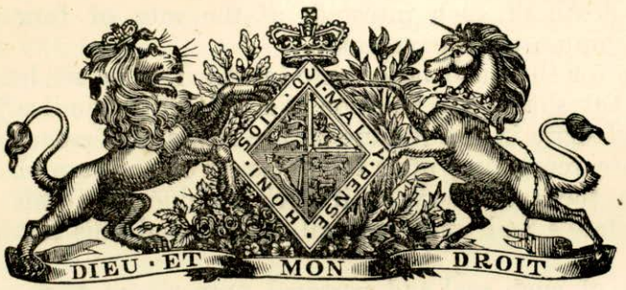

This PUBLIC BILL *originated in the* LEGISLATIVE COUNCIL, *and, having this day passed, is now ready for presentation to the* LEGISLATIVE ASSEMBLY *for its concurrence.*

Legislative Council Chamber,
Sydney, 15th March, 1893.

ADOLPHUS P. CLAPIN,
Acting Clerk of the Parliaments.

New South Wales.

ANNO QUINQUAGESIMO SEXTO

VICTORIÆ REGINÆ.

* *

No. .

An Act to amend the "Probate Act of 1890"; to give greater facilities for the issue of probate and letters of administration in small estates; and to amend the "Stamp Duties Amendment Act of 1886."

Preamble.

WHEREAS it is expedient to amend the "Probate Act of 1890," and to provide greater facilities for granting probate and letters of administration in small estates: 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:—

Short title.

1. This Act may be cited as the "Probate Act of 1890 Amendment Act."

PART I.

Distribution of Property under an Intestacy.

Interest of husband in intestate estate of wife.

2. Whereas doubts have arisen as to the construction of sections thirty-two and thirty-three of the "Probate Act of 1890," it is hereby declared that, subject to the provisions of this Act, the husband is entitled in the intestate estate of his wife only to the share or interest specified in section thirty-three, and the residue of the estate is divisible among the next of kin as in the case of the estate of a husband dying intestate and leaving a widow him surviving.

3. Where the net value of the real and personal property of an intestate dying without issue shall not exceed the sum of five hundred pounds, the whole of the said property shall pass to the husband or wife, if any, of such intestate, as the case may be.

Estates under £500 to go to husband or wife absolutely if no issue. 53 and 54 Vic., c. 29, sec. 1.

4. Where the net value of the real and personal property of an intestate dying without issue shall exceed the sum of five hundred pounds, the husband or wife, as the case may be, of such intestate shall be entitled to five hundred pounds part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal property for such five hundred pounds with interest thereon from the date of the death of such intestate at the rate of four pounds per centum per annum until payment.

In estates over £500 husband or wife to have a charge for £500 if no issue. *Ib.* sec. 2.

5. The provision for the husband or wife intended to be made by section four of this Act shall be in addition and without prejudice to his or her interest and share in the residue of the real and personal property of such intestate remaining after the payment of the sum of five hundred pounds in the same way as if such residue had been the whole of such intestate's real and personal estate, and this Act had not been passed.

Above provision to be in addition to share of residue. *Ib.* sec. 4.

6. The net value of such real and personal property as aforesaid, shall be ascertained by deducting from the gross value thereof all debts, funeral and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said real and personal property shall be subject.

Net value. *Ib.* sec. 6.

7. Where the net value of the real and personal property of an intestate leaving infant issue shall not exceed five hundred pounds, the Judge may, on the petition of such infants, or any of them, or of any person on their behalf, authorise the administrator of the estate to expend the whole or any portion of the share of such infants, or any of them, in their respective maintenance, advancement, or education, and such authority may be given in respect of the infant issue of intestates who died before the passing of this Act.

In estates under £500 Judge may authorise the expenditure of infant's share in maintenance, &c.

8. The real or personal estate to which a married woman may be entitled under this Act, or the "Probate Act of 1890," and the rents and profits thereof shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipt alone shall be a good discharge for the same.

Estate taken by married woman to be held for her separate use.

PART II.

Probate and Administration of Small Estates.

9. For the purpose of receiving applications for probate or administration under this Act, the Judge may appoint such person as he may think fit in any town beyond thirty miles from Sydney, where a District Court is held, to act as District Agent for the Registrar of Probates.

District Agents to receive applications in estates under £500.

10. All District Agents may for the purposes of this Act administer oaths and take declarations and affirmations, and exercise any other powers which can be exercised by Commissioners of the Supreme Court; and applicants under this Act may be sworn, and may execute all necessary documents before a Commissioner of the Supreme Court.

Power to administer oaths.

11. The provisions of the "Stamp Duties Act Amendment Act of 1886" shall not apply to estates of deceased persons shown not to exceed two hundred pounds gross value.

Stamp Duties Act not to apply.

12. In all cases where a person shall die leaving property not exceeding five hundred pounds in value, application for probate or administration may be made direct to the Registrar; or, if the fixed abode of the deceased at the time of his death shall have been more than thirty miles from Sydney, then to the District Agent for the Registrar nearest to such place of abode.

Application to be made direct to Registrar or to District Agent.

13. The Registrar or District Agent shall, upon being satisfied as to the identity and the right of the applicant to administer the estate of the deceased and the value of the estate, furnish him with all necessary information for the purpose of enabling him to fill up the advertisements, affidavits, and documents necessary for obtaining probate or letters of administration, as the case may be, and may swear the applicant and every deponent, and attest the execution of the adminstration bond, and shall receive payment of all proper fees fixed or to be fixed by rule of the Supreme Court in connection with the application.

Duties of Registrar or District Agent.

14. The District Agent shall forthwith transmit to the Registrar all affidavits, documents, and fees received by him, and upon receipt of the probate or letters of administration shall deliver the same to the applicant upon demand.

District Agent to send all papers to Registrar.

15. The Registrar shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed five hundred pounds in value, and that no caveat has been entered against the application, and that no will has been deposited with the Registrar-General (search for which it shall be his duty to make), and that the fees have been duly paid, cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand, or shall forward the same to the District Agent, for delivery by him to the applicant, and such probate or letters of administration shall be issued in the name and under the seal of the Court.

Registrar to issue probate or administration in the name of the Court.

16. In any case where the Registrar is not satisfied as aforesaid, he shall state the matters in respect of which he is not satisfied either to the applicant or to the district agent transmitting the application, and such agent shall then inform the applicant accordingly, and shall take such further steps as may be proper to enable the applicant to satisfy the Registrar in respect of such matters.

Where Registrar not satisfied with the material before him.

17. In no case shall the Registrar be under any obligation by reason of this Act to deal with any application which he may think proper to be dealt with by the Judge, or to be placed in the hands of an attorney, solicitor, or proctor.

Registrar not bound to grant probate in certain cases.

PART III.

General Matters.

18. A caveat may be withdrawn at any time with the leave of the Judge, subject to such order as to costs or otherwise as he may direct, and the person applying for probate or administration may, if he think fit, summon the caveator to attend before the Judge to show cause why the caveat should not be removed, and it shall be lawful for the Judge on proof that the caveator has been summoned, to make such order in the premises or otherwise as may seem fit.

Caveats.

19. 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

To whom administration may be granted

age of twenty-one years. And in case there shall be no such person, or no such person within the jurisdiction of the Court, 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.

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

20. In the administration of the estate of every person who shall die after the passing of this Act, all the creditors of every description of such person 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: Provided further that nothing herein contained shall affect the provisions of any Acts protecting life assurance or other policies against creditors.

Executor may sign acknowledgment in lieu of conveyance.

21. When any real estate not under the provisions of the "Real Property Act" is devised to any person by a will duly proved under the provisions of the "Probate Act of 1890," the executor of the will or the administrator with the will annexed may, as such executor, instead of executing a conveyance, sign an acknowledgment in a form to be prescribed by rule of the Supreme Court hereby authorised to be made in that behalf, that the devisee is entitled to such real estate for the estate for which the same is devised to him, which acknowledgment may be registered under the Acts in force regulating the registration of deeds; and upon registration of such acknowledgment as aforesaid such real estate shall vest in the devisee for such estate as aforesaid in the same way and subject to the same trusts and liabilities as if the executor or administrator had executed a conveyance of the same.

Summary application for legacy, &c.

22. If the executor or administrator shall, after request in writing, neglect or refuse to sign such acknowledgment, or to execute a conveyance of land devised to the devisee, or to pay or hand over to the person entitled any legacy or residuary bequest, such devisee or person may apply by summons to the Judge calling upon such executor or administrator to show cause why he should not comply with such request, and the Judge may make such order in the matter as he may think right.

Surety may apply to the Court for relief.

23. If upon motion by a surety to an administration bond it appear to the Probate Judge that the estate is being wasted, or is in danger of being wasted, or that the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or default of the person administering the estate, the said Judge may grant such relief as he may think fit, and for the purpose of making such relief effectual may have and exercise all the powers and jurisdiction of a Court of Equity.

Property to vest in Chief Justice till probate or administration with will annexed.

24. From and after the decease of any person dying testate and until probate or letters of administration with the will annexed shall be granted in respect of his estate his real and personal estate shall vest as is provided by section thirty-nine of the "Probate Act of 1890," in the case of persons dying intestate.

Claims barred against executor or administrator in certain cases.

25. When an executor or administrator has given notice in accordance with section twenty-nine of the "Trust Property Act of 1862," and a claim against the estate is sent into him, he may, if he dispute the claim, serve upon the person by whom or on whose behalf the claim was sent in a notice calling upon him to take proceedings to enforce his claim within a period of six months, and to duly prosecute the same, and if after the said period of six months

months has expired such person as aforesaid does not satisfy the Court that he is duly prosecuting his claim, the Court may, on application by the executor or administrator, make an order barring the claim against the executor or administrator, subject to such conditions as may seem just, or may make such other order as the Court may think fit: Provided that nothing in this section shall prejudice the right of any creditor or claimant to follow the estate or any part thereof into the hands of any person who may have received the same.

26. This Act shall be read with and form part of the "Probate Act of 1890." To be read with "Probate Act of 1890."

27. Section sixteen of the "Probate Act of 1890" is amended by substituting the word fifteenth for the word thirteenth. Sec. 16, Probate Act amended.

28. Sections twenty-six and fifty-three of the "Probate Act of 1890" are hereby repealed. Repeal.

[6*d.*]

Sydney: Charles Potter, Government Printer.—1893.

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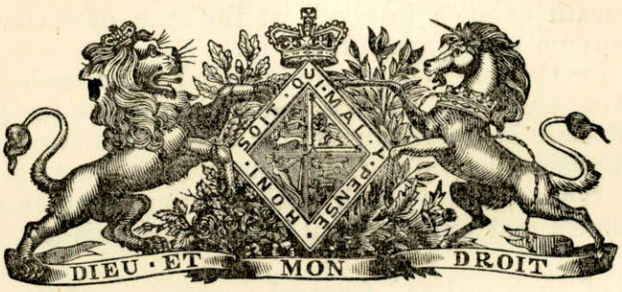

ANNO QUINQUAGESIMO SEXTO

VICTORIÆ REGINÆ.

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Distribution of Property under an Intestacy.

2. Whereas doubts have arisen as to the construction of sections thirty-two and thirty-three of the "Probate Act of 1890," it is hereby declared that, subject to the provisions of this Act, the husband is entitled in the intestate estate of his wife only to the share or interest specified in section thirty-three, and the residue of the estate is divisible among the next of kin as in the case of the estate of a husband dying intestate and leaving a widow him surviving. **Interest of husband in intestate estate of wife.**

3. Where the net value of the real and personal property of an intestate dying without issue shall not exceed the sum of five hundred pounds, the whole of the said property shall pass to the husband or wife, if any, of such intestate, as the case may be.

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In estates over £500 husband or wife to have a charge for £500 if no issue. *Ib.* sec. 2.

5. The provision for the husband or wife intended to be made by section four of this Act shall be in addition and without prejudice to his or her interest and share in the residue of the real and personal property of such intestate remaining after the payment of the sum of five hundred pounds in the same way as if such residue had been the whole of such intestate's real and personal estate, and this Act had not been passed.

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In estates under £500 Judge may authorise the expenditure of infant's share in maintenance, &c.

8. The real or personal estate to which a married woman may be entitled under this Act, or the "Probate Act of 1890," and the rents and profits thereof shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipt alone shall be a good discharge for the same.

Estate taken by married woman to be held for her separate use.

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Where Registrar not satisfied with the material before him.

17. In no case shall the Registrar be under any obligation by reason of this Act to deal with any application which he may think proper to be dealt with by the Judge, or to be placed in the hands of an attorney, solicitor, or proctor.

Registrar not bound to grant probate in certain cases.

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Caveats.

19. 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

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age of twenty-one years. And in case there shall be no such person, or no such person within the jurisdiction of the Court, 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.

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

20. In the administration of the estate of every person who shall die after the passing of this Act, all the creditors of every description of such person 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: Provided further that nothing herein contained shall affect the provisions of any Acts protecting life assurance or other policies against creditors.

