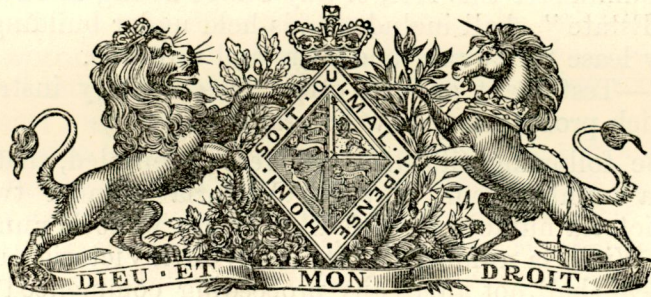


New South Wales.



ANNO QUINQUAGESIMO QUARTO

VICTORIÆ REGINÆ.

No. XXV.

An Act 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. [Assented to, 15th December, 1890.]

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. 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 the 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.

“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

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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.

“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.

“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.

“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, first Victoria number four, eleventh Victoria number twenty-four, thirteenth Victoria number forty-four, fifteenth Victoria number eight, twenty-sixth Victoria number twenty, forty-fifth Victoria number two, 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 between the date on which the said Act came into force and the passing of this Act.

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.*

PART IV.—*Probate and Administration generally.*

PART V.—*Foreign Probates and Letters of Administration.*

PART VI.—*Curator of Intestate Estates.*

PART VII.—*Procedure.*

PART VIII.—*General matters.*

and may be cited as the “Probate Act of 1890.”

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 such 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 at his request.

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5. 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 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.

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

6. 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.

7. The Governor may appoint some fit and proper person to be the Registrar, and also if thought expedient may appoint a Deputy Registrar of the Probate Jurisdiction 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 the illness or absence of the Registrar the Probate Judge may authorize any officer of the Supreme Court to act as Registrar.

Appointment of Registrar.

8. The Governor may appoint some fit and proper person to be Curator, and if necessary may appoint a 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, and such Curator of Intestate Estates may be suspended or removed from office by the Governor.

Curator.

9. The Deputy Registrar or Deputy Curator, as the case may be, if any, may exercise all the powers and shall perform all the duties by this Act conferred or imposed upon the Registrar or Curator respectively, and such other duties as may be prescribed by Rule of Court or directed by the Probate Judge.

Deputies may exercise powers and perform duties of Registrar and 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 upon his giving such security as the Judge may direct; 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 temporary Curator.

Security.

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. All applications for probate or letters of administration may be made by petition to the Judges of the Supreme Court without the necessity of application being made in open Court. Provided that notice of such intended application shall be published in the *Gazette* and in one Sydney newspaper at least fourteen days before such application is made.

Application for probate or administration may be made by petition.

Probate.

Certain matters may
be delegated to
Master in Equity.

14. It shall be lawful for the Judges of the Supreme Court, 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 estates not exceeding one thousand pounds in value where no contention has arisen, and also in and about the passing of the accounts of 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.

PART II.

Probate.

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

15. 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 in the same way as personal estate now vests.

Real estate held by
testator as trustee to
be held by executor
subject to trusts.

16. All such real estate as shall have been held by any testator as a trustee and shall vest in his executor by virtue of the thirteenth section of this Act shall be held by such executor subject to the trusts and equities affecting the same.

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

17. The real as well as personal 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 for purposes of administration to sell such real estate or mortgage the same with or without a power of sale and to convey the same to a purchaser or mortgagee in as full and effectual a manner in law as the testator of such executor could have done in his lifetime.

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

18. In all suits in Equity concerning the real estate of a deceased person, his executor to whom probate shall have been granted or administrator shall represent his real estate so long as it shall remain vested in him 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.

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

19. Subject to the provisions of this Act the real estate of every deceased person devising such estate by his will shall be held by his executor to whom probate shall have been granted according to the trusts and dispositions of such will.

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

20. The executor to whom probate shall have been granted shall have the same rights and be subject to the same duties with respect to the real estate of his testator 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.

21. The probate of any will or letters of administration with the will annexed already granted or hereafter to be granted shall be evidence of the due execution of such will upon all questions concerning real estate in the same manner and to the same extent as heretofore concerning personal estate, and the copy attached or annexed to such probate or letters of administration purporting to be a copy of the will in respect of which probate or letters of administration have been so granted

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granted shall be *primâ facie* evidence of the contents of such will, and every probate or administration shall be *primâ facie* evidence of the death and the date of the death of the testator or intestate.

22. 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 at the present time used in that behalf.

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

23. 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.

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

24. 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 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; and no probate of any will not so deposited and no 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 stating whether any such will remains deposited with the officer for the time being authorized to have the custody of deposited wills, or by a certificate from the Registrar-General to the like effect.

Will may be deposited in the office of the Registrar-General by testator in his lifetime.
Vict. Act No. 213 s. 14.

Vict. Act No. 230 s. 14.

PART III.

Administration and Distribution of Intestate Estates.

25. The practice and proceedings hitherto in force with reference to granting administration of the personal estate of an intestate shall, 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.

Practice as to granting administration of real and personal estate.

26. 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 years. And in case there shall be no such person who shall be qualified as aforesaid, or who being so qualified 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 any person or persons whether creditors or not of the deceased that the Court shall think fit.

To whom administration may be granted.

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Validation of administration heretofore granted in certain cases.

27. 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.

Administration bond to be executed. 20 and 21 Vic. c. 77 s. 81.

28. 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 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. Provided also that no such bond shall be required to be given by or on behalf of the "Permanent Trustee Company of New South Wales (Limited)" or the "Perpetual Trustee Company (Limited)," except in respect of estates exceeding twenty thousand pounds in value, in which the Court shall otherwise order.

Amount of penalty in administration bond. *Ib.* s. 82.

29. 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 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.

Administration may be revoked or further bond required.

30. 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 an administrator 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.

31. 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, for and on behalf of Her Majesty, to assign the same 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 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.

32. 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 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 in the case of partial intestacy the executor or administrator with the will annexed, as the case may be, shall hold the said real estate upon trust for payment of the debts of the deceased, and subject thereto in 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.

Vict. Act No. 230 s. 8.

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33. 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 Act out of any real estate. 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.

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.

34. 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 as to the same vest in the administrator for all the estate therein of such person subject to the trusts and equities affecting the same.

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

35. No real estate of which administration has been granted under this Act shall be leased for a longer term than three years or sold or mortgaged 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.

Lands not to be sold without consent or order.

Queensland 41 Vic. No. 24 s. 24.

36. The Court may upon the petition of the administrator, or in case of partial intestacy the executor, or the administrator with the will annexed, or of 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 management thereof until sale, the application for maintenance or advancement or otherwise of shares or income of shares of infants, the 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.

Court may make special order.

26 Vic. No. 20 s. 3.

37. In any case wherein upon such inquiry the Court shall be 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 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 to him, and an office copy of such award so signed, confirmed, and registered as aforesaid shall for all purposes be equivalent to an indenture of conveyance to each allottee of the lands allotted to him 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 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 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.

38. No personal representative shall be required against his own consent to continue the duty of a trustee by managing the 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.

Probate.

PART IV.

Probate and Administration generally.

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

39. 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.

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.

40. 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 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 renunciation go, devolve, and be committed in like manner as if such person had not been appointed executor.

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

41. 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 been granted to the said executor or administration to some other person.

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

42. 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.

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

43. When any person named as executor, or any husband or 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 attorney, but on behalf of the person entitled thereto and on such terms and conditions as the Court shall think fit.

Administration *pendente lite* and receiver.
20 & 21 Vic. c. 77 ss. 70, 71.

44. 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.

Power as to appointment of administrator.
Ib. s. 73.

45. Where a person shall die 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.

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46. In any case where the executor named in a will shall neglect or refuse to prove the same or to renounce probate thereof within three calendar months from the death of the testator or from the time of such executor attaining the age of twenty-one years, 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.

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

47. 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 an order being made for the rescission thereof as herein-after mentioned.

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

48. The person applying for any such special grant as aforesaid shall in addition to the oath usually taken by administrators satisfy the Court by affidavit 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, or real estate, to which he is by law entitled, or that the estate is liable to loss or waste.

Special administrator to make certain affidavits.
Ib.

49. 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 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, and thereafter the original probate or administration shall be and remain as valid and effectual as if such special grant of administration had never been made.

On return of original executor or administrator special administration to be rescinded.
Ib.

50. 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.

On order being made for rescission special administrator to account and pay over moneys.
Ib.

51. 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.

Original executor or administrator liable although special administration not rescinded.
Ib.

52. 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

Revocation of temporary grants not to prejudice actions or suits.
20 & 21 Vic. c. 77
s. 76.

proceedings

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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 or restoration 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.

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

53. 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 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 mortgage, lien, charge, or other security which any creditor may hold or be entitled to for payment of his debt.

Payments under revoked probates or administrations valid.

Ib. s. 77.

54. 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.

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

Ib. s. 78.

55. 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.

Executor or administrator to pass accounts.

56. Every person to whom probate or administration has been or shall be granted shall file an inventory of the estate of the deceased and pass his accounts relating thereto within such time, and from time to 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, and the order of the Court allowing any such account shall be *primâ facie* evidence of the correctness of the same, and shall, after the expiration of three years from the date of such order, operate as a release to the person filing the same, excepting so far as it shall be shown by some person interested therein that an error or omission or fraudulent entry has been made in such account.

Executors &c. may be allowed commission.

57. 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 such Court 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.

Probate.

58. 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. Registrar to keep record of probates, &c.

59. 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 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 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. If accounts not exhibited Registrar to summon administrator before Judge who may inflict penalty.

60. Proceedings being taken under the last preceding section 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 any bond to any person with a view of enforcing the penalty thereof as hereinbefore mentioned. Proceedings under last section not to prejudice proceedings on bond.

61. 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. Judge may make order as to disposal of moneys in hands of executor, &c.

62. Any decree in Equity in an administration suit shall bind the parties, and be of the same force and effect to all intents and purposes as if an order to the same effect had been made in the Probate Jurisdiction. Decree in Equity shall bind parties.

PART V.

Foreign Probates and Letters of Administration.

63. When any probate or letters of administration already granted or hereafter 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 Supreme Court of New South Wales, 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 said Supreme Court. Provided always that the Court may require any such executor or administrator 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.

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Seal not to be affixed till duty is paid.

It.

And as to administration till bond is entered into.

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

Caveat.

Notice of intention to apply.

Not to apply to Public Officer or Curator.

64. 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.

65. 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.

66. 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.

67. 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.

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

PART VI.

Curator of Intestate Estates.

Curator to give security.

69. 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.

Successors to have power of administrator *de bonis non*.

70. On the death, resignation, or removal of such Curator, his successor shall immediately on his appointment and by virtue thereof become entitled to administer all the real and personal estate 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 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.

71. In legal proceedings it shall not be necessary for the Curator 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 another person shall be appointed to the vacancy so created,

any

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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.

72. The Curator may appoint any persons he may think fit to 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 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 neglect.

73. 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 fees and commission into the Treasury for the public uses of the Colony after deducting 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.

74. The Court may on the application of the Curator grant to the Curator an order to collect the estate of any deceased person 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, 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 willing and capable of acting as aforesaid.
- (II) Where the person shall have died either testate or intestate 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 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 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) 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.
- (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 think

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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.

Effect of order.

75. An order to collect the estate of any deceased person shall give to the Curator the same powers, rights, and obligations in 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.

Probates and administrations may be granted notwithstanding appointment of Curator.

76. 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 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.

On such grant Curator's duties and liabilities to cease.

77. Immediately on the grant of any such probate or administration all the interest, powers, rights, and duties of the Curator (except 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 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 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 the estate up to the time of such probate or administration.

When there is reasonable ground to believe that any person has died out of jurisdiction of the Court the Curator may obtain order to manage &c. without strict legal proof of death.

78. Whenever it shall be made to appear to the Court that there is reasonable ground to suppose that any person has died either in or out of the jurisdiction of the Court intestate leaving property within such jurisdiction the Court may order and empower the Curator to collect and 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 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.

79. 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 daily 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 also 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.

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80. 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, if there shall be any such Consul resident in Sydney, unless the Court shall in any case otherwise order.

Like notices to next of kin.

81. 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.

Court to have summary jurisdiction over Curator.

82. 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.

Applications how heard.

83. 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.

Curator to act as the Court shall direct.

84. 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, 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.

Mode of proceeding under this Act.

85. The Curator shall at such times as he shall think fit cause advertisements to be published in the *Gazette* and such public newspapers 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 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

Payment of debts.

Probate.

and expenses incident to the collection, management, and administration of such estate he shall pay over the residue to the personal representative if any of the intestate or testator (as the case may be) so soon as such representative shall have been duly constituted.

Payment to relatives
&c. in petty cases.

86. If at the expiration of three calendar months from the time fixed by the advertisement for creditors to come in and prove their debts no debt shall have been 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.

Accounts to be kept,
&c.

87. 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.

Receipt of Curator
sufficient discharge.

88. 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.

Quarterly returns to
Treasurer and
accounts.

89. 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 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 six
months.

90. The Curator shall after the expiration of six months from the date of the order for collection of any estate 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 or control of the Court of Equity.

Curator or his agents
not liable for acts
done in the perform-
ance of their duties.

91. 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 testator or intestate at the time of his death which shall be sold by the Curator or any such agent as the goods of such testator or intestate, unless such Curator or agent shall know or have actual notice before the sale that such goods or chattels were not in fact the property
of

Probate.

of such testator or intestate, nor for any act done *bonâ 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.

92. 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 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 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.

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

93. If it shall appear on office found that any real estate vested 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 intestate to such purchaser as in any other case.

Conveyance of escheated lands and disposal of proceeds of sale.

94. 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 estate under his control for the term of six years then next preceding to be paid to the Colonial Treasurer for the public service of the Colony, subject to the provisions hereinafter contained.

Payment to Colonial Treasurer after six years.

95. 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 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 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.

Parties entitled may apply subsequently.

PART VII.

Procedure.

96. 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.

97. 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

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

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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.

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

Ib. s. 32.

98. 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.

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

Ib. s. 35.

Question to be stated.

Ib. ss. 37, 38.

99. 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.

100. 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 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.

Appeal.

101. 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.

Judge may direct rehearing.

Eq. Act s. 77.

102. 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.

Caveat may be lodged.

Vict. Act.

No. 427 s. 29.

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

104. In every case in which a caveat shall be lodged the Court may upon motion on behalf of the person applying for probate 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 time.

Service of order *nisi*.

Ib. 31.

105. 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.

106. If upon the day named in the order *nisi* or upon the day 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.

Probate.

107. 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 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 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.

Powers of the Court to enforce orders.
20 & 21 Vic. c. 77 s. 25.

108. The Court may on motion or petition or otherwise in a summary way whether any suit or other proceeding shall or shall not 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 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 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 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.

Order to produce an instrument purporting to be testamentary.

Ib. s. 26.

109. In all matters and proceedings under this Act every attorney, solicitor, and proctor of the Supreme Court of New South Wales shall have the right of audience before the Probate Judge.

Attorney, &c., to have right of audience before Probate Judge.

PART VIII.

General matters.

110. The Registrar, Commissioners of the Supreme Court, and Justices of the Peace of the Colony of New South Wales shall have power to administer oaths under this Act.

Oaths.

111. 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.

Costs.

112. The Judges of the Supreme Court or any three of them, may make general rules for regulating the times and form and mode of procedure, and generally the practice of the Court in respect of the several matters to which this Act relates, and for fixing the amount of all fees and allowances to officers of the Court and solicitors in reference to such matters, and otherwise for the effectual execution of this Act and of the intention and object thereof; and all such rules and orders shall be published in the *Gazette* and shall be laid before both Houses of Parliament within thirty days of their being so published, or if Parliament be not then sitting, within the like time after Parliament shall thereafter assemble for the despatch of business.

