



ANNO DECIMO

GEORGII V REGIS.

A.D. 1919.

No. 1367.

An Act to consolidate certain Acts relating to the Administration of the Estates of Deceased Persons, and other matters.

[Assented to, October 16th, 1919.]

BE it Enacted by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows :

PART I.

PART I.

PRELIMINARY.

1. This Act may be cited as the "Administration and Probate Act, 1919." Short title.

2. The provisions of this Act are arranged as follows :—

Arrangement of Act.

PART I.—Preliminary.

PART II.—Granting, Revoking, Etc., of Probate and Administration.

PART III.—Vesting and Administration of Estates.

PART IV.—The Public Trustee—

DIVISION I.—The Office of Public Trustee :

DIVISION II.—Appointment of Public Trustee to Administer Estates and Trusts :

DIVISION III.—Administration of Estates by the Public Trustee.

PART V.—Miscellaneous.

3. (1) This

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Acts repealed and consolidated.

3. (1) This Act is a consolidation of the Acts and parts of Acts mentioned in the First Schedule, and the said Acts and parts are hereby repealed to the extent mentioned in such Schedule.

Saving provisions.

(2) Such repeal shall not—

- (a) affect the operation prior to the passing of this Act of any of the repealed Acts or parts of Acts :
- (b) alter the past or future effect of the doing, suffering, or omission of anything prior to the passing of this Act :
- (c) affect any probate, administration, proclamation, notice, rule, regulation, order, matter or thing granted, made, given, published, or done under or in pursuance of any of the repealed Acts or parts of Acts :
- (d) affect any estate, right, title, interest, privilege, power, status, duty, obligation, liability, or penalty acquired, accrued, exercisable, incurred, or imposed by or under or liable to be imposed under any of the repealed Acts or parts of Acts :
- (e) affect any investigation, inquiry, legal or other proceeding in respect of any of the matters or things in this section before mentioned.

(3) All matters and things mentioned in subsection (2) are, to the extent that they were respectively in force or in existence immediately before the passing of this Act, hereby preserved and continued and declared to be of the same force and effect as if this Act had been in force when respectively they were done, suffered, omitted, created, granted, acquired, incurred, held, imposed, or made, or had accrued, or become exercisable, or liable to be imposed, and they respectively had been done, suffered, omitted, created, granted, acquired, incurred, held, imposed or made, or had accrued, or had become exercisable or liable to be imposed under this Act.

(4) All matters and proceedings commenced under any Act or part of an Act hereby repealed, and pending or in progress on the passing of this Act, may be continued, completed, and enforced under this Act.

(5) All offences committed, and all liabilities, forfeitures, and penalties incurred or imposed, or liable to be imposed, before the passing of this Act, may be tried, punished, inquired into, and enforced under this Act.

Interpretation.
537, 1891, s. 4.

4. In this Act, except where the subject matter or context or other provision requires a different construction—

“Administration” means all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special, or limited purposes :

“Administrator” means any person to whom administration has been granted :
“Court,”

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“ Court,” “ the Court,” and “ the said Court ” mean the Supreme Court of this State and any Judge thereof :

“ Court of Probate Act, 1858 ” means an Act of the Imperial Parliament made and passed in the twenty-first and twenty-second years of the reign of Queen Victoria, intituled “ An Act to amend the Act of the twentieth and twenty-first Victoria, chapter seventy-seven ” :

“ Common form business ” means the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the Court in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the Court in matters of testacy and intestacy not being proceedings in any action, and also the business of lodging caveats against the grant of probate or administration :

“ Deliver ” includes “ pay ” :

“ Estate ” comprises both realty and personalty, and includes any money or other property subject to any trust and received by the Public Trustee under order of the Court : 1174, 1914, s. 3.

“ Judge ” means a Judge of the Supreme Court :

“ Matters and causes testamentary ” means all matters and causes relating to the grant and revocation of probate of wills or of administration :

“ Registrar ” means the Registrar of Probates, and any Acting or Deputy Registrar of Probates :

“ Rules ” means the rules under this Act :

“ Will ” comprehends “ testament ” and “ codicil ” and all other testamentary instruments of which probate can be granted.

