

## Memo. and Certificate to accompany Wills, Probate and Administration Bill.

This Bill consolidates the following Acts.—

- 11 Geo. IV and 1 Wm. IV, c. 40. An English Statute as to Wills adopted in N.S.W. by the Act 5 Wm. IV, No. 8.
- 1 Vic. c. 26. An English Statute amending the law as to Wills, and adopted in N.S.W. by the Act 3 Victoria No. 5.
- 17 Vic. No. 5. An Act amending the law as to Wills.
- 26 Vic. No. 12. The Trust Property Act of 1862, sections 27, 28, 29, 65.
- 54 Vic. No. 25. The Probate Act of 1890.
- 56 Vic. No. 30. Amending the Probate Act of 1890.

This has been an important piece of work requiring much care and consideration.

In clauses 30 and 31 the phrase "Rules of Court" has been substituted for the phrase "Rules and Regulations," as the Probate Act, 54 Victoria No. 25, sections 14 and 112, gives to the Judges of the Supreme Court the power to make rules. The expression "Rules of Court" has a definite meaning under the Interpretation Act.

In clause 39 the word "fit" has been omitted as unnecessary.

In clause 43 the power to make rules (which under section 14 of the Probate Act was entrusted to the Judges, *i.e.* to *all* the Judges) has been amended by adding the words "or any three of them," to agree with section 112 of the same Act. There appears to be no reason for the distinction, which was probably an oversight. The only rules in existence under sections 14 and 112 are by three judges.

In clause 44 the last words of section 15 of the Probate Act (54 Vic. No. 25) "and if there shall be more than one such executor shall vest in them as joint tenants in the same way as personal estate now vests" have been omitted as unnecessary.

Clause 46 consolidates sections 17 and 32 of the Probate Act. The former deals with executors, the latter with administrators. The former makes real estate assets in the hands of executors for payment of "duties and fees" as well as debts, and adds after the word "debts" the phrase "in the ordinary course of administration." Both of these were, apparently by inadvertence, omitted in section 32, and in this clause are now applied to both executors and administrators.

In clause 47 the words "or the administrator with the will annexed" have been added to the words in the Probate Act, being necessary to give effect to the provisions of sections 17 and 32.

In clause 57 a positive amendment has been ventured upon. The words "the application" have been substituted for the words "the petition," which appear in section 36 of the Probate Act. Both summons and motion are cheaper modes of application than petition. It seems unnecessary in small estates to render the more expensive course compulsory, and it would appear to be better to leave it to the Court itself to direct in what way it should be approached. To make the amendment complete the words "or the Probate Judge" have been added after "the Court," to make it clear that the application is to be made in an inexpensive way, in Chambers.

In clause 69 the word "estate" has been substituted for the word "effects," the latter appearing to be appropriate only to personal property, whereas it appears clear that realty was also intended to be included.

In clause 81 the provisions of section 52 of the Probate Act have been extended to proceedings against executors as well as administrators. The meaning of the section is a little obscure, but its intention is to save expense, and there seems no reason why it should not apply to both the classes mentioned.

In clause 110 the words "up to the morning of such application," which appear in section 67 of the Probate Act, have been omitted, as really tending to defeat the intention of the section and to give a possible opening to a dishonest applicant.

In clause 111 section 68 of the Probate Act has—with some verbal amendments—been reproduced, though there had been a temptation to leave it out as really unnecessary.

Section 109 of the Probate Act has been omitted as having been superseded by section 2 of the 55 Victoria No. 31. This follows the ruling of Mr. Justice A. H. Simpson.

In clause 155 the power to make rules has been extended to the whole of this Bill, though there is no such power under the Wills Act. The extension is only in form, the part of the Probate Act relating to the custody of Wills having in this Bill been placed in the part relating to Wills. No rules are required in relation to Wills except as to their custody, and the power will therefore be inoperative as to them.

Except a few trivial changes in the wording which do not affect the sense the above are the only alterations which have been made.

I certify that except as above set out this Bill solely consolidates and in no way alters, adds to; or amends the statutes herein consolidated.

CHAS. G. HEYDON,  
Commissioner for the Consolidation of the Statute Law.

THE OFFICE OF THE SECRETARY OF THE ARMY

WASHINGTON, D. C.

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THE OFFICE OF THE SECRETARY OF THE ARMY  
WASHINGTON, D. C.

# Wills, Probate and Administration Bill.

TABLE showing how the sections of Acts intended to be consolidated have been dealt with.

Section of Act.	Section of Bill.	Remarks.
5 WM. IV. No. 8 (ADOPTING 11 GEO. IV AND 1 WM. IV c. 40).		
1	49 (I), (II)	Inapplicable.
2	49 (III)	
3	.....	
3 VIC. No. 5.		
1	.....	Adopting 7 Wm. IV and 1 Vic. c. 26.
2	.....	Inapplicable.
7 WM. IV AND 1 VIC. c. 26.		
1	3	Omitting definitions contained in the Interpretation Bill.
2	.....	Repeal.
3	5 (I)	Inapplicable.
4	.....	
5	.....	
6	.....	
7	6	
8	5 (II)	
9	7	
10	9	
11	10	
12	.....	
13	11	Inapplicable.
14	12	
15	13	
16	14 (I)	
17	14 (II)	
18	15	
19	16	
20	17	
21	18	
22	19	
23	20	
24	21	
25	22	
26	23 (I)	
27	23 (II)	
28	24	
29	25	
30	26	
31	27	
32	28	
33	29	
34	4	Inapplicable. Obsolete.
35	.....	
36	.....	
17 VIC. No. 5.		
1	8	Validating.
2	.....	
3	.....	
26 VIC. No. 12.		
27	95, 96	Inapplicable.
28	95, 96	
29	93, 96	
65	97	
54 VIC. No. 25.		
1	3	Unnecessary.
2	.....	
3	.....	Unnecessary.
4	33	Unnecessary.
5	34	

Section of Act.	Section of Bill	Remarks.
54 Vic. No. 25.		
6	35	
7	36	
8	37, 2 (II)	
9	38	
10	39	
11	40	
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21	92	
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23	31	
24	32, 42 (III)	
25	62	
26	.....	Repealed, 56 Vic. No. 30, s. 27
27	.....	Validating.
28	64	
29	65	
30	66	
31	67	
32	44, 46, 49 (I)	
33	50, 52, 53	
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53	.....	Repealed, 56 Vic. No. 30, s. 27.
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62	157	
63	108	
64	109	
65	98	
66	146, 147, 150 (II)	
67	110	
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Section of Act.	Section of Bill.	Remarks.
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106	149	
107	151	
108	152	
109	.....	<i>Vide 55 Vic. No. 31.</i>
110	153	
111	155	
112	156	
Schedule.	Schedule 2.	
56 Vic. No. 30.		
1	.....	
2	50, 51	
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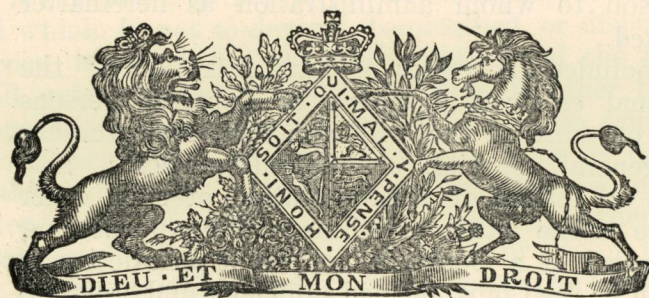
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This PUBLIC BILL originated in the LEGISLATIVE COUNCIL, and, having this day passed, is now ready for presentation to the LEGISLATIVE ASSEMBLY for its concurrence.

Legislative Council Chamber,  
Sydney, 28th October, 1897. }

JOHN J. CALVERT,  
Clerk of the Parliaments.

## New South Wales.



ANNO SEXAGESIMO PRIMO

# VICTORIÆ REGINÆ.

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No. . (A.D. 1897.)

An Act to consolidate enactments relating to Wills, Probate and Administration.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

5 1. This Act may be cited as the "Wills, Probate and Administration Act, 1897," and is divided into Parts and Divisions, as follows—

Short title, and division.

PART I.—*Wills*—ss. 4–32.

PART II.—*Probate and administration*—

10 DIVISION 1.—*Jurisdiction of the Supreme Court in probate jurisdiction, and appointment of officers*—ss. 33–43.

DIVISION 2.—*Estates of deceased persons*—ss. 44–61.

DIVISION 3.—*Probate and administration*—ss. 62–98.

DIVISION 4.—*Small estates*—ss. 99–107.

15 DIVISION 5.—*Foreign probates and letters of administration*—ss. 108–111.

DIVISION 6.—*Curator of intestate estates*—ss. 112–138.

DIVISION 7.—*Procedure*—ss. 139–152.

DIVISION 8.—*General matters*—ss. 153–157.

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2.

*Wills, Probate and Administration.*

2. (I) The Acts mentioned in the First Schedule to this Act to the extent therein expressed are hereby repealed.

Repeal.  
First Schedule.

(II) All persons appointed by virtue of the provisions of any Act hereby repealed and holding office at the time of the passing of this Act shall be deemed to have been appointed hereunder.

Offices under Acts hereby repealed.

(III) All rules of court made under the authority of any Act hereby repealed, and being in force at the passing of this Act, shall be deemed to have been made under the authority of this Act.

Rules of Court under Acts hereby repealed.

3. In this Act, unless the context or subject matter otherwise indicates or requires:—

Interpretation.  
3 Vic. No. 5, 7 Wm. IV, and 1 Vic., c. 26, s. 1. 54 Vic. No. 25, s. 1.

“Administrator” includes the curator of intestate estates and any other person to whom administration as hereinafter defined is granted.

“Administrator.”

“Administration” includes all letters of administration of the real and personal estate and effects of deceased persons whether with or without the will annexed, and whether granted for general, special, or limited purposes, also exemplification of letters of administration or such other formal evidence of the letters of administration purporting to be under the seal of a Court of competent jurisdiction as is in the opinion of the Court deemed sufficient, and orders to the Curator to collect.

“Administration.”

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

“Court.”

“Judge” or “Judges” means Judge or Judges of the Supreme Court of New South Wales.

“Judge.”

“Probate” includes “exemplification of probate” or any other formal document purporting to be under the seal of a court of competent jurisdiction which, in the opinion of the Court, is deemed sufficient.

“Probate.”