Rules.

Equity Act, 1880.

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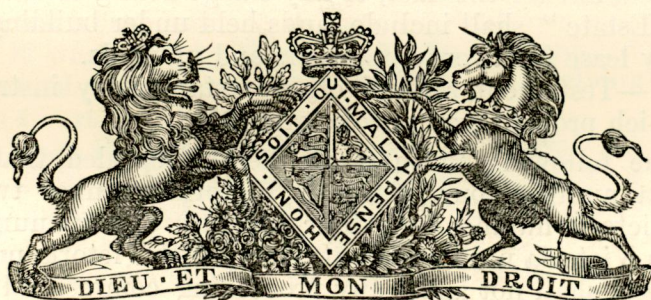
SCHEDULE.

	£	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—			
For every order to pay money if £10 and under £20	0	2	6
If £20 and under £50	0	5	0
If £50 and under £100	0	10	0
And on every £100 above the first	0	2	6
For every common order	0	2	6
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
If £50 and under £100	0	10	0
For every £100 above the first	0	2	6

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New South Wales.



ANNO QUINQUAGESIMO QUARTO

VICTORIÆ REGINÆ.

No. XXV.

An Act 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. [Assented to, 15th December, 1890.]

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. 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 the 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.

“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

Preamble.
Interpretation clause.

Probate.

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.

“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.

“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.

“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, first Victoria number four, eleventh Victoria number twenty-four, thirteenth Victoria number forty-four, fifteenth Victoria number eight, twenty-sixth Victoria number twenty, forty-fifth Victoria number two, 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 between the date on which the said Act came into force and the passing of this Act.

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.*

PART IV.—*Probate and Administration generally.*

PART V.—*Foreign Probates and Letters of Administration.*

PART VI.—*Curator of Intestate Estates.*

PART VII.—*Procedure.*

PART VIII.—*General matters.*

and may be cited as the “Probate Act of 1890.”

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 such 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 at his request.

5.

Probate.

5. 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 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.

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

6. 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.

7. The Governor may appoint some fit and proper person to be the Registrar, and also if thought expedient may appoint a Deputy Registrar of the Probate Jurisdiction 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 the illness or absence of the Registrar the Probate Judge may authorize any officer of the Supreme Court to act as Registrar.

Appointment of Registrar.

8. The Governor may appoint some fit and proper person to be Curator, and if necessary may appoint a 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, and such Curator of Intestate Estates may be suspended or removed from office by the Governor.

Curator.

9. The Deputy Registrar or Deputy Curator, as the case may be, if any, may exercise all the powers and shall perform all the duties by this Act conferred or imposed upon the Registrar or Curator respectively, and such other duties as may be prescribed by Rule of Court or directed by the Probate Judge.

Deputies may exercise powers and perform duties of Registrar and 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 upon his giving such security as the Judge may direct; 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 temporary Curator.
Security.

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. All applications for probate or letters of administration may be made by petition to the Judges of the Supreme Court without the necessity of application being made in open Court. Provided that notice of such intended application shall be published in the *Gazette* and in one Sydney newspaper at least fourteen days before such application is made.

Application for probate or administration may be made by petition.

Probate.

Certain matters may
be delegated to
Master in Equity.

14. It shall be lawful for the Judges of the Supreme Court, 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 estates not exceeding one thousand pounds in value where no contention has arisen, and also in and about the passing of the accounts of 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.

PART II.

Probate.

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

15. 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 in the same way as personal estate now vests.

Real estate held by
testator as trustee to
be held by executor
subject to trusts.

16. All such real estate as shall have been held by any testator as a trustee and shall vest in his executor by virtue of the thirteenth section of this Act shall be held by such executor subject to the trusts and equities affecting the same.

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

17. The real as well as personal 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 for purposes of administration to sell such real estate or mortgage the same with or without a power of sale and to convey the same to a purchaser or mortgagee in as full and effectual a manner in law as the testator of such executor could have done in his lifetime.

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

18. In all suits in Equity concerning the real estate of a deceased person, his executor to whom probate shall have been granted or administrator shall represent his real estate so long as it shall remain vested in him 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.

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

19. Subject to the provisions of this Act the real estate of every deceased person devising such estate by his will shall be held by his executor to whom probate shall have been granted according to the trusts and dispositions of such will.

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

20. The executor to whom probate shall have been granted shall have the same rights and be subject to the same duties with respect to the real estate of his testator that executors heretofore have had or been subject to with reference to personal assets.

Ib. s. 10.

Probate to be
evidence of will
concerning real
estate.

21. The probate of any will or letters of administration with the will annexed already granted or hereafter to be granted shall be evidence of the due execution of such will upon all questions concerning real estate in the same manner and to the same extent as heretofore concerning personal estate, and the copy attached or annexed to such probate or letters of administration purporting to be a copy of the will in respect of which probate or letters of administration have been so

Ib. s. 11.

granted

Probate.

granted shall be *primâ facie* evidence of the contents of such will, and every probate or administration shall be *primâ facie* evidence of the death and the date of the death of the testator or intestate.

22. 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 at the present time used in that behalf.

Place of original wills.

20 and 21 Vic. c. 77, s. 66.

23. 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.

Official copy of whole or part of will may be obtained.

Ib. s. 69.

24. 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 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 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; and no probate of any will not so deposited and no 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 stating whether any such will remains deposited with the officer for the time being authorized to have the custody of deposited wills, or by a certificate from the Registrar-General to the like effect.

Will may be deposited in the office of the Registrar-General by testator in his lifetime.

Vict. Act No. 213 s. 14.

Vict. Act No. 230 s. 14.

PART III.

Administration and Distribution of Intestate Estates.

25. The practice and proceedings hitherto in force with reference to granting administration of the personal estate of an intestate shall, 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.

Practice as to granting administration of real and personal estate.

26. 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 years. And in case there shall be no such person who shall be qualified as aforesaid, or who being so qualified 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 any person or persons whether creditors or not of the deceased that the Court shall think fit.

To whom administration may be granted.

Probate.

Validation of administration heretofore granted in certain cases.

27. 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.

Administration bond to be executed. 20 and 21 Vic. c. 77 s. 81.

28. 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 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. Provided also that no such bond shall be required to be given by or on behalf of the "Permanent Trustee Company of New South Wales (Limited)" or the "Perpetual Trustee Company (Limited)," except in respect of estates exceeding twenty thousand pounds in value, in which the Court shall otherwise order.

Amount of penalty in administration bond. *Ib.* s. 82.

29. 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 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.

Administration may be revoked or further bond required.

30. 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 an administrator 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.

31. 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, for and on behalf of Her Majesty, to assign the same 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 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.

32. 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 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 in the case of partial intestacy the executor or administrator with the will annexed, as the case may be, shall hold the said real estate upon trust for payment of the debts of the deceased, and subject thereto in 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.

Vict. Act No. 230 s. 8.

Probate.

33. 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 Act out of any real estate. 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.

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.

34. 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 as to the same vest in the administrator for all the estate therein of such person subject to the trusts and equities affecting the same.

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

35. No real estate of which administration has been granted under this Act shall be leased for a longer term than three years or sold or mortgaged 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.

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

36. The Court may upon the petition of the administrator, or in case of partial intestacy the executor, or the administrator with the will annexed, or of 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 management thereof until sale, the application for maintenance or advancement or otherwise of shares or income of shares of infants, the 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.

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

37. In any case wherein upon such inquiry the Court shall be 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 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 to him, and an office copy of such award so signed, confirmed, and registered as aforesaid shall for all purposes be equivalent to an indenture of conveyance to each allottee of the lands allotted to him 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 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 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.

38. No personal representative shall be required against his own consent to continue the duty of a trustee by managing the 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.

Probate.

PART IV.

Probate and Administration generally.

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

39. 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.

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.

40. 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 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 renunciation go, devolve, and be committed in like manner as if such person had not been appointed executor.

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

41. 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 been granted to the said executor or administration to some other person.

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

42. 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.

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

43. When any person named as executor, or any husband or 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 attorney, but on behalf of the person entitled thereto and on such terms and conditions as the Court shall think fit.

Administration *pendente lite* and receiver.
20 & 21 Vic. c. 77 ss. 70, 71.

44. 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.

Power as to appointment of administrator.
Ib. s. 73.

45. Where a person shall die 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.

Probate.

46. In any case where the executor named in a will shall neglect or refuse to prove the same or to renounce probate thereof within three calendar months from the death of the testator or from the time of such executor attaining the age of twenty-one years, 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.

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

47. 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 an order being made for the rescission thereof as herein-after mentioned.

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

48. The person applying for any such special grant as aforesaid shall in addition to the oath usually taken by administrators satisfy the Court by affidavit 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, or real estate, to which he is by law entitled, or that the estate is liable to loss or waste.

Special administrator to make certain affidavits.
Ib.

49. 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 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, and thereafter the original probate or administration shall be and remain as valid and effectual as if such special grant of administration had never been made.

On return of original executor or administrator special administration to be rescinded.
Ib.

50. 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.

On order being made for rescission special administrator to account and pay over moneys.
Ib.

51. 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.

Original executor or administrator liable although special administration not rescinded.
Ib.

52. 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

Revocation of temporary grants not to prejudice actions or suits.
20 & 21 Vic. c. 77 s. 76.

Probate.

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 or restoration 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.

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

53. 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 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 mortgage, lien, charge, or other security which any creditor may hold or be entitled to for payment of his debt.

Payments under revoked probates or administrations valid.
Ib. s. 77.

54. 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.

Persons &c. making payments upon probates granted for estate of deceased person to be indemnified.
Ib. s. 78.

55. 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.

Executor or administrator to pass accounts.

56. Every person to whom probate or administration has been or shall be granted shall file an inventory of the estate of the deceased and pass his accounts relating thereto within such time, and from time to 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, and the order of the Court allowing any such account shall be *primâ facie* evidence of the correctness of the same, and shall, after the expiration of three years from the date of such order, operate as a release to the person filing the same, excepting so far as it shall be shown by some person interested therein that an error or omission or fraudulent entry has been made in such account.

Executors &c. may be allowed commission.

57. 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 such Court 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.

Probate.

58. 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.

Registrar to keep record of probates, &c.

59. 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 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 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.

If accounts not exhibited Registrar to summon administrator before Judge who may inflict penalty.

60. Proceedings being taken under the last preceding section 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 any bond to any person with a view of enforcing the penalty thereof as hereinbefore mentioned.

Proceedings under last section not to prejudice proceedings on bond.

61. 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.

Judge may make order as to disposal of moneys in hands of executor, &c.

62. Any decree in Equity in an administration suit shall bind the parties, and be of the same force and effect to all intents and purposes as if an order to the same effect had been made in the Probate Jurisdiction.

Decree in Equity shall bind parties.

PART V.

Foreign Probates and Letters of Administration.

63. When any probate or letters of administration already granted or hereafter 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 Supreme Court of New South Wales, 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 said Supreme Court. Provided always that the Court may require any such executor or administrator 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.

Probate.

Seal not to be affixed till duty is paid.

It.

And as to administration till bond is entered into.

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

Caveat.

Notice of intention to apply.

Not to apply to Public Officer or Curator.

64. 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.

65. 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.

66. 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.

67. 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.

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

PART VI.

Curator of Intestate Estates.

Curator to give security.

69. 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.

Successors to have power of administrator *de bonis non*.

70. On the death, resignation, or removal of such Curator, his successor shall immediately on his appointment and by virtue thereof become entitled to administer all the real and personal estate 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 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.

71. In legal proceedings it shall not be necessary for the Curator 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 another person shall be appointed to the vacancy so created,

any

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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.

72. The Curator may appoint any persons he may think fit to 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 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 neglect.

73. 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 fees and commission into the Treasury for the public uses of the Colony after deducting 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.

74. The Court may on the application of the Curator grant to the Curator an order to collect the estate of any deceased person 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, 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 willing and capable of acting as aforesaid.
- (II) Where the person shall have died either testate or intestate 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 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 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) 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.
- (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 think

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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.

Effect of order.

75. An order to collect the estate of any deceased person shall give to the Curator the same powers, rights, and obligations in 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.

Probates and administrations may be granted notwithstanding appointment of Curator.

76. 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 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.

On such grant Curator's duties and liabilities to cease.

77. Immediately on the grant of any such probate or administration all the interest, powers, rights, and duties of the Curator (except 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 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 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 the estate up to the time of such probate or administration.

When there is reasonable ground to believe that any person has died out of jurisdiction of the Court the Curator may obtain order to manage &c. without strict legal proof of death.

78. Whenever it shall be made to appear to the Court that there is reasonable ground to suppose that any person has died either in or out of the jurisdiction of the Court intestate leaving property within such jurisdiction the Court may order and empower the Curator to collect and 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 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.

79. 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 daily 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 also 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.

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80. 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, if there shall be any such Consul resident in Sydney, unless the Court shall in any case otherwise order.

Like notices to next of kin.

81. 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.

Court to have summary jurisdiction over Curator.

82. 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.

Applications how heard.

83. 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.

Curator to act as the Court shall direct.

84. 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, 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.

Mode of proceeding under this Act.

85. The Curator shall at such times as he shall think fit cause advertisements to be published in the *Gazette* and such public newspapers 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 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

Payment of debts.

Probate.

and expenses incident to the collection, management, and administration of such estate he shall pay over the residue to the personal representative if any of the intestate or testator (as the case may be) so soon as such representative shall have been duly constituted.

Payment to relatives
&c. in petty cases.

86. If at the expiration of three calendar months from the time fixed by the advertisement for creditors to come in and prove their debts no debt shall have been 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.

Accounts to be kept,
&c.

87. 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.

Receipt of Curator
sufficient discharge.

88. 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.

Quarterly returns to
Treasurer and
accounts.

89. 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 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 six
months.

90. The Curator shall after the expiration of six months from the date of the order for collection of any estate 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 or control of the Court of Equity.

Curator or his agents
not liable for acts
done in the perform-
ance of their duties.

91. 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 testator or intestate at the time of his death which shall be sold by the Curator or any such agent as the goods of such testator or intestate, unless such Curator or agent shall know or have actual notice before the sale that such goods or chattels were not in fact the property of

Probate.

of such testator or intestate, nor for any act done *bonâ 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.

92. 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 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 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.

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

93. If it shall appear on office found that any real estate vested 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 intestate to such purchaser as in any other case.

Conveyance of escheated lands and disposal of proceeds of sale.

94. 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 estate under his control for the term of six years then next preceding to be paid to the Colonial Treasurer for the public service of the Colony, subject to the provisions hereinafter contained.

Payment to Colonial Treasurer after six years.

95. 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 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 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.

Parties entitled may apply subsequently.

PART VII.

Procedure.

96. 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.

97. 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

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

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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.

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

98. 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.

Questions of fact may be directed to be tried before the Court or before a jury.
Ib. s. 35.

99. 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.

Question to be stated.
Ib. ss. 37, 38.

100. 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 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.

Appeal.

101. 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.

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

102. 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.

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

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

104. In every case in which a caveat shall be lodged the Court may upon motion on behalf of the person applying for probate 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 time.

Service of order *nisi*.
Ib. 31.

105. 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.

106. If upon the day named in the order *nisi* or upon the day 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.

Probate.

107. 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 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 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.

Powers of the Court to enforce orders.
20 & 21 Vic. c. 77 s. 25.