Executor may sign acknowledgment in lieu of conveyance.

21. When any real estate not under the provisions of the "Real Property Act" is devised to any person by a will duly proved under the provisions of the "Probate Act of 1890," the executor of the will or the administrator with the will annexed may, as such executor, instead of executing a conveyance, sign an acknowledgment in a form to be prescribed by rule of the Supreme Court hereby authorised to be made in that behalf, that the devisee is entitled to such real estate for the estate for which the same is devised to him, which acknowledgment may be registered under the Acts in force regulating the registration of deeds; and upon registration of such acknowledgment as aforesaid such real estate shall vest in the devisee for such estate as aforesaid in the same way and subject to the same trusts and liabilities as if the executor or administrator had executed a conveyance of the same.

Summary application for legacy, &c.

22. If the executor or administrator shall, after request in writing, neglect or refuse to sign such acknowledgment, or to execute a conveyance of land devised to the devisee, or to pay or hand over to the person entitled any legacy or residuary bequest, such devisee or person may apply by summons to the Judge calling upon such executor or administrator to show cause why he should not comply with such request, and the Judge may make such order in the matter as he may think right.

Surety may apply to the Court for relief.

23. If upon motion by a surety to an administration bond it appear to the Probate Judge that the estate is being wasted, or is in danger of being wasted, or that the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or default of the person administering the estate, the said Judge may grant such relief as he may think fit, and for the purpose of making such relief effectual may have and exercise all the powers and jurisdiction of a Court of Equity.

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Claims barred against executor or administrator in certain cases.

25. When an executor or administrator has given notice in accordance with section twenty-nine of the "Trust Property Act of 1862," and a claim against the estate is sent into him, he may, if he dispute the claim, serve upon the person by whom or on whose behalf the claim was sent in a notice calling upon him to take proceedings to enforce his claim within a period of six months, and to duly prosecute the same, and if after the said period of six months

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26. This Act shall be read with and form part of the "Probate Act of 1890." To be read with "Probate Act of 1890."

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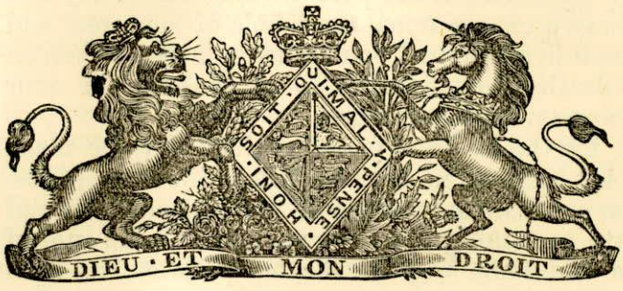
Legislative Council Chamber,
Sydney, *March,* 1893. } *Acting Clerk of the Parliaments.*

New South Wales.



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11. The provisions of the "Stamp Duties Act Amendment Act of 1886" shall not apply to estates of deceased persons shown not to exceed two hundred pounds gross value.

Stamp Duties Act not to apply.

12. In all cases where a person shall die leaving property not exceeding five hundred pounds in value, application for probate or administration may be made direct to the Registrar; or, if the fixed abode of the deceased at the time of his death shall have been more than thirty miles from Sydney, then to the District Agent for the Registrar nearest to such place of abode. Application to be made direct to Registrar or to District Agent.

13. The Registrar or District Agent shall, upon being satisfied as to the identity and the right of the applicant to administer the estate of the deceased and the value of the estate, furnish him with all necessary information for the purpose of enabling him to fill up the advertisements, affidavits, and documents necessary for obtaining probate or letters of administration, as the case may be, and may swear the applicant and every deponent, and attest the execution of the adminstration bond, and shall receive payment of all proper fees fixed or to be fixed by rule of the Supreme Court in connection with the application. Duties of Registrar or District Agent.

14. The District Agent shall forthwith transmit to the Registrar all affidavits, documents, and fees received by him, and upon receipt of the probate or letters of administration shall deliver the same to the applicant upon demand. District Agent to send all papers to Registrar.

15. The Registrar shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed five hundred pounds in value, and that no caveat has been entered against the application, and that no will has been deposited with the Registrar-General (search for which it shall be his duty to make), and that the fees have been duly paid, cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand, or shall forward the same to the District Agent, for delivery by him to the applicant, and such probate or letters of administration shall be issued in the name and under the seal of the Court. Registrar to issue probate or administration in the name of the Court.

16. In any case where the Registrar is not satisfied as aforesaid, he shall state the matters in respect of which he is not satisfied either to the applicant or to the district agent transmitting the application, and such agent shall then inform the applicant accordingly, and shall take such further steps as may be proper to enable the applicant to satisfy the Registrar in respect of such matters. Where Registrar not satisfied with the material before him.

17. In no case shall the Registrar be under any obligation by reason of this Act to deal with any application which he may think proper to be dealt with by the Judge, or to be placed in the hands of an attorney, solicitor, or proctor. Registrar not bound to grant probate in certain cases.

PART III.

General Matters.

18. A caveat may be withdrawn at any time with the leave of the Judge, subject to such order as to costs or otherwise as he may direct, and the person applying for probate or administration may, if he think fit, summon the caveator to attend before the Judge to show cause why the caveat should not be removed, and it shall be lawful for the Judge on proof that the caveator has been summoned, to make such order in the premises or otherwise as may seem fit. Caveats.

19. 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 To whom administration may be granted

age of twenty-one years. And in case there shall be no such person, or no such person within the jurisdiction of the Court, 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.

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

20. In the administration of the estate of every person who shall die after the passing of this Act, all the creditors of every description of such person 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: Provided further that nothing herein contained shall affect the provisions of any Acts protecting life assurance or other policies against creditors.

Executor may sign acknowledgment in lieu of conveyance.

21. When any real estate not under the provisions of the "Real Property Act" is devised to any person by a will duly proved under the provisions of the "Probate Act of 1890," the executor of the will or the administrator with the will annexed may, as such executor, instead of executing a conveyance, sign an acknowledgment in a form to be prescribed by rule of the Supreme Court hereby authorised to be made in that behalf, that the devisee is entitled to such real estate for the estate for which the same is devised to him, which acknowledgment may be registered under the Acts in force regulating the registration of deeds; and upon registration of such acknowledgment as aforesaid such real estate shall vest in the devisee for such estate as aforesaid in the same way and subject to the same trusts and liabilities as if the executor or administrator had executed a conveyance of the same.

Summary application for legacy, &c.

22. If the executor or administrator shall, after request in writing, neglect or refuse to sign such acknowledgment, or to execute a conveyance of land devised to the devisee, or to pay or hand over to the person entitled any legacy or residuary bequest, such devisee or person may apply by summons to the Judge calling upon such executor or administrator to show cause why he should not comply with such request, and the Judge may make such order in the matter as he may think right.

Surety may apply to the Court for relief.

23. If upon motion by a surety to an administration bond it appear to the Probate Judge that the estate is being wasted, or is in danger of being wasted, or that the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or default of the person administering the estate, the said Judge may grant such relief as he may think fit, and for the purpose of making such relief effectual may have and exercise all the powers and jurisdiction of a Court of Equity.

Property to vest in Chief Justice till probate or administration with will annexed.

24. From and after the decease of any person dying testate and until probate or letters of administration with the will annexed shall be granted in respect of his estate his real and personal estate shall vest as is provided by section thirty-nine of the "Probate Act of 1890," in the case of persons dying intestate.

Claims barred against executor or administrator in certain cases.

25. When an executor or administrator has given notice in accordance with section twenty-nine of the "Trust Property Act of 1862," and a claim against the estate is sent into him, he may, if he dispute the claim, serve upon the person by whom or on whose behalf the claim was sent in a notice calling upon him to take proceedings to enforce his claim within a period of six months, and to duly prosecute the same, and if after the said period of six

months

months has expired such person as aforesaid does not satisfy the Court that he is duly prosecuting his claim, the Court may, on application by the executor or administrator, make an order barring the claim against the executor or administrator, subject to such conditions as may seem just, or may make such other order as the Court may think fit: Provided that nothing in this section shall prejudice the right of any creditor or claimant to follow the estate or any part thereof into the hands of any person who may have received the same.

26. This Act shall be read with and form part of the "Probate Act of 1890." To be read with "Probate Act of 1890."

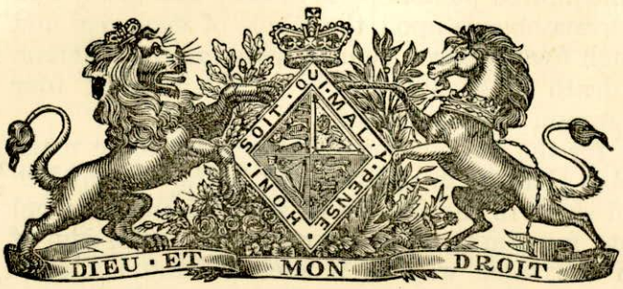
27. Section sixteen of the "Probate Act of 1890" is amended by substituting the word fifteenth for the word thirteenth. Sec. 16, Probate Act amended.

28. Sections twenty-six and fifty-three of the "Probate Act of 1890" are hereby repealed. Repeal.

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

Legislative Council Chamber,
Sydney, *March,* 1893. } *Acting Clerk of the Parliaments.*

New South Wales.



ANNO QUINQUAGESIMO SEXTO

VICTORIÆ REGINÆ.

* *

No. .

An Act to amend the "Probate Act of 1890"; to give greater facilities for the issue of probate and letters of administration in small estates; and to amend the "Stamp Duties Amendment Act of 1886."

WHEREAS it is expedient to amend the "Probate Act of 1890," and to provide greater facilities for granting probate and letters of administration in small estates: 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:— Preamble.

1. This Act may be cited as the "Probate Act of 1890 Amendment Act." Short title.

PART I.

Distribution of Property under an Intestacy.

2. Whereas doubts have arisen as to the construction of sections thirty-two and thirty-three of the "Probate Act of 1890," it is hereby declared that, subject to the provisions of this Act, the husband is entitled in the intestate estate of his wife only to the share or interest specified in section thirty-three, and the residue of the estate is divisible among the next of kin as in the case of the estate of a husband dying intestate and leaving a widow him surviving. Interest of husband in intestate estate of wife.

3. Where the net value of the real and personal property of an intestate dying without issue shall not exceed the sum of five hundred pounds, the whole of the said property shall pass to the husband or wife, if any, of such intestate, as the case may be.

Estates under £500 to go to husband or wife absolutely if no issue. 53 and 54 Vic., c. 29, sec. 1.

4. Where the net value of the real and personal property of an intestate dying without issue shall exceed the sum of five hundred pounds, the husband or wife, as the case may be, of such intestate shall be entitled to five hundred pounds part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal property for such five hundred pounds with interest thereon from the date of the death of such intestate at the rate of four pounds per centum per annum until payment.

In estates over £500 husband or wife to have a charge for £500 if no issue. *Ib.* sec. 2.

5. The provision for the husband or wife intended to be made by section four of this Act shall be in addition and without prejudice to his or her interest and share in the residue of the real and personal property of such intestate remaining after the payment of the sum of five hundred pounds in the same way as if such residue had been the whole of such intestate's real and personal estate, and this Act had not been passed.

Above provision to be in addition to share of residue. *Ib.* sec. 4.

6. The net value of such real and personal property as aforesaid, shall be ascertained by deducting from the gross value thereof all debts, funeral and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said real and personal property shall be subject.

Net value. *Ib.* sec. 6.

7. Where the net value of the real and personal property of an intestate leaving infant issue shall not exceed five hundred pounds, the Judge may, on the petition of such infants, or any of them, or of any person on their behalf, authorise the administrator of the estate to expend the whole or any portion of the share of such infants, or any of them, in their respective maintenance, advancement, or education, and such authority may be given in respect of the infant issue of intestates who died before the passing of this Act.

In estates under £500 Judge may authorise the expenditure of infant's share in maintenance, &c.

8. The real or personal estate to which a married woman may be entitled under this Act, or the "Probate Act of 1890," and the rents and profits thereof shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipt alone shall be a good discharge for the same.

Estate taken by married woman to be held for her separate use.

PART II.

Probate and Administration of Small Estates.

9. For the purpose of receiving applications for probate or administration under this Act, the Judge may appoint such person as he may think fit in any town beyond thirty miles from Sydney, where a District Court is held, to act as District Agent for the Registrar of Probates.

District Agents to receive applications in estates under £500.

10. All District Agents may for the purposes of this Act administer oaths and take declarations and affirmations, and exercise any other powers which can be exercised by Commissioners of the Supreme Court; and applicants under this Act may be sworn, and may execute all necessary documents before a Commissioner of the Supreme Court.

Power to administer oaths.

11. The provisions of the "Stamp Duties Act Amendment Act of 1886" shall not apply to estates of deceased persons shown not to exceed two hundred pounds gross value.

Stamp Duties Act not to apply.