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

“Probate Judge.”

“Will” extends to a testament and to a codicil and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child by virtue of the Imperial Act twelfth Charles the Second, chapter twenty-four, and to any other testamentary disposition.

“Will.”

“Real estate” extends to messuages, lands, rents, and hereditaments, of freehold or any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein, and in part II hereof includes lands held under building leases or any lease for twenty-one years and upwards.

“Real estate.”

“Personal estate,” except in part II hereof as hereinbefore mentioned, extends to leasehold estates and other chattels real, and also to moneys, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which, prior to the coming into operation of the Real Estates of Intestates Distribution Act of 1862, commonly known as “Dr. Lang’s Act,” by law devolved upon the executor or administrator, and to any share or interest therein.

“Personal estate.”



*Wills, Probate and Administration.*

## PART I.

*Wills.*

4. This part of this Act shall not extend to any will made before the passing of this Act, and every will re-executed or re-published or revived by any codicil shall, for the purposes of this part of this Act, be deemed to have been made at the time at which the same is so re-executed, re-published, or revived, and this part of this Act shall not extend to any estate *pur autre vie* of any person dying before the passing of this Act.

To what wills and estates this Act shall not extend.  
7 Wm. IV, and  
1 Vic., c. 26, s. 34.

10 5. (I) Every person may devise, bequeath, or dispose of by his will, executed in manner hereinafter required, all real and personal estate which he is entitled to either at law or in equity at the time of his death, and which, if not so devised, bequeathed, or disposed of would devolve upon his executor or administrator, and the power hereby  
15 given shall extend to estates *pur autre vie*, whether there is or is not any special occupant thereof, and whether the same is freehold or of any other tenure, and whether the same is a corporeal or incorporeal hereditament, and also to all contingent executory or other  
20 future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will, and also to all rights of entry for conditions broken and other rights  
25 of entry, and also to such of the same estates, interests, and rights respectively, and other real and personal estate as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

All property may be disposed of by will.  
*Ibid.* s. 3.

30 (II) This section shall not be deemed to confer on a married woman any greater power to dispose of property by will than is provided by the Married Women's Property Act, 1893.

Married women.  
*Ibid.* s. 8.  
56 Vic. No. 11,  
ss. 1, 2.

6. No will made by any person under the age of twenty-one years shall be valid.

No will of a minor valid.  
*Ibid.* s. 7.

7. No will shall be valid unless it is in writing and executed in  
35 manner hereinafter mentioned, that is to say, it shall be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses  
40 present at the same time, and such witnesses shall attest and shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Every will to be in writing, and signed in the presence of two witnesses.  
*Ibid.* s. 9.

8. (I) Every will shall, so far only as regards the position of the signature of the testator or of the person signing for him as aforesaid, be deemed to be valid within the meaning of this part of this Act, if  
45 the signature shall be so placed at, or after, or following, or under, or beside, or opposite to the end of the will, that it shall be apparent, on the face of the will, that the testator intended to give effect by such his signature to the writing signed as his will, and no such will shall be affected by the circumstance—

When signature to a will shall be deemed valid.  
17 Vic. No. 5, s. 1.

50 (a) that the signature does not follow or be immediately after the foot or end of the will; or

(b) that a blank space intervenes between the concluding word of the will and the signature; or

55 (c) that the signature is placed among the words of the testimonium clause or of the clause of attestation, or follows, or is after, or under the clause of attestation, either with or without a blank space intervening, or follows, or is after, or under, or beside the names or one of the names of the subscribing witnesses; or  
(d)

*Wills, Probate and Administration.*

- (d) that the signature is on a side, or page, or other portion of the paper or papers containing the will whercon no clause or paragraph or disposing part of the will is written above the signature; or
- 5 (e) that there appears to be sufficient space on or at the bottom of the preceding side, or page, or other portion of the same paper on which the will is written to contain the signature.
- (II) The enumeration of the above circumstances shall not restrict the generality of the above enactment; but no signature under  
10 this part of this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.
9. No appointment made by will in exercise of any power  
15 shall be valid unless the same is executed in manner hereinbefore required, and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding it has been expressly required that a will made in exercise of such power  
20 should be executed with some additional or other form of execution or solemnity.
10. Any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the coming into operation of this Act.
- 25 11. Every will executed in manner hereinbefore required shall be valid without any other publication thereof.
12. If any person who attests the execution of a will is at the time of the execution thereof or at any time afterwards incompetent to be admitted a witness to prove the execution thereof such will shall  
30 not on that account be invalid.
13. If any person attests the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment of, or affecting any real or personal estate (other than and except charges and directions for the payment of any debt  
35 or debts) is thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will or the wife or husband of such person or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a  
40 witness to prove the execution of such will or to prove the validity or invalidity thereof notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.
14. (I) If by any will any real or personal estate is charged with any debts, and any creditor or the wife or husband of any creditor  
45 whose debt is so charged attests the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will or the validity or invalidity thereof.
- (II) No person shall on account of his being an executor of a will be incompetent to be admitted a witness to prove the execu-  
50 tion of such will or the validity or invalidity thereof.
15. Every will made by any person shall be revoked by his marriage (except a will made in exercise of a power of appointment when the real or personal estate thereby appointed would not, in default of such appointment, pass to his executor or administrator).
- 55 16. No will shall be revoked by any presumption of an intention on the ground of an alteration in circumstances.
17. No will or any part thereof shall be revoked otherwise than as aforesaid, or by another will executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same,  
and

Appointments by will to be executed like other wills, &c.  
7 Wm. IV, and 1 Vic., c. 26, s. 10.

Soldiers' and mariners' wills excepted.  
*Ibid.* s. 11.

Publication not to be requisite.  
*Ibid.* s. 13.

Will not void by incompetency of witness.  
*Ibid.* s. 14.

Gifts to an attesting witness to be void.  
*Ibid.* s. 15.

Creditor attesting to be admitted a witness.  
*Ibid.* s. 16.

Executor to be admitted a witness.  
*Ibid.* s. 17.

Will to be revoked by marriage.  
*Ibid.* s. 18.

No will to be revoked by presumption.  
*Ibid.* s. 19.

In what cases wills may be revoked.  
*Ibid.* s. 20.

*Wills, Probate and Administration.*

and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator or by some person in his presence and by his direction, with the intention of revoking the same.

5 18. No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration are not apparent, unless such alteration is executed in like manner as hereinbefore is required for the execution of a will, but the will, with  
10 such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses are made in the margin or on some other part of the will opposite or near to such alteration or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part  
15 of the will.

No alteration in a will shall have any effect unless executed as a will.

*Ibid.* s. 21.

19. No will or any part thereof which is in any manner revoked shall be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and showing an intention to revive the same, and when any will which is partly  
20 revoked and afterwards wholly revoked is revived, such revival shall not extend to so much thereof as has been revoked before the revocation of the whole thereof, unless an intention to the contrary is shown.

How revoked will shall be revived.

*Ibid.* s. 22.

20. No conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate  
25 therein comprised, except an act by which such will is revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator has power to dispose of by will at the time of his death.

When a devise not to be rendered inoperative, &c.

*Ibid.* s. 23.

21. Every will shall be construed with reference to the real  
30 and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention appears by the will.

A will to speak from the death of the testator.

*Ibid.* s. 24.

22. Unless a contrary intention appears by the will, such real  
35 estate or interest therein, as is comprised or intended to be comprised in any devise in such will contained, which fails or is void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

What a residuary devise shall include.

*Ibid.* s. 25.

40 23. (i) A devise of the land of the testator or of the land of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other  
45 general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the leasehold estates of the testator, or his leasehold estates, or any of them to which such description extends, as the case may be, as well as freehold estates, unless a contrary intention appears by the will.

What a general devise of land shall include.

*Ibid.* s. 26.

(ii) A general devise of the real estate of the testator, or of  
50 the real estate of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description extends (as the case may be), which he may have power to appoint in any manner he may think proper,  
55 and shall operate as an execution of such power, unless a contrary intention appears by the will.

What a general devise of real estate shall include.

*Ibid.* s. 27.

(iii) In like manner a bequest of the personal estate of  
the testator, or any bequest of personal property described in a general  
manner shall be construed to include any personal estate, or any  
personal

What a general gift of personal estate shall include.

*Wills, Probate and Administration.*

personal estate to which such description extends (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention appears by the will.

5 24. Where any real estate is devised to any person without any words of limitation, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention appears by the will.

How a devise without words of limitation shall be construed.

*Ibid.* s. 28.

10 25. (I) In any devise or bequest of real or personal estate, the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue shall be construed to mean a  
15 want or failure of issue in the lifetime, or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention appears by the will by reason of such person having a prior estate tail, or of a preceding gift being without any implication arising from such words, a limitation of an estate tail, to such person,  
20 or issue, or otherwise.

How the words "die without issue" or "die without leaving issue" or "have no issue" shall be construed.

*Ibid.* s. 29.

(II) This part of this Act shall not extend to cases where such words as aforesaid import if no issue described in a preceding gift is born, or if there is no issue who lives to attain the age or otherwise answer the description required for obtaining a vested estate  
25 by a preceding gift to such issue.

26. Where any real estate is devised to any trustee or executor, such devise shall be construed to pass the fee simple or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years absolute or determinable,  
30 or an estate of freehold is thereby given to him expressly or by implication.

No devise to trustees or executors except, &c., shall pass a chattle interest.

*Ibid.* s. 30.

27. Where any real estate is devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits  
35 thereof is not given to any person for life, or such beneficial interest is given to any person for life but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an  
40 estate determinable when the purposes of the trust are satisfied.

Trustees under an unlimited devise, &c., to take the fee.

*Ibid.* s. 31.

28. Where any person to whom any real estate is devised for an estate tail, or an estate in *quasi* entail, dies in the lifetime of the testator, leaving issue who would be inheritable under such entail, and any such issue are living at the time of the death of the testator, such  
45 devise shall not lapse but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention appears by the will.

Devises of estates tail shall not lapse.

*Ibid.* s. 32.

29. Where any person being a child or other issue of the testator to whom any real or personal estate is devised or bequeathed  
50 for any estate or interest not determinable at or before the death of such person dies in the lifetime of the testator, leaving issue, and any such issue of such person is living at the time of the death of the testator, such devise or bequest shall not lapse but shall take effect as if the death of such person had happened immediately after the  
55 death of the testator, unless a contrary intention appears by the will.