108. The Court may on motion or petition or otherwise in a summary way whether any suit or other proceeding shall or shall not 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 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 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 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.

Order to produce an instrument purporting to be testamentary.

Ib. s. 26.

109. In all matters and proceedings under this Act every attorney, solicitor, and proctor of the Supreme Court of New South Wales shall have the right of audience before the Probate Judge.

Attorney, &c., to have right of audience before Probate Judge.

PART VIII.

General matters.

110. The Registrar, Commissioners of the Supreme Court, and Justices of the Peace of the Colony of New South Wales shall have power to administer oaths under this Act.

Oaths.

111. 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.

Costs.

112. The Judges of the Supreme Court or any three of them, may make general rules for regulating the times and form and mode of procedure, and generally the practice of the Court in respect of the several matters to which this Act relates, and for fixing the amount of all fees and allowances to officers of the Court and solicitors in reference to such matters, and otherwise for the effectual execution of this Act and of the intention and object thereof; and all such rules and orders shall be published in the *Gazette* and shall be laid before both Houses of Parliament within thirty days of their being so published, or if Parliament be not then sitting, within the like time after Parliament shall thereafter assemble for the despatch of business.

Rules.

Equity Act, 1880.

Probate.

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—			
For every order to pay money if £10 and under £20	0	2	6
If £20 and under £50	0	5	0
If £50 and under £100	0	10	0
And on every £100 above the first	0	2	6
For every common order	0	2	6
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
If £50 and under £100	0	10	0
For every £100 above the first	0	2	6

 By Authority : CHARLES POTTER, Government Printer, Sydney, 1890.

[1s. 3d.]

PROBATE BILL.

SCHEDULE of the Amendments referred to in Message of 4th December, 1890.

- Page 2, clause 2, line 28. Omit "prior to" insert "between the date on which the said Act came into force and"
- Page 3, clause 4, lines 7 and 8. Omit "the Primary Judge in Equity or"
- Page 3, clause 4, line 8. Omit "other"
- Page 3, clause 7, line 28. After "and" insert "also"
- Page 3, clause 7, line 28. After "expedient" insert "may appoint a"
- Page 3, clause 7, line 36. Omit "his" insert "the"
- Page 3, clause 7, line 37. After "absence" insert "of the Registrar"
- Page 3, clause 8, line 40. After "necessary" insert "may appoint a"
- Page 3. After clause 8 insert new clause 9
- Page 4. After clause ~~11~~ 12, insert new clause 13.
- Page 4, clause ~~12~~ 14, line 21. Add "s" to "estate"
- Page 4, clause ~~12~~ 14, line 23. Omit "trustees"
- Page 4, clause ~~12~~ 14, line 27. After "Judge" omit remainder of clause.
- Page 4. After clause ~~13~~ 15, insert new clause 16.
- Page 4, clause ~~14~~ 17, line 46. After "real" insert "as well as personal"
- Page 5, clause ~~14~~ 17, line 2. After "sell" insert "such real estate"
- Page 5, clause ~~14~~ 17, line 2. Omit "such real estate" insert "the same"
- Page 5, clause ~~14~~ 17, line 3. After "purchaser" insert "or mortgagee"
- Page 5, clause ~~15~~ 18, line 7. After "Executor" insert "to whom probate shall have been granted"
- Page 5, clause ~~15~~ 18, line 8. After "estate" insert "so long as it shall remain vested in him"
- Page 5, clause ~~16~~ 19, line 14. Omit "the" insert "his"
- Page 5, clause ~~16~~ 19, line 15. Omit "of such person" insert "to whom probate shall have been granted"
- Page 5, clause ~~17~~ 20, line 17. Omit "of any deceased person" insert "to whom probate shall have been granted"
- Page 5, clause ~~17~~ 20, line 19. Omit "such person" insert "his testator"
- Page 5, clause ~~18~~ 21, line 23. After "annexed" insert "already granted or"
- Page 5, clause ~~19~~ 22, lines 40 and 41. Omit "and manner"
- Page 5, clause ~~19~~ 22, line 41. Omit "set apart and"
- Page 6, clause ~~25~~ 28. At end of clause add "Provided also that no such bond shall be required to be given by or on behalf of the 'Permanent Trustee Company of New South Wales (Limited)' or the 'Perpetual Trustee Company (Limited),' except in respect of estates exceeding twenty thousand pounds in value, in which the Court shall otherwise order."
- Page 7, clause ~~27~~ 30, line 9. Omit "de bonis non"
- Page 7, clause ~~28~~ 31, line 13. After "Curator" insert "for and on behalf of Her Majesty"
- Page 7, clause ~~29~~ 32, line 29. Omit "on" insert "in"
- Page 7, clause ~~31~~ 34, line 43. After "intestate" insert "as to the same"
- Page 7, clause ~~32~~ 35, line 47. Omit "sold or mortgaged or"
- Page 7, clause ~~32~~ 35, line 48. After "years" insert "or sold or mortgaged"
- Page 8, clause ~~34~~ 37, line 14. After "allotted" insert "to him"
- Page 8, clause ~~34~~ 37, line 17. After "allotted" insert "to him"
- Page 9, clause ~~42~~ 45, line 28. Omit "wholly or partially"
- Page 9, clause ~~43~~ 46, lines 37 and 38. Omit "six weeks" insert "three calendar months"
- Page 9, clause ~~43~~ 46, lines 39 and 40. Omit "after a grant durante minore etate"
- Page 9, clause ~~44~~ 47, lines 58 and 59. Omit "the return of the lawful executor or administrator within the jurisdiction of the said Court and"
- Page 10, clause ~~45~~ 48, lines 2 and 3. Omit "make oath" insert "satisfy the Court by affidavit"
- Page 10, clause ~~45~~ 48, line 6. After "chattels" insert "or real estate"

- Page 10, clause ~~46. 49~~, lines 13 to 16. *Omit* "upon being satisfied that such executor or administrator *"boná fide* intends to remain within the jurisdiction of the Court until the estate of the deceased "has been duly administered"
- Page 10, clause ~~46. 49~~. At end of clause *add* "and thereafter the original probate or administration shall be and remain as valid and effectual as if such special grant of administration had never been made"
- Page 10, clause ~~49. 52~~, line 40. *After* "grant" *insert* "or restoration"
- Page 11, clause ~~53. 56~~, line 14. *After* "Administration" *insert* "has been or"
- Page 11, clause ~~53. 56~~, line 16. *After* "time" *insert* "and from time to time"
- Page 11, clause ~~53. 56~~, line 22. *After* "accounts" *omit* remainder of clause, *add* "and the order of the Court allowing any such account shall be prima facie evidence of the correctness of the same, and shall after the expiration of three years from the date of such order operate as a release to the person filing the same, excepting so far as it shall be shown by some person interested therein that an error or omission or fraudulent entry has been made in such account"
- Page 11, clause ~~54. 57~~, line 34. *Omit* "he" *insert* "such Court"
- Page 11, clause ~~57. 60~~, line 60. *Omit* "clause" *insert* "section"
- Page 11, clause ~~57. 60~~, line 63. *Omit* "the" second occurring *insert* "any"
- Page 12, clause ~~60. 63~~, line 12. *After* "administration" *insert* "already granted or hereafter"
- Page 12, clause ~~60. 63~~, line 19. *After* "of the" *insert* "Supreme"
- Page 12, clause ~~60. 63~~, line 19. *After* "Court" *insert* "of New South Wales"
- Page 12, clause ~~60. 63~~, line 24. *After* "the" *insert* "said"
- Page 12, clause ~~60. 63~~, line 25. *Omit* "of New South Wales in its Probate Jurisdiction"
- Page 12, clause ~~60. 63~~, line 26. *Omit* "on application in that behalf";
- Page 12, clause ~~60. 63~~, line 27. *After* "executor" *insert* "or administrator"
- Page 13, clause ~~67. 70~~, lines 12 and 13. *Omit* "or of the successor in office of any such curator the" *insert* "his"
- Page 13, clause ~~67. 70~~, lines 13 and 14. *Omit* "of the curator so dying, resigning, or removed"
- Page 13, clause ~~67. 70~~, line 15. *Omit* "administrator of" *insert* "entitled to administer"
- Page 13, clause ~~67. 70~~, line 16. *After* "personal" *insert* "estate"
- Page 13, clause ~~68. 71~~, line 23. *Omit* "all"
- Page 13, clause ~~70. 73~~, line 46. *Omit* "moneys" second occurring *insert* "fees and commission"
- Page 14, clause ~~71. 74~~, line 2. At end of sub-section (1) *add* "willing and capable of acting as aforesaid"
- Page 14, clause ~~71. 74~~, line 29. *After* "otherwise" *omit* remainder of clause.
- Page 15, clause ~~75. 78~~, line 16. *After* "died" *insert* "either in or"
- Page 15, clause ~~75. 78~~, line 17. *Omit* "but"
- Page 15, clause ~~76. 79~~, line 32. *After* "some" *insert* "daily"
- Page 15, clause ~~76. 79~~, line 34. *After* "then" *insert* "also"
- Page 15, clause ~~77. 80~~, line 42. *After* "reside" *insert* "if there shall be any such consul resident in Sydney"
- Page 16, clause ~~81. 84~~, line 14. *Omit* "within the provisions of this Act"
- Page 16, clause ~~82. 85~~, line 21. *Omit* "other"
- Page 16, clause ~~82. 85~~, line 21. *Omit* "papers" *insert* "newspapers"
- Page 16, clause ~~82. 85~~, line 40. *Before* "of" *insert* "if any"
- Page 16, clause ~~83. 86~~, line 42. *Omit* "after" *insert* "If at"
- Page 16, clause ~~83. 86~~, line 44. *Omit* "if"
- Page 16, clause ~~83. 86~~, line 44. *Omit* "be" *insert* "have been"
- Page 16, clause 84. *Omit* clause 84.
- Page 17, clause ~~89. 91~~, line 42. *After* "any" *insert* "testator or"
- Page 17, clause ~~89. 91~~, line 43. *Before* "intestate" *insert* "testator or"
- Page 17, clause ~~89. 91~~, line 46. *Before* "intestate" *insert* "testator or"
- Page 17, clause ~~90. 92~~, line 51. *Omit* "or them"
- Page 18, clause ~~92. 94~~, line 8. *Omit* "intestate"
- Page 18, clause ~~92. 94~~, line 9. *After* "estate" *insert* "under his control"
- Page 20. *After* clause 106 *insert* new clause 109.
- Page 20, clause ~~109. 112~~, line 36. *Omit* "Government"
- Page 20, clause ~~109. 112~~, line 38. *Omit* "promulgated" *insert* "so published"

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 16 September, 1890.* }

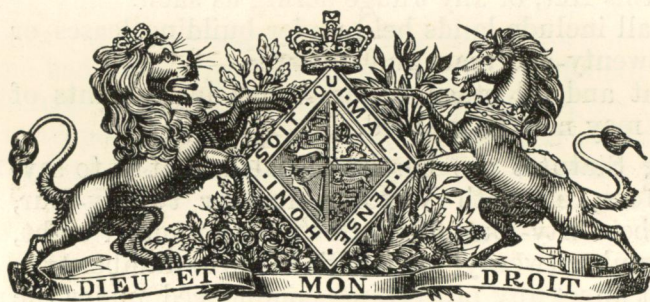
F. W. WEBB,
Clerk of Legislative Assembly.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

*Legislative Council Chamber,
Sydney, 4th December, 1890.* }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO QUINQUAGESIMO QUARTO

VICTORIÆ REGINÆ.

No. .

An Act 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.

WHEREAS it is expedient to consolidate and amend the law Preamble. 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 the authority of the same, as follows:—

10 1. In the construction of this Act, unless the context be inconsis- Interpretation: clause tent 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

354—A

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter,

Probate.

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.

5

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

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

10

“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.

15

“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.

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

20

2. The following Statutes are hereby repealed, that is to say, ^{Repeal.} first Victoria number four, eleventh Victoria number twenty-four, thirteenth Victoria number forty-four, fifteenth Victoria number eight, twenty-sixth Victoria number twenty, forty-fifth Victoria number two, 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~~ **between the date on which the said Act came into force and the passing of this Act.**

30

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

Division of Act.

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.*

35

PART IV.—*Probate and Administration generally.*

PART V.—*Foreign Probates and Letters of Administration.*

PART VI.—*Curator of Intestate Estates.*

PART VII.—*Procedure.*

PART VIII.—*General matters.*

40 and may be cited as the “Probate Act of 1890.”

Probate.

PART I.

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

4. The jurisdiction and authority heretofore vested in or
 5 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
 10 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 at his request.

Jurisdiction of
 Supreme Court in
 causes testamentary

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

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

6. The Probate Judge may hear in Chambers such part of the
 20 business under this Act as can in his opinion be so heard with advan-
 tage 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
 25 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.

7. The Governor may appoint some fit and proper person
 to be the Registrar and also if thought expedient may appoint a
 Deputy Registrar of the Probate Jurisdiction of the Supreme Court;
 30 and such Registrar shall, subject to any rules to be made here-
 under 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,
 35 and such other duties as may be prescribed by rule of Court or
 directed by the Probate Judge, and during his the illness or absence
 of the Registrar the Probate Judge may authorize any Officer of the
 Supreme Court to act as Registrar.

Appointment of
 Registrar.

8. The Governor may appoint some fit and proper person to be
 40 Curator and if necessary may appoint a 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, and such Curator of Intestate Estates may
 45 be suspended or removed from office by the Governor.

Curator.

9. The Deputy Registrar or Deputy Curator, as the case may be,
 if any, may exercise all the powers and shall perform all the duties by
 this Act conferred or imposed upon the Registrar or Curator res-
 50 pectively, and such other duties as may be prescribed by Rule of Court
 or directed by the Probate Judge.

Deputies may
 exercise powers
 and perform
 duties of
 Registrar and
 Curator.

9. 10. During the illness or absence of the Curator the Probate
 Judge may appoint some fit person to discharge the duties of the
 Curator upon his giving such security as the Judge may direct; and
 such person shall during such illness or absence act in the stead of the
 Curator,

Appointment of
 temporary Curator.
 Security.

Probate.

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.

10- 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.

11- 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 10 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. All applications for probate or letters of administration may be made by petition to the Judges of the Supreme Court without the necessity of application being made in open Court. Provided that 15 notice of such intended application shall be published in the Gazette and in one Sydney newspaper at least fourteen days before such application is made.

Application for probate or administration may be made by petition.

12- 14. It shall be lawful for the Judges of the Supreme Court, by rule of Court in that behalf made, to delegate to the Master in Equity 20 or Registrar the powers of the Court in and about the granting of probates and administration of estates not exceeding one thousand 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 25 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, lease, or otherwise deal with the real estate of the intestate unless such real estate shall be sworn to 30 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, which he is hereby authorized to do.

Certain matters may be delegated to Master in Equity.

PART II.

Probate.

35 13- 15. 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 40 than one such executor shall vest in them as joint tenants in the same way as personal estate now vests.

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

16. All such real estate as shall have been held by any testator as a trustee and shall vest in his executor by virtue of the thirteenth section of this Act shall be held by such executor subject to the trusts 45 and equities affecting the same.

Real estate held by testator as trustee to be held by executor subject to trusts.

14- 17. The real as well as personal 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, 50

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

and

Probate.

and it shall be lawful for such executor for purposes of administration to sell **such real estate** or mortgage ~~such real estate~~ **the same** with or without a power of sale and to convey the same to a purchaser or mortgagee in as full and effectual a manner in law as the testator of such executor could have done in his lifetime.