12. In all cases where a person shall die leaving property not exceeding five hundred pounds in value, application for probate or administration may be made direct to the Registrar; or, if the fixed abode of the deceased at the time of his death shall have been more than thirty miles from Sydney, then to the District Agent for the Registrar nearest to such place of abode.

Application to be made direct to Registrar or to District Agent.

13. The Registrar or District Agent shall, upon being satisfied as to the identity and the right of the applicant to administer the estate of the deceased and the value of the estate, furnish him with all necessary information for the purpose of enabling him to fill up the advertisements, affidavits, and documents necessary for obtaining probate or letters of administration, as the case may be, and may swear the applicant and every deponent, and attest the execution of the adminstration bond, and shall receive payment of all proper fees fixed or to be fixed by rule of the Supreme Court in connection with the application.

Duties of Registrar or District Agent.

14. The District Agent shall forthwith transmit to the Registrar all affidavits, documents, and fees received by him, and upon receipt of the probate or letters of administration shall deliver the same to the applicant upon demand.

District Agent to send all papers to Registrar.

15. The Registrar shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed five hundred pounds in value, and that no caveat has been entered against the application, and that no will has been deposited with the Registrar-General (search for which it shall be his duty to make), and that the fees have been duly paid, cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand, or shall forward the same to the District Agent, for delivery by him to the applicant, and such probate or letters of administration shall be issued in the name and under the seal of the Court.

Registrar to issue probate or administration in the name of the Court.

16. In any case where the Registrar is not satisfied as aforesaid, he shall state the matters in respect of which he is not satisfied either to the applicant or to the district agent transmitting the application, and such agent shall then inform the applicant accordingly, and shall take such further steps as may be proper to enable the applicant to satisfy the Registrar in respect of such matters.

Where Registrar not satisfied with the material before him.

17. In no case shall the Registrar be under any obligation by reason of this Act to deal with any application which he may think proper to be dealt with by the Judge, or to be placed in the hands of an attorney, solicitor, or proctor.

Registrar not bound to grant probate in certain cases.

PART III.

General Matters.

18. A caveat may be withdrawn at any time with the leave of the Judge, subject to such order as to costs or otherwise as he may direct, and the person applying for probate or administration may, if he think fit, summon the caveator to attend before the Judge to show cause why the caveat should not be removed, and it shall be lawful for the Judge on proof that the caveator has been summoned, to make such order in the premises or otherwise as may seem fit.

Caveats.

19. 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

To whom administration may be granted

age of twenty-one years. And in case there shall be no such person, or no such person within the jurisdiction of the Court, 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.

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

20. In the administration of the estate of every person who shall die after the passing of this Act, all the creditors of every description of such person 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: Provided further that nothing herein contained shall affect the provisions of any Acts protecting life assurance or other policies against creditors.

Executor may sign acknowledgment in lieu of conveyance.

21. When any real estate not under the provisions of the "Real Property Act" is devised to any person by a will duly proved under the provisions of the "Probate Act of 1890," the executor of the will or the administrator with the will annexed may, as such executor, instead of executing a conveyance, sign an acknowledgment in a form to be prescribed by rule of the Supreme Court hereby authorised to be made in that behalf, that the devisee is entitled to such real estate for the estate for which the same is devised to him, which acknowledgment may be registered under the Acts in force regulating the registration of deeds; and upon registration of such acknowledgment as aforesaid such real estate shall vest in the devisee for such estate as aforesaid in the same way and subject to the same trusts and liabilities as if the executor or administrator had executed a conveyance of the same.

Summary application for legacy, &c.

22. If the executor or administrator shall, after request in writing, neglect or refuse to sign such acknowledgment, or to execute a conveyance of land devised to the devisee, or to pay or hand over to the person entitled any legacy or residuary bequest, such devisee or person may apply by summons to the Judge calling upon such executor or administrator to show cause why he should not comply with such request, and the Judge may make such order in the matter as he may think right.

Surety may apply to the Court for relief.

23. If upon motion by a surety to an administration bond it appear to the Probate Judge that the estate is being wasted, or is in danger of being wasted, or that the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or default of the person administering the estate, the said Judge may grant such relief as he may think fit, and for the purpose of making such relief effectual may have and exercise all the powers and jurisdiction of a Court of Equity.

Property to vest in Chief Justice till probate or administration with will annexed.

24. From and after the decease of any person dying testate and until probate or letters of administration with the will annexed shall be granted in respect of his estate his real and personal estate shall vest as is provided by section thirty-nine of the "Probate Act of 1890," in the case of persons dying intestate.

Claims barred against executor or administrator in certain cases.

25. When an executor or administrator has given notice in accordance with section twenty-nine of the "Trust Property Act of 1862," and a claim against the estate is sent into him, he may, if he dispute the claim, serve upon the person by whom or on whose behalf the claim was sent in a notice calling upon him to take proceedings to enforce his claim within a period of six months, and to duly prosecute the same, and if after the said period of six months

months has expired such person as aforesaid does not satisfy the Court that he is duly prosecuting his claim, the Court may, on application by the executor or administrator, make an order barring the claim against the executor or administrator, subject to such conditions as may seem just, or may make such other order as the Court may think fit: Provided that nothing in this section shall prejudice the right of any creditor or claimant to follow the estate or any part thereof into the hands of any person who may have received the same.

26. This Act shall be read with and form part of the "Probate Act of 1890." To be read with "Probate Act of 1890."

27. Section sixteen of the "Probate Act of 1890" is amended by substituting the word fifteenth for the word thirteenth. Sec. 16, Probate Act amended.

28. Sections twenty-six and fifty-three of the "Probate Act of 1890" are hereby repealed. Repeal.

Legislative Council.

56° VICTORIÆ, 1892.

A BILL

To amend the "Probate Act of 1890"; to give greater facilities for the issue of probate and letters of administration in small estates; and to amend the "Stamp Duties ~~Act of 1880~~ **Amendment Act of 1886.**"

(As amended in Committee of the Whole.)

WHEREAS it is expedient to amend the "Probate Act of 1890," and to provide greater facilities for granting probate and letters of administration in small estates: 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:— Preamble.

1. This Act may be cited as the "Probate Act **of 1890** Amendment Act." Short title.

PART I.

Distribution of Property under an Intestacy.

2. Whereas doubts have arisen as to the construction of sections thirty-two and thirty-three of the "Probate Act of 1890," it is hereby declared that, subject to the provisions of this Act, the husband is entitled in the intestate estate of his wife only to the share or interest specified in section thirty-three, and the residue of the estate is divisible among the next of kin as in the case of the estate of a husband dying intestate and leaving a widow him surviving. Interest of husband in intestate estate of wife.

3. Where the net value of the real and personal property of an intestate dying without issue shall not exceed the sum of five hundred pounds, the whole of the said property shall pass to the husband or wife, if any, of such intestate, as the case may be. Estates under £500 to go to husband or wife absolutely if no issue. 53 and 54 Vic., c. 29, sec. 1.

4. Where the net value of the real and personal property of an intestate dying without issue shall exceed the sum of five hundred pounds, the husband or wife, as the case may be, of such intestate shall be entitled to five hundred pounds part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal In estates over £500 husband or wife to have a charge for £500 if no issue. *Ib.* sec. 2.

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

personal property for such five hundred pounds with interest thereon from the date of the death of such intestate at the rate of eight pounds per centum per annum until payment.

Above provision to be in addition to share of residue.
Ib. sec. 4.

5. The provision for the husband or wife intended to be made by section four of this Act shall be in addition and without prejudice to his or her interest and share in the residue of the real and personal property of such intestate remaining after the payment of the sum of five hundred pounds in the same way as if such residue had been the whole of such intestate's real and personal estate, and this Act had not been passed.

Net value.
Ib. sec. 6.

6. The net value of such real and personal property as aforesaid, shall be ascertained by deducting from the gross value thereof all debts, ~~personal~~ **funeral** and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said real and personal property shall be subject.

In estates under £500 Judge may authorize the expenditure of infant's share in maintenance, &c.

7. Where the net value of the real and personal property of an intestate leaving infant issue shall not exceed five hundred pounds, the Judge may, on the petition of such infants, or any of them, or of any person on their behalf, authorize the administrator of the estate to expend the whole or any portion of the share of such infants, or any of them, in their respective maintenance, advancement, or education, and such authority may be given in respect of the infant issue of intestates who died before the passing of this Act.

Estate taken by married woman to be held for her separate use.

8. The real or personal estate to which a married woman may be entitled under this Act, or the "Probate Act of 1890," and the rents and profits thereof shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipt alone shall be a good discharge for the same.

PART II.

Probate and Administration of Small Estates.

District Agents to receive applications in estates under £500.

9. For the purpose of receiving applications for probate or administration under this Act, the Judge may appoint such person as he may think fit in any town beyond thirty miles from Sydney, where a District Court is held, to act as District Agent for the Registrar of Probates.

Power to administer oaths.

10. All District Agents may for the purposes of this Act administer oaths and take declarations and affirmations, and exercise any other powers which can be exercised by Commissioners of the Supreme Court; and ~~in the absence or during the illness of such agent,~~ applicants under this Act may be sworn, and may execute all necessary documents before a Commissioner of the Supreme Court.

Stamp Duties Act not to apply.

11. The provisions of the "Stamp Duties Act ~~of 1880~~ **Amendment Act of 1886,**" shall not apply to estates of deceased persons shown not to exceed ~~five~~ **two** hundred pounds **gross value.**

Application to be made direct to Registrar or to District Agent.

12. In all cases where a person shall die leaving property not exceeding five hundred pounds in value, application for probate or administration may be made direct to the Registrar; or, if the fixed abode of the deceased at the time of his death shall have been more than thirty miles from Sydney, then to the District Agent for the Registrar nearest to such place of abode.

Duties of Registrar or District Agent.

13. The Registrar or District Agent shall, upon being satisfied as to the identity and the right of the applicant to administer the estate of the deceased **and the value of the estate,** furnish him with all necessary information for the purpose of enabling him to fill up the advertisements, affidavits, and documents necessary for obtaining probate or letters of administration, as the case may be, and ~~shall~~ **may** swear the applicant and every deponent, and attest the execution of the adminstration bond, and **shall** receive payment of all proper fees **fixed or to be fixed by rule of the Supreme Court** in connection with the application.

14.

14. The District Agent shall forthwith transmit to the Registrar all affidavits, documents, and fees received by him, and upon receipt of the probate or letters of administration shall deliver the same to the applicant upon demand.

District Agent to send all papers to Registrar.

15. The Registrar shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed five hundred pounds in value, and that no caveat has been entered against the application, and that no will has been deposited with the Registrar-General (search for which it shall be his duty to make), and that the fees have been duly paid, cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand, or shall forward the same to the District ~~Registrar,~~ **Agent,** for delivery by him to the applicant, and such probate or letters of administration shall be issued in the name and under the seal of the Court.

Registrar to issue probate or administration in the name of the Court.

16. In any case where the Registrar is not satisfied as aforesaid, he shall state the matters in respect of which he is not satisfied either to the applicant or to the **district** agent transmitting the application, and such agent shall then inform the applicant accordingly, and shall take such further steps as may be proper to enable the applicant to satisfy the Registrar in respect of such matters.

Where Registrar not satisfied with the material before him.

17. In no case shall the Registrar be under any obligation by reason of this Act to deal with any application which he may think proper to be dealt with by the Judge, or to be placed in the hands of an attorney, solicitor, or proctor.

Registrar not bound to grant probate in certain cases.

PART III.

General Matters.

18. A caveat may be withdrawn at any time with the leave of the Judge, subject to such order as to costs or otherwise as he may direct, and the person applying for probate or administration may, if he think fit, summon the caveator to attend before the Judge to show cause why the caveat should not be removed, and it shall be lawful for the Judge on proof that the caveator has been summoned, to make such order in the premises or otherwise as may seem fit.

Caveats.

19. ~~Section twenty-six of the Principal Act is hereby amended, and shall be read as follows:—~~

"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, or no such person within the jurisdiction of the Court, 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.

20. ~~Section fifty-three of the Principal Act is hereby amended, and shall be read as follows:—~~

"In the administration of the estate of every person who shall die after the passing of this Act, all the creditors of every description of such person 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

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

32 and 33 Vic. cap. 46.

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."

~~Devisee~~ **Executor** may ~~require~~ **sign** acknowledgment in lieu of conveyance.

21. Any person to whom any real estate may be devised by a will duly proved under the provisions of the Principal Act may require the executor of the said will, or the administrator with the will annexed, in lieu of executing a conveyance thereof, to sign an acknowledgment that such devisee is entitled under the said will to such real estate for the estate, for which the same is devised, freed from all claim for the debts of the testator, and thereupon such real estate shall become vested in such devisee for such estate as aforesaid. And if such real estate be held under the provisions of the Real Property Act, such devisee shall upon the production of such acknowledgment be entitled to a certificate of title in his own name under the said Act without the necessity of any application for transmission, but subject to any charges or encumbrances endorsed on the certificate of title.

Effect of such acknowledgment.

Effect of such acknowledgment under Real Property Act.