Gifts to children or other issue who leave issue living at the testator's death shall not lapse.

*Ibid.* s. 33.

30. All original wills brought into the Court, or of which probate or administration with the will annexed is granted under this Act, and such other documents as the Probate Judge may direct shall be deposited and preserved at the Supreme Court-house or at such  
other

Place of original wills.

54 Vic. No. 25, s. 22.

*Wills, Probate and Administration.*

other one place in Sydney under the control of the Court as the Governor may by notice in the Gazette direct, and may be inspected under the control of the Court and subject to the rules of court.

31. An official copy of the whole or any part of a will or an official certificate of the grant of any letters of administration may be obtained from the Registrar or custodian on the payment of the fees fixed for the same by the rules of court.

Official copy of whole or part of will may be obtained, *Ibid.* s. 23.

32. Any person residing in New South Wales may deposit in the office of the Registrar-General his will enclosed in a sealed envelope or cover endorsed with the full name, description, and the address of the testator or other means of ready identification, and also the names in full with descriptions and addresses of the executors named therein, and such will shall unless previously required to be given up by the testator remain in the said office in the custody of the Registrar-General until the death of the testator, and upon his death the Registrar-General shall deliver the same after examination to either of the executors named in the said will, or in case of doubt to such person as the Court or a Judge may direct.

Will may be deposited in the office of the Registrar-General by testator in his lifetime. *Ibid.* s. 24.

## PART II.

20

*Probate and administration.*DIVISION 1.—*Jurisdiction of the Supreme Court in Probate Jurisdiction, and appointment of officers.*

33. The jurisdiction and authority, prior to the coming into operation of the Probate Act of 1890 vested in or exercised by the Supreme Court or by the Primary Judge in Equity in respect of the estates of deceased persons, shall be vested in and exercised by the Court, and such Court, except on appeal or otherwise as hereinafter provided, shall be holden by such Judge as may from time to time be permanently or temporarily appointed in that behalf by the Governor under the title of the Probate Judge, or by any Judge acting for the said Probate Judge during his illness or absence, or at his request.

Jurisdiction of Supreme Court in causes testamentary. *Ibid.* s. 4.

34. The Probate Judge may sit with the assistance of any Judge or Judges, who, at his request, may consent to attend for that purpose:

Other judges may sit with probate judge. *Ibid.* s. 5.

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

35. (I) The Probate Judge may hear in chambers such part of the business under this part of this Act as can, in his opinion, be so heard with advantage to the suitors, and shall, when so sitting, have and exercise the same powers and jurisdiction as if in court.

Judge may sit in chambers. *Ibid.* s. 6.

(II) Such Judge while sitting in chambers may adjourn for hearing in court, or when sitting in court may adjourn for hearing in chambers, any case before him which he may think would be better heard in court or chambers, as the case may be.

36. The Governor may appoint a Registrar, and also a Deputy Registrar of the probate jurisdiction of the Supreme Court; and such Registrar shall, subject to the rules of court, perform such duties as were, prior to the coming into operation of the Probate Act of 1890, performed by the Prothonotary of the Supreme Court in reference to proceedings in the ecclesiastical jurisdiction of the Court, and by the ecclesiastical clerk of the Supreme Court, and such other duties as may be

Appointment of Registrar. *Ibid.* s. 7.

*Wills, Probate and Administration.*

be prescribed by the rules of court or directed by the Probate Judge ; and during the illness or absence of the Registrar, the Probate Judge may authorise any officer of the Supreme Court to act as Registrar.

37. The Governor may appoint a Curator, and also a Deputy Curator.

5 Curator of intestate estates.

*Ibid.* s. 8.

38. The Deputy Registrar or Deputy Curator, as the case may be, if any, may exercise all the powers and shall perform all the duties by this Act conferred or imposed upon the Registrar or Curator respectively, and such other duties as may be prescribed by the rules

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

10 of court or directed by the Probate Judge.

*Ibid.* s. 9.

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

Appointment of temporary Curator.

15 the Curator, and sign and execute in his name all such documents as may require his signature or execution, and do, perform, and discharge all other acts, deeds, and duties pertaining to the office of Curator.

*Ibid.* s. 10.

Security.

40. The Court shall have jurisdiction to grant probate of the will or administration of the estate of any deceased person leaving

Probate or administration may be granted of real or personal estate.

20 property, whether real or personal, in New South Wales.

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

*Ibid.* s. 11.

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

25 42. (I) All applications for probate or letters of administration may be made by petition to the Judges without the necessity of application being made in open court :

*Ibid.* s. 12.

Application or probate or administration may be made by petition.

(II) Notice of such intended application shall be published in the Gazette and in one Sydney newspaper at least fourteen days

*Ibid.* s. 13.

3) before such application is made.

(III) No probate of any will not deposited as in section thirty hereof provided, and no administration in any case shall be granted unless the application be supported by an affidavit that a search has been made in the proper office for a will of the deceased, and stating whether any such will remains deposited with the officer for the time being authorised to have the custody of deposited wills, or by a certificate from the Registrar-General to the like effect.

*Ibid.* s. 24.

35 and stating whether any such will remains deposited with the officer for the time being authorised to have the custody of deposited wills, or by a certificate from the Registrar-General to the like effect.

43. The Judges or any three of them may, by rules of court in that behalf made, delegate to the Master in Equity or Registrar the

Certain matters may be delegated to registrar.

40 powers of the Court in and about the granting of probates and administration of estates not exceeding one thousand pounds in value where no contention has arisen, and also in and about the passing of the accounts of executors and administrators, save in respect of the award of commission thereon :

*Ibid.* s. 14.

45 Provided that such Master in Equity or Registrar shall, where any party interested so desires and in cases of doubt or difficulty, refer the matter to the Probate Judge.

#### DIVISION 2.—*Estates of deceased persons.*

44. Upon the grant of probate of the will or administration of the estate of any person dying after the date of the coming into operation of this Act, all real and personal estate which any such person dies seised or possessed of or entitled to in New South Wales, shall as from the death of such person pass to and become vested in the executor to whom probate has been granted or administrator for all his estate and interest therein in the manner following, that is to say :—

Real and personal estate to vest in executor or administrator.

*Ibid.* ss. 15, 32.

(a) On testacy in the executor or administrator with the will annexed.

(b)

*Wills, Probate and Administration.*

(b) On intestacy in the administrator.

(c) On partial intestacy in the executor or administrator with the will annexed.

45. All real estate held by any person in trust or by way of mortgage, and vesting as aforesaid under this part of this Act, shall as from the death of such person vest in his executor or administrator, subject to the trusts and equities affecting the same.

Real estate held by testator or intestate to vest in executor or administrator, subject to equities

*Ibid.* ss. 16, 34.

46. (I) The real as well as the personal estate of every person dying as aforesaid shall be assets in the hands of his executor to whom probate has been granted, or administrator, for the payment of all duties and fees, and for the payment of his debts in the ordinary course of administration.

Property of deceased to be assets.

*Ibid.* ss. 17, 32.

(II) Such executor or administrator for purposes of administration may, subject to the provisions of section fifty-four hereof, sell such real estate, or mortgage the same with or without a power of sale, and convey the same to a purchaser or mortgagee in as full and effectual a manner in law as the deceased could have done in his lifetime.

Power to sell or mortgage.

47. Subject to the provisions of this part of this Act, the real estate of every such deceased person devising such estate by his will, shall be held by his executor to whom probate has been granted, or the administrator with the will annexed, according to the trusts and dispositions of such will.

Real estate to be held upon trusts of will.

*Ibid.* s. 19.

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

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

*Ibid.* s. 20.

49. (I) Subject as aforesaid and subject to the provisions of the next four succeeding sections, the administrator on intestacy, or in case of partial intestacy the executor or administrator with the will annexed, as the case may be, shall hold the real and personal estate, vesting as aforesaid, as to which any person dies intestate, in trust as to the personal estate for the persons who would be entitled thereto under the Statute of Distributions, and as to the real estate in trust for and as if the same had been devised to such persons as tenants in common.

Administrator to hold, subject to payment of debts, in trust for persons entitled.

5 Wm. IV No. 8, 11 Geo. IV & 1 Wm. IV, c. 40, s. 1. 54 Vic. No. 25, s. 32.

(II) No executor as such shall be entitled to take beneficially any residue not expressly disposed of by the will of the testator, unless it appear by such will that he is intended so to take.

Beneficial interest of executor in residue.

11 Geo. IV, and 1 Wm. IV, c. 40, s. 1.

40 (III) Nothing herein contained shall affect or prejudice any right to which any executor, if this Act had not been passed, would have been entitled in cases where there is not any person who would be entitled to the testator's estate in respect of any residue not expressly disposed of.

Not to affect rights of executor where no person entitled to residue.

*Ibid.* s. 2.

45 50. Any husband or wife shall be entitled on the death of the other, as to the property as to which he or she dies intestate, to the following shares only:—

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

54 Vic. No. 25, s. 33.

(a) Where there is issue surviving, to one-third share of such property.

56 Vic. No. 30, ss. 2, 3, 4, 5.

50 (b) Where there is no issue surviving, and in case of total intestacy,

(i) Where the net value of the property of the deceased does not exceed the sum of five hundred pounds, to the whole of such property.

55 (ii) Where the net value of such property exceeds the sum of five hundred pounds, to the sum of five hundred pounds absolutely and exclusively, which sum with interest thereon from the date of the death until payment, at the rate of four pounds per centum per annum shall be a charge upon the

*Wills, Probate and Administration.*

the whole of such property; and in addition thereto to one-half share of the residue of such property after the payment of such sum of five hundred pounds and interest, if any.

5 (c) Where there is no issue surviving and in case of partial intestacy to one-half share of such property.

51. Subject as aforesaid the property of such deceased husband Next of kin. or wife shall be divisible among the next of kin. 56 Vic. No. 30, s. 2.

10 52. No estate by courtesy or right of dower or any equivalent No dower or courtesy. estate shall arise, after the coming into operation of this Act, out of 54 Vic. No. 25, s. 33. the real estate as to which any person dies intestate.

53. Any husband or wife so entitled to share in real estate Value to be accepted in lieu of partition. shall be bound to accept the value thereof in lieu of partition if so Ibid. s. 33. desired by all the persons entitled jointly with him or her.