15. 18. In all suits in Equity concerning the real estate of a deceased person, his executor to whom probate shall have been granted or administrator shall represent his real estate so long as it shall remain vested in him and the persons interested therein in the same 20 manner and to the same extent as in suits concerning personal estate the executor or administrator represents such estate and the persons interested therein.

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

15. 16. 19. 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 15 his executor of such person to whom probate shall have been granted according to the trusts and dispositions of such will.

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

20. 17. 20. The executor of any deceased person to whom probate shall have been granted shall have the same rights and be subject to the same duties with respect to the real estate of such person his testator 20 that executors heretofore have had or been subject to with reference to personal assets.

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

25. 18. 21. The probate of any will or letters of administration with the will annexed already granted or hereafter to be granted shall be evidence of the due execution of such will upon all questions concerning real 25 estate in the same manner and to the same extent as heretofore concerning personal estate, and the copy attached or annexed to such probate or letters of administration purporting to be a copy of the will in respect of which probate or letters of administration have been so granted shall be *primâ facie* evidence of the contents of such will, and 30 every probate or administration shall be *primâ facie* evidence of the death and the date of the death of the testator or intestate.

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

35. 19. 22. 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 35 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 40 and other documents shall be deposited and kept in the places and manner at the present time set apart and used in that behalf.

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

45. 20. 23. 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 45 fixed for the same by the rules and regulations now or hereafter to be in force in that behalf.

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

50. 21. 24. 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 50 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 Registrar-General until the death of the testator, and upon his 55 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; and no probate of any will not so deposited and no administration in any case shall be granted unless the application be supported by an

Will may be deposited in the office of the Registrar-General by testator in his lifetime. Vict. Act No. 213 s. 14.

Vict. Act No. 230 s. 14.

affidavit

Probate.

affidavit that a search has been made in the proper office for a will of the deceased, and stating whether any such will remains deposited with the officer for the time being authorized to have the custody of deposited wills, or by a certificate from the Registrar-General to the like effect.

5

PART III.

Administration and Distribution of Intestate Estates.

22. 25. The practice and proceedings hitherto in force with reference to granting administration of the personal estate of an intestate shall, 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.

Practice as to granting administration of real and personal estate.

23. 26. 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 years. And in case there shall be no such person who shall be qualified as aforesaid, or who being so qualified 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 any person or persons whether creditors or not of the deceased that the Court shall think fit.

To whom administration may be granted.

24. 27. 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.

25. 28. 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 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. Provided also that no such bond shall be required to be given by or on behalf of the "Permanent Trustee Company of New South Wales (Limited)" or the "Perpetual Trustee Company (Limited)", except in respect of estates exceeding twenty thousand pounds in value, in which the Court shall otherwise order.

Administration bond to be executed. 20 and 21 Vic. c. 77 s. 81.

26. 29. 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 Court shall think reasonable, and may in place of such bond accept the security

Amount of penalty in administration bond. *Ib.* s. 82.

Probate.

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.

27. 30. 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 an administrator ~~de bonis non~~ in his place, with power to sue or be sued upon any contract made by the removed administrator.

Administration may be revoked or further bond required.

28. 31. 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, **for and on behalf of Her Majesty**, to assign the same 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 respect of any breach of the condition of the said bond.

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

29. 32. 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 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 in the case of partial intestacy the executor or administrator with the will annexed, as the case may be, shall hold the said real estate upon trust for payment of the debts of the deceased, and subject thereto ~~on~~ in 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.

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

30. 33. 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 Act out of any real estate. 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.

Vict. Act No. 230 s. 8.

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. 34. 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 **as to the same** vest in the administrator for all the estate therein of such person subject to the trusts and equities affecting the same.

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

32. 35. No real estate of which administration has been granted under this Act shall be ~~sold or mortgaged or~~ leased for a longer term than three years **or sold or mortgaged** 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.

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

33. 36. The Court may upon the petition of the administrator, or in case of partial intestacy the executor, or the administrator with the will annexed, or of 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 management thereof until sale, the application for maintenance

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

OR

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or advancement or otherwise of shares or income of shares of infants, the 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.

- 5 ~~34.~~ **37.** In any case wherein upon such inquiry the Court shall be 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
10 arbitrators setting forth particulars of the land allotted to each 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 to him, and an office copy
15 of such award so signed, confirmed, and registered as aforesaid shall for all purposes be equivalent to an indenture of conveyance to each allottee of the lands allotted to him 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
20 of title for the land so allotted to him. And if such allotment be made 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
25 the necessity of any further instrument being made or executed. And 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.

- 30 ~~35.~~ **38.** No personal representative shall be required against his own consent to continue the duty of a trustee by managing the 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.

35 *Probate and Administration generally.*

36. **39.** 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
40 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.

37. **40.** Where any person after the commencement of this Act
45 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 not appear to such citation the right of such person in respect of the
50 executorship shall wholly cease, and the representation to the testator and the administration of his effects shall without any further renunciation 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.

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38. 41. 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 5 or limited powers to act in the premises until probate shall have been granted to the said executor or administration to some other person. Where an infant is sole executor administration to be granted to the guardian &c. 38 Geo. III c. 87 s. 6.
39. 42. 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 10 the next of kin. Who shall have the same power as where administration is granted *durante minore ætate* of the next of kin. *Ib.* s. 7.
40. 43. When any person named as executor, or any husband or 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 15 her respectively, administration may be granted to such attorney, but on behalf of the person entitled thereto and on such terms and conditions as the Court shall think fit. Probate or administration to be granted to attorney in certain cases.
41. 44. Pending any suit touching the validity of the will of any deceased person or for obtaining, recalling, or revoking any probate or 20 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, 25 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. Administration *pendente lite* and receiver. 20 & 21 Vic. c. 77 ss. 70, 71.
42. 45. Where a person shall die wholly or partially intestate or leaving a will but without having appointed an executor thereof, or an 30 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 35 every such administration may be limited as the Court shall think fit. Power as to appointment of administrator. *Ib.* s. 73.
43. 46. 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 40 ~~weeks~~ **three calendar months** 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 45 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 50 as shall appear just. Proceeding where executor neglect to prove will. Vict. Act.
44. 47. 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 55 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 60 rescission thereof as hereinafter mentioned. If executor or administrator out of jurisdiction special administrator may be appointed. *Ib.*

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45. 48. The person applying for any such special grant as aforesaid shall in addition to the oath usually taken by administrators ~~make~~ Special administrator to make certain affidavits. **oath satisfy the Court by affidavit** that the executor or administrator of such deceased person is resident out of the jurisdiction of the Court Ib. and that the applicant is thereby delayed in recovering or obtaining payment of moneys or the possession of goods and chattels, or real estate, to which he is by law entitled or that the estate is liable to loss or waste.
- 10 46. 49. 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~~ On return of original executor or administrator special administration to be rescinded. **that such executor or administrator *bonâ fide* intends to remain within** Ib. 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, and thereafter the original probate or administration shall be and remain as valid and Ib. 20 **effectual as if such special grant of administration had never been made.**
- 25 47. 50. 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 On order being made for rescission special administrator to account and pay over moneys. 25 **special administrator, and then remaining in his hands undisposed of, as the Court may order.** Ib.
- 30 48. 51. 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. Original executor or administrator liable although special administration not rescinded. Ib.
- 35 49. 52. 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 Revocation of temporary grants not to prejudice actions or suits. 20 & 21 Vic. c. 77 s. 76. the record of the revocation or rescission of such administration and 40 of the grant or restoration 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 45 to such conditions and variations if any as such Court may direct.
- 50 50. 53. 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 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 All specialty and simple contract debts to stand in equal degree. 32 and 33 Vic. cap. 46. 50 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 55 or law to the contrary notwithstanding. Provided always that this Act shall not prejudice or affect any mortgage, lien, charge, or other security which any creditor may hold or be entitled to for payment of his debt.
- 60 51. 54. 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 Payments under revoked probates or administrations valid. Ib. s. 77. same,

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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.

52. 55. 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.

Persons &c. making payments upon probates granted for estate of deceased person to be indemnified.
Ib. s. 78.

53. 56. Every person to whom probate or administration has been or shall be granted shall file an inventory of the estate of the deceased and pass his accounts relating thereto within such time, and from time to 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, and the order of the Court allowing any such account shall be prima facie evidence of the correctness of the same, and shall, after the expiration of three years from the date of such order, operate as a release to the person filing the same, excepting so far as it shall be shown by some person interested therein that an error or omission or fraudulent entry has been made in such account.

Executor or administrator to pass accounts.

54. 57. 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 the such Court 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.

Executors &c. may be allowed commission.

55. 58. 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.

Registrar to keep record of probates, &c.

56. 59. 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 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 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.

If accounts not exhibited Registrar to summon administrator before Judge who may inflict penalty.

57. 60. Proceedings being taken under the last preceding clause section 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 any bond to any person with a view of enforcing the penalty thereof as hereinbefore mentioned.

Proceedings under last section not to prejudice proceedings on bond.

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58. 61. 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.

Judge may make order as to disposal of moneys in hands of executor &c.

59. 62. Any decree in Equity in an administration suit shall bind the parties, and be of the same force and effect to all intents and purposes as if an order to the same effect had been made in the Probate Jurisdiction.

Decree in Equity shall bind parties.

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PART V.

Foreign Probates and Letters of Administration.

60. 63. When any probate or letters of administration already granted or hereafter 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 Supreme Court of New South Wales, 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 said 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 administrator 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.

61. 64. 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. *ib.*

62. 65. 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.

And as to administration till bond is entered into.

63. 66. 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.

64. 67. 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.

65. 68. 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.

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PART VI.

Curator of Intestate Estates.

66- 69. 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.

67- 70. On the death, resignation, or removal of such Curator or of the successor in office of any such Curator, the his successor of the Curator so dying, resigning, or removed shall immediately on his appointment and by virtue thereof become administrator of entitled to administer all the real and personal estate 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 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.

68- 71. In all legal proceedings it shall not be necessary for the Curator 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 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.

69- 72. The Curator may appoint any persons he may think fit to 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 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 neglect.

70- 73. 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 fees and commission into the Treasury for the public uses of the Colony after deducting 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.

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

(1) 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, or no such person willing and capable as aforesaid resident within the jurisdiction of the Court, or where he shall have died

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died intestate and leaving no widow or next of kin resident within such jurisdiction willing and capable of acting as aforesaid.

- 5 (II) Where the person shall have died either testate or intestate 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.
- 10 (IV) Where the estate or any portion thereof is liable to waste, and 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.
- 15 (V) Where the executors named in the will of the deceased have 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.
- 20 (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.
- (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.

25 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 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. ~~And it is hereby declared~~

30 that the provisions of this Act shall apply to the administration of the real estate within the Colony of all persons who shall have died prior to the first day of July, one thousand eight hundred and sixty-three, where those entitled to such estate shall not have asserted their rights thereto prior to the date of the passing of this Act; and all orders to

35 collect such estate shall have the effect of vesting it in the Curator, subject to any claim under the Statute of Limitations, so as to enable him to convey the right, title, and interest (if any) of the deceased to the purchaser thereof. And the Curator shall hold such estate, or the

40 proceeds of sale thereof, subject as aforesaid, for the benefit of, and in trust for, those who, prior to the first day of July, one thousand eight hundred and sixty-three, would have been entitled thereto.

72. 75. An order to collect the estate of any deceased person shall give to the Curator the same powers, rights, and obligations in 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. Effect of order.

73. 76. 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 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. Probates and administrations may be granted notwithstanding appointment of Curator.

74. 77. Immediately on the grant of any such probate or administration all the interest, powers, rights, and duties of the Curator (except 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

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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 for the commission of the Curator as aforesaid and the necessary outlay, 5 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 such deceased person as shall be left unadministered by the Curator, 10 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 the estate up to the time of such probate or administration.

15 75. 78. Whenever it shall be made to appear to the Court that there is reasonable ground to suppose that any person has died **either** in or 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 manage the estate of such person both real and personal, 20 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 liabilities of such person in like manner as if he were 25 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.

When there is reasonable ground to believe that any person has died out of jurisdiction of the Court the Curator may obtain order to manage &c. without strict legal proof of death.

30 76. 79. 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 **daily** 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 **also** twice in some 35 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.

Notice of rule to be published.

40 77. 80. 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, **if there shall be any such Consul resident in Sydney**, unless the Court shall in any case otherwise order.

Like notices to next of kin.

45 78. 81. 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 50 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 55 may be granted subject to such conditions as to giving security for costs as the Court may impose.

Court to have summary jurisdiction over Curator.

79. 82. 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

Applications how heard.

may

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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.

80. 83. 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.

Curator to act as the Court shall direct.

81. 84. 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.

Mode of proceeding under this Act.

82. 85. The Curator shall at such times as he shall think fit cause advertisements to be published in the *Gazette* and such other public papers newspapers 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 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 if any of the intestate or testator (as the case may be) so soon as such representative shall have been duly constituted.

Payment of debts.

83. 86. After If at 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 have been 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.

84. 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.

Probate.

85. 87. 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.
86. 88. 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.
87. 89. 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 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.
88. 90. The Curator shall after the expiration of six months from the date of the order for collection of any estate 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 or control of the Court of Equity.
89. 91. 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 testator or intestate at the time of his death which shall be sold by the Curator or any such agent as the goods of such testator or intestate, unless such 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 testator or intestate, nor for any act done *bonâ 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.
90. 92. 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 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.
91. 93. If it shall appear on office found that any real estate vested in the Curator has escheated to Her Majesty, the net proceeds of sale of such

Accounts to be kept, &c.

Receipt of Curator sufficient discharge.

Quarterly returns to Treasurer and accounts.

The Curator to invest moneys after expiration of twelve months.

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

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

Conveyance of escheated lands and disposal of proceeds of sale.

Probate.

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
5 intestate to such purchaser as in any other case.

92. 94. 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 **under his control** for the term of six years then next preceding
10 to be paid to the Colonial Treasurer for the public service of the Colony, subject to the provisions hereinafter contained.

Payment to Colonial Treasurer after six years.

93. 95. 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
15 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
20 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.

Parties entitled may apply subsequently.

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PART VII.

Procedure.

94. 96. 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 circum-
30 stances 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.

95. 97. 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
35 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
40 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.

96. 98. Where a witness in any contested matter is out of the jurisdiction of the Court, or where by reason of his illness or otherwise
45 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
50 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
55 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.

Probate.

97. 99. 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. *Ib.* s. 35.
98. 100. 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 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. Question to be stated. *Ib.* s. 37 38.
99. 101. 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. Appeal.
100. 102. 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.
101. 103. Any person may lodge with the registrar a caveat against any application for probate or administration at any time previous to 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. Caveat may be lodged. Vict. Act. No. 427 s. 23.
102. 104. In every case in which a caveat shall be lodged the Court may upon motion on behalf of the person applying for probate 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 time. Where a caveat lodged Court may grant order *nisi*. *Ib.* 30.
103. 105. 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. Service of order *nisi*. *Ib.* 31.
104. 106. If upon the day named in the order *nisi* or upon the day 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. Proceeding where caveator does not appear. *Ib.* 32.
105. 107. 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 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 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. Powers of the Court to enforce orders. 20 & 21 Vic. c. 77 s. 25.
106. 108. The Court may on motion or petition or otherwise in a summary way whether any suit or other proceeding shall or shall not be pending in the Court with respect to any probate or administration, order Order to produce any instrument purporting to be testamentary. *Ib.* s. 26.

Probate.

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
 5 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
 10 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 inter-
 15 gatories or not bringing in such paper or writing as he would have 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.

