall be sealed with the seal of the Supreme Court of New South Wales, and shall have the like force and effect and the same operation in New South Wales as if it or they had been originally granted in New South Wales; and every such executor of any such will and administrator of any such estate and person authorized by power of attorney as aforesaid shall perform the same duties and shall have the same rights, and every such executor and administrator and person authorized by power of attorney as aforesaid, and the estate of every such deceased person shall be subject to the same liabilities and obligations as if such probate or letters of administration had been originally granted by the Supreme Court of New South Wales. 25 30 35
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10 7. Upon the sealing of any such probate or letters of administration to the estate of any deceased person as aforesaid, every such executor or administrator therein named, or person by such executor or administrator duly authorized by power of attorney, under his hand and seal (as the case may be), shall be and be deemed to be for every  
15 purpose the executor or administrator of the estate of such deceased person within the jurisdiction of the Supreme Court of New South Wales.

Executor or administrator or attorney to become executor or administrator as to property within jurisdiction.

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