15 54. Where the net value of the real and personal property of an In estates under £500 Court may authorise the expenditure of infant's share in maintenance, &c. intestate leaving infant issue does not exceed five hundred pounds, the 56 Vic. No. 30, s. 7. Court may, on the application of such infants, or any of them, or of any person on their behalf, authorise the administrator to expend the whole or any portion of the share of such infants, or any of them, in their 56 Vic. No. 30, s. 7. respective maintenance, advancement, or education, and such authority may be given in respect of the infant issue of intestates who died before the coming into operation of this Act.

20 55. The net value of such property as aforesaid shall be ascer- Net value. tained by deducting from the gross value thereof all debts, funeral and Ibid. s. 6. testamentary expenses of the intestate, and all other lawful liabilities and charges to which the said property may be subject.

25 56. No real estate of which administration has been granted Lands not to be sold without consent or order. under this part of this Act shall be leased for a longer term than three 54 Vic. No. 25, s. 35. years, or sold or mortgaged by the administrator without the consent of all persons beneficially interested, or the order of the Court in that behalf which may impose such conditions as it shall think fit, subject, however, to appeal as herein provided.

30 57. The Court may upon the application of the administrator, Court may make special order. or in case of partial intestacy the executor or administrator with the Ibid. s. 36. will annexed as the case may be, or of any person beneficially interested, and after such previous notice to other parties and inquiry as may seem fit, order and direct the course of proceedings which shall be taken in regard to—

- 40 (a) the time and mode of sale of any real estate ;  
 (b) the letting and management thereof until sale ;  
 (c) the application for maintenance or advancement or otherwise of shares or income of shares of infants ;  
 (d) the expediency and mode of effecting a partition if applied for ;

45 and generally in regard to the administration of such real estate for the greatest advantage of all persons interested.

50 58. (I) In any case wherein upon such inquiry the Court is Court may order partition in a summary way. satisfied that a partition of such real estate or any part thereof will be Ibid. s. 37. advantageous to the parties interested therein, the Court may appoint one or more arbitrators to effect such partition.

55 (II) The report and final award of the arbitrators setting forth particulars of the land allotted to each party interested shall, when signed by them and confirmed by the order of the Court, and when also registered in the office of the Registrar-General, be effectual without the necessity of any further conveyance to vest in each allottee the land so allotted to him, and an office copy of such award so signed, confirmed, and registered as aforesaid, shall for all purposes be equivalent to an indenture of conveyance to each allottee of the lands allotted to him as aforesaid.

(III)



*Wills, Probate and Administration.*

(III) In the case of land subject to the provisions of the "Real Property Act," or any Act amending or consolidating the same, each such allottee shall be entitled to have issued to him a certificate of title for the land so allotted to him.

5 (iv) If such allotment be made subject to the charge of any money payable to any other party interested for equalising the partition, such charge shall take effect according to the terms and conditions in regard to time and mode of payment and otherwise which shall be expressed in such award without the necessity of any further  
10 instrument being made or executed.

(v) In the case of land subject to the provisions of the "Real Property Act," or any Act amending or consolidating the same, the certificate of title shall issue, subject to such charge, unless such charge be satisfied.

15 59. No personal representative shall be required against his own consent to continue the duty of a trustee by managing the property during an enforced suspension of sale, but shall be entitled upon such suspension being ordered to relinquish his trust to such  
20 person as the Court may appoint. Personal representative not required to continue to act against their own consent. *Ibid.* s. 38.

20 60. In all suits in equity concerning the real estate of a deceased person, his executor to whom probate has been granted or administrator shall represent his real estate so long as it remains vested in him and the persons interested therein, in the same manner and to the same extent as in suits concerning personal estate the executor or  
25 administrator represents such estate and the persons interested therein. In suits executor or administrator to represent real estate *Ibid.* s. 18.

61. From and after the decease of any person dying testate or intestate, and until probate, or administration, or an order to collect is granted in respect of his estate, the real and personal estate of such  
30 deceased person shall be deemed to be vested in the Chief Justice of New South Wales, or if there shall be no Chief Justice, then in the senior puisne Judge for the time being, in the same manner and to the same extent as aforesaid the personal estate and effects vested in the Ordinary in England. Property of deceased to vest in Chief Justice. *Ibid.* s. 39. 56 Vic. No. 30 s. 23.

DIVISION 3.—*Probate and administration.*

35 62. The practice and proceedings hitherto in force with reference to granting administration of the personal estate of an intestate shall, save as hereby altered and subject to the rules of court, be applicable to administration granted hereunder, and so far as may be to adminis-  
40 tration of real estate, and administration of both real and personal estate may be granted in and by the same letters. Practice as to granting administration of real and personal estate. 54 Vic. No. 25, s. 25.

63. The Court may grant administration of the estate of an  
intestate person to the following persons, being of the full age of  
twenty-one years, that is to say to— To whom administration may be granted 56 Vic. No. 30, s. 18.

45 (a) the husband or wife of the deceased; or  
(b) one or more of the next of kin; or  
(c) the husband or wife conjointly with one or more of the next  
of kin;

or if there be no such person or no such person within the jurisdiction—

50 (i) who is, in the opinion of the Court, fit to be so trusted; or  
(ii) who, when duly cited, appears and prays for administration;  
then to—

(d) any person, whether a creditor or not of the deceased, that the Court thinks fit.

64. (I) Every person to whom a grant of administration is made  
55 shall, previous to the issue of such administration, execute a bond to Her Majesty and her successors with one or more sureties conditioned for duly collecting, getting in, and administering the personal estate or real and personal estate of the deceased, which bond shall be in the form directed by the rules of court. Administration bond to be executed. 54 Vic. No. 25, s. 28.

(II)

*Wills, Probate and Administration.*

(II) It shall not be necessary for the Curator or for any person obtaining administration to the use or for the benefit of Her Majesty to execute any such bond.

(III) No such bond shall be required to be given by or on behalf of the Permanent Trustee Company of New South Wales (Limited) or the Perpetual Trustee Company (Limited), except in respect of estates exceeding twenty thousand pounds in value, in which the Court otherwise orders.

65. Such bond shall be in a penalty equal to the amount under which the property of the deceased is sworn, but the Court may in any case dispense with the bond or with one or both of the sureties, or direct that such penalty be reduced in amount, and may also direct that more bonds than one be given so as to limit the liability of any surety to such amount as the Court thinks reasonable, and may, in place of such bond, accept the security of any incorporated company or guarantee society approved of by the Court in the form and as directed by the rules of court.

Amount of penalty in administration bond.

*Ibid.* s. 29.

66. The Court may at any time, upon the motion of any person interested in the estate—

Administration may be revoked or further bond required.

*Ibid.* s. 30.

- 20 (a) revoke the administration already granted; or  
 (b) order the administrator to execute a further bond in such sum and within such time as may seem right with or without sureties as aforesaid; and  
 25 (c) upon default remove the administrator and appoint an administrator in his place, with power to sue or be sued upon any contract made by the removed administrator.

67. (I) The Court may, on application made on motion in a summary way, and on being satisfied that the condition of any bond given hereunder has been broken, order the Curator, for and on behalf of Her Majesty, to assign the same to some person to be named in such order.

Order may be made to assign the bond.

*Ibid.* s. 31.

(II) Such person his executors or administrators shall thereupon be entitled to sue upon the said bond in his or their own name or names as if the same had been originally given to him, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond.

68. If, upon motion by a surety to an administration bond, it appear to the Court that—

Surety may apply to the court for relief.

56 Vic. No. 30, s. 22.

- 40 (a) the estate is being wasted; or  
 (b) is in danger of being wasted; or  
 (c) 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,  
 45 the Court may grant such relief as it 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.

69. Where, after the date of the coming into operation of this Act—

Executor renouncing probate or not acting or not appearing to a citation to be treated as if he had renounced.

54 Vic. No. 25, s. 40.

- 50 (a) any person renounces probate of the will of which he is appointed executor or one of the executors; or  
 (b) an executor appointed in a will survives the testator but dies without having taken probate; or  
 55 (c) an executor named in a will is personally cited to take probate and does not appear to such citation,

the right of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his estate shall, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor.

*Wills, Probate and Administration.*

70. Where an infant is sole executor, administration with the will annexed may be granted to—

- (a) the guardian of such infant; or  
(b) such other person as the Court thinks fit,

5 until such infant has attained the full age of twenty-one years, with full or limited powers to act in the premises until probate has been granted to the said executor or administration to some other person.

Where an infant is sole executor administration to be granted to the guardian, &c.  
*Ibid.* s. 41.

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

Who shall have the same power as where administration is granted *durante minore ætate* of the next of kin.  
*Ibid.* s. 42.

15 72. When any person named as executor, or any husband or wife or the next of kin entitled to probate or administration is out of the jurisdiction but has some person within the jurisdiction appointed under power of attorney to act for him or her respectively, administration may be granted to such attorney, but on behalf of the person entitled thereto, and on such terms and conditions as the Court thinks fit.

Administration to be granted to attorney in certain cases.  
*Ibid.* s. 43.

20 73. (I) The Court may—

- (a) pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling, or revoking any probate or any grant of administration; or

Administration *pendente lite* and receiver.  
*Ibid.* s. 44.

(b) during a contested right to administration, appoint an administrator of the personal estate and the same or any other person to be receiver of the real estate of any deceased person, with such full or limited powers and with or without a bond or sureties as the Court may think right.

(II) The Court may make such orders for the remuneration of such administrator or receiver out of the personal and real estate of the deceased as it may think right.

74. The Court may, in any case where a person dies—

- (a) intestate; or  
(b) leaving a will, but without having appointed an executor thereof; or

Power as to appointment of administrator.  
*Ibid.* s. 45.

35 (c) leaving a will and having appointed an executor thereof, where such executor—

- (i) is not willing and competent to take probate; or  
(ii) is resident out of New South Wales,

40 if it thinks it necessary or convenient, appoint some person to be the administrator of the estate of the deceased or of any part thereof, upon his giving such security (if any) as the Court directs, and every such administration may be limited as the Court thinks fit.

75. (I) In any case where the executor named in a will—

- 45 (a) neglects or refuses to prove the same or to renounce probate thereof within three months from the death of the testator or from the time of such executor attaining the age of twenty-one years; or

Proceeding where executor neglects to prove will.  
*Ibid.* s. 46.