21. When any real estate not under the provisions of the "Real Property Act" is devised to any person by a will duly proved under the provisions of the "Probate Act of 1890," the executor of the will or the administrator with the will annexed may, as such executor, instead of executing a conveyance, sign an acknowledgment in a form to be prescribed by rule of the Supreme Court hereby authorised to be made in that behalf, that the devisee is entitled to such real estate for the estate for which the same is devised to him, which acknowledgment may be registered under the Acts in force regulating the registration of deeds; and upon registration of such acknowledgment as aforesaid such real estate shall vest in the devisee for such estate as aforesaid in the same way and subject to the same trusts and liabilities as if the executor or administrator had executed a conveyance of the same.

No stamp duty payable on conveyance from executor to devisee.

22. No stamp duty shall be payable upon any such acknowledgment, or upon any conveyance of land from such executor or ~~administrator to the devisee.~~

Summary application for legacy, &c.

~~23.~~ **22.** If the executor or administrator shall, ~~upon~~ **after** request **in writing,** neglect or refuse to sign such acknowledgment, or to execute a conveyance of land ~~specifically~~ devised to the devisee, or to pay or hand over to the person entitled any legacy or residuary bequest, such devisee or person may apply by summons to the Judge calling upon such executor or administrator to show cause why he should not comply with such request, and the Judge may make such order in the matter as he may think right.

Surety may apply to the Court for relief.

23. If upon motion by a surety to an administration bond it appear to the Probate Judge that the estate is being wasted, or is in danger of being wasted, or that the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or default of the person administering the estate, the said judge may grant such relief as he may think fit, and for the purpose of making such relief effectual may have and exercise all the powers and jurisdiction of a Court of Equity.

Property to vest in Chief Justice till probate or administration with will annexed.

24. From and after the decease of any person dying testate and until probate or letters of administration with the will annexed shall be granted in respect of his estate his real and personal estate shall vest as is provided by section thirty-nine of the "Probate Act of 1890," in the case of persons dying intestate.

To be read with Probate Act of 1890."

25. This Act shall be read with and form part of the "Probate Act of 1890."

Sec. 16, Probate Act amended.

26. Section sixteen of the "Probate Act of 1890" is amended by substituting the word fifteenth for the word thirteenth.

Repeal.

27. Sections twenty-six and fifty-three of the "Probate Act of 1890" are hereby repealed.

Sydney: Charles Potter, Government Printer.—1892.

Legislative Council.

56° VICTORIÆ, 1892.

A BILL

To amend the "Probate Act of 1890"; to give greater facilities for the issue of probate and letters of administration in small estates; and to amend the "Stamp Duties ~~Act of 1880~~ **Amendment Act of 1886.**"

(As amended in Committee of the Whole.)

WHEREAS it is expedient to amend the "Probate Act of 1890," and to provide greater facilities for granting probate and letters of administration in small estates: 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:— Preamble.

1. This Act may be cited as the "Probate Act **of 1890** Amendment Act." Short title.

PART I.

Distribution of Property under an Intestacy.

2. Whereas doubts have arisen as to the construction of sections thirty-two and thirty-three of the "Probate Act of 1890," it is hereby declared that, subject to the provisions of this Act, the husband is entitled in the intestate estate of his wife only to the share or interest specified in section thirty-three, and the residue of the estate is divisible among the next of kin as in the case of the estate of a husband dying intestate and leaving a widow him surviving. Interest of husband in intestate estate of wife.

3. Where the net value of the real and personal property of an intestate dying without issue shall not exceed the sum of five hundred pounds, the whole of the said property shall pass to the husband or wife, if any, of such intestate, as the case may be. Estates under £500 to go to husband or wife absolutely if no issue. 53 and 54 Vic., c. 29, sec. 1.

4. Where the net value of the real and personal property of an intestate dying without issue shall exceed the sum of five hundred pounds, the husband or wife, as the case may be, of such intestate shall be entitled to five hundred pounds part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and In estates over £500 husband or wife to have a charge for £500 if no issue. *Ib.* sec. 2.

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

personal property for such five hundred pounds with interest thereon from the date of the death of such intestate at the rate of eight pounds per centum per annum until payment.

Above provision to be in addition to share of residue. *Ib.* sec. 4.

5. The provision for the husband or wife intended to be made by section four of this Act shall be in addition and without prejudice to his or her interest and share in the residue of the real and personal property of such intestate remaining after the payment of the sum of five hundred pounds in the same way as if such residue had been the whole of such intestate's real and personal estate, and this Act had not been passed.

Net value. *Ib.* sec. 6.

6. The net value of such real and personal property as aforesaid, shall be ascertained by deducting from the gross value thereof all debts, ~~personal~~ **funeral** and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said real and personal property shall be subject.

In estates under £500 Judge may authorize the expenditure of infant's share in maintenance, &c.

7. Where the net value of the real and personal property of an intestate leaving infant issue shall not exceed five hundred pounds, the Judge may, on the petition of such infants, or any of them, or of any person on their behalf, authorize the administrator of the estate to expend the whole or any portion of the share of such infants, or any of them, in their respective maintenance, advancement, or education, and such authority may be given in respect of the infant issue of intestates who died before the passing of this Act.

Estate taken by married woman to be held for her separate use.

8. The real or personal estate to which a married woman may be entitled under this Act, or the "Probate Act of 1890," and the rents and profits thereof shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipt alone shall be a good discharge for the same.

PART II.

Probate and Administration of Small Estates.

District Agents to receive applications in estates under £500.

9. For the purpose of receiving applications for probate or administration under this Act, the Judge may appoint such person as he may think fit in any town beyond thirty miles from Sydney, where a District Court is held, to act as District Agent for the Registrar of Probates.

Power to administer oaths.

10. All District Agents may for the purposes of this Act administer oaths and take declarations and affirmations, and exercise any other powers which can be exercised by Commissioners of the Supreme Court; and ~~in the absence or during the illness of such agent,~~ applicants under this Act may be sworn, and may execute all necessary documents before a Commissioner of the Supreme Court.

Stamp Duties Act not to apply.

11. The provisions of the "Stamp Duties Act ~~of 1880~~ **Amendment Act of 1886,**" shall not apply to estates of deceased persons shown not to exceed ~~five~~ **two** hundred pounds **gross value.**

Application to be made direct to Registrar or to District Agent.

12. In all cases where a person shall die leaving property not exceeding five hundred pounds in value, application for probate or administration may be made direct to the Registrar; or, if the fixed abode of the deceased at the time of his death shall have been more than thirty miles from Sydney, then to the District Agent for the Registrar nearest to such place of abode.

Duties of Registrar or District Agent.

13. The Registrar or District Agent shall, upon being satisfied as to the identity and the right of the applicant to administer the estate of the deceased **and the value of the estate,** furnish him with all necessary information for the purpose of enabling him to fill up the advertisements, affidavits, and documents necessary for obtaining probate or letters of administration, as the case may be, and ~~shall~~ **may** swear the applicant and every deponent, and attest the execution of the adminstration bond, and **shall** receive payment of all proper fees **fixed or to be fixed by rule of the Supreme Court** in connection with the application.

14.

14. The District Agent shall forthwith transmit to the Registrar all affidavits, documents, and fees received by him, and upon receipt of the probate or letters of administration shall deliver the same to the applicant upon demand. District Agent to send all papers to Registrar.

15. The Registrar shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed five hundred pounds in value, and that no caveat has been entered against the application, and that no will has been deposited with the Registrar-General (search for which it shall be his duty to make), and that the fees have been duly paid, cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand, or shall forward the same to the District ~~Registrar,~~ **Agent,** for delivery by him to the applicant, and such probate or letters of administration shall be issued in the name and under the seal of the Court. Registrar to issue probate or administration in the name of the Court.

16. In any case where the Registrar is not satisfied as aforesaid, he shall state the matters in respect of which he is not satisfied either to the applicant or to the **district** agent transmitting the application, and such agent shall then inform the applicant accordingly, and shall take such further steps as may be proper to enable the applicant to satisfy the Registrar in respect of such matters. Where Registrar not satisfied with the material before him.

17. In no case shall the Registrar be under any obligation by reason of this Act to deal with any application which he may think proper to be dealt with by the Judge, or to be placed in the hands of an attorney, solicitor, or proctor. Registrar not bound to grant probate in certain cases.

PART III.

General Matters.

18. A caveat may be withdrawn at any time with the leave of the Judge, subject to such order as to costs or otherwise as he may direct, and the person applying for probate or administration may, if he think fit, summon the caveator to attend before the Judge to show cause why the caveat should not be removed, and it shall be lawful for the Judge on proof that the caveator has been summoned, to make such order in the premises or otherwise as may seem fit. Caveats.

19. ~~Section twenty-six of the Principal Act is hereby amended, and shall be read as follows:—~~

"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, or no such person within the jurisdiction of the Court, 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.

20. ~~Section fifty-three of the Principal Act is hereby amended, and shall be read as follows:—~~

"In the administration of the estate of every person who shall die after the passing of this Act, all the creditors of every description of such person 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: All specialty and simple contract debts to stand in equal degree. 32 and 33 Vic. cap. 46.

Provided

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."

~~Devisee~~ **Executor** may ~~require~~ **sign** acknowledgment in lieu of conveyance.

21. Any person to whom any real estate may be devised by a will duly proved under the provisions of the Principal Act may require the executor of the said will, or the administrator with the will annexed, in lieu of executing a conveyance thereof, to sign an acknowledgment that such devisee is entitled under the said will to such real estate for the estate, for which the same is devised, freed from all claim for the debts of the testator, and thereupon such real estate shall become vested in such devisee for such estate as aforesaid. And if such real estate be held under the provisions of the Real Property Act, such devisee shall upon the production of such acknowledgment be entitled to a certificate of title in his own name under the said Act without the necessity of any application for transmission, but subject to any charges or encumbrances endorsed on the certificate of title.

Effect of such acknowledgment.

Effect of such acknowledgment under Real Property Act.

21. When any real estate not under the provisions of the "Real Property Act" is devised to any person by a will duly proved under the provisions of the "Probate Act of 1890," the executor of the will or the administrator with the will annexed may, as such executor, instead of executing a conveyance, sign an acknowledgment in a form to be prescribed by rule of the Supreme Court hereby authorised to be made in that behalf, that the devisee is entitled to such real estate for the estate for which the same is devised to him, which acknowledgment may be registered under the Acts in force regulating the registration of deeds; and upon registration of such acknowledgment as aforesaid such real estate shall vest in the devisee for such estate as aforesaid in the same way and subject to the same trusts and liabilities as if the executor or administrator had executed a conveyance of the same.

No stamp duty payable on conveyance from executor to devisee.

22. No stamp duty shall be payable upon any such acknowledgment, or upon any conveyance of land from such executor or ~~administrator to the devisee.~~

Summary application for legacy, &c.

~~23.~~ **22.** If the executor or administrator shall, ~~upon~~ **after** request **in writing,** neglect or refuse to sign such acknowledgment, or to execute a conveyance of land ~~specifically~~ devised to the devisee, or to pay or hand over to the person entitled any legacy or residuary bequest, such devisee or person may apply by summons to the Judge calling upon such executor or administrator to show cause why he should not comply with such request, and the Judge may make such order in the matter as he may think right.

Surety may apply to the Court for relief.

23. If upon motion by a surety to an administration bond it appear to the Probate Judge that the estate is being wasted, or is in danger of being wasted, or that the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or default of the person administering the estate, the said judge may grant such relief as he may think fit, and for the purpose of making such relief effectual may have and exercise all the powers and jurisdiction of a Court of Equity.

Property to vest in Chief Justice till probate or administration with will annexed.

24. From and after the decease of any person dying testate and until probate or letters of administration with the will annexed shall be granted in respect of his estate his real and personal estate shall vest as is provided by section thirty-nine of the "Probate Act of 1890," in the case of persons dying intestate.

To be read with Probate Act of 1890."

25. This Act shall be read with and form part of the "Probate Act of 1890."

Sec. 16, Probate Act amended.

26. Section sixteen of the "Probate Act of 1890" is amended by substituting the word fifteenth for the word thirteenth.

Repeal.

27. Sections twenty-six and fifty-three of the "Probate Act of 1890" are hereby repealed.

Sydney: Charles Potter, Government Printer.—1892.

Legislative Council.

56° VICTORIÆ, 1892.

A BILL

To amend the "Probate Act of 1890"; to give greater facilities for the issue of probate and letters of administration in small estates; and to amend the "Stamp Duties Act of 1880."

[MR. R. E. O'CONNOR;—3 *November*, 1892.]

WHEREAS it is expedient to amend the "Probate Act of 1890," and to provide greater facilities for granting probate and letters of administration in small estates: 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:— Preamble.

1. This Act may be cited as the "Probate Act Amendment Act." Short title.

PART I.

Distribution of Property under an Intestacy.

Interest of husband in intestate estate of wife.