109. In all matters and proceedings under this Act every Attorney, &c.,
 attorney, solicitor, and proctor of the Supreme Court of New South to have right of
 20 Wales shall have the right of audience before the Probate Judge. Probate Judge.

PART VIII.

General matters.

107. 110. The Registrar, Commissioners of the Supreme Court, and Oaths.
 Justices of the Peace of the Colony of New South Wales shall have
 25 power to administer oaths under this Act.

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

109. 112. The Judges of the Supreme Court or any three of them, Rules.
 30 may make general rules for regulating the times and form and mode Equity Act, 1880.
 of procedure, and generally the practice of the Court in respect of the several matters to which this Act relates, and for fixing the amount of all fees and allowances to officers of the Court and solicitors in reference to such matters, and otherwise for the effectual execution of
 35 this Act and of the intention and object thereof; 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 so published, or if Parliament be not then sitting, within the like time after Parliament shall thereafter assemble for the
 40 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—			
45 For every order to pay money if £10 and under £20	0	2	6
If £20 and under £50	0	5	0
If £50 and under £100	0	10	0
And on every £100 above the first	0	2	6
50 For every common order	0	2	6
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
55 If £20 and under £50	0	7	0
If £50 and under £100	0	10	0
For every £100 above the first	0	2	6

PROBATE BILL.

SCHEDULE of the Amendments referred to in Message of 4th December, 1890.

- Page 2, clause 2, line 28. *Omit "prior to" insert "between the date on which the said Act came into force and"*
- Page 3, clause 4, lines 7 and 8. *Omit "the Primary Judge in Equity or"*
- Page 3, clause 4, line 8. *Omit "other"*
- Page 3, clause 7, line 28. *After "and" insert "also"*
- Page 3, clause 7, line 28. *After "expedient" insert "may appoint a"*
- Page 3, clause 7, line 36. *Omit "his" insert "the"*
- Page 3, clause 7, line 37. *After "absence" insert "of the Registrar"*
- Page 3, clause 8, line 40. *After "necessary" insert "may appoint a"*
- Page 3. *After clause 8 insert new clause 9*
- Page 4. *After clause ~~11~~ 12, insert new clause 13.*
- Page 4, clause ~~12~~ 14, line 21. *Add "s" to "estate"*
- Page 4, clause ~~12~~ 14, line 23. *Omit "trustees"*
- Page 4, clause ~~12~~ 14, line 27. *After "Judge" omit remainder of clause.*
- Page 4. *After clause ~~13~~ 15, insert new clause 16.*
- Page 4, clause ~~14~~ 17, line 46. *After "real" insert "as well as personal"*
- Page 5, clause ~~14~~ 17, line 2. *After "sell" insert "such real estate"*
- Page 5, clause ~~14~~ 17, line 2. *Omit "such real estate" insert "the same"*
- Page 5, clause ~~14~~ 17, line 3. *After "purchaser" insert "or mortgagee"*
- Page 5, clause ~~15~~ 18, line 7. *After "Executor" insert "to whom probate shall have been granted"*
- Page 5, clause ~~15~~ 18, line 8. *After "estate" insert "so long as it shall remain vested in him"*
- Page 5, clause ~~16~~ 19, line 14. *Omit "the" insert "his"*
- Page 5, clause ~~16~~ 19, line 15. *Omit "of such person" insert "to whom probate shall have been granted"*
- Page 5, clause ~~17~~ 20, line 17. *Omit "of any deceased person" insert "to whom probate shall have been granted"*
- Page 5, clause ~~17~~ 20, line 19. *Omit "such person" insert "his testator"*
- Page 5, clause ~~18~~ 21, line 23. *After "annexed" insert "already granted or"*
- Page 5, clause ~~19~~ 22, lines 40 and 41. *Omit "and manner"*
- Page 5, clause ~~19~~ 22, line 41. *Omit "set apart and"*
- Page 6, clause ~~25~~ 28. *At end of clause add "Provided also that no such bond shall be required to be given by or on behalf of the 'Permanent Trustee Company of New South Wales (Limited)' or the 'Perpetual Trustee Company (Limited),' except in respect of estates exceeding twenty thousand pounds in value, in which the Court shall otherwise order."*
- Page 7, clause ~~27~~ 30, line 9. *Omit "de bonis non"*
- Page 7, clause ~~28~~ 31, line 13. *After "Curator" insert "for and on behalf of Her Majesty"*
- Page 7, clause ~~29~~ 32, line 29. *Omit "on" insert "in"*
- Page 7, clause ~~31~~ 34, line 43. *After "intestate" insert "as to the same"*
- Page 7, clause ~~32~~ 35, line 47. *Omit "sold or mortgaged or"*
- Page 7, clause ~~32~~ 35, line 48. *After "years" insert "or sold or mortgaged"*
- Page 8, clause ~~34~~ 37, line 14. *After "allotted" insert "to him"*
- Page 8, clause ~~34~~ 37, line 17. *After "allotted" insert "to him"*
- Page 9, clause ~~42~~ 45, line 28. *Omit "wholly or partially"*
- Page 9, clause ~~43~~ 46, lines 37 and 38. *Omit "six weeks" insert "three calendar months"*
- Page 9, clause ~~43~~ 46, lines 39 and 40. *Omit "after a grant durante minore etate"*
- Page 9, clause ~~44~~ 47, lines 58 and 59. *Omit "the return of the lawful executor or administrator within the jurisdiction of the said Court and"*
- Page 10, clause ~~45~~ 48, lines 2 and 3. *Omit "make oath" insert "satisfy the Court by affidavit"*
- Page 10, clause ~~45~~ 48, line 6. *After "chattels" insert "or real estate"*

- Page 10, clause ~~46~~ **49**, lines 13 to 16. *Omit* "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"
- Page 10, clause ~~46~~ **49**. At end of clause *add* "and thereafter the original probate or administration shall be and remain as valid and effectual as if such special grant of administration had never been made"
- Page 10, clause ~~49~~ **52**, line 40. *After* "grant" *insert* "or restoration"
- Page 11, clause ~~53~~ **56**, line 14. *After* "Administration" *insert* "has been or"
- Page 11, clause ~~53~~ **56**, line 16. *After* "time" *insert* "and from time to time"
- Page 11, clause ~~53~~ **56**, line 22. *After* "accounts" *omit* remainder of clause, *add* "and the order of the Court allowing any such account shall be prima facie evidence of the correctness of the same, and shall after the expiration of three years from the date of such order operate as a release to the person filing the same, excepting so far as it shall be shown by some person interested therein that an error or omission or fraudulent entry has been made in such account"
- Page 11, clause ~~54~~ **57**, line 34. *Omit* "he" *insert* "such Court"
- Page 11, clause ~~57~~ **60**, line 60. *Omit* "clause" *insert* "section"
- Page 11, clause ~~57~~ **60**, line 63. *Omit* "the" second occurring *insert* "any"
- Page 12, clause ~~60~~ **63**, line 12. *After* "administration" *insert* "already granted or hereafter"
- Page 12, clause ~~60~~ **63**, line 19. *After* "of the" *insert* "Supreme"
- Page 12, clause ~~60~~ **63**, line 19. *After* "Court" *insert* "of New South Wales"
- Page 12, clause ~~60~~ **63**, line 24. *After* "the" *insert* "said"
- Page 12, clause ~~60~~ **63**, line 25. *Omit* "of New South Wales in its Probate Jurisdiction"
- Page 12, clause ~~60~~ **63**, line 26. *Omit* "on application in that behalf";
- Page 12, clause ~~60~~ **63**, line 27. *After* "executor" *insert* "or administrator"
- Page 13, clause ~~67~~ **70**, lines 12 and 13. *Omit* "or of the successor in office of any such curator the" *insert* "his"
- Page 13, clause ~~67~~ **70**, lines 13 and 14. *Omit* "of the curator so dying, resigning, or removed"
- Page 13, clause ~~67~~ **70**, line 15. *Omit* "administrator of" *insert* "entitled to administer"
- Page 13, clause ~~67~~ **70**, line 16. *After* "personal" *insert* "estate"
- Page 13, clause ~~68~~ **71**, line 23. *Omit* "all"
- Page 13, clause ~~70~~ **73**, line 46. *Omit* "moneys" second occurring *insert* "fees and commission"
- Page 14, clause ~~71~~ **74**, line 2. At end of sub-section (1) *add* "willing and capable of acting as aforesaid"
- Page 14, clause ~~71~~ **74**, line 29. *After* "otherwise" *omit* remainder of clause.
- Page 15, clause ~~75~~ **78**, line 16. *After* "died" *insert* "either in or"
- Page 15, clause ~~75~~ **78**, line 17. *Omit* "but"
- Page 15, clause ~~76~~ **79**, line 32. *After* "some" *insert* "daily"
- Page 15, clause ~~76~~ **79**, line 34. *After* "then" *insert* "also"
- Page 15, clause ~~77~~ **80**, line 42. *After* "reside" *insert* "if there shall be any such consul resident in Sydney"
- Page 16, clause ~~81~~ **84**, line 14. *Omit* "within the provisions of this Act"
- Page 16, clause ~~82~~ **85**, line 21. *Omit* "other"
- Page 16, clause ~~82~~ **85**, line 21. *Omit* "papers" *insert* "newspapers"
- Page 16, clause ~~82~~ **85**, line 40. *Before* "of" *insert* "if any"
- Page 16, clause ~~83~~ **86**, line 42. *Omit* "after" *insert* "If at"
- Page 16, clause ~~83~~ **86**, line 44. *Omit* "if"
- Page 16, clause ~~83~~ **86**, line 44. *Omit* "be" *insert* "have been"
- Page 16, clause ~~84~~ **84**. *Omit* clause 84.
- Page 17, clause ~~89~~ **91**, line 42. *After* "any" *insert* "testator or"
- Page 17, clause ~~89~~ **91**, line 43. *Before* "intestate" *insert* "testator or"
- Page 17, clause ~~89~~ **91**, line 46. *Before* "intestate" *insert* "testator or"
- Page 17, clause ~~90~~ **92**, line 51. *Omit* "or them"
- Page 18, clause ~~92~~ **94**, line 8. *Omit* "intestate"
- Page 18, clause ~~92~~ **94**, line 9. *After* "estate" *insert* "under his control"
- Page 20. *After* clause 106 *insert* new clause **109**.
- Page 20, clause ~~109~~ **112**, line 36. *Omit* "Government"
- Page 20, clause ~~109~~ **112**, line 38. *Omit* "promulgated" *insert* "so published"

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

*Legislative Assembly Chamber,
Sydney, 16 September, 1890.* }

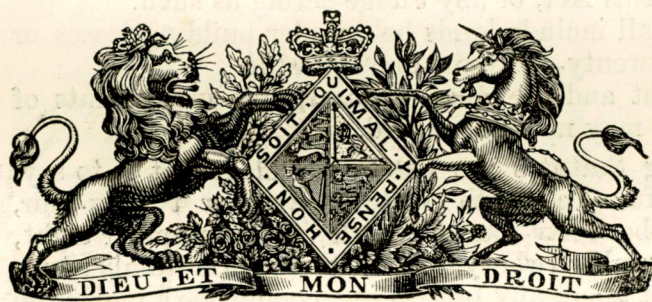
F. W. WEBB,
Clerk of Legislative Assembly.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

*Legislative Council Chamber,
Sydney, 4th December, 1890.* }

JOHN J. CALVERT,
Clerk of the Parliaments.

New South Wales.



ANNO QUINQUAGESIMO QUARTO

VICTORIÆ REGINÆ.

No. .

An Act 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.

WHEREAS it is expedient to consolidate and amend the law Preamble.
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 the authority of the same, as follows:—

10 1. In the construction of this Act, unless the context be inconsis- Interpretation clause
tent 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
354—A general

NOTE.—The words to be omitted are ruled through; those to be inserted are printed in black letter.

Probate.

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

5

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

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

10

“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.

15

“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.

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

20

2. The following Statutes are hereby repealed, that is to say, ^{Repeal.} first Victoria number four, eleventh Victoria number twenty-four, thirteenth Victoria number forty-four, fifteenth Victoria number eight, twenty-sixth Victoria number twenty, forty-fifth Victoria number eight, but such repeal shall not affect any proceeding commenced under the

25

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~~ **between the date on which the said Act came into force and** the passing of this Act.

30

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

Division of Act.

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.*

35

PART IV.—*Probate and Administration generally.*

PART V.—*Foreign Probates and Letters of Administration.*

PART VI.—*Curator of Intestate Estates.*

PART VII.—*Procedure.*

PART VIII.—*General matters.*

40 and may be cited as the “Probate Act of 1890.”

Probate.

PART I.

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

4. The jurisdiction and authority heretofore vested in or
 5 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
 10 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 at his request.

Jurisdiction of
 Supreme Court in
 causes testamentary

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

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

6. The Probate Judge may hear in Chambers such part of the
 20 business under this Act as can in his opinion be so heard with advan-
 tage 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
 25 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.

7. The Governor may appoint some fit and proper person
 to be the Registrar and also if thought expedient may appoint a
 Deputy Registrar of the Probate Jurisdiction of the Supreme Court;
 30 and such Registrar shall, subject to any rules to be made here-
 under 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,
 35 and such other duties as may be prescribed by rule of Court or
 directed by the Probate Judge, and during his the illness or absence
 of the Registrar the Probate Judge may authorize any Officer of the
 Supreme Court to act as Registrar.

Appointment of
 Registrar.

8. The Governor may appoint some fit and proper person to be
 40 Curator and if necessary may appoint a 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, and such Curator of Intestate Estates may
 45 be suspended or removed from office by the Governor.

Curator.

9. The Deputy Registrar or Deputy Curator, as the case may be,
 if any, may exercise all the powers and shall perform all the duties by
 this Act conferred or imposed upon the Registrar or Curator res-
 50 pectively, and such other duties as may be prescribed by Rule of Court
 or directed by the Probate Judge.

Deputies may
 exercise powers
 and perform
 duties of
 Registrar and
 Curator.

9. 10. During the illness or absence of the Curator the Probate
 Judge may appoint some fit person to discharge the duties of the
 Curator upon his giving such security as the Judge may direct; and
 such person shall during such illness or absence act in the stead of the
 Curator,

Appointment of
 temporary Curator.
 Security.

Probate.

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.

10. 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.

11. 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 10 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. All applications for probate or letters of administration may be made by petition to the Judges of the Supreme Court without the necessity of application being made in open Court. Provided that 15 notice of such intended application shall be published in the Gazette and in one Sydney newspaper at least fourteen days before such application is made.

Application for probate or administration may be made by petition.

12. 14. It shall be lawful for the Judges of the Supreme Court, by rule of Court in that behalf made, to delegate to the Master in Equity 20 or Registrar the powers of the Court in and about the granting of probates and administration of estates not exceeding one thousand 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 25 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, lease, or otherwise deal with the real estate of the intestate unless such real estate shall be sworn to 30 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, which he is hereby authorized to do.

Certain matters may be delegated to Master in Equity.

PART II.

Probate.

35 13. 15. 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 40 than one such executor shall vest in them as joint tenants in the same way as personal estate now vests.

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

16. All such real estate as shall have been held by any testator as a trustee and shall vest in his executor by virtue of the thirteenth section of this Act shall be held by such executor subject to the trusts 45 and equities affecting the same.

Real estate held by testator as trustee to be held by executor subject to trusts.

14. 17. The real as well as personal 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, 50 and

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

Probate.

and it shall be lawful for such executor for purposes of administration to sell **such real estate** or mortgage ~~such real estate~~ **the same** with or without a power of sale and to convey the same to a purchaser or mortgagee in as full and effectual a manner in law as the testator of such executor could have done in his lifetime.