- (b) is unknown or cannot be found;

the Court may, upon the application of—

- 50 (i) any person interested in the estate; or  
(ii) the Curator; or  
(iii) any creditor of the testator,

grant an order *nisi* calling upon the executor to show cause why probate of the said will should not be granted to such executor, or 55 in the alternative why administration with such will annexed should not be granted to the applicant.

(II) Upon affidavit of service or of sufficient reasons for non-service of such order if the executor do not appear, or upon cause being shown, the Court may make such order thereon for the administration of the estate, and as to costs as appears just.

*Wills, Probate and Administration.*

76. If, at the expiration of six months from the death of any person, the executor to whom probate has been granted or the administrator is then residing out of the jurisdiction, the Court may, upon the application of any creditor, legatee, or next of kin, grant to such creditor, legatee, or next of kin so applying special letters of administration of such deceased person, nevertheless to cease upon an order being made for the rescission thereof as hereinafter mentioned.
77. The person applying for any such special grant as aforesaid shall, in addition to the oath usually taken by administrators, satisfy the Court by affidavit that—
- (a) the executor or administrator of such deceased person is resident out of the jurisdiction; and
  - (b) the applicant is thereby delayed in recovering or obtaining payment of moneys or the possession of goods and chattels, or real estate, to which he is by law entitled; or
  - (c) the estate is liable to loss or waste.
78. (I) On the return within the jurisdiction of the executor to whom probate has originally been granted, or the administrator, such executor or administrator may apply to the Court by petition to rescind such special grant of administration.
- (II) The Court on the hearing of such petition may make an order to rescind such special grant of administration upon such terms and conditions as to security, costs, or otherwise as to the Court may seem reasonable, and thereafter the original probate or administration shall be and remain as valid and effectual as if such special grant of administration had never been made.
79. Upon any order being made by the Court for the rescission of any grant of special administration as aforesaid, the special administrator shall be bound duly to account to the original executor or administrator, and to pay over all moneys received by him as such special administrator, and then remaining in his hands undisposed of as the Court may order.
80. If such executor or administrator neglects to apply for an order for the rescission of such special administration he shall, notwithstanding that such special administration remains unrescinded, be liable to answer and make good all claims and demands against the estate of the deceased to the extent of the assets which have come to his hands or which might have come to his hands but for his wilful neglect or default, including the neglect herein mentioned.
81. (I) Where any proceedings at law or in equity have been commenced by or against any executor or administrator lawfully acting as such, and the grant of probate or administration is, pending such proceedings, revoked or rescinded, the Court in which such proceedings are pending may order that a suggestion be made upon the records of—
- (a) the revocation or rescission of such probate or administration; and
  - (b) the grant or restoration of probate or administration which has been made consequent thereon.
- (II) Thereupon the proceedings shall be continued in the name of the executor or administrator authorised to act as such by such grant or restoration of probate or administration as if the proceedings had been originally commenced by or against such last-mentioned executor or administrator, but subject to such conditions and variations (if any) as such Court may direct.
82. (I) In the administration of the estate of every person dying 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.
- (II)

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

*Ibid.* s. 47.

Special administrator to make certain affidavits.

*Ibid.* s. 48.

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

*Ibid.* s. 49.

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

*Ibid.* s. 50.

Original executor or administrator liable although special administration not rescinded.

*Ibid.* s. 51.

Revocation of grants not to prejudice actions or suits.

*Ibid.* s. 52.

All debts to stand in equal degree.

56 Vic. No. 30, s. 19.

*Wills, Probate and Administration.*

(II) 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.

(III) Nothing herein contained shall affect the provisions of any Acts protecting life assurance or other policies against creditors.

83. (I) When any real estate not under the provisions of the "Real Property Act" or any Act amending or consolidating the same is devised to any person by a will duly proved under the provisions of this part of this Act, the executor of the will or the administrator with the will annexed may, as such executor or administrator, instead of executing a conveyance to such person, sign an acknowledgment in the form prescribed by the rules of court, that the devisee is entitled to such real estate for the estate for which the same is devised to him.

Executor may sign acknowledgment in lieu of conveyance.  
*Ibid.* s. 20.

(II) Such acknowledgment may be registered under the Acts in force regulating the registration of deeds; and upon registration thereof 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.

84. If the executor or administrator, after request in writing, neglects or refuses to—

Summary application for legacy, &c.  
*Ibid.* s. 21.

(a) sign such acknowledgment; or

(b) execute a conveyance of land devised to the devisee; or

(c) pay or hand over to the person entitled any legacy or residuary bequest,

such devisee or person may apply by summons to the Probate Judge, calling upon such executor or administrator to show cause why he should not comply with such request, and such Judge may make such order in the matter as he may think right.

85. (I) Every person to whom probate or administration has been or is granted shall file an inventory of the estate of the deceased and pass his accounts relating thereto within such time, and from time to time, and in such manner as may be fixed by the rules of court, or as the Court may specially order.

Executor or administrator to pass accounts.  
54 Vic. No. 25, s. 56.

(II) Every such person shall be subject to any special order that the Court may on the motion of any person interested make as to the production and verification of his accounts.

(III) The order of the Court allowing any such account shall be *prima facie* evidence of the correctness of the same, and shall, after the expiration of three years from the date of such order, operate as a release to the person filing the same, excepting so far as it is shown by some person interested therein that an error or omission or fraudulent entry has been made in such account.

86. (I) The Court may allow out of the assets of any deceased person to his executor, administrator, or trustee for the time being, in passing his accounts, such commission or percentage for his pains and trouble as is just and reasonable, and subject to such notices (if any) as the Court may direct.

Executors, &c., may be allowed commission.  
*Ibid.* s. 57.

(II) No such allowance shall be made to any executor, administrator, or trustee who neglects or omits without good reason or a special order of a Judge to pass his accounts pursuant to any general or special rule or order of the Court.

87. (I) In case any such executor or administrator neglects to file such inventory, or to pass such accounts as aforesaid for the space of one month after the expiration of the period fixed, the Registrar shall cause such executor or administrator to be notified of such neglect.

If accounts not exhibited Registrar to summon administrator before judge, who may inflict penalty.  
*Ibid.* s. 59.

(II)

*Wills, Probate and Administration.*

(II) In case of further neglect for the period of one month, the Registrar shall cause such executor or administrator to be summoned before the Court to show cause why he should not be ordered to file such inventory or exhibit such account to the Court forthwith.

5 (III) If such executor or administrator does not within the prescribed time, or within such further time as is allowed him by a Judge, file, pass, or exhibit such inventory or account in manner aforesaid, he shall be liable to attachment in accordance with the practice of the Supreme Court in its equitable jurisdiction.

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

Proceedings under last section not to prejudice proceedings on bond.

*Ibid.* s. 60.

15 89. (I) The Court may make such order with reference to the distribution or application of any moneys which the executor or administrator or Curator may have in hand, or as to the residue of the estate as it may think fit:

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

*Ibid.* s. 61.

(II) No final order for distribution shall be made except upon notice to all the parties entitled.

20 90. (I) Where any probate or administration is revoked or rescinded under this part of this Act, all payments *bona fide* made to any executor or administrator under such probate or administration before the revocation or rescission thereof shall be a legal discharge to the person making the same.

Payments under revoked probates or administrations valid.

*Ibid.* s. 54.

(II) The executor or administrator who has acted under any such revoked or rescinded probate or administration may retain and reimburse himself or shall be entitled to be reimbursed in respect of any payments made by him which the person to whom probate or administration is afterwards or was originally granted might have lawfully made.

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

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

*Ibid.* s. 55.

40 92. (I) The probate of any will or letters of administration with the will annexed already granted or hereafter to be granted shall be evidence of the due execution of such will upon all questions concerning real estate in the same manner and to the same extent as heretofore concerning personal estate.

Probate to be evidence of will concerning real estate.

*Ibid.* s. 21.

(II) The copy attached or annexed to such probate or administration purporting to be a copy of the will in respect of which probate or administration has been so granted shall be *prima facie* evidence of the contents of such will.

(III) Every probate or administration shall be *prima facie* evidence of the death and the date of the death of the testator or

50 intestate.

93. (I) Where an executor or administrator has given such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the Supreme Court in its equitable jurisdiction in an administration suit for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator may, at the expiration of the time named in the said notices, or the last of the said notices, for sending in such claims,

Distribution of asset after notice given by executor or administrator.

26 Vic. No. 12, s. 29.

*Wills, Probate and Administration.*

claims, distribute the assets of the testator or intestate, or any part thereof, amongst the persons entitled thereto, having regard to the claims of which such executor or administrator has then notice.

5 (II) Such executor or administrator shall not be liable for the assets or any part thereof so distributed to any person of whose claim he has not had notice at the time of such distribution.

94. (I) When an executor or administrator has given the notices in the last preceding section mentioned, and a claim against the estate is sent in to him, he may, if he dispute the claim, serve upon the 10 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.

Claims barred against executor or administrator in certain cases.

56 Vic. No. 30, s. 24.

(II) If after the said period of six months has expired such person as aforesaid does not satisfy the court that he is duly prosecuting 15 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 make such other order as the Court may think fit.

95. (I) Where an executor or administrator liable as such, under 20 any lease or agreement for a lease, or any conveyance on chief rents or rent charges or agreement for such conveyance granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, to—

Distribution of estate by executors and administrators.

26 Vic. No. 12, ss. 27, 28.

25 (a) the rents, covenants, or agreements, contained in any such lease or agreement for a lease; or

(b) the rents, covenants, or agreements, contained in any such conveyance or agreement for such conveyance, whether any such rent be by limitation of use, grant, or reservation; has:—

30 (i) satisfied all such liabilities under the said lease or conveyance, or agreement for a lease or for a conveyance, as may have accrued due and been claimed up to the time of the assignment or conveyance hereinafter mentioned; and

35 (ii) set apart a sufficient sum to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee or grantee, to be laid out on the property demised or conveyed, or agreed to be demised or to be conveyed, although the period for laying out the same may not have arrived; and

40 (iii) assigned the lease or agreement for a lease or conveyed such property, or assigned the agreement for such conveyance as aforesaid to a purchaser,

he may distribute the estate of the testator or intestate remaining in his hands amongst the parties entitled thereto respectively without appropriating any part or any further part thereof, as the case may 45 be, to meet any future liability under any such lease or conveyance, or agreement for a lease or for a conveyance.

(II) An executor or administrator so distributing such estate shall not after having made or executed such conveyance or assignment, and having where necessary, set apart such sufficient 50 fund as aforesaid, be personally liable in respect of any subsequent claim under any such lease or conveyance or agreement for a lease or for a conveyance.