2. Whereas doubts have arisen as to the construction of sections thirty-two and thirty-three of the "Probate Act of 1890," it is hereby declared that, subject to the provisions of this Act, the husband is entitled in the intestate estate of his wife only to the share or interest specified in section thirty-three, and the residue of the estate is divisible among the next of kin as in the case of the estate of a husband dying intestate and leaving a widow him surviving.

Estates under £500 to go to husband or wife absolutely if no issue. 53 and 54 Vic., c. 29, sec. 1.

3. Where the net value of the real and personal property of an intestate dying without issue shall not exceed the sum of five hundred pounds, the whole of the said property shall pass to the husband or wife, if any, of such intestate, as the case may be.

In estates over £500 husband or wife to have a charge for £500 if no issue. *Ib.* sec. 2.

4. Where the net value of the real and personal property of an intestate dying without issue shall exceed the sum of five hundred pounds, the husband or wife, as the case may be, of such intestate shall be entitled to five hundred pounds part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal property for such five hundred pounds with interest thereon from the date of the death of such intestate at the rate of eight pounds per centum per annum until payment.

Above provision to be in addition to share of residue. *Ib.* sec. 4.

5. The provision for the husband or wife intended to be made by section four of this Act shall be in addition and without prejudice to his or her interest and share in the residue of the real and personal property of such intestate remaining after the payment of the sum of five hundred pounds in the same way as if such residue had been the whole of such intestate's real and personal estate, and this Act had not been passed.

Net value. *Ib.* sec. 6.

6. The net value of such real and personal property as aforesaid, shall be ascertained by deducting from the gross value thereof all debts, personal and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said real and personal property shall be subject.

In estates under £500 Judge may authorize the expenditure of infant's share in maintenance, &c.

7. Where the net value of the real and personal property of an intestate leaving infant issue shall not exceed five hundred pounds, the Judge may, on the petition of such infants, or any of them, or of any person on their behalf, authorize the administrator of the estate to expend the whole or any portion of the share of such infants, or any of them, in their respective maintenance, advancement, or education, and such authority may be given in respect of the infant issue of intestates who died before the passing of this Act.

Estate taken by married woman to be held for her separate use.

8. The real or personal estate to which a married woman may be entitled under this Act, or the "Probate Act of 1890," and the rents and profits thereof shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipt alone shall be a good discharge for the same.

PART II.

Probate and Administration of Small Estates.

9. For the purpose of receiving applications for probate or administration under this Act, the Judge may appoint such person as he may think fit in any town beyond thirty miles from Sydney, where a District Court is held, to act as District Agent for the Registrar of Probates.

District Agents to receive applications in estates under £500.

10. All District Agents may for the purposes of this Act administer oaths and take declarations and affirmations, and exercise any other powers which can be exercised by Commissioners of the Supreme Court; and in the absence or during the illness of such agent, applicants under this Act may be sworn, and may execute all necessary documents before a Commissioner of the Supreme Court.

Power to administer oaths.

11. The provisions of the "Stamp Duties Act of 1880" shall not apply to estates of deceased persons shown not to exceed five hundred pounds.

Stamp Duties Act not to apply.

12. In all cases where a person shall die leaving property not exceeding five hundred pounds in value, application for probate or administration may be made direct to the Registrar; or, if the fixed abode of the deceased at the time of his death shall have been more than thirty miles from Sydney, then to the District Agent for the Registrar nearest to such place of abode.

Application to be made direct to Registrar or to District Agent.

13. The Registrar or District Agent shall, upon being satisfied as to the identity and the right of the applicant to administer the estate of the deceased, furnish him with all necessary information for the purpose of enabling him to fill up the advertisements, affidavits, and documents necessary for obtaining probate or letters of administration, as the case may be, and shall swear the applicant and every deponent, and attest the execution of the adminstration bond, and receive payment of all proper fees in connection with the application.

Duties of Registrar or District Agent.

14. The District Agent shall forthwith transmit to the Registrar all affidavits, documents, and fees received by him, and upon receipt of the probate or letters of administration shall deliver the same to the applicant upon demand.

District Agent to send all papers to Registrar.

15. The Registrar shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed five hundred pounds in value, and that no caveat has been entered against the application, and that no will has been deposited with the Registrar-General (search for which it shall be his duty to make), and that the fees have been duly paid, cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand, or shall forward the same to the District Registrar for delivery by him to the applicant, and such probate or letters of administration shall be issued in the name and under the seal of the Court.

Registrar to issue probate or administration in the name of the Court.

16. In any case where the Registrar is not satisfied as aforesaid, he shall state the matters in respect of which he is not satisfied either to the applicant or to the agent transmitting the application, and such agent shall then inform the applicant accordingly, and shall take such further steps as may be proper to enable the applicant to satisfy the Registrar in respect of such matters.

Where Registrar not satisfied with the material before him.

17. In no case shall the Registrar be under any obligation by reason of this Act to deal with any application which he may think proper to be dealt with by the Judge, or to be placed in the hands of an attorney, solicitor, or proctor.

Registrar not bound to grant probate in certain cases.

PART

PART III.

General Matters.

Caveats.

18. A caveat may be withdrawn at any time with the leave of the Judge, subject to such order as to costs or otherwise as he may direct, and the person applying for probate or administration may, if he think fit, summon the caveator to attend before the Judge to show cause why the caveat should not be removed, and it shall be lawful for the Judge on proof that the caveator has been summoned, to make such order in the premises or otherwise as may seem fit.

19. Section twenty-six of the Principal Act is hereby amended, and shall be read as follows:—

To whom administration may be granted.

"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, or no such person within the jurisdiction of the Court, 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."

20. Section fifty-three of the Principal Act is hereby amended, and shall be read as follows:—

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

32 and 33 Vic. cap. 46.

"In the administration of the estate of every person who shall die after the passing of this Act, all the creditors of every description of such person 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."

Devisee may require acknowledgment in lieu of conveyance.

21. Any person to whom any real estate may be devised by a will duly proved under the provisions of the Principal Act may require the executor of the said will, or the administrator with the will annexed, in lieu of executing a conveyance thereof, to sign an acknowledgment that such devisee is entitled under the said will to such real estate for the estate, for which the same is by the said will devised, freed from all claim for the debts of the testator, and thereupon such real estate shall become vested in such devisee for such estate as aforesaid. And if such real estate be held under the provisions of the Real Property Act, such devisee shall upon the production of such acknowledgment be entitled to a certificate of title in his own name under the said Act without the necessity of any application for transmission, but subject to any charges or encumbrances endorsed on the certificate of title.

Effect of such acknowledgment.

Effect of such acknowledgment under Real Property Act.

No stamp duty payable on conveyance from executor to devisee.

22. No stamp duty shall be payable upon any such acknowledgment, or upon any conveyance of land from such executor or administrator to the devisee.

Summary application for legacy, &c.

23. If the executor or administrator shall, upon request, neglect or refuse to sign such acknowledgment, or to execute a conveyance of land specifically devised to the devisee, or to pay or hand over to the person entitled any legacy or residuary bequest, such devisee or person may apply by summons to the Judge calling upon such executor or administrator to show cause why he should not comply with such request, and the Judge may make such order in the matter as he may think right.

Sydney: Charles Potter, Government Printer. -1892.

[3*d*.]

Legislative Council.

56° VICTORIÆ, 1892.

A BILL

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[MR. R. E. O'CONNOR;—3 *November*, 1892.]

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Estates under £500 to go to husband or wife absolutely if no issue. 53 and 54 Vic., c. 29, sec. 1.

3. Where the net value of the real and personal property of an intestate dying without issue shall not exceed the sum of five hundred pounds, the whole of the said property shall pass to the husband or wife, if any, of such intestate, as the case may be.

In estates over £500 husband or wife to have a charge for £500 if no issue. *Ib.* sec. 2.

4. Where the net value of the real and personal property of an intestate dying without issue shall exceed the sum of five hundred pounds, the husband or wife, as the case may be, of such intestate shall be entitled to five hundred pounds part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal property for such five hundred pounds with interest thereon from the date of the death of such intestate at the rate of eight pounds per centum per annum until payment.

Above provision to be in addition to share of residue. *Ib.* sec. 4.

5. The provision for the husband or wife intended to be made by section four of this Act shall be in addition and without prejudice to his or her interest and share in the residue of the real and personal property of such intestate remaining after the payment of the sum of five hundred pounds in the same way as if such residue had been the whole of such intestate's real and personal estate, and this Act had not been passed.

Net value. *Ib.* sec. 6.

6. The net value of such real and personal property as aforesaid, shall be ascertained by deducting from the gross value thereof all debts, personal and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said real and personal property shall be subject.

In estates under £500 Judge may authorize the expenditure of infant's share in maintenance, &c.

7. Where the net value of the real and personal property of an intestate leaving infant issue shall not exceed five hundred pounds, the Judge may, on the petition of such infants, or any of them, or of any person on their behalf, authorize the administrator of the estate to expend the whole or any portion of the share of such infants, or any of them, in their respective maintenance, advancement, or education, and such authority may be given in respect of the infant issue of intestates who died before the passing of this Act.

Estate taken by married woman to be held for her separate use.

8. The real or personal estate to which a married woman may be entitled under this Act, or the "Probate Act of 1890," and the rents and profits thereof shall, subject and without prejudice to the trusts of any settlement affecting the same, belong to such woman for her separate use, and her receipt alone shall be a good discharge for the same.

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11. The provisions of the "Stamp Duties Act of 1880" shall not apply to estates of deceased persons shown not to exceed five hundred pounds.

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12. In all cases where a person shall die leaving property not exceeding five hundred pounds in value, application for probate or administration may be made direct to the Registrar; or, if the fixed abode of the deceased at the time of his death shall have been more than thirty miles from Sydney, then to the District Agent for the Registrar nearest to such place of abode.

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13. The Registrar or District Agent shall, upon being satisfied as to the identity and the right of the applicant to administer the estate of the deceased, furnish him with all necessary information for the purpose of enabling him to fill up the advertisements, affidavits, and documents necessary for obtaining probate or letters of administration, as the case may be, and shall swear the applicant and every deponent, and attest the execution of the adminstration bond, and receive payment of all proper fees in connection with the application.

District Agent to send all papers to Registrar.

14. The District Agent shall forthwith transmit to the Registrar all affidavits, documents, and fees received by him, and upon receipt of the probate or letters of administration shall deliver the same to the applicant upon demand.

Registrar to issue probate or administration in the name of the Court.

15. The Registrar shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed five hundred pounds in value, and that no caveat has been entered against the application, and that no will has been deposited with the Registrar-General (search for which it shall be his duty to make), and that the fees have been duly paid, cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand, or shall forward the same to the District Registrar for delivery by him to the applicant, and such probate or letters of administration shall be issued in the name and under the seal of the Court.

Where Registrar not satisfied with the material before him.

16. In any case where the Registrar is not satisfied as aforesaid, he shall state the matters in respect of which he is not satisfied either to the applicant or to the agent transmitting the application, and such agent shall then inform the applicant accordingly, and shall take such further steps as may be proper to enable the applicant to satisfy the Registrar in respect of such matters.

Registrar not bound to grant probate in certain cases.

17. In no case shall the Registrar be under any obligation by reason of this Act to deal with any application which he may think proper to be dealt with by the Judge, or to be placed in the hands of an attorney, solicitor, or proctor.

PART

PART III.

General Matters.

Caveats.

18. A caveat may be withdrawn at any time with the leave of the Judge, subject to such order as to costs or otherwise as he may direct, and the person applying for probate or administration may, if he think fit, summon the caveator to attend before the Judge to show cause why the caveat should not be removed, and it shall be lawful for the Judge on proof that the caveator has been summoned, to make such order in the premises or otherwise as may seem fit.

19. Section twenty-six of the Principal Act is hereby amended, and shall be read as follows:—

To whom administration may be granted.

"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, or no such person within the jurisdiction of the Court, 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."

20. Section fifty-three of the Principal Act is hereby amended, and shall be read as follows:—

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

32 and 33 Vic. cap. 46.

"In the administration of the estate of every person who shall die after the passing of this Act, all the creditors of every description of such person 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."

Devisee may require acknowledgment in lieu of conveyance.

21. Any person to whom any real estate may be devised by a will duly proved under the provisions of the Principal Act may require the executor of the said will, or the administrator with the will annexed, in lieu of executing a conveyance thereof, to sign an acknowledgment that such devisee is entitled under the said will to such real estate for the estate, for which the same is by the said will devised, freed from all claim for the debts of the testator, and thereupon such real estate shall become vested in such devisee for such estate as aforesaid. And if such real estate be held under the provisions of the Real Property Act, such devisee shall upon the production of such acknowledgment be entitled to a certificate of title in his own name under the said Act without the necessity of any application for transmission, but subject to any charges or encumbrances endorsed on the certificate of title.

Effect of such acknowledgment.

Effect of such acknowledgment under Real Property Act.

No stamp duty payable on conveyance from executor to devisee.

22. No stamp duty shall be payable upon any such acknowledgment, or upon any conveyance of land from such executor or administrator to the devisee.