15. 18. In all suits in Equity concerning the real estate of a deceased person, his executor to whom probate shall have been granted or administrator shall represent his real estate so long as it shall remain vested in him 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.

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

16. 19. 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 to whom probate shall have been granted according to the trusts and dispositions of such will.

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

17. 20. The executor of any deceased person to whom probate shall have been granted shall have the same rights and be subject to the same duties with respect to the real estate of such person his testator that executors heretofore have had or been subject to with reference to personal assets.

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

18. 21. The probate of any will or letters of administration with the will annexed already granted or hereafter to be granted shall be evidence of the due execution of such will upon all questions concerning real estate in the same manner and to the same extent as heretofore concerning personal estate, and the copy attached or annexed to such probate or letters of administration purporting to be a copy of the will in respect of which probate or letters of administration have been so granted shall be *prima facie* evidence of the contents of such will, and every probate or administration shall be *prima facie* evidence of the death and the date of the death of the testator or intestate.

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

19. 22. 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.

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

20. 23. 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.

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

21. 24. 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 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 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; and no probate of any will not so deposited and no administration in any case shall be granted unless the application be supported by an affidavit

Will may be deposited in the office of the Registrar-General by testator in his lifetime. Vict. Act No. 213 s. 14.

Vict. Act No. 230 s. 14.

Probate.

affidavit that a search has been made in the proper office for a will of the deceased, and stating whether any such will remains deposited with the officer for the time being authorized to have the custody of deposited wills, or by a certificate from the Registrar-General to the like effect.

5

PART III.

Administration and Distribution of Intestate Estates.

22- 25. The practice and proceedings hitherto in force with reference to granting administration of the personal estate of an intestate shall, 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.

Practice as to granting administration of real and personal estate.

23- 26. 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 years. And in case there shall be no such person who shall be qualified as aforesaid, or who being so qualified 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 any person or persons whether creditors or not of the deceased that the Court shall think fit.

To whom administration may be granted.

24- 27. 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.

25- 28. 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 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. Provided also that no such bond shall be required to be given by or on behalf of the "Permanent Trustee Company of New South Wales (Limited)" or the "Perpetual Trustee Company (Limited)", except in respect of estates exceeding twenty thousand pounds in value, in which the Court shall otherwise order.

Administration bond to be executed. 20 and 21 Vic. c. 77 s. 81.

26- 29. 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 Court shall think reasonable, and may in place of such bond accept the security

Amount of penalty in administration bond. *Ib.* s. 82.

Probate.

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.

27. 30. 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 an administrator ~~de bonis non~~ in his place, with power to sue or be sued upon any contract made by the removed administrator.

Administration may be revoked or further bond required.

28. 31. 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, for and on behalf of Her Majesty, to assign the same 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 respect of any breach of the condition of the said bond.

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

29. 32. 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 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 in the case of partial intestacy the executor or administrator with the will annexed, as the case may be, shall hold the said real estate upon trust for payment of the debts of the deceased, and subject thereto ~~in~~ in 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.

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

Vict. Act No. 230 s. 8.

30. 33. 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 Act out of any real estate. 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.

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. 34. 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 as to the same vest in the administrator for all the estate therein of such person subject to the trusts and equities affecting the same.

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

32. 35. No real estate of which administration has been granted under this Act shall be sold or mortgaged or leased for a longer term than three years or sold or mortgaged 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.

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

33. 36. The Court may upon the petition of the administrator, or in case of partial intestacy the executor, or the administrator with the will annexed, or of 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 management thereof until sale, the application for maintenance

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

OR

Probate.

or advancement or otherwise of shares or income of shares of infants, the 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.

5 34. 37. In any case wherein upon such inquiry the Court shall be 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
10 arbitrators setting forth particulars of the land allotted to each 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 to him, and an office copy
15 of such award so signed, confirmed, and registered as aforesaid shall for all purposes be equivalent to an indenture of conveyance to each allottee of the lands allotted to him 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
20 of title for the land so allotted to him. And if such allotment be made 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
25 the necessity of any further instrument being made or executed. And 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.

30 35. 38. No personal representative shall be required against his own consent to continue the duty of a trustee by managing the 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.

35 *Probate and Administration generally.*

36. 39. 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
40 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.

37. 40. Where any person after the commencement of this Act
45 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 not appear to such citation the right of such person in respect of the
50 executorship shall wholly cease, and the representation to the testator and the administration of his effects shall without any further renunciation 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.

Probate.

38. 41. 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 5 or limited powers to act in the premises until probate shall have been granted to the said executor or administration to some other person. Where an infant is sole executor administration to be granted to the guardian &c. 38 Geo. III c. 87 s. 6.
39. 42. 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 10 the next of kin. Who shall have the same power as where administration is granted *durante minore ætate* of the next of kin. *Ib.* s. 7.
40. 43. When any person named as executor, or any husband or 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 15 her respectively, administration may be granted to such attorney, but on behalf of the person entitled thereto and on such terms and conditions as the Court shall think fit.
41. 44. Pending any suit touching the validity of the will of any deceased person or for obtaining, recalling, or revoking any probate or 20 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, 25 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. Administration *pendente lite* and receiver. 20 & 21 Vic. c. 77 ss. 70, 71.
42. 45. Where a person shall die wholly or partially intestate or leaving a will but without having appointed an executor thereof, or an 30 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 35 every such administration may be limited as the Court shall think fit. Power as to appointment of administrator. *Ib.* s. 73.
43. 46. 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 40 weeks **three calendar months** 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 45 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 50 as shall appear just. Proceeding where executor neglect to prove will. Vict. Act.
44. 47. 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 55 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 60 rescission thereof as hereinafter mentioned. If executor or administrator out of jurisdiction special administrator may be appointed. *Ib.*

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45. 48. The person applying for any such special grant as aforesaid shall in addition to the oath usually taken by administrators ~~make oath~~ satisfy the Court by affidavit 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, or real estate, to which he is by law entitled or that the estate is liable to loss or waste.
46. 49. 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, and thereafter the original probate or administration shall be and remain as valid and effectual as if such special grant of administration had never been made.
47. 50. 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. 51. 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. 52. 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 or restoration 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.
50. 53. 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 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 mortgage, lien, charge, or other security which any creditor may hold or be entitled to for payment of his debt.
51. 54. 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,

Special administrator to make certain affidavits.

Ib.

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.

All specialty and simple contract debts to stand in equal degree.

32 and 33 Vic. cap. 46.

Payments under revoked probates or administrations valid.

Ib. s. 77.

Probate.

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
5 administration shall be afterwards or was originally granted might have lawfully made.

52. 55. 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
10 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.

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

Ib. s. 78.

53. 56. Every person to whom probate or administration has been
15 or shall be granted shall file an inventory of the estate of the deceased and pass his accounts relating thereto within such time, and from time to 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
20 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, and the order of the Court allowing any such account shall be prima facie evidence of
25 the correctness of the same, and shall, after the expiration of three years from the date of such order, operate as a release to the person filing the same, excepting so far as it shall be shown by some person interested therein that an error or omission or fraudulent entry has been made in such account.

Executor or administrator to pass accounts.

30 54. 57. 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 the such Court may direct. No such allowance shall
35 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.

Executors &c. may be allowed commission.

55. 58. The Registrar shall cause entries to be made in a book to be kept for that purpose of all grants of probate and administration,
40 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
45 sworn value of the estates, and the dates of the filing, passing allowance of, and special orders with reference to the said accounts.

Registrar to keep record of probates, &c.

56. 59. 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
50 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 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.
55 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.

If accounts not exhibited Registrar to summon administrator before Judge who may inflict penalty.

60 57. 60. Proceedings being taken under the last preceding clause section 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 any bond to any person with a view of enforcing the penalty thereof as hereinbefore mentioned.

Proceedings under last section not to prejudice proceedings on bond.

Probate.

58- 61. 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.

Judge may make order as to disposal of moneys in hands of executor &c.

59- 62. Any decree in Equity in an administration suit shall bind the parties, and be of the same force and effect to all intents and purposes as if an order to the same effect had been made in the Probate Jurisdiction.

Decree in Equity shall bind parties.

10

PART V.

Foreign Probates and Letters of Administration.

60- 63. When any probate or letters of administration already granted or hereafter 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 Supreme Court of New South Wales, 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 said 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 administrator 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.

61- 64. 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. *Ib.*

62- 65. 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.

And as to administration till bond is entered into.

63- 66. 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.

64- 67. 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.

65- 68. 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.

PART

Probate.

PART VI.

Curator of Intestate Estates.

66. 69. 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.

67. 70. On the death, resignation, or removal of such Curator or of the successor in office of any such Curator, the his successor of the Curator so dying, resigning, or removed shall immediately on his appointment and by virtue thereof become administrator of entitled to administer all the real and personal estate 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 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.

68. 71. In all legal proceedings it shall not be necessary for the Curator 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 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.

69. 72. The Curator may appoint any persons he may think fit to 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 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 neglect.

70. 73. 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 fees and commission into the Treasury for the public uses of the Colony after deducting 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.

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

(1) 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, or no such person willing and capable as aforesaid resident within the jurisdiction of the Court, or where he shall have died

Probate.

died intestate and leaving no widow or next of kin resident within such jurisdiction **willing and capable of acting as aforesaid.**

- 5 (II) Where the person shall have died either testate or intestate 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.
- 10 (IV) Where the estate or any portion thereof is liable to waste, and 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.
- 15 (V) Where the executors named in the will of the deceased have 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.
- 20 (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.
- (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.

25 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 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. ~~And it is hereby declared~~

30 that the provisions of this Act shall apply to the administration of the real estate within the Colony of all persons who shall have died prior to the first day of July, one thousand eight hundred and sixty-three, where those entitled to such estate shall not have asserted their rights thereto prior to the date of the passing of this Act; and all orders to

35 collect such estate shall have the effect of vesting it in the Curator, subject to any claim under the Statute of Limitations, so as to enable him to convey the right, title, and interest (if any) of the deceased to the purchaser thereof. And the Curator shall hold such estate, or the proceeds of sale thereof, subject as aforesaid, for the benefit of, and in

40 trust for, those who, prior to the first day of July, one thousand eight hundred and sixty-three, would have been entitled thereto.

~~72.~~ **75.** An order to collect the estate of any deceased person shall give to the Curator the same powers, rights, and obligations in 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. Effect of order.

~~73.~~ **76.** 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 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. Probates and administrations may be granted notwithstanding appointment of Curator.

~~74.~~ **77.** Immediately on the grant of any such probate or administration all the interest, powers, rights, and duties of the Curator (except 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 On such grant Curator's duties and liabilities to cease.

all

Probate.

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 for the commission of the Curator as aforesaid and the necessary outlay, 5 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 such deceased person as shall be left unadministered by the Curator, 10 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 the estate up to the time of such probate or administration.

15 ~~75.~~ 78. Whenever it shall be made to appear to the Court that there is reasonable ground to suppose that any person has died **either** **in or** 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 manage the estate of such person both real and personal, 20 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 liabilities of such person in like manner as if he were 25 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.

30 ~~76.~~ 79. 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 **daily** 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 **also** twice in some 35 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.

40 ~~77.~~ 80. 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, **if there shall be any such Consul resident in Sydney**, unless the Court shall in any case otherwise order.

45 ~~78.~~ 81. 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 50 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 55 may be granted subject to such conditions as to giving security for costs as the Court may impose.

79. 82. 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

When there is reasonable ground to believe that any person has died out of jurisdiction of the Court the Curator may obtain order to manage &c. without strict legal proof of death.

Notice of rule to be published.

Like notices to next of kin.

Court to have summary jurisdiction over Curator.

Applications how heard.

Probate.

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.

80. 83. 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.

Curator to act as the Court shall direct.

81. 84. 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.

Mode of proceeding under this Act.

82. 85. The Curator shall at such times as he shall think fit cause advertisements to be published in the *Gazette* and such other public papers newspapers 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 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 if any of the intestate or testator (as the case may be) so soon as such representative shall have been duly constituted.

Payment of debts.

83. 86. After If at 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 have been 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.

84. 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.

Probate.

85. 87. 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.

86. 88. 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.

87. 89. 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 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.

Quarterly returns to Treasurer and accounts.

88. 90. The Curator shall after the expiration of six months from the date of the order for collection of any estate 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 or control of the Court of Equity.

The Curator to invest moneys after expiration of twelve months.

89. 91. 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 testator or intestate at the time of his death which shall be sold by the Curator or any such agent as the goods of such testator or intestate, unless such 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 testator or intestate, nor for any act done *bonâ 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.

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

90. 92. 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 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.

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

91. 93. If it shall appear on office found that any real estate vested in the Curator has escheated to Her Majesty, the net proceeds of sale of such

Conveyance of escheated lands and disposal of proceeds of sale.

Probate.

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
5 intestate to such purchaser as in any other case.

92. 94. 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 under his control for the term of six years then next preceding
10 to be paid to the Colonial Treasurer for the public service of the Colony, subject to the provisions hereinafter contained.

Payment to Colonial Treasurer after six years.

93. 95. 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
15 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
20 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.

Parties entitled may apply subsequently.

25

PART VII.

Procedure.

94. 96. 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 circum-
30 stances 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.

95. 97. 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
35 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
40 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.

96. 98. Where a witness in any contested matter is out of the jurisdiction of the Court, or where by reason of his illness or otherwise
45 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
50 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
55 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.

Probate.

97. 99. 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. *Ib.* s. 35.
98. 100. When any question shall be so directed to be tried such
 5 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 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. Question to be stated. *Ib.* s. 37 38.
- 10 99. 101. Any person considering himself aggrieved by any final or Appeal.
 interlocutory decree or order of the Probate Judge may appeal there-
 from 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.
- 15 100. 102. The Probate Judge may on the application of any party or Judge may direct rehearing. *Eq. Act* s. 77.
 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
 20 right of any party to appeal when the Judge shall not give any such
 direction.
101. 103. Any person may lodge with the registrar a caveat against Caveat may be lodged. *Vict. Act.* No. 427 s. 23.
 any application for probate or administration at any time previous to
 such probate or administration being granted; and every such caveat
 25 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.
102. 104. In every case in which a caveat shall be lodged the Where a caveat lodged Court may grant order nisi. *Ib.* 30.
 Court may upon motion on behalf of the person applying for probate
 or administration supported by affidavits upon which if there had been
 30 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
 time.
- 35 103. 105. Every such order *nisi* and every order enlarging the same Service of order nisi. *Ib.* 31.
 may be served on the caveator by delivering a copy of the same at the
 address mentioned in his caveat.
104. 106. If upon the day named in the order *nisi* or upon the day Proceeding where caveator does not appear. *Ib.* 32.
 to which such order shall have been enlarged the caveator do not
 40 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.
105. 107. The Court shall have the like powers, jurisdiction, and Powers of the Court to enforce orders. 20 & 21 *Vic. c. 77* s. 25.
 45 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
 evidence, or guilty of contempt, and generally for the trial or determina-
 50 tion of questions of fact, and for enforcing all orders, decrees, and judg-
 ments 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
 this Act as are or shall be by law vested in the Supreme Court in equity
 55 for such purposes in relation to any suit or matter depending in such
 Court in equity.
106. 108. The Court may on motion or petition or otherwise in a Order to produce any instrument purporting to be testamentary. *Ib.* s. 26.
 summary way whether any suit or other proceeding shall or shall not
 be pending in the Court with respect to any probate or administration,
 order

Probate.

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
 5 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
 10 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 interro-
 15 gatories or not bringing in such paper or writing as he would have 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.