96. Nothing in the last three preceding sections contained shall 55 prejudice the right of any creditor or claimant or lessor or grantor, or those claiming under any lessor or grantor, to follow the assets or estate or any part thereof, into the hands of the persons or any of them among whom the same may have been distributed, or who may have received the same.

Right to follow assets.

*Ibid.* ss. 27, 28, 29.

56 Vic. No. 30, s. 24.

*Wills, Probate and Administration.*

97. Any executor may—

- (a) pay any debts or claims upon any evidence that he may think sufficient; or  
 5 (b) accept any composition or any security, real or personal, for any debts due to the deceased; or  
 (c) allow any time for the payment of any such debts as he thinks fit; or  
 (d) compromise, compound, or submit to arbitration, all debts, accounts, claims, and things whatsoever relating to the estate  
 10 of the deceased; and  
 (e) for any of the purposes aforesaid, enter into, give, and execute such agreements, instruments of composition, releases, and other things as he thinks expedient, without being responsible for any loss occasioned thereby.

Executors may compound, &c.  
26 Vic. No. 12, s. 65.

98. (I) Every executor or administrator—

- (a) named in any probate or letters of administration granted by any Court of competent jurisdiction in any portion of Her Majesty's dominions and making application under the provisions of Division 5 of this part of this Act for the sealing  
 15 of such probate or administration; or  
 20 (b) appointed under this part of this Act;

Every executor, &c., to be deemed resident in New South Wales.  
54 Vic. No. 25, s. 65.

shall be deemed to be resident in New South Wales.

(II) Where not actually so resident, he shall, before the issue or sealing of any probate or administration, file with the  
 25 Registrar, an address within the city of Sydney, at which notices and processes may be served upon him; and all services at such registered address shall be deemed personal service.

DIVISION 4.—*Small estates.*

99. For the purpose of receiving applications for probate or  
 30 administration under this division of this part of this Act, the Probate 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.

District agents to receive applications in estates under £300  
56 Vic. No. 30, s. 8.

100. (I) All district agents may for the purposes of this part of  
 35 this Act—

- (a) administer oaths; and  
 (b) take declarations and affirmations; and  
 (c) exercise any other powers which can be exercised by commissioners of the Supreme Court.

Power to administer oaths.  
*Ibid.* s. 9.

(II) Applicants under this division of this part of this Act  
 40 may be sworn, and may execute all necessary documents before a commissioner of the Supreme Court.

101. The provisions of the "Stamp Duties Act Amendment Act  
 45 of 1886," or of any Act amending or consolidating the same, shall not apply to estates of deceased persons shown not to exceed two hundred pounds gross value.

Stamp Duties Act not to apply.  
*Ibid.* s. 10.

102. In all cases where a person dies leaving property not  
 50 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 has 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.  
*Ibid.* s. 11.

103. (I) The Registrar or district agent shall, upon being satisfied as to—

- (a) the identity of the applicant; and  
 55 (b) the right of the applicant to administer the estate of the deceased; and  
 (c) the value of the estate, furnish

Duties of Registrar or district agent.  
*Ibid.* s. 12.



*Wills, Probate and Administration.*

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 administration, as the case may be.

(II) The Registrar or district agent may—

- 5 (a) swear the applicant and every deponent; and  
(b) attest the execution of the administration bond.

(III) The Registrar or district agent shall receive payment of all proper fees fixed by the rules of court in connection with the application.

- 10 104. 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.  
*Ibid.* s. 13.

105. (I) The Registrar shall, upon being satisfied—

- 15 (a) with the sufficiency of the evidence in support of the application; and

Registrar to issue probate or administration in the name of the Court.  
*Ibid.* s. 14.

- (b) that the estate does not exceed three hundred pounds in value; and

- (c) that no caveat has been entered against the application; and

- 20 (d) that no will has been deposited with the Registrar-General (search for which it shall be the duty of the Registrar to make); and

- (e) 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.

(II) Such probate or administration shall be issued in the name and under the seal of the Court.

- 30 106. (I) 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.

Where Registrar not satisfied with the material before him.  
*Ibid.* s. 15.

(II) 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.

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

Registrar not bound to grant probate in certain cases.  
*Ibid.* s. 16.

40 DIVISION 5.—*Foreign probates and letters of administration.*

108. (I) When any probate or letters of administration already granted or hereafter to be granted by any Court of competent jurisdiction in any portion of Her Majesty's dominions is or are produced to and a copy thereof deposited with the Registrar by any person being the executor or administrator therein named, or by any person duly authorised by power of attorney in that behalf under the hand and seal of such executor or administrator, such probate or letters of administration may be sealed with the seal of the Court.

Probates and letters of administration granted in other colonies or the United Kingdom to be of like force as if granted in New South Wales on being resealed.  
54 Vic. No. 25, s. 63.

(II) When so sealed such probate or letters of administration shall have the like force and effect and the same operation in New South Wales, and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities as if such probate or administration had been originally granted by the court.

- 55 (III) The Court may require any such executor or administrator or person authorised as aforesaid to give security for the due administration of the estate in respect of matters or claims in New South Wales.

*Wills, Probate and Administration.*

109. (I) The seal of the Court shall not be affixed to any such probate or letters of administration until all such probate, stamp, and other duties, if any, have been paid as would have been payable if such probate or administration had been originally granted by the Court.

Seal not to be affixed till duty is paid.

*Ibid.* s. 61.

5 (II) Such letters of administration shall not be so sealed until such bond has been entered into as would have been required if such administration had been originally granted by the Court.

And as to administration till bond is entered into.

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

Notice of intention to apply.

*Ibid.* s. 67.

111. No provision in this Act as to the sealing of probates or letters of administration shall apply to any public officer or to the

Not to apply to public officer or Curator.

15 Curator of intestate estates.

*Ibid.* s. 68.

DIVISION 6.—*Curator of intestate estates.*

112. (I) Every person appointed Curator shall, before entering upon the duties of his office, give security to Her Majesty and her successors to the satisfaction of the Colonial Treasurer for the collection and due payment of, and accounting for all moneys which shall come to his hands by virtue of his office.

Curator to give security.

*Ibid.* s. 69.

20 (II) Any surety found by him may withdraw from any future liability by giving the Colonial Treasurer three months written notice of his desire so to do, but such withdrawal shall not affect his liability for any breach which may have occurred prior to the date of actual withdrawal.

113. (I) On the death, resignation, or removal of such Curator, his successor shall immediately on his appointment and by virtue thereof become entitled to administer all the real and personal estate of every such deceased person as hereinafter mentioned left unadministered by any predecessor.

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

*Ibid.* s. 70.

30 (II) Every such successor shall immediately upon his appointment and by virtue thereof become entitled to the possession of all books, accounts, letters, papers, and documents of every description used by or in the possession or under the control of any predecessor relating to any estate administered by him or to the office of curator.

114. (I) In legal proceedings it shall not be necessary for the Curator or those suing him to prove his general authority to act as Curator, but only to prove the order to collect in the specific estate to which the proceedings relate

Proceedings by and against Curator.

*Ibid.* s. 71.

40 (II) Whenever the office of Curator becomes vacant by death, resignation, or removal from office or otherwise, and another person is appointed to the vacancy so created, any action or proceeding which has been taken as aforesaid, shall not abate, but shall be continued by or against the person so appointed as such curator, and no fresh order to collect shall be necessary.

115. (I) The Curator may appoint any persons to act as his agents for the purpose of administering all estates in his hands, and the clerks to the several benches of magistrates shall at his request act as such agents within their respective districts.

Curator's agents.

*Ibid.* s. 72.

50 (II) Every such agent not being a clerk of petty sessions, shall give security to the satisfaction of the Curator for the performance of his duties.

55 (III) Such agents shall in all respects act in the management, collection, and getting in of such property under the direction of the Curator, who shall not be answerable for any act or omission of any such agent not in conformity with any such direction, or which has not happened by the said Curator's own default or neglect.

*Wills, Probate and Administration.*

116. (I) The Curator shall take and retain—
- (a) the fees set out in the Second Schedule hereto ; and also As to fees and commission.
- (b) a commission of five pounds per centum on all moneys collected by him or by his agents. Ibid. s. 73.
- 5 (II) The Curator shall pay such fees and commission into the Treasury for public uses after deducting therefrom all expenses and an allowance not exceeding three pounds per centum by way of commission to his agents in respect of all moneys collected by them or through or by reason of their agency. Second Schedule.
- 10 117. (I) The Court may, on the application of the Curator, grant to the Curator an order to collect the estate of any deceased person leaving real or personal estate within the jurisdiction in any of the following cases:— Order to curator to collect.
- (a) Where such person leaves no executor, widow, or next of kin willing and capable of acting in execution of his will or administration of his estate resident within the jurisdiction. Ibid. s. 74.
- 15 (b) Where the executors named renounce probate of the will of the deceased and all the persons primarily entitled to administration by writing filed with the Registrar decline to apply for administration.
- 20 (c) Where probate or administration is not applied for within three months after the death of such person.
- (d) Where, after the expiration of thirty days from such death, there is no reasonable probability of application being made within such period as aforesaid.
- 25 (e) Where the estate or any portion thereof is liable to waste, and the executor or widow or next of kin—
- (i) is absent from the locality of the estate ; or
- (ii) is not known ; or
- 30 (iii) has not been found ; or
- (iv) requests the Curator in writing to apply for such order.
- (f) Where the estate or any portion thereof is—
- (i) of a perishable nature ; or
- (ii) in danger of being lost or destroyed.
- 35 (g) Where great expense may be incurred by reason of delay.
- (h) Where by the will of such person the Curator is appointed to act.
- (II) The Court may in any case require the Curator to—
- 40 (a) give such notices ; or
- (b) cite such persons ; or
- (c) produce such evidence
- as it may think fit before granting the order applied for, or may make a temporary order for collection and protection only or limited to a portion of the estate or otherwise.
- 45 118. (I) An order to collect the estate of any deceased person shall give to the Curator the same powers, rights, and obligations in respect of such estate, except as hereby enacted, as he would have had if administration had been granted to him as next of kin to such person intestate. Effect of order. Ibid. s. 75.
- 50 (II) All laws now or hereafter in force in reference to the administration of the estates of deceased persons shall apply to the administration of estates by the Curator.
119. (I) Notwithstanding any order which has been made authorising the Curator to collect under this division of this part of this Act, the Court may grant probate of the will or administration of the estate of any deceased person to any person in such manner and subject to such limitations or conditions as it thinks proper. Probates and administrations may be granted notwithstanding appointment of Curator.
- (II) No application for any such grant shall be made until seven days after notice in writing of the intention to apply for the same has been left at the office of the Curator. Ibid. s. 76.
- 60

*Wills, Probate and Administration.*

120. (I) Immediately on the grant of any such probate or administration all the interest, powers, rights, and duties of the Curator (except such rights as are conferred by this section) in regard to the estate of the deceased person whose estate is affected by such grant, and all liabilities of the Curator under any contract or agreement entered into by him in relation to such estate or any part thereof shall cease.