Summary application for legacy, &c.

23. If the executor or administrator shall, upon request, neglect or refuse to sign such acknowledgment, or to execute a conveyance of land specifically devised to the devisee, or to pay or hand over to the person entitled any legacy or residuary bequest, such devisee or person may apply by summons to the Judge calling upon such executor or administrator to show cause why he should not comply with such request, and the Judge may make such order in the matter as he may think right.

Sydney: Charles Potter, Government Printer. -1892.

New South Wales.

ANNO QUINQUAGESIMO SEXTO

VICTORIÆ REGINÆ.

* *

No. XXX.

An Act to amend the "Probate Act of 1890"; and to give greater facilities for the issue of probate and letters of administration in small estates. [Assented to, 13th June, 1893.]

Preamble.

WHEREAS it is expedient to amend the "Probate Act of 1890," and to provide greater facilities for granting probate and letters of administration in small estates: 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:—

Short title.

1. This Act may be cited as the "Probate Act of 1890 Amendment Act."

PART I.

Distribution of Property under an Intestacy.

Interest of husband in intestate estate of wife.

2. Whereas doubts have arisen as to the construction of sections thirty-two and thirty-three of the "Probate Act of 1890," it is hereby declared that, subject to the provisions of this Act, the husband is entitled in the intestate estate of his wife only to the share or interest specified in section thirty-three, and the residue of the estate is divisible among the next of kin as in the case of the estate of a husband dying intestate and leaving a widow him surviving.

3.

Estates under £500 to go to husband or wife absolutely if no issue. 53 and 54 Vic., c. 29, sec. 1.

3. Where the net value of the real and personal property of an intestate dying without issue shall not exceed the sum of five hundred pounds, the whole of the said property shall pass to the husband or wife, if any, of such intestate, as the case may be.

In estates over £500 husband or wife to have a charge for £500 if no issue. *Ib.* sec. 2.

4. Where the net value of the real and personal property of an intestate dying without issue shall exceed the sum of five hundred pounds, the husband or wife, as the case may be, of such intestate shall be entitled to five hundred pounds part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal property for such five hundred pounds with interest thereon from the date of the death of such intestate at the rate of four pounds per centum per annum until payment.

Above provision to be in addition to share of residue. *Ib.* sec. 4.

5. The provision for the husband or wife intended to be made by section four of this Act shall be in addition and without prejudice to his or her interest and share in the residue of the real and personal property of such intestate remaining after the payment of the sum of five hundred pounds in the same way as if such residue had been the whole of such intestate's real and personal estate, and this Act had not been passed.

Net value. *Ib.* sec. 6.

6. The net value of such real and personal property as aforesaid, shall be ascertained by deducting from the gross value thereof all debts, funeral and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said real and personal property shall be subject.

In estates under £500 Judge may authorise the expenditure of infant's share in maintenance, &c.

7. Where the net value of the real and personal property of an intestate leaving infant issue shall not exceed five hundred pounds, the Judge may, on the petition of such infants, or any of them, or of any person on their behalf, authorise the administrator of the estate to expend the whole or any portion of the share of such infants, or any of them, in their respective maintenance, advancement, or education, and such authority may be given in respect of the infant issue of intestates who died before the passing of this Act.

PART II.

Probate and Administration of Small Estates.

District Agents to receive applications in estates under £500.

8. For the purpose of receiving applications for probate or administration under this Act, the Judge may appoint such person as he may think fit in any town beyond thirty miles from Sydney, where a District Court is held, to act as District Agent for the Registrar of Probates.

Power to administer oaths.

9. All District Agents may for the purposes of this Act administer oaths and take declarations and affirmations, and exercise any other powers which can be exercised by Commissioners of the Supreme Court; and applicants under this Act may be sworn, and may execute all necessary documents before a Commissioner of the Supreme Court.

Stamp Duties Act not to apply.

10. The provisions of the "Stamp Duties Act Amendment Act of 1886" shall not apply to estates of deceased persons shown not to exceed two hundred pounds gross value.

11. In all cases where a person shall die leaving property not exceeding three hundred pounds in value, application for probate or administration may be made direct to the Registrar; or, if the fixed abode of the deceased at the time of his death shall have been more than thirty miles from Sydney, then to the District Agent for the Registrar nearest to such place of abode. Application to be made direct to Registrar or to District Agent.

12. The Registrar or District Agent shall, upon being satisfied as to the identity and the right of the applicant to administer the estate of the deceased and the value of the estate, furnish him with all necessary information for the purpose of enabling him to fill up the advertisements, affidavits, and documents necessary for obtaining probate or letters of administration, as the case may be, and may swear the applicant and every deponent, and attest the execution of the adminstration bond, and shall receive payment of all proper fees fixed or to be fixed by rule of the Supreme Court in connection with the application. Duties of Registrar or District Agent.

13. The District Agent shall forthwith transmit to the Registrar all affidavits, documents, and fees received by him, and upon receipt of the probate or letters of administration shall deliver the same to the applicant upon demand. District Agent to send all papers to Registrar.

14. The Registrar shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed three hundred pounds in value, and that no caveat has been entered against the application, and that no will has been deposited with the Registrar-General (search for which it shall be his duty to make), and that the fees have been duly paid, cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand, or shall forward the same to the District Agent, for delivery by him to the applicant, and such probate or letters of administration shall be issued in the name and under the seal of the Court. Registrar to issue probate or administration in the name of the Court.

15. In any case where the Registrar is not satisfied as aforesaid, he shall state the matters in respect of which he is not satisfied either to the applicant or to the District Agent transmitting the application, and such Agent shall then inform the applicant accordingly, and shall take such further steps as may be proper to enable the applicant to satisfy the Registrar in respect of such matters. Where Registrar not satisfied with the material before him.

16. In no case shall the Registrar be under any obligation by reason of this Act to deal with any application which he may think proper to be dealt with by the Judge, or to be placed in the hands of an attorney, solicitor, or proctor. Registrar not bound to grant probate in certain cases.

PART III.

General Matters.

17. A caveat may be withdrawn at any time with the leave of the Judge, subject to such order as to costs or otherwise as he may direct, and the person applying for probate or administration may, if he think fit, summon the caveator to attend before the Judge to show cause why the caveat should not be removed, and it shall be lawful for the Judge on proof that the caveator has been summoned, to make such order in the premises or otherwise as may seem fit. Caveats.

18. 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 To whom administration may be granted

age of twenty-one years. And in case there shall be no such person, or no such person within the jurisdiction of the Court, 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.

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

32 and 33 Vic. cap. 46.

19. In the administration of the estate of every person who shall die after the passing of this Act, all the creditors of every description of such person 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: Provided further that nothing herein contained shall affect the provisions of any Acts protecting life assurance or other policies against creditors.

Executor may sign acknowledgment in lieu of conveyance.

20. When any real estate not under the provisions of the "Real Property Act" is devised to any person by a will duly proved under the provisions of the "Probate Act of 1890," the executor of the will or the administrator with the will annexed may, as such executor or administrator, instead of executing a conveyance, sign an acknowledgment in a form to be prescribed by rule of the Supreme Court hereby authorised to be made in that behalf, that the devisee is entitled to such real estate for the estate for which the same is devised to him, which acknowledgment may be registered under the Acts in force regulating the registration of deeds; and upon registration of such acknowledgment as aforesaid such real estate shall vest in the devisee for such estate as aforesaid in the same way and subject to the same trusts and liabilities as if the executor or administrator had executed a conveyance of the same.

Summary application for legacy, &c.

21. If the executor or administrator shall, after request in writing, neglect or refuse to sign such acknowledgment, or to execute a conveyance of land devised to the devisee, or to pay or hand over to the person entitled any legacy or residuary bequest, such devisee or person may apply by summons to the Judge calling upon such executor or administrator to show cause why he should not comply with such request, and the Judge may make such order in the matter as he may think right.

Surety may apply to the Court for relief.

22. If upon motion by a surety to an administration bond it appear to the Probate Judge that the estate is being wasted, or is in danger of being wasted, or that the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or default of the person administering the estate, the said Judge may grant such relief as he may think fit, and for the purpose of making such relief effectual may have and exercise all the powers and jurisdiction of a Court of Equity.

Property to vest in Chief Justice till probate or administration with will annexed.

23. From and after the decease of any person dying testate and until probate or letters of administration with the will annexed shall be granted in respect of his estate his real and personal estate shall vest as is provided by section thirty-nine of the "Probate Act of 1890," in the case of persons dying intestate.

Claims barred against executor or administrator in certain cases.

24. When an executor or administrator has given notice in accordance with section twenty-nine of the "Trust Property Act of 1862," and a claim against the estate is sent in to him, he may, if he dispute the claim, serve upon the person by whom or on whose behalf the claim was sent in a notice calling upon him to take proceedings to enforce his claim within a period of six months, and to duly prosecute the same, and if after the said period of six months

months has expired such person as aforesaid does not satisfy the Court that he is duly prosecuting his claim, the Court may, on application by the executor or administrator, make an order barring the claim against the executor or administrator, subject to such conditions as may seem just, or may make such other order as the Court may think fit: Provided that nothing in this section shall prejudice the right of any creditor or claimant to follow the estate or any part thereof into the hands of any person who may have received the same.

To be read with "Probate Act of 1890."

25. This Act shall be read with and form part of the "Probate Act of 1890."

Sec. 16, Probate Act amended.

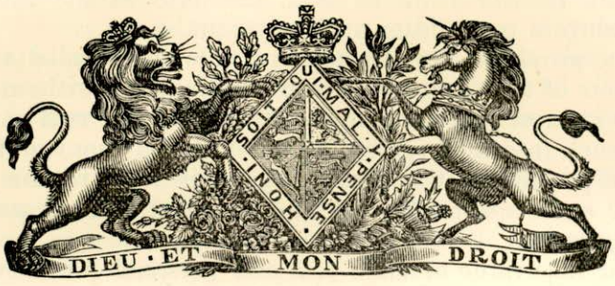
26. Section sixteen of the "Probate Act of 1890" is amended by substituting the word fifteenth for the word thirteenth.

Repeal.

27. Sections twenty-six and fifty-three of the "Probate Act of 1890" are hereby repealed.

By Authority: CHARLES POTTER, Government Printer, Sydney, 1893.

[6*d*.]



New South Wales.

ANNO QUINQUAGESIMO SEXTO

VICTORIÆ REGINÆ.

* *

No. XXX.

An Act to amend the "Probate Act of 1890"; and to give greater facilities for the issue of probate and letters of administration in small estates. [Assented to, 13th June, 1893.]

Preamble.

WHEREAS it is expedient to amend the "Probate Act of 1890," and to provide greater facilities for granting probate and letters of administration in small estates: 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:—

Short title.

1. This Act may be cited as the "Probate Act of 1890 Amendment Act."

PART I.

Distribution of Property under an Intestacy.

Interest of husband in intestate estate of wife.

2. Whereas doubts have arisen as to the construction of sections thirty-two and thirty-three of the "Probate Act of 1890," it is hereby declared that, subject to the provisions of this Act, the husband is entitled in the intestate estate of his wife only to the share or interest specified in section thirty-three, and the residue of the estate is divisible among the next of kin as in the case of the estate of a husband dying intestate and leaving a widow him surviving.

3.

Estates under £500 to go to husband or wife absolutely if no issue. 53 and 54 Vic., c. 29, sec. 1.

3. Where the net value of the real and personal property of an intestate dying without issue shall not exceed the sum of five hundred pounds, the whole of the said property shall pass to the husband or wife, if any, of such intestate, as the case may be.

In estates over £500 husband or wife to have a charge for £500 if no issue. *Ib.* sec. 2.

4. Where the net value of the real and personal property of an intestate dying without issue shall exceed the sum of five hundred pounds, the husband or wife, as the case may be, of such intestate shall be entitled to five hundred pounds part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal property for such five hundred pounds with interest thereon from the date of the death of such intestate at the rate of four pounds per centum per annum until payment.

Above provision to be in addition to share of residue. *Ib.* sec. 4.

5. The provision for the husband or wife intended to be made by section four of this Act shall be in addition and without prejudice to his or her interest and share in the residue of the real and personal property of such intestate remaining after the payment of the sum of five hundred pounds in the same way as if such residue had been the whole of such intestate's real and personal estate, and this Act had not been passed.

Net value. *Ib.* sec. 6.

6. The net value of such real and personal property as aforesaid, shall be ascertained by deducting from the gross value thereof all debts, funeral and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said real and personal property shall be subject.

In estates under £500 Judge may authorise the expenditure of infant's share in maintenance, &c.

7. Where the net value of the real and personal property of an intestate leaving infant issue shall not exceed five hundred pounds, the Judge may, on the petition of such infants, or any of them, or of any person on their behalf, authorise the administrator of the estate to expend the whole or any portion of the share of such infants, or any of them, in their respective maintenance, advancement, or education, and such authority may be given in respect of the infant issue of intestates who died before the passing of this Act.

PART II.

Probate and Administration of Small Estates.