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GRANTING, REVOKING, ETC., OF PROBATE AND ADMINISTRATION.

Jurisdiction of the Supreme Court.

5. (1) The like voluntary and contentious jurisdiction and authority as immediately before the coming into operation of this Act belonged to or were vested in the Supreme Court, in relation to granting or revoking probate of wills and letters of administration of the effects of deceased persons, shall be vested in and exercised by the said Court in relation to granting or revoking probate of wills and letters of administration of the estate, as well real as personal, of deceased persons within the said State ; and the Court shall

Probate jurisdiction of Supreme Court.

537, 1891, s. 6.

shall have the same power of granting probate or administration, where the only estate within the State consists of realty, as if such estate comprised both realty and personalty.

(2) The said Court shall also have and exercise the like powers, and its grants and orders shall have the like effect within the said State, in relation to the real and personal estate therein of deceased persons, as immediately before the coming into operation of this Act the said Court and its grants and orders respectively had within the said State, in relation to those matters and causes testamentary, and those effects of deceased persons, which were within the jurisdiction of the said Court.

(3) All duties which by statute or otherwise were, immediately before the coming into operation of this Act, imposed on or to be performed by the said Supreme Court in respect to probates, or administrations, or matters or causes testamentary within its jurisdiction shall continue to be performed by such Court within the said State.

The Registrar of Probates.

Registrar of Probates.

Ibid., s. 7 (part).
1354, 1918, s. 10.

6. (1) The Registrar of Probates shall have and exercise the powers, authorities, and duties by this Act conferred upon him.

(2) The person who, immediately before the coming into operation of this Act, was Registrar of Probates shall hold such office under this Act.

(3) The Registrar of Probates may be removed by the Governor at any time.

(4) The Governor may from time to time appoint another person to be Registrar.

(5) The offices of Registrar and Public Trustee may be held by one person.

(6) No person shall be appointed to the office of Registrar of Probates unless he is a practitioner of the Supreme Court of three years' standing.

(7) The Governor may also appoint Acting or Deputy Registrars of Probates, and such officers, clerks, and persons as he thinks fit to assist the Registrar in his duties, and may assign to them such duties as he thinks fit.

(8) Notwithstanding anything hereinbefore contained, it shall not be necessary for the Acting or Deputy Registrar to be a practitioner of the Supreme Court.

Registrar's powers.

537, 1891, s. 8.

7. The Registrar shall have and exercise, with reference to proceedings in the Supreme Court, the like powers and authorities as he had and exercised immediately before the coming into operation of this Act.

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8. In any case where it appears to the Registrar doubtful whether probate or administration should be granted, or whether he should exercise any power or discretion appertaining to his office, he shall obtain the direction of a Judge, and act accordingly, and the Registrar shall be subject in all cases to the control and orders of the Court.

Registrar to obtain direction of Judge in doubtful case.

District Registries.

9. (1) The Governor may, by proclamation, appoint the Local Courts of Moonta, Gladstone, Mount Gambier, and Port Augusta, or any of them, to be District Registries or a District Registry of the Court.

Certain Local Courts may be appointed district registries.

Ibid., s. 16, and s. 7 (part).

(2) The Governor may appoint a Special Magistrate to be District Registrar of any District Registry.

(3) Probate of a will or administration may, where the value of the estate does not exceed One Thousand Pounds, be granted in common form by a District Registrar in the name of the Supreme Court and under the seal prescribed to be used in the District Registry.

(4) The Governor may, by proclamation, define the Districts for which the Local Courts mentioned in subsection (1) hereof shall respectively be the District Registries.

(5) No probate or administration shall be granted by a District Registrar unless it appears by the affidavit of one or more of the applicants therefor that the testator or intestate had at the time of his death a fixed place of abode, to be mentioned in the affidavit, within the District for which such District Registrar is District Registrar.

(6) Any District Registrar shall refuse to grant probate or administration in any case in which it appears to him that the same ought not to be granted in common form.

(7) Probate or administration granted by a District Registrar under this Act shall have the same effect as probate or administration granted by the Supreme Court, and shall equally therewith be subject to revocation by the Supreme Court.