On such grant Curator's duties and liabilities to cease. *Ibid.* s. 77.

(II) Such portion of the estate of such person as is left unadministered by the Curator, and all rights and obligations of the Curator in respect thereof shall vest in the executor or administrator obtaining such probate or administration.

(III) Nothing herein contained shall interfere with the allowance and payment of—

- (a) all money due for the commission of the Curator or his agents; and
- 15 (b) the necessary outlay, disbursements, costs, charges, and expenses in relation to such estate; including
- (c) all costs of and incidental to appearing on the application for such probate or administration.

(IV) Nothing herein contained shall relieve the Curator from any liability in respect of his management of the estate up to the time of granting such probate or administration.

121. (I) Whenever it is made to appear to the Court that there is reasonable ground to suppose that any person has died either in or out of the jurisdiction of the Court intestate leaving property within such jurisdiction, the Court may order and empower the Curator to collect and manage the estate of such person both real and personal.

When there is reasonable ground to believe that any person has died out of jurisdiction of the Court the Curator may obtain order to manage, &c., without strict legal proof of death. *Ibid.* s. 78.

(II) Every such order shall be valid until revoked, and shall empower the Curator to—

- 30 (a) collect, manage, and administer the personal estate of such supposed deceased person; and
- (b) enter upon and receive the rents and profits and otherwise manage the real estate; and
- (c) pay and discharge the debts and liabilities of such person.

in like manner as if he were certainly dead and the Curator had obtained an order to collect the estate of such person under the preceding provisions.

(III) The Curator shall not proceed to any distribution of the assets without an order of the Court specially authorising him to make such distribution.

122. Within fourteen days after any order to collect has been granted the Curator shall, unless the Court otherwise orders, cause notice of the fact that such order has been granted to be published—

Notice of order to be published. *Ibid.* s. 79.

(a) twice in some daily newspaper published in the city of Sydney; and if the person of whose estate the Curator has been appointed Curator did not reside in such city then also;

(b) twice in some newspaper published in the town or place where such person resided;

or if there is no newspaper published in such town or place then—

50 (c) twice in some newspaper circulating in or near to such town or place.

123. The Curator shall—

(a) cause like notices to be published in newspapers published or circulating in the town or place where the next of kin are known or supposed to reside;

Like notices to next of kin. *Ibid.* s. 80.

55 and in the case of foreigners

(b) give notice to the Consul of the country where the next of kin are supposed to reside, if there is any such Consul resident in Sydney,

unless the Court in any case otherwise orders.

*Wills, Probate and Administration.*

124. (I) Any person interested as creditor, next of kin, or otherwise in the real or personal estate of any deceased person which the Curator has been ordered to collect may—
- 5 (a) on the neglect or refusal of the Curator to do any act in relation to the administration of such estate; or
- (b) on his doing or threatening to do any act in breach of his duty with reference to the said estates,
- apply *ex parte* upon affidavit to the Probate Judge in chambers—
- 10 (i) for an order calling upon the Curator to show cause upon a day not less than two days from the service of such order upon him before the Court why he should not do or abstain from doing such act; and
- (ii) for an interim order in the nature of an injunction if warranted by the facts of the case.
- 15 (II) Any such order may be granted subject to such conditions as to giving security for costs as the Court may impose.
125. (I) Upon the hearing of any such complaint the Court may receive proof of the matters in relation thereto orally or by affidavit, and may make such order thereon as the circumstances of the case may require, and as to payment of costs—
- 20 (a) by the complainant; or
- (b) by the curator personally; or
- (c) from the estate administered by him,
- as in its discretion seems just.
- 25 (II) Such orders shall have the same effect and be enforceable by the same process as if made by the Supreme Court in its equitable jurisdiction in a suit between the parties to such complaint.
126. In all cases where an order to collect is made under this division of this part of this Act the Court may, on the petition of the Curator or any person interested in the estate, make such orders touching the collection, sale, investment, and disposal of the estate as to the Court seems meet.
- 30 127. (I) In every case in which the estate of any deceased person is administered by the Curator under this division of this part of this Act—
- 35 (a) all disputes and matters touching the collection, management, or administration of the same; and
- (b) all claims and demands thereon
- shall, except as hereinafter provided, be decided by the Court on
- 40 petition.
- (II) In any case in which it appears to be not desirable that the matter in question should be so decided, the Court may direct such proceedings to be instituted as appear proper for the due decision thereof.
- 45 128. (I) The Curator shall, at such times as he thinks fit, cause advertisements to be published in the Gazette and such public newspapers as he deems expedient, calling upon the creditors of the persons whose estates he has been ordered to administer to come in and prove their debts before him, on or before a time to be fixed in
- 50 such notice.
- (II) The Curator may allow any claim which is made before him upon the affidavit of the claimant alone or call for further evidence upon such further evidence as he requires.
- (III) The Curator shall, as soon after the expiration of the
- 55 time allowed for proof of debts as he conveniently can—
- (a) pay the debts proved if the whole thereof can be paid; and if not—
- (b) declare and pay a dividend thereon.

Court to have summary jurisdiction over Curator.

*Ibid.* s. 81.

Applications how heard.

*Ibid.* s. 82.

Curator to act as the court shall direct

*Ibid.* s. 83.

Mode of proceeding under this Act.

*Ibid.* s. 84.

Payment of debts.

*Ibid.* s. 85.

(IV)

*Wills, Probate and Administration.*

(iv) If he collects any further assets after making such payment he shall pay any part of the proved debts remaining unpaid, and any debts subsequently proved before him (or a dividend thereon, as the case may be).

5 (v) Such creditors as subsequently prove shall first be paid a dividend equal to the dividend paid to creditors having previously proved their debts.

(vi) After payment of all debts, fees, and expenses incident to the collection, management, and administration of such estate, the  
10 Curator shall pay over the residue to the personal representative, if any, of the intestate or testator (as the case may be) so soon as such representative is duly constituted.

129. If at the expiration of three months from the time fixed by the advertisement for creditors to come in and prove their debts—

15 (a) no debt has been proved; or

(b) no creditor having proved his debt remains unpaid;

the Curator, with the approval of the Court, may pay any sum not exceeding one hundred pounds to any person claiming to be a party in distribution or to be a legatee under a will without administration

20 having been obtained or the will being proved, and upon such evidence of the right or title of the party so claiming as the Court may, under the circumstances, deem sufficient.

130. (I) The Curator shall—

25 (a) make or cause to be made an inventory or list of all the estates of the persons which he has been ordered to administer and retain the same in his office; and

(b) keep an account of all his receipts, payments, and dealings in every such estate; and

30 (c) retain all letters received, and copies of all letters written by him, and all deeds, papers, and writings of and relating to such estates; and

(d) permit all persons to inspect and take copies of the same, and of all proceedings relating thereto at all reasonable hours; or

35 (e) furnish office copies thereof on payment of the fees mentioned in the Second Schedule hereto annexed.

(II) The Curator shall, with due diligence—

(a) sell or mortgage such lands as he may be authorised to deal with; and

40 (b) convert into money all such other estate as does not consist of money;

unless otherwise ordered by the Court; and

45 (c) forthwith pay all moneys received by him as such curator into some bank to be approved of by the court and the Colonial Treasurer to the credit of an official account to be operated on by him as such Curator.

131. The receipt in writing of the Curator for any moneys payable to him under this division of this part of this Act shall be sufficient discharge for the same to the persons paying the same who shall not afterwards be liable for any misapplication thereof.

50 132. The Curator shall—

(a) transmit in the months of January, April, July, and October in every year to the Colonial Treasurer a return of all moneys received and paid by him, or any agent for him, during the three months immediately preceding in respect of the estates intrusted to him to collect, distinguishing the particular estate in which the same have been so received or paid;

(b) furnish at the same time a separate and distinct return of all balances or sums whatsoever then in his hands to the credit of each of such estates; and

(c)

Payment to relatives,  
&c., in petty cases.  
*Ibid.* s. 86.

Accounts to be kept  
&c.  
*Ibid.* s. 87.

Second Schedule.  
Realisation of  
estates.

Receipt of Curator  
sufficient discharge.  
*Ibid.* s. 88.

Quarterly returns to  
Treasurer and  
accounts.  
*Ibid.* s. 89.

*Wills, Probate and Administration.*

(c) keep proper books of account in reference thereto, which shall once in every three months, or oftener if necessary, be examined and passed by the Colonial Treasurer, or some officer appointed by him in that behalf.

133. The Curator shall, after the expiration of six months from the date of the order for collection of any estate, invest all moneys then standing to the credit of each such estate as the Court may by any general or special rule or order direct, and subject to any such order or rule in accordance with the rules of court with reference to the investment of suitors' moneys under the charge or control of the Supreme Court in its equitable jurisdiction.

The Curator to invest moneys after expiration of six months. *Ibid.* s. 90.

134. (I) Neither the Curator nor any of his agents shall be personally liable to any person in respect of goods or chattels in the possession of any testator or intestate at the time of his death which are sold by the Curator or any such agent as the goods of such testator or intestate, unless the Curator or agent knows or has actual notice before the sale that such goods or chattels are not in fact the property of such testator or intestate.

Curator or his agents not liable for acts done in the performance of their duties. *Ibid.* s. 91.

(II) Neither the Curator nor any of his agents shall be personally liable to any person for any act done *bona fide* in the performance of their duties respectively, unless it is shown that such act was done not only illegally but wilfully or with gross negligence.

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

Proceeds of property of third person to be handed over to him. *Ibid.* s. 92.

136. (I) If it appears on office found that any real estate vested in the Curator has escheated to Her Majesty, the net proceeds of sale of such estate shall be paid by the Curator to the Colonial Treasurer, and be by him carried to the credit of the consolidated revenue.