District Agents to receive applications in estates under £500.

8. For the purpose of receiving applications for probate or administration under this Act, the Judge may appoint such person as he may think fit in any town beyond thirty miles from Sydney, where a District Court is held, to act as District Agent for the Registrar of Probates.

Power to administer oaths.

9. All District Agents may for the purposes of this Act administer oaths and take declarations and affirmations, and exercise any other powers which can be exercised by Commissioners of the Supreme Court; and applicants under this Act may be sworn, and may execute all necessary documents before a Commissioner of the Supreme Court.

Stamp Duties Act not to apply.

10. The provisions of the "Stamp Duties Act Amendment Act of 1886" shall not apply to estates of deceased persons shown not to exceed two hundred pounds gross value.

11. In all cases where a person shall die leaving property not exceeding three hundred pounds in value, application for probate or administration may be made direct to the Registrar; or, if the fixed abode of the deceased at the time of his death shall have been more than thirty miles from Sydney, then to the District Agent for the Registrar nearest to such place of abode.

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12. The Registrar or District Agent shall, upon being satisfied as to the identity and the right of the applicant to administer the estate of the deceased and the value of the estate, furnish him with all necessary information for the purpose of enabling him to fill up the advertisements, affidavits, and documents necessary for obtaining probate or letters of administration, as the case may be, and may swear the applicant and every deponent, and attest the execution of the adminstration bond, and shall receive payment of all proper fees fixed or to be fixed by rule of the Supreme Court in connection with the application.

Duties of Registrar or District Agent.

13. The District Agent shall forthwith transmit to the Registrar all affidavits, documents, and fees received by him, and upon receipt of the probate or letters of administration shall deliver the same to the applicant upon demand.

District Agent to send all papers to Registrar.

14. The Registrar shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed three hundred pounds in value, and that no caveat has been entered against the application, and that no will has been deposited with the Registrar-General (search for which it shall be his duty to make), and that the fees have been duly paid, cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand, or shall forward the same to the District Agent, for delivery by him to the applicant, and such probate or letters of administration shall be issued in the name and under the seal of the Court.

Registrar to issue probate or administration in the name of the Court.

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Caveats.

18. 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

To whom administration may be granted

age of twenty-one years. And in case there shall be no such person, or no such person within the jurisdiction of the Court, 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.

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

32 and 33 Vic. cap. 46.

19. In the administration of the estate of every person who shall die after the passing of this Act, all the creditors of every description of such person 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: Provided further that nothing herein contained shall affect the provisions of any Acts protecting life assurance or other policies against creditors.

Executor may sign acknowledgment in lieu of conveyance.

20. When any real estate not under the provisions of the "Real Property Act" is devised to any person by a will duly proved under the provisions of the "Probate Act of 1890," the executor of the will or the administrator with the will annexed may, as such executor or administrator, instead of executing a conveyance, sign an acknowledgment in a form to be prescribed by rule of the Supreme Court hereby authorised to be made in that behalf, that the devisee is entitled to such real estate for the estate for which the same is devised to him, which acknowledgment may be registered under the Acts in force regulating the registration of deeds; and upon registration of such acknowledgment as aforesaid such real estate shall vest in the devisee for such estate as aforesaid in the same way and subject to the same trusts and liabilities as if the executor or administrator had executed a conveyance of the same.

Summary application for legacy, &c.

21. If the executor or administrator shall, after request in writing, neglect or refuse to sign such acknowledgment, or to execute a conveyance of land devised to the devisee, or to pay or hand over to the person entitled any legacy or residuary bequest, such devisee or person may apply by summons to the Judge calling upon such executor or administrator to show cause why he should not comply with such request, and the Judge may make such order in the matter as he may think right.

Surety may apply to the Court for relief.

22. If upon motion by a surety to an administration bond it appear to the Probate Judge that the estate is being wasted, or is in danger of being wasted, or that the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or default of the person administering the estate, the said Judge may grant such relief as he may think fit, and for the purpose of making such relief effectual may have and exercise all the powers and jurisdiction of a Court of Equity.

Property to vest in Chief Justice till probate or administration with will annexed.

23. From and after the decease of any person dying testate and until probate or letters of administration with the will annexed shall be granted in respect of his estate his real and personal estate shall vest as is provided by section thirty-nine of the "Probate Act of 1890," in the case of persons dying intestate.

Claims barred against executor or administrator in certain cases.

24. When an executor or administrator has given notice in accordance with section twenty-nine of the "Trust Property Act of 1862," and a claim against the estate is sent in to him, he may, if he dispute the claim, serve upon the person by whom or on whose behalf the claim was sent in a notice calling upon him to take proceedings to enforce his claim within a period of six months, and to duly prosecute the same, and if after the said period of six months

months has expired such person as aforesaid does not satisfy the Court that he is duly prosecuting his claim, the Court may, on application by the executor or administrator, make an order barring the claim against the executor or administrator, subject to such conditions as may seem just, or may make such other order as the Court may think fit: Provided that nothing in this section shall prejudice the right of any creditor or claimant to follow the estate or any part thereof into the hands of any person who may have received the same.

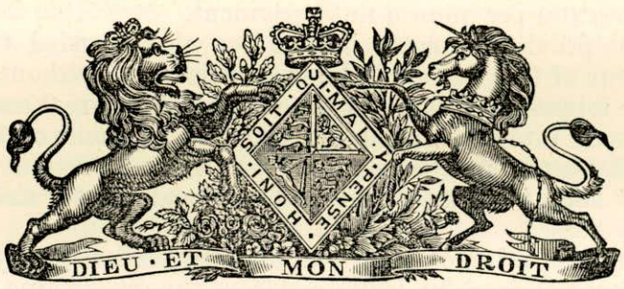
25. This Act shall be read with and form part of the "Probate Act of 1890." To be read with "Probate Act of 1890."

26. Section sixteen of the "Probate Act of 1890" is amended by substituting the word fifteenth for the word thirteenth. Sec. 16, Probate Act amended.

27. Sections twenty-six and fifty-three of the "Probate Act of 1890" are hereby repealed. Repeal.

By Authority: CHARLES POTTER, Government Printer, Sydney, 1893.

[6*d*.]



I Certify that this PUBLIC BILL, *which originated in the* LEGISLATIVE COUNCIL, *has finally passed the* LEGISLATIVE COUNCIL *and the* LEGISLATIVE ASSEMBLY *of* NEW SOUTH WALES.

Legislative Council Chamber,
Sydney, 9th June, 1893.

ADOLPHUS P. CLAPIN,
Acting Clerk of the Parliaments.

New South Wales.

ANNO QUINQUAGESIMO SEXTO

VICTORIÆ REGINÆ.

* * *

No. XXX.

An Act to amend the "Probate Act of 1890"; and to give greater facilities for the issue of probate and letters of administration in small estates. [Assented to, 13th June, 1893.]

Preamble. WHEREAS it is expedient to amend the "Probate Act of 1890," and to provide greater facilities for granting probate and letters of administration in small estates: 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:—

Short title. 1. This Act may be cited as the "Probate Act of 1890 Amendment Act."

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Interest of husband in intestate estate of wife. 2. Whereas doubts have arisen as to the construction of sections thirty-two and thirty-three of the "Probate Act of 1890," it is hereby declared that, subject to the provisions of this Act, the husband is entitled in the intestate estate of his wife only to the share or interest specified in section thirty-three, and the residue of the estate is divisible among the next of kin as in the case of the estate of a husband dying intestate and leaving a widow him surviving.

3.

Estates under £500 to go to husband or wife absolutely if no issue. 53 and 54 Vic., c. 29, sec. 1.

3. Where the net value of the real and personal property of an intestate dying without issue shall not exceed the sum of five hundred pounds, the whole of the said property shall pass to the husband or wife, if any, of such intestate, as the case may be.

In estates over £500 husband or wife to have a charge for £500 if no issue. *Ib.* sec. 2.

4. Where the net value of the real and personal property of an intestate dying without issue shall exceed the sum of five hundred pounds, the husband or wife, as the case may be, of such intestate shall be entitled to five hundred pounds part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal property for such five hundred pounds with interest thereon from the date of the death of such intestate at the rate of four pounds per centum per annum until payment.

Above provision to be in addition to share of residue. *Ib.* sec. 4.

5. The provision for the husband or wife intended to be made by section four of this Act shall be in addition and without prejudice to his or her interest and share in the residue of the real and personal property of such intestate remaining after the payment of the sum of five hundred pounds in the same way as if such residue had been the whole of such intestate's real and personal estate, and this Act had not been passed.

Net value. *Ib.* sec. 6.

6. The net value of such real and personal property as aforesaid, shall be ascertained by deducting from the gross value thereof all debts, funeral and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said real and personal property shall be subject.

In estates under £500 Judge may authorise the expenditure of infant's share in maintenance, &c.

7. Where the net value of the real and personal property of an intestate leaving infant issue shall not exceed five hundred pounds, the Judge may, on the petition of such infants, or any of them, or of any person on their behalf, authorise the administrator of the estate to expend the whole or any portion of the share of such infants, or any of them, in their respective maintenance, advancement, or education, and such authority may be given in respect of the infant issue of intestates who died before the passing of this Act.

PART II.

Probate and Administration of Small Estates.

District Agents to receive applications in estates under £500.

8. For the purpose of receiving applications for probate or administration under this Act, the Judge may appoint such person as he may think fit in any town beyond thirty miles from Sydney, where a District Court is held, to act as District Agent for the Registrar of Probates.

Power to administer oaths.

9. All District Agents may for the purposes of this Act administer oaths and take declarations and affirmations, and exercise any other powers which can be exercised by Commissioners of the Supreme Court; and applicants under this Act may be sworn, and may execute all necessary documents before a Commissioner of the Supreme Court.

Stamp Duties Act not to apply.

10. The provisions of the "Stamp Duties Act Amendment Act of 1886" shall not apply to estates of deceased persons shown not to exceed two hundred pounds gross value.

11. In all cases where a person shall die leaving property not exceeding three hundred pounds in value, application for probate or administration may be made direct to the Registrar; or, if the fixed abode of the deceased at the time of his death shall have been more than thirty miles from Sydney, then to the District Agent for the Registrar nearest to such place of abode. Application to be made direct to Registrar or to District Agent.

12. The Registrar or District Agent shall, upon being satisfied as to the identity and the right of the applicant to administer the estate of the deceased and the value of the estate, furnish him with all necessary information for the purpose of enabling him to fill up the advertisements, affidavits, and documents necessary for obtaining probate or letters of administration, as the case may be, and may swear the applicant and every deponent, and attest the execution of the adminstration bond, and shall receive payment of all proper fees fixed or to be fixed by rule of the Supreme Court in connection with the application. Duties of Registrar or District Agent.

13. The District Agent shall forthwith transmit to the Registrar all affidavits, documents, and fees received by him, and upon receipt of the probate or letters of administration shall deliver the same to the applicant upon demand. District Agent to send all papers to Registrar.

14. The Registrar shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed three hundred pounds in value, and that no caveat has been entered against the application, and that no will has been deposited with the Registrar-General (search for which it shall be his duty to make), and that the fees have been duly paid, cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand, or shall forward the same to the District Agent, for delivery by him to the applicant, and such probate or letters of administration shall be issued in the name and under the seal of the Court. Registrar to issue probate or administration in the name of the Court.

15. In any case where the Registrar is not satisfied as aforesaid, he shall state the matters in respect of which he is not satisfied either to the applicant or to the District Agent transmitting the application, and such Agent shall then inform the applicant accordingly, and shall take such further steps as may be proper to enable the applicant to satisfy the Registrar in respect of such matters. Where Registrar not satisfied with the material before him.

16. In no case shall the Registrar be under any obligation by reason of this Act to deal with any application which he may think proper to be dealt with by the Judge, or to be placed in the hands of an attorney, solicitor, or proctor. Registrar not bound to grant probate in certain cases.

PART III.

General Matters.

17. A caveat may be withdrawn at any time with the leave of the Judge, subject to such order as to costs or otherwise as he may direct, and the person applying for probate or administration may, if he think fit, summon the caveator to attend before the Judge to show cause why the caveat should not be removed, and it shall be lawful for the Judge on proof that the caveator has been summoned, to make such order in the premises or otherwise as may seem fit. Caveats.

18. 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 To whom administration may be granted.

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age of twenty-one years. And in case there shall be no such person, or no such person within the jurisdiction of the Court, 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.

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

32 and 33 Vic. cap. 46.

19. In the administration of the estate of every person who shall die after the passing of this Act, all the creditors of every description of such person 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: Provided further that nothing herein contained shall affect the provisions of any Acts protecting life assurance or other policies against creditors.

Executor may sign acknowledgment in lieu of conveyance.