109. In all matters and proceedings under this Act every Attorney, &c., attorney, solicitor, and proctor of the Supreme Court of New South Wales shall have the right of audience before the Probate Judge. to have right of audience before Probate Judge.

PART VIII.

General matters.

107. 110. The Registrar, Commissioners of the Supreme Court, and Justices of the Peace of the Colony of New South Wales shall have
 25 power to administer oaths under this Act. Oaths.

108. 111. 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. Costs.

109. 112. The Judges of the Supreme Court or any three of them, may make general rules for regulating the times and form and mode
 30 of procedure, and generally the practice of the Court in respect of the several matters to which this Act relates, and for fixing the amount of all fees and allowances to officers of the Court and solicitors in reference to such matters, and otherwise for the effectual execution of
 35 this Act and of the intention and object thereof; 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 so published, or if Parliament be not then sitting, within the like time after Parliament shall thereafter assemble for the
 40 despatch of business. Rules. Equity Act, 1880.

SCHEDULE.

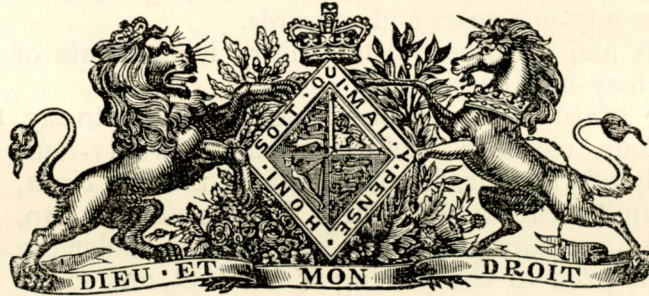
	£	s.	d.
For every order to administer where effects shall appear to be above £50...	0	7	6
Where effects shall appear to be £50 or under—			
45 For every order to pay money if £10 and under £20	0	2	6
If £20 and under £50	0	5	0
If £50 and under £100	0	10	0
And on every £100 above the first	0	2	6
For every 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

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly Chamber,
} Sydney, 16 September, 1890. }

F. W. WEBB,
Clerk of Legislative Assembly.

New South Wales.



ANNO QUINQUAGESIMO QUARTO

VICTORIÆ REGINÆ.

No. .

An Act 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.

WHEREAS it is expedient to consolidate and amend the law Preamble.
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 the authority of the same, as follows:—

10 1. In the construction of this Act, unless the context be inconsis- Interpretation clause.
tent 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
20 Court be deemed sufficient, and orders to the Curator to collect.

Probate.

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

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

5 “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.

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

15 2. The following Statutes are hereby repealed, that is to say, Repeal.
 first Victoria number four, eleventh Victoria number twenty-four, thirteenth Victoria number forty-four, fifteenth Victoria number eight, twenty-sixth Victoria number twenty, forty-fifth Victoria number two, but such repeal shall not affect any proceeding commenced under the
 20 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.

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

Division of Act.

25 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.*

PART IV.—*Probate and Administration generally.*

30 PART V.—*Foreign Probates and Letters of Administration.*

PART VI.—*Curator of Intestate Estates.*

PART VII.—*Procedure.*

PART VIII.—*General matters.*

and may be cited as the “Probate Act of 1890.”

35

PART I.

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

40 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
 45 Supreme Court acting for the said Probate Judge during his illness or absence or at his request.

Jurisdiction of Supreme Court in causes testamentary.

50 5. 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 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.

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

6.

Probate.

6. 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.
7. The Governor may appoint some fit and proper person to be the Registrar and if thought expedient Deputy Registrar of the Probate Jurisdiction 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 authorize any Officer of the Supreme Court to act as Registrar. Appointment of Registrar.
8. 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, and such Curator of Intestate Estates may be suspended or removed from office by the Governor. Curator.
9. During the illness or absence of the Curator the Probate Judge may appoint some fit person to discharge the duties of the Curator upon his giving such security as the Judge may direct; 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 temporary Curator. Security.
10. 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.
11. 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.
12. It shall be lawful for the Judges of the Supreme Court, 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 one thousand 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, lease, 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, which he is hereby authorized to do. Certain matters may be delegated to Master in Equity.

Probate.

PART II.

Probate.

13. 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 in the same way as personal estate now vests. Real estate to vest in executors. Vict. Act. No. 427 s. 6.
14. 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 for purposes of administration 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. Real estate to be assets for payment of debts. Geo. IV cap. 33 ss. 1 & 2.
15. 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. In suits executor or administrator to represent real estate. Vict. Act. No. 407 s. 8.
16. 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. Real estate to be held upon trusts of will. Ib. s. 9.
17. 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. Executor to have same rights &c. as to real estate as personal estate. Ib. s. 10.
18. The probate of any will or letters of administration with the will annexed hereafter to be granted shall be evidence of the due execution of such will upon all questions concerning real estate in the same manner and to the same extent as heretofore concerning personal estate, and the copy attached or annexed to such probate or letters of administration purporting to be a copy of the will in respect of which probate or letters of administration have been so granted shall be *primâ facie* evidence of the contents of such will, and every probate or administration shall be *primâ facie* evidence of the death and the date of the death of the testator or intestate. Probate to be evidence of will concerning real estate. Ib. s. 11.
19. 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. Place of original wills. 20 and 21 Vic. c. 77 s. 66.
20. 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. Official copy of whole or part of will may be obtained. Ib. s. 69.

Probate.

21. 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 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 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; and no probate of any will not so deposited and no 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 stating whether any such will remains deposited with the officer for the time being authorized to have the custody of deposited wills, or by a certificate from the Registrar-General to the like effect.

Will may be deposited in the office of the Registrar-General by testator in his lifetime.

Vict. Act No. 213 s. 201.

Vict. Act No. 230 s. 14.

PART III.

Administration and Distribution of Intestate Estates.

22. The practice and proceedings hitherto in force with reference to granting administration of the personal estate of an intestate shall, 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.

Practice as to granting administration of real and personal estate.

23. 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 years. And in case there shall be no such person who shall be qualified as aforesaid, or who being so qualified 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 any person or persons whether creditors or not of the deceased that the Court shall think fit.

To whom administration may be granted.

24. 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.

25. 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 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.

26. 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

Amount of penalty in administration bond. *Ib.* s. 82.

Probate.

given so as to limit the liability of any surety to such amount as the 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.

27. 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 an administrator *de bonis non* in his place, with power to sue or be sued upon any contract made by the removed administrator.

Administration may be revoked or further bond required.

28. 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 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 respect of any breach of the condition of the said bond.

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

29. 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 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 in the case of partial intestacy the executor or administrator with the will annexed, as the case may be, shall hold the said real estate 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.

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

Vict. Act No. 230 s. 8.

30. 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 Act out of any real estate. 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.

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

32. No real estate of which administration has been granted under this Act shall be 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.

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

33. The Court may upon the petition of the administrator, or in case of partial intestacy the executor, or the administrator with the will annexed, or of 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 management thereof until sale, the application for maintenance

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

or

Probate.

or advancement or otherwise of shares or income of shares of infants, the 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.

5 34. In any case wherein upon such inquiry the Court shall be 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
10 arbitrators setting forth particulars of the land allotted to each 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
15 copy of such award so signed, confirmed, and registered as aforesaid 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
20 of title for the land so allotted to him. And if such allotment be made 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
25 the necessity of any further instrument being made or executed. And 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.

30 35. No personal representative shall be required against his own consent to continue the duty of a trustee by managing the 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.

35 *Probate and Administration generally.*

36. 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
40 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.

37. Where any person after the commencement of this Act
45 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 not appear to such citation the right of such person in respect of the
50 executorship shall wholly cease, and the representation to the testator and the administration of his effects shall without any further renunciation 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.

Probate.

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 been granted to the said executor or administration to some other person.

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

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 etate* of the next of kin.

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

40. When any person named as executor, or any husband or 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 attorney, but on behalf of the person entitled thereto and on such terms and conditions as the Court shall think fit.

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

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.

Administration *pendente lite* and receiver.
20 & 21 Vic. c. 77
ss. 70, 71.

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.

Power as to appointment of administrator.
Ib. s. 73.

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 etate*, 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.

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

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.

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

Probate.

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. Special administrator to make certain affidavits. *Ib.*
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. On return of original executor or administrator special administration to be rescinded. *Ib.*
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. On order being made for rescission special administrator to account and pay over moneys. *Ib.*
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. Original executor or administrator liable although special administration not rescinded. *Ib.*
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. Revocation of temporary grants not to prejudice actions or suits. 20 & 21 Vic. c. 77 s. 76.
50. 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 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 mortgage, lien, charge, or other security which any creditor may hold or be entitled to for payment of his debt. All specialty and simple contract debts to stand in equal degree. 32 and 33 Vic. cap. 46.
51. 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, Payments under revoked probates or administrations valid. *Ib.* s. 77.

Probate.

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
5 administration shall be afterwards or was originally granted might have lawfully made.

52. All persons and corporations making or permitting to be made any payment or transfer *bonâ fide* upon any probate or adminis-
10 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 adminis-
15 tration or order not then known to such persons or corporations.

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

Ib. s. 78.

53. Every person to whom probate or administration shall be
15 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
20 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
25 accounts shall affect the rights of parties to dispute the same other than the applicant.

Executor or administrator to pass accounts.

54. It shall be lawful for the Court to allow out of the assets
25 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
30 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
35 accounts pursuant to any general or special rule or order of the Court.

Executors &c. may be allowed commission.

55. The Registrar shall cause entries to be made in a book to
35 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
40 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
45 sworn value of the estates, and the dates of the filing, passing allowance of, and special orders with reference to the said accounts.

Registrar to keep record of probates, &c.

56. In case any such executor or administrator shall neglect to
45 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
50 to be notified of such neglect, and in case of further neglect for the 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.
55 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.

If accounts not exhibited Registrar to summon administrator before Judge who may inflict penalty.

57. 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.

Proceedings under last section not to prejudice proceedings on bond.

Probate.

58. 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.

Judge may make order as to disposal of moneys in hands of executor &c.

59. Any decree in Equity in an administration suit shall bind the parties, and be of the same force and effect to all intents and purposes as if an order to the same effect had been made in the Probate Jurisdiction.

Decree in Equity shall bind parties.

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PART V.

Foreign Probates and Letters of Administration.

60. 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.

61. 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. *ib.*

And as to administration till bond is entered into.

62. 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.

63. 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.

64. 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.

65. 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.

PART

Probate.

PART VI.

Curator of Intestate Estates.

66. 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.

67. 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 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.

68. In all legal proceedings it shall not be necessary for the Curator 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 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.

69. The Curator may appoint any persons he may think fit to 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 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 neglect.

70. 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 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.

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

(1) Where the person shall have died testate but leaving no executor or no executor who may be willing and capable of acting

Probate.

- acting in execution of his will and no widow or next of kin 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.
- 5 (II) Where the person shall have died either testate or intestate and probate or administration shall not have been applied for within three months after the death of such person.
- 10 (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 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.
- 15 (V) Where the executors named in the will of the deceased have 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.
- 20 (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.
- (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.
- 25

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 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. And it is hereby declared that the provisions of this Act shall apply to the administration of the real estate within the Colony of all persons who shall have died prior to the first day of July, one thousand eight hundred and sixty-three, where those entitled to such estate shall not have asserted their rights thereto prior to the date of the passing of this Act; and all orders to collect such estate shall have the effect of vesting it in the Curator, subject to any claim under the Statute of Limitations, so as to enable him to convey the right, title, and interest (if any) of the deceased to the purchaser thereof. And the Curator shall hold such estate, or the proceeds of sale thereof, subject as aforesaid, for the benefit of, and in trust for, those who, prior to the first day of July, one thousand eight hundred and sixty-three, would have been entitled thereto.

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72. An order to collect the estate of any deceased person shall give to the Curator the same powers, rights, and obligations in 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.

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73. 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 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.

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Probate.

74. Immediately on the grant of any such probate or administration all the interest, powers, rights, and duties of the Curator (except 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
 5 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 for the commission of the Curator as aforesaid and the necessary outlay, disbursements, costs, charges, and expenses in relation to such estate,
 10 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 such deceased person as shall be left unadministered by the Curator, and all rights and obligations of the Curator in respect thereof shall vest
 15 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 the estate up to the time of such probate or administration.

On such grant Curator's duties and liabilities to cease.

75. Whenever it shall be made to appear to the Court that
 20 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 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
 25 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 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
 30 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.

When there is reasonable ground to believe that any person has died out of jurisdiction of the Court the Curator may obtain order to manage &c. without strict legal proof of death.

76. Within fourteen days after any order to collect shall
 have been granted the Curator shall, unless the Court shall otherwise
 35 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,
 40 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.

Notice of rule to be published.

77. 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
 45 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.

Like notices to next of kin.

78. Any person interested as creditor, next of kin or otherwise
 in the real or personal estate of any deceased person which the Curator
 50 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
 55 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
 60 costs as the Court may impose.

Court to have summary jurisdiction over Curator.

Probate.

79. 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.

Applications how heard.

80. 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.

Curator to act as the Court shall direct.

81. 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.

Mode of proceeding under this Act.

82. 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 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.

Payment of debts.

83. 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.

84. 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.

Probate.

85. 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, 5 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 10 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 15 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.

86. 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 20 for any misapplication thereof.

Receipt of Curator sufficient discharge.

87. 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 25 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 30 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.

Quarterly returns to Treasurer and accounts.

88. The Curator shall after the expiration of six months from the date of the order for collection of any estate invest all moneys 35 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 or control of the Court of Equity.

The Curator to invest moneys after expiration of twelve months.

89. 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 Curator or agent shall know or have actual notice before the sale that 45 such goods or chattels were not in fact the property of such intestate, nor for any act done *bonâ 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.

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

90. In case of any sale by the Curator or his agents of goods or 50 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 distributed according to any will of the deceased or in the ordinary 55 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.

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

91. If it shall appear on office found that any real estate vested in the Curator has escheated to Her Majesty, the net proceeds of sale of such 60 such

Conveyance of escheated lands and disposal of proceeds of sale.

Probate.

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
5 intestate to such purchaser as in any other case.

92. 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
10 Colonial Treasurer for the public service of the Colony, subject to the provisions hereinafter contained.

Payment to Colonial Treasurer after six years.

93. 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
15 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
20 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.

Parties entitled may apply subsequently.

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PART VII.

Procedure.

94. 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 circum-
30 stances 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.

95. 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
35 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
40 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.

96. Where a witness in any contested matter is out of the jurisdiction of the Court, or where by reason of his illness or otherwise
45 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
50 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
55 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.

Probate.

97. 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. *Ib.* s. 35.
98. 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 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. Question to be stated. *Ib.* s. 37 38.
99. 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. Appeal.
100. 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.
101. Any person may lodge with the registrar a caveat against any application for probate or administration at any time previous to 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. Caveat may be lodged. Vict. Act. No. 427 s. 23.
102. In every case in which a caveat shall be lodged the Court may upon motion on behalf of the person applying for probate 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 time. Where a caveat lodged Court may grant order *nisi.* *Ib.* 30.
103. 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. Service of order *nisi.* *Ib.* 31.
104. If upon the day named in the order *nisi* or upon the day 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. Proceeding where caveator does not appear. *Ib.* 32.
105. 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 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 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. Powers of the Court to enforce orders. 20 & 21 Vic. c. 77 s. 25.
106. The Court may on motion or petition or otherwise in a summary way whether any suit or other proceeding shall or shall not be pending in the Court with respect to any probate or administration, order Order to produce any instrument purporting to be testamentary. *Ib.* s. 26.

Probate.

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
 5 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
 10 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
 15 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 VIII.

General matters.