Conveyance of escheated lands and disposal of proceeds of sale. *Ibid.* s. 93.

(II) The Curator's conveyance of such real estate to the purchaser thereof shall operate to pass the right, title, and interest of the deceased intestate to such purchaser as in any other case.

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

Payment to Colonial Treasurer after six years. *Ibid.* s. 94.

138. (I) The Court may at any time—

(a) upon the petition of any person claiming to be entitled to any moneys so paid over to the Colonial Treasurer; and  
(b) upon being satisfied by affidavit, or other sufficient evidence, that such person is so entitled,

Parties entitled may apply subsequently. *Ibid.* s. 95.

make an order for the payment of such moneys or any portion thereof, but

(i) without interest thereon from the time of payment to the Colonial Treasurer as aforesaid; and  
(ii) after deducting any costs and expenses which may have been incurred by the Curator or otherwise in respect of such application.

(II) The Colonial Treasurer on being served with such order shall within a reasonable time pay the amount mentioned therein to the person therein named, and the receipt of such person shall be a sufficient voucher for such payment.

*Wills, Probate and Administration.*DIVISION 7.—*Procedure.*

139. Subject to the rules of court, and except where otherwise provided by this part of this Act, the practice of the Court shall be regulated so far as the circumstances of the case will admit by the practice of the Supreme Court in its equitable jurisdiction. Practice until otherwise ordered to be as at present existing. *Ibid.* s. 96.
140. (I) Subject to the rules of Court, the witnesses, and, where necessary, the parties in all matters where their attendance can be had, shall be examined orally in open Court, whether the trial or proceeding be with or without a jury. Mode of taking evidence. Orally. *Ibid.* s. 97.
- 10 (II) By the permission of the Court in every case the parties may verify their respective cases in whole or in part by affidavit. By affidavit.
- (III) The deponent in every such affidavit shall be subject to be cross-examined by or on behalf of the opposite party orally in open court as aforesaid, and upon such cross-examination may be re-examined orally in open Court as aforesaid by or on behalf of the party using such affidavit. 15
141. (I) (a) Where a witness in any contested matter is out of the jurisdiction; or Court may issue commission or give orders for examination of witnesses abroad or who are unable to attend. *Ibid.* s. 98.
- 20 (b) where by reason of his illness or otherwise the Court does not think fit to enforce the attendance of the witness in open court, the Court may order a commission to issue for the examination of such witness on oath upon interrogatories or otherwise.
- 25 (II) If the witness be within the jurisdiction the Court may order the examination of such witness on oath upon interrogatories or otherwise before any officer of the Court or other person to be named in such order for the purpose.
- (III) All the powers vested in the Supreme Court in its equitable jurisdiction with reference to and generally in connection with— 30
- (a) the issuing of commissions; and
- (b) ordering the examination of witnesses shall extend to and be applicable to the Court.
- 35 142. The Court may direct any question of fact arising in any suit or proceeding under this part of this Act to be tried by a special or common jury. Questions of fact may be directed to be tried before the Court or before a jury. *Ibid.* s. 99.
- 40 143. (I) When any question is so directed to be tried such question shall be reduced into the form of an issue, and shall be tried before the Probate Judge or a Judge and a jury of four or twelve men at such time and place as the Court may direct. Question to be stated. *Ibid.* s. 100.
- (II) Thereupon the matter shall proceed as in the case of issues directed to be tried by the Supreme Court in its equitable jurisdiction.
- 45 144. Any person considering himself aggrieved by any final or interlocutory decree or order of the Probate Judge may appeal therefrom to the Full Court in the same way and with and subject to the same powers, orders, rules, and regulations as are in force with reference to appeals from the decisions of the Chief Judge or Judge in Equity. Appeal. *Ibid.* s. 101.
- 50 145. (I) The Probate Judge may on the application of any party or at his own discretion, and on such terms (if any) as he thinks fit to impose, direct a rehearing by the Full Court of any cause, petition, motion, or matter before him. Judge may direct rehearing. *Ibid.* s. 102.
- 55 (II) In such case it shall not be necessary to give any notice of appeal, but nothing herein shall prejudice the right of any party to appeal when such Judge does not give any such direction.



*Wills, Probate and Administration.*

146. (I) Any person may lodge with the Registrar a caveat against any application for probate or administration, or for the sealing of any probate or letters of administration under division five of this part of this Act, at any time previous to such probate or administration being granted, or to the sealing of any such probate or letters of administration.

Caveat may be lodged.  
*Ibid.* ss. 66, 103.

(II) Every such caveat shall set forth the name of the person lodging the same, and an address within the city of Sydney at which notices may be served on him.

10 147. (I) In every case in which a caveat is lodged the Court may upon motion on behalf of the person applying for probate or administration, or for the sealing of any probate or letters of administration, supported by affidavits upon which if there had been no caveat the application would have been granted, make an order *nisi* for the grant of probate or administration, or for the sealing of probate or letters of administration as the case may be.

Where a caveat lodged Court may grant order *nisi*.  
*Ibid.* ss. 66, 104.

(II) Every such order shall name a time for showing cause against the same, and the Court may enlarge such order from time to time.

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

Service of order *nisi*.  
*Ibid.* 105.

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

Proceeding where caveator does not appear.  
*Ibid.* 106.

30 150. (I) A caveat may be withdrawn at any time with the leave of the Probate Judge, subject to such order as to costs or otherwise as he may direct.

Caveats may be withdrawn.  
56 Vic. No. 30, s. 17.

35 (II) The person applying for probate or administration, or for the sealing of any probate or letters of administration, may, if he think fit, summon the caveator to attend before the Probate Judge to show cause why the caveat should not be removed, and such Judge may, on proof that the caveator has been summoned, make such order in the premises or otherwise as may seem fit.

54 Vic. No. 25, s. 66.  
56 Vic. No. 30, s. 17.

151. The Court shall have the like powers, jurisdiction, and authority—

Powers of the Court to enforce orders.  
54 Vic. No. 25, s. 107.

- 40 (a) for requiring and enforcing the production of documents and the attendance of persons as witnesses and otherwise ;
- (b) for punishing persons failing, neglecting, or refusing to produce such documents, or to appear or to be sworn or make affirmation or declaration, or to give evidence, or guilty of contempt ;
- 45 (c) for the trial or determination of questions of fact ;
- (d) for enforcing all orders, decrees, and judgments made or given by the Court under this part of this Act ;
- (e) for the taxation of costs,

50 and otherwise in relation to the matters to be inquired into and done under this part of this Act, or by or under the orders of the Court under this part of this Act as are by law vested in the Supreme Court in its equitable jurisdiction for such purposes in relation to any suit or matter depending therein.

55 152. (I) The Court may, on motion, or petition, or otherwise, in a summary way, whether any suit or other proceeding are or are not pending in the Court with respect to any probate or administration, order any person to produce and bring into the registry any paper or writing,

Order to produce an instrument purporting to be testamentary.  
*Ibid.* s. 108.

*Wills, Probate and Administration.*

writing, being or purporting to be testamentary, or otherwise material to the matter before the Court, which may be shown to be in the possession or under the control of such person.

(II) If it is not shown that any such paper or writing is in the possession or under the control of such person, but it appears that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined in open court or upon interrogatories respecting the same.

(III) Such person shall be bound to answer such questions or interrogatories, and (if so ordered) to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing as he would have been subject to in case he had been a party to a suit in the Court and had made such default.

(IV) The costs of any such motion, petition, or other proceeding shall be in the discretion of the Court.

DIVISION 8.—*General matters.*

153. The Registrar, commissioners of the Supreme Court, and justices of the peace shall have power to administer oaths under this part of this Act. Oaths. *Ibid.* s. 110.

154. (I) The Registrar shall cause entries to be made in a book to be kept for that purpose of— Registrar to keep record of probates, &c. *Ibid.* s. 58.

(a) all grants of probate and administration ;  
(b) the filing, passing, and allowance of the accounts of all executors and administrators ; and of  
(c) any special order extending the time for passing such accounts.

(II) Such book shall set forth—  
(a) the dates of such grants ;  
(b) the names of the testators or intestates ;  
(c) the place and time of death ;  
(d) the names and description of the executors or administrators ;  
(e) the sworn value of the estates ;  
(f) the dates of the filing, passing, allowance of, and special orders with reference to, the said accounts.

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

156. (I) The Judges, or any three of them, may make general rules— Rules. *Ibid.* s. 112.

(a) for regulating the times and form and mode of procedure, and generally the practice of the Court in respect of the several matters to which this Act relates ; and  
(b) for fixing the amount of all fees and allowances to officers of the Court and solicitors in reference to such matters, and otherwise for the effectual execution of this Act, and of the intention and object thereof.

(II) All such rules and orders shall be published in the Gazette, and shall be laid before both Houses of Parliament within thirty days of their being so published, or if Parliament be not then sitting, within the like time after Parliament thereafter assembles for the despatch of business.

157. Any decree of the Supreme Court in its equitable jurisdiction in an administration suit shall bind the parties, and be of the same force and effect to all intents and purposes as if an order to the same effect had been made in the probate jurisdiction. Decree in equity shall bind parties. *Ibid.* s. 62.

## SCHEDULES.

*Wills, Probate and Administration.*

SCHEDULES.

FIRST SCHEDULE.

S. 2.

Number of Act.	Title or short title.	Extent of repeal.
5	5 Wm. IV No. 8. An Act for adopting and applying certain Acts of Parliament, &c., &c., in the Administration of Justice in New South Wales in like manner, &c., &c.	So far as it adopts the Act of Parliament 11 Geo. IV and 1 Wm. IV, c. 40.
10	3 Vic. No. 5 ... An Act for adopting a certain Act of Parliament intituled <i>An Act for the amendment of the Laws with respect to Wills in the Administration of Justice in New South Wales in like manner as other laws of England are applied therein.</i>	The whole.
15	17 Vic. No. 5 ... An Act to amend the Law with respect to the Execution of Wills.	The whole.
	26 Vic. No. 12 ... Trust Property Act of 1862... ..	Sections 27, 28, 29, 65
	54 Vic. No. 25 ... Probate Act of 1890 ... ..	The whole.
	56 Vic. No. 30 ... Probate Act of 1890 Amendment Act ...	The whole.

SECOND SCHEDULE.

Ss. 124, 138.

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

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