20. When any real estate not under the provisions of the "Real Property Act" is devised to any person by a will duly proved under the provisions of the "Probate Act of 1890," the executor of the will or the administrator with the will annexed may, as such executor or administrator, instead of executing a conveyance, sign an acknowledgment in a form to be prescribed by rule of the Supreme Court hereby authorised to be made in that behalf, that the devisee is entitled to such real estate for the estate for which the same is devised to him, which acknowledgment may be registered under the Acts in force regulating the registration of deeds; and upon registration of such acknowledgment as aforesaid such real estate shall vest in the devisee for such estate as aforesaid in the same way and subject to the same trusts and liabilities as if the executor or administrator had executed a conveyance of the same.

Summary application for legacy, &c.

21. If the executor or administrator shall, after request in writing, neglect or refuse to sign such acknowledgment, or to execute a conveyance of land devised to the devisee, or to pay or hand over to the person entitled any legacy or residuary bequest, such devisee or person may apply by summons to the Judge calling upon such executor or administrator to show cause why he should not comply with such request, and the Judge may make such order in the matter as he may think right.

Surety may apply to the Court for relief.

22. If upon motion by a surety to an administration bond it appear to the Probate Judge that the estate is being wasted, or is in danger of being wasted, or that the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or default of the person administering the estate, the said Judge may grant such relief as he may think fit, and for the purpose of making such relief effectual may have and exercise all the powers and jurisdiction of a Court of Equity.

Property to vest in Chief Justice till probate or administration with will annexed.

23. From and after the decease of any person dying testate and until probate or letters of administration with the will annexed shall be granted in respect of his estate his real and personal estate shall vest as is provided by section thirty-nine of the "Probate Act of 1890," in the case of persons dying intestate.

Claims barred against executor or administrator in certain cases.

24. When an executor or administrator has given notice in accordance with section twenty-nine of the "Trust Property Act of 1862," and a claim against the estate is sent in to him, he may, if he dispute the claim, serve upon the person by whom or on whose behalf the claim was sent in a notice calling upon him to take proceedings to enforce his claim within a period of six months, and to duly prosecute the same, and if after the said period of six months

months has expired such person as aforesaid does not satisfy the Court that he is duly prosecuting his claim, the Court may, on application by the executor or administrator, make an order barring the claim against the executor or administrator, subject to such conditions as may seem just, or may make such other order as the Court may think fit: Provided that nothing in this section shall prejudice the right of any creditor or claimant to follow the estate or any part thereof into the hands of any person who may have received the same.

25. This Act shall be read with and form part of the "Probate Act of 1890." To be read with "Probate Act of 1890."

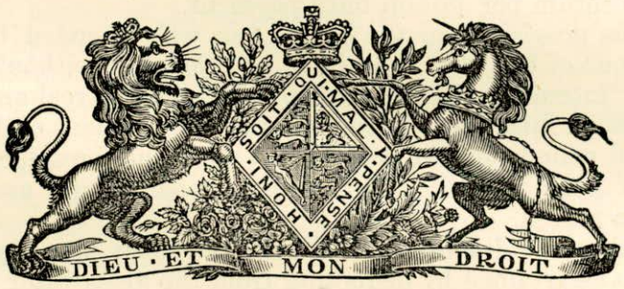
26. Section sixteen of the "Probate Act of 1890" is amended by substituting the word fifteenth for the word thirteenth. Sec. 16, Probate Act amended.

27. Sections twenty-six and fifty-three of the "Probate Act of 1890" are hereby repealed. Repeal.

In the name and on the behalf of Her Majesty I assent to this Act.

R. W. DUFF.

Government House,
Sydney, 13*th June,* 1893.



I Certify that this PUBLIC BILL, *which originated in the* LEGISLATIVE COUNCIL, *has finally passed the* LEGISLATIVE COUNCIL *and the* LEGISLATIVE ASSEMBLY *of* NEW SOUTH WALES.

Legislative Council Chamber,
Sydney, 9th June, 1893.

ADOLPHUS P. CLAPIN,
Acting Clerk of the Parliaments.

New South Wales.

ANNO QUINQUAGESIMO SEXTO

VICTORIÆ REGINÆ.

* * *

No. XXX.

An Act to amend the "Probate Act of 1890"; and to give greater facilities for the issue of probate and letters of administration in small estates. [Assented to, 13th June, 1893.]

Preamble.

WHEREAS it is expedient to amend the "Probate Act of 1890," and to provide greater facilities for granting probate and letters of administration in small estates: 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:—

Short title.

1. This Act may be cited as the "Probate Act of 1890 Amendment Act."

PART I.

Distribution of Property under an Intestacy.

Interest of husband in intestate estate of wife.

2. Whereas doubts have arisen as to the construction of sections thirty-two and thirty-three of the "Probate Act of 1890," it is hereby declared that, subject to the provisions of this Act, the husband is entitled in the intestate estate of his wife only to the share or interest specified in section thirty-three, and the residue of the estate is divisible among the next of kin as in the case of the estate of a husband dying intestate and leaving a widow him surviving.

3.

Estates under £500 to go to husband or wife absolutely if no issue. 53 and 54 Vic., c. 29, sec. 1.

3. Where the net value of the real and personal property of an intestate dying without issue shall not exceed the sum of five hundred pounds, the whole of the said property shall pass to the husband or wife, if any, of such intestate, as the case may be.

In estates over £500 husband or wife to have a charge for £500 if no issue. *Ib.* sec. 2.

4. Where the net value of the real and personal property of an intestate dying without issue shall exceed the sum of five hundred pounds, the husband or wife, as the case may be, of such intestate shall be entitled to five hundred pounds part thereof absolutely and exclusively, and shall have a charge upon the whole of such real and personal property for such five hundred pounds with interest thereon from the date of the death of such intestate at the rate of four pounds per centum per annum until payment.

Above provision to be in addition to share of residue. *Ib.* sec. 4.

5. The provision for the husband or wife intended to be made by section four of this Act shall be in addition and without prejudice to his or her interest and share in the residue of the real and personal property of such intestate remaining after the payment of the sum of five hundred pounds in the same way as if such residue had been the whole of such intestate's real and personal estate, and this Act had not been passed.

Net value. *Ib.* sec. 6.

6. The net value of such real and personal property as aforesaid, shall be ascertained by deducting from the gross value thereof all debts, funeral and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said real and personal property shall be subject.

In estates under £500 Judge may authorise the expenditure of infant's share in maintenance, &c.

7. Where the net value of the real and personal property of an intestate leaving infant issue shall not exceed five hundred pounds, the Judge may, on the petition of such infants, or any of them, or of any person on their behalf, authorise the administrator of the estate to expend the whole or any portion of the share of such infants, or any of them, in their respective maintenance, advancement, or education, and such authority may be given in respect of the infant issue of intestates who died before the passing of this Act.

PART II.

Probate and Administration of Small Estates.

District Agents to receive applications in estates under £500.

8. For the purpose of receiving applications for probate or administration under this Act, the Judge may appoint such person as he may think fit in any town beyond thirty miles from Sydney, where a District Court is held, to act as District Agent for the Registrar of Probates.

Power to administer oaths.

9. All District Agents may for the purposes of this Act administer oaths and take declarations and affirmations, and exercise any other powers which can be exercised by Commissioners of the Supreme Court; and applicants under this Act may be sworn, and may execute all necessary documents before a Commissioner of the Supreme Court.

Stamp Duties Act not to apply.

10. The provisions of the "Stamp Duties Act Amendment Act of 1886" shall not apply to estates of deceased persons shown not to exceed two hundred pounds gross value.

11. In all cases where a person shall die leaving property not exceeding three hundred pounds in value, application for probate or administration may be made direct to the Registrar; or, if the fixed abode of the deceased at the time of his death shall have been more than thirty miles from Sydney, then to the District Agent for the Registrar nearest to such place of abode. Application to be made direct to Registrar or to District Agent.

12. The Registrar or District Agent shall, upon being satisfied as to the identity and the right of the applicant to administer the estate of the deceased and the value of the estate, furnish him with all necessary information for the purpose of enabling him to fill up the advertisements, affidavits, and documents necessary for obtaining probate or letters of administration, as the case may be, and may swear the applicant and every deponent, and attest the execution of the adminstration bond, and shall receive payment of all proper fees fixed or to be fixed by rule of the Supreme Court in connection with the application. Duties of Registrar or District Agent.

13. The District Agent shall forthwith transmit to the Registrar all affidavits, documents, and fees received by him, and upon receipt of the probate or letters of administration shall deliver the same to the applicant upon demand. District Agent to send all papers to Registrar.

14. The Registrar shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed three hundred pounds in value, and that no caveat has been entered against the application, and that no will has been deposited with the Registrar-General (search for which it shall be his duty to make), and that the fees have been duly paid, cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand, or shall forward the same to the District Agent, for delivery by him to the applicant, and such probate or letters of administration shall be issued in the name and under the seal of the Court. Registrar to issue probate or administration in the name of the Court.

15. In any case where the Registrar is not satisfied as aforesaid, he shall state the matters in respect of which he is not satisfied either to the applicant or to the District Agent transmitting the application, and such Agent shall then inform the applicant accordingly, and shall take such further steps as may be proper to enable the applicant to satisfy the Registrar in respect of such matters. Where Registrar not satisfied with the material before him.

16. In no case shall the Registrar be under any obligation by reason of this Act to deal with any application which he may think proper to be dealt with by the Judge, or to be placed in the hands of an attorney, solicitor, or proctor. Registrar not bound to grant probate in certain cases.

PART III.

General Matters.

17. A caveat may be withdrawn at any time with the leave of the Judge, subject to such order as to costs or otherwise as he may direct, and the person applying for probate or administration may, if he think fit, summon the caveator to attend before the Judge to show cause why the caveat should not be removed, and it shall be lawful for the Judge on proof that the caveator has been summoned, to make such order in the premises or otherwise as may seem fit. Caveats.

18. 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 To whom administration may be granted.

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age of twenty-one years. And in case there shall be no such person, or no such person within the jurisdiction of the Court, 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.

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

32 and 33 Vic. cap. 46.

19. In the administration of the estate of every person who shall die after the passing of this Act, all the creditors of every description of such person 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: Provided further that nothing herein contained shall affect the provisions of any Acts protecting life assurance or other policies against creditors.

Executor may sign acknowledgment in lieu of conveyance.

20. When any real estate not under the provisions of the "Real Property Act" is devised to any person by a will duly proved under the provisions of the "Probate Act of 1890," the executor of the will or the administrator with the will annexed may, as such executor or administrator, instead of executing a conveyance, sign an acknowledgment in a form to be prescribed by rule of the Supreme Court hereby authorised to be made in that behalf, that the devisee is entitled to such real estate for the estate for which the same is devised to him, which acknowledgment may be registered under the Acts in force regulating the registration of deeds; and upon registration of such acknowledgment as aforesaid such real estate shall vest in the devisee for such estate as aforesaid in the same way and subject to the same trusts and liabilities as if the executor or administrator had executed a conveyance of the same.

Summary application for legacy, &c.

21. If the executor or administrator shall, after request in writing, neglect or refuse to sign such acknowledgment, or to execute a conveyance of land devised to the devisee, or to pay or hand over to the person entitled any legacy or residuary bequest, such devisee or person may apply by summons to the Judge calling upon such executor or administrator to show cause why he should not comply with such request, and the Judge may make such order in the matter as he may think right.

Surety may apply to the Court for relief.

22. If upon motion by a surety to an administration bond it appear to the Probate Judge that the estate is being wasted, or is in danger of being wasted, or that the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or default of the person administering the estate, the said Judge may grant such relief as he may think fit, and for the purpose of making such relief effectual may have and exercise all the powers and jurisdiction of a Court of Equity.

Property to vest in Chief Justice till probate or administration with will annexed.

23. From and after the decease of any person dying testate and until probate or letters of administration with the will annexed shall be granted in respect of his estate his real and personal estate shall vest as is provided by section thirty-nine of the "Probate Act of 1890," in the case of persons dying intestate.

Claims barred against executor or administrator in certain cases.

24. When an executor or administrator has given notice in accordance with section twenty-nine of the "Trust Property Act of 1862," and a claim against the estate is sent in to him, he may, if he dispute the claim, serve upon the person by whom or on whose behalf the claim was sent in a notice calling upon him to take proceedings to enforce his claim within a period of six months, and to duly prosecute the same, and if after the said period of six months

months has expired such person as aforesaid does not satisfy the Court that he is duly prosecuting his claim, the Court may, on application by the executor or administrator, make an order barring the claim against the executor or administrator, subject to such conditions as may seem just, or may make such other order as the Court may think fit: Provided that nothing in this section shall prejudice the right of any creditor or claimant to follow the estate or any part thereof into the hands of any person who may have received the same.

25. This Act shall be read with and form part of the "Probate Act of 1890." To be read with "Probate Act of 1890."

26. Section sixteen of the "Probate Act of 1890" is amended by substituting the word fifteenth for the word thirteenth. Sec. 16, Probate Act amended.

27. Sections twenty-six and fifty-three of the "Probate Act of 1890" are hereby repealed. Repeal.

In the name and on the behalf of Her Majesty I assent to this Act.

R. W. DUFF.

Government House,
Sydney, 13*th June,* 1893.