20 107. The Registrar, Commissioners of the Supreme Court, and Oaths.
 Justices of the Peace of the Colony of New South Wales shall have power to administer oaths under this Act.

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

109. The Judges of the Supreme Court or any three of them, Rules.
 may make general rules for regulating the times and form and mode Equity Act, 1860.
 of procedure, and generally the practice of the Court in respect of the several matters to which this Act relates, and for fixing the amount of
 30 all fees and allowances to officers of the Court and solicitors in reference to such matters, and otherwise for the effectual execution of this Act and of the intention and object thereof; and all such rules and orders shall be published in the *Government Gazette* and shall be
 35 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.
40 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			
For every order to pay money if £10 and under £20	0	2	6
If £20 and under £50	0	5	0
If £50 and under £100	0	10	0
45 And on every £100 above the first	0	2	6
For every common order	0	2	6
For every special order	0	5	0
For every office copy 6d. per folio.			
50 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
If £50 and under £100	0	10	0
For every £100 above the first	0	2	6

order to be... into the... paper...

PART VIII

General... of the...

PART IX

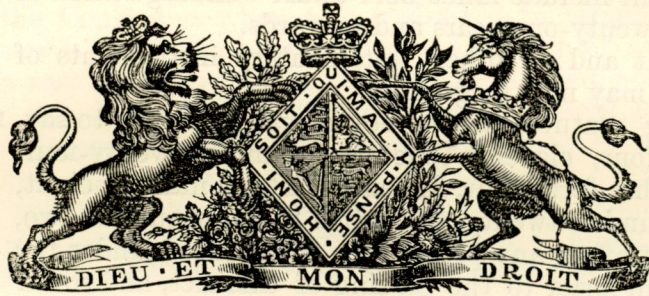
10. It shall be the duty of the...

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

Legislative Assembly Chamber,
} Sydney, 16 September, 1890. }

F. W. WEBB,
Clerk of Legislative Assembly.

New South Wales.



ANNO QUINQUAGESIMO QUARTO

VICTORIÆ REGINÆ.

No.

An Act 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.

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 the 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.

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

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

5 “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.

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

15 2. The following Statutes are hereby repealed, that is to say, Repeal.
 first Victoria number four, eleventh Victoria number twenty-four, thirteenth Victoria number forty-four, fifteenth Victoria number eight, twenty-sixth Victoria number twenty, forty-fifth Victoria number two, but such repeal shall not affect any proceeding commenced under the
 20 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.

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

Division of Act.

25 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.*

PART IV.—*Probate and Administration generally.*

30 PART V.—*Foreign Probates and Letters of Administration.*

PART VI.—*Curator of Intestate Estates.*

PART VII.—*Procedure.*

PART VIII.—*General matters.*

and may be cited as the “Probate Act of 1890.”

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PART I.

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

4. The jurisdiction and authority heretofore vested in or exercised by the Supreme Court or by the Primary Judge in Equity in
 40 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
 45 Supreme Court acting for the said Probate Judge during his illness or absence or at his request.

Jurisdiction of Supreme Court in causes testamentary.

5. 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
 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.

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

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6. 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.

7. The Governor may appoint some fit and proper person to be the Registrar and if thought expedient Deputy Registrar of the Probate Jurisdiction 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 authorize any Officer of the Supreme Court to act as Registrar.

Appointment of Registrar.

8. 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, and such Curator of Intestate Estates may be suspended or removed from office by the Governor.

Curator.

9. During the illness or absence of the Curator the Probate Judge may appoint some fit person to discharge the duties of the Curator upon his giving such security as the Judge may direct; 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 temporary Curator.
Security.

10. 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.

11. 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.

12. It shall be lawful for the Judges of the Supreme Court, 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 one thousand 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, lease, 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, which he is hereby authorized to do.

Certain matters may be delegated to Master in Equity.

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PART II.

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13. 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 in the same way as personal estate now vests. Real estate to vest in executors. Vict. Act. No. 427 s. 6.
14. 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 for purposes of administration 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. Real estate to be assets for payment of debts. 9 Geo. IV cap. 33 ss. 1 & 2.
15. 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. In suits executor or administrator to represent real estate. Vict. Act. No. 407 s. 8.
16. 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. Real estate to be held upon trusts of will. Ib. s. 9.
17. 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. Executor to have same rights &c. as to real estate as personal estate. Ib. s. 10.
18. The probate of any will or letters of administration with the will annexed hereafter to be granted shall be evidence of the due execution of such will upon all questions concerning real estate in the same manner and to the same extent as heretofore concerning personal estate, and the copy attached or annexed to such probate or letters of administration purporting to be a copy of the will in respect of which probate or letters of administration have been so granted shall be *primâ facie* evidence of the contents of such will, and every probate or administration shall be *primâ facie* evidence of the death and the date of the death of the testator or intestate. Probate to be evidence of will concerning real estate. Ib. s. 11.
19. 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. Place of original wills. 20 and 21 Vic. c. 77 s. 66.
20. 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. Official copy of whole or part of will may be obtained. Ib. s. 69.

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21. 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 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; and no probate of any will not so deposited and no 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 stating whether any such will remains deposited with the officer for the time being authorized to have the custody of deposited wills, or by a certificate from the Registrar-General to the like effect.

Will may be deposited in the office of the Registrar-General by testator in his lifetime.

Vict. Act No. 213 s. 201.

Vict. Act No. 230 s. 14.

PART III.

Administration and Distribution of Intestate Estates.

22. The practice and proceedings hitherto in force with reference to granting administration of the personal estate of an intestate shall, 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.

Practice as to granting administration of real and personal estate.

23. 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 years. And in case there shall be no such person who shall be qualified as aforesaid, or who being so qualified 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 any person or persons whether creditors or not of the deceased that the Court shall think fit.

To whom administration may be granted.

24. 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.

25. 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 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.

26. 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

Amount of penalty in administration bond. *Ib.* s. 82.

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given so as to limit the liability of any surety to such amount as the 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.

27. 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 an administrator *de bonis non* in his place, with power to sue or be sued upon any contract made by the removed administrator.

Administration may be revoked or further bond required.

28. 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 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 respect of any breach of the condition of the said bond.

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

29. 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 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 in the case of partial intestacy the executor or administrator with the will annexed, as the case may be, shall hold the said real estate 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.

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

30. 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 Act out of any real estate. 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.

Vict. Act No. 230 s. 8.

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

32. No real estate of which administration has been granted under this Act shall be 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.

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

33. The Court may upon the petition of the administrator, or in case of partial intestacy the executor, or the administrator with the will annexed, or of 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 management thereof until sale, the application for maintenance

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

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or advancement or otherwise of shares or income of shares of infants, the 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.

5 34. In any case wherein upon such inquiry the Court shall be 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
10 arbitrators setting forth particulars of the land allotted to each 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
15 copy of such award so signed, confirmed, and registered as aforesaid 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
20 of title for the land so allotted to him. And if such allotment be made 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
25 the necessity of any further instrument being made or executed. And 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.

30 35. No personal representative shall be required against his own consent to continue the duty of a trustee by managing the 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.

35 *Probate and Administration generally.*

36. 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
40 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.

37. Where any person after the commencement of this Act
45 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 not appear to such citation the right of such person in respect of the
50 executorship shall wholly cease, and the representation to the testator and the administration of his effects shall without any further renunciation 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.

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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 5 or limited powers to act in the premises until probate shall have been granted to the said executor or administration to some other person.

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

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 etate* of 10 the next of kin.

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

40. When any person named as executor, or any husband or 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 15 her respectively, administration may be granted to such attorney, but on behalf of the person entitled thereto and on such terms and conditions as the Court shall think fit.

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

41. Pending any suit touching the validity of the will of any deceased person or for obtaining, recalling, or revoking any probate or 20 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, 25 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.

Administration *pendente lite* and receiver.
20 & 21 Vic. c. 77 ss. 70, 71.

42. Where a person shall die wholly or partially intestate or leaving a will but without having appointed an executor thereof, or an 30 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 35 every such administration may be limited as the Court shall think fit.

Power as to appointment of administrator.
Ib. s. 73.

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* 40 *etate*, 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 45 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.

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

50 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, 55 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.

If executor or administrator out of jurisdiction special administrator may be appointed.
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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. Special administrator to make certain affidavits. *Ib.*
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. On return of original executor or administrator special administration to be rescinded. *Ib.*
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. On order being made for rescission special administrator to account and pay over moneys. *Ib.*
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. Original executor or administrator liable although special administration not rescinded. *Ib.*
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. Revocation of temporary grants not to prejudice actions or suits. 20 & 21 Vic. c. 77 s. 76.
50. 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 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 mortgage, lien, charge, or other security which any creditor may hold or be entitled to for payment of his debt. All specialty and simple contract debts to stand in equal degree. 32 and 33 Vic. cap. 46.
51. 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. Payments under revoked probates or administrations valid. *Ib.* s. 77.

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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
5 administration shall be afterwards or was originally granted might have lawfully made.

52. 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
10 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.

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

Id. s. 78.

53. Every person to whom probate or administration shall be
15 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
20 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.

Executor or administrator to pass accounts.

54. It shall be lawful for the Court to allow out of the assets
25 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
30 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.

Executors &c. may be allowed commission.

55. The Registrar shall cause entries to be made in a book to
35 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
40 sworn value of the estates, and the dates of the filing, passing allowance of, and special orders with reference to the said accounts.

Registrar to keep record of probates, &c.

56. 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
45 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 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.
50 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.

If accounts not exhibited Registrar to summon administrator before Judge who may inflict penalty.

57. Proceedings being taken under the last preceding clause
55 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.

Proceedings under last section not to prejudice proceedings on bond.

Probate.

58. 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.

Judge may make order as to disposal of moneys in hands of executor &c.

59. Any decree in Equity in an administration suit shall bind the parties, and be of the same force and effect to all intents and purposes as if an order to the same effect had been made in the Probate Jurisdiction.

Decree in Equity shall bind parties.

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PART V.

Foreign Probates and Letters of Administration.

60. 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.

61. 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. *Id.*

And as to administration till bond is entered into.

62. 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.

63. 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.

64. 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.

65. 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.

PART

Probate.

PART VI.

Curator of Intestate Estates.

66. 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.

Curator to give security.

67. 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 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.

Successors to have power of administrator *de bonis non*.

68. In all legal proceedings it shall not be necessary for the Curator 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 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.

Proceedings by and against Curator.

69. The Curator may appoint any persons he may think fit to 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 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 neglect.

Curator's agents.

70. 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 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.

As to fees and commission.

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

Order to Curator to collect.

(1) Where the person shall have died testate but leaving no executor or no executor who may be willing and capable of acting

Probate.

- acting in execution of his will and no widow or next of kin 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.
- 5 (II) Where the person shall have died either testate or intestate and probate or administration shall not have been applied for within three months after the death of such person.
- 10 (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 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.
- 15 (V) Where the executors named in the will of the deceased have 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.
- 20 (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.
- 25 (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 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. And it is hereby declared that the provisions of this Act shall apply to the administration of the real estate within the Colony of all persons who shall have died prior to the first day of July, one thousand eight hundred and sixty-three, where those entitled to such estate shall not have asserted their rights thereto prior to the date of the passing of this Act; and all orders to collect such estate shall have the effect of vesting it in the Curator, subject to any claim under the Statute of Limitations, so as to enable him to convey the right, title, and interest (if any) of the deceased to the purchaser thereof. And the Curator shall hold such estate, or the proceeds of sale thereof, subject as aforesaid, for the benefit of, and in trust for, those who, prior to the first day of July, one thousand eight hundred and sixty-three, would have been entitled thereto.

72. An order to collect the estate of any deceased person shall give to the Curator the same powers, rights, and obligations in 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.

73. 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 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.

Probate.

74. Immediately on the grant of any such probate or administration all the interest, powers, rights, and duties of the Curator (except 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 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 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 the estate up to the time of such probate or administration.

On such grant Curator's duties and liabilities to cease.

75. 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 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 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.

When there is reasonable ground to believe that any person has died out of jurisdiction of the Court the Curator may obtain order to manage &c. without strict legal proof of death.

76. 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.

Notice of rule to be published.

77. 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.

Like notices to next of kin.

78. 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.

Court to have summary jurisdiction over Curator.

Probate.

79. 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.

Applications how heard.

80. 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.

Curator to act as the Court shall direct.

81. 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.

Mode of proceeding under this Act.

82. 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 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.

Payment of debts.

83. 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.

84. 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.

Probate.

85. 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.

86. 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.

87. 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 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.

Quarterly returns to Treasurer and accounts.

88. The Curator shall after the expiration of six months from the date of the order for collection of any estate 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 or control of the Court of Equity.

The Curator to invest moneys after expiration of twelve months.

89. 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 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 *bonâ 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.

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

90. 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 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.

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

91. If it shall appear on office found that any real estate vested in the Curator has escheated to Her Majesty, the net proceeds of sale of such

Conveyance of escheated lands and disposal of proceeds of sale.

Probate.

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
5 intestate to such purchaser as in any other case.

92. 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
10 Colonial Treasurer for the public service of the Colony, subject to the provisions hereinafter contained.

Payment to Colonial Treasurer after six years.

93. 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
15 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
20 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.

Parties entitled may apply subsequently.

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PART VII.

Procedure.

94. 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 circum-
30 stances 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.

95. 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
35 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
40 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.

96. Where a witness in any contested matter is out of the jurisdiction of the Court, or where by reason of his illness or otherwise
45 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
50 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
55 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.

Probate.

97. 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. *Ib.* s. 35.
98. 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 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. Question to be stated. *Ib.* s. 37 38.
99. 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. Appeal.
100. 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.
101. Any person may lodge with the registrar a caveat against any application for probate or administration at any time previous to 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. Caveat may be lodged. Vict. Act. No. 427 s. 23.
102. In every case in which a caveat shall be lodged the Court may upon motion on behalf of the person applying for probate 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 time. Where a caveat lodged Court may grant order *nisi*. *Ib.* 30.
103. 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. Service of order *nisi*. *Ib.* 31.
104. If upon the day named in the order *nisi* or upon the day 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. Proceeding where caveator does not appear. *Ib.* 32.
105. 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 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 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. Powers of the Court to enforce orders. 20 & 21 Vic. c. 77 s. 25.
106. The Court may on motion or petition or otherwise in a summary way whether any suit or other proceeding shall or shall not be pending in the Court with respect to any probate or administration, Order to produce any instrument purporting to be testamentary. *Ib.* s. 26.

Probate.

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
 5 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
 10 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 interro-
 15 gatories or not bringing in such paper or writing as he would have 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 VIII.

General matters.

20 107. The Registrar, Commissioners of the Supreme Court, and Oaths.
 Justices of the Peace of the Colony of New South Wales shall have power to administer oaths under this Act.

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

109. The Judges of the Supreme Court or any three of them, Rules.
 may make general rules for regulating the times and form and mode Equity Act, 1880.
 of procedure, and generally the practice of the Court in respect of the several matters to which this Act relates, and for fixing the amount of
 30 all fees and allowances to officers of the Court and solicitors in reference to such matters, and otherwise for the effectual execution of this Act and of the intention and object thereof; 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
 35 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.
40 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			
For every order to pay money if £10 and under £20	0	2	6
If £20 and under £50	0	5	0
If £50 and under £100	0	10	0
45 And on every £100 above the first	0	2	6
For every common order	0	2	6
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			
50 amount which shall have been in the Curator's hands be under £20 ...	0	5	0
If £20 and under £50	0	7	6
If £50 and under £100	0	10	0
For every £100 above the first... ..	0	2	6

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PART VIII

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