10. (1) Any Judge may, on the application of any person interested, order that any proceedings in a District Registry be removed into the Supreme Court.

Judge may order proceedings in District Registry to be removed to Supreme Court.

(2) Upon such order being made and notified to the District Registrar the whole of such proceedings shall be forthwith transmitted to the Supreme Court, and shall become records thereof.

Ibid., s. 17.

11. (1) Where—

(a) it appears to a District Registrar doubtful whether a probate or administration applied for should be granted; or

(b) any

District Registrars may in certain cases apply through Registrar for directions of a Judge.

Ibid., s. 18.

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- (b) any question arises in relation to the grant or application for the grant of any probate or administration upon which the District Registrar desires the directions of a Judge,

the District Registrar shall transmit a statement of the matter in question to the Registrar.

(2) The Registrar shall obtain the directions of a Judge in relation to such matter.

(3) The Judge may direct the District Registrar to proceed with the matter according to such instructions as to the Judge seem advisable, or may forbid any further proceeding by the District Registrar in relation to such matter, leaving the party applying for the grant to make application to the Supreme Court.

District Registrar may in certain cases obtain directions of Registrar.

Ibid., s. 19.

12. In any case where any question arises in relation to the duty upon any property comprised in any estate affected by the grant of any District Registrar, upon which the District Registrar concerned desires the directions of the Registrar, the District Registrar shall transmit a statement of the matter in question to the Registrar, who shall give such directions to the District Registrar in reference to the matter as he thinks fit, and the District Registrar shall comply with such directions.

Deposit of Wills.

Wills may be deposited.

Ibid., s. 20.

13. (1) Any will, duly executed as provided by subsection (3) of this section, and whereof an executor or executors is or are appointed, may at any time previous to the death of the testator be deposited for safe custody with the Registrar by the testator, or on his behalf by any District Registrar, solicitor, notary public, or commissioner for taking affidavits in the Supreme Court.

(2) The Registrar shall—

- (a) enclose such will in a packet and seal the same,
 (b) indorse on such packet the names of the testator and executor or executors, the date of the will, the time of its being deposited, and the number of the deposit ; and
 (c) deliver to the depositor a certificate of such deposit.

(3) Every will deposited under this section shall be executed by the testator as required by law, and one of the attesting witnesses shall be the Registrar, a District Registrar, notary public, solicitor, or a commissioner for taking affidavits in the Supreme Court.

(4) Such attesting witness, unless he is the Registrar or a District Registrar, shall verify the testator's execution of the will by a certificate in the prescribed form, which shall accompany the will.

Deposit of codicil.
Ibid., s. 21.

14. On depositing any codicil to a will already deposited, and not withdrawn, a reference to the numbers of the will and codicil and

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and any previously deposited codicil shall be made on the packets containing the will and codicil or codicils, and in the index to be kept by the Registrar.

15. (1) A deposited will may be withdrawn by the testator, or some one authorised by him. Withdrawal.
Ibid., s. 22.

(2) On such withdrawal the Registrar shall take a receipt for the will and enter a memorandum of the withdrawal and the time thereof in his index, and also on the will, before delivery.

(3) Any other will deposited by the testator shall not receive the number of the former will so withdrawn.

(4) On the withdrawal of a will, the certificate of deposit given by the Registrar shall be delivered up and cancelled, unless the Registrar sees fit to dispense with such delivery.

16. (1) On the death of a testator, whose will is at the time of his death deposited with the Registrar, any executor of the will may in person apply for probate of such will. Proceedings for probate on death of testator where will has been deposited.

(2) The Registrar shall thereupon supply the executor so applying with a printed form of declaration in the prescribed form, and upon the executor making such declaration the Registrar, if he thinks the case a proper one for the exercise of the power by this section given to him, may, on payment of all duties due, grant probate to the executor. Ibid., s. 23.

(3) Such probate shall be made out by the Registrar, or a clerk in his office, and the Registrar shall make the prescribed charges for the form of declaration and for making out the probate.

Sealing of Grants Made Outside this State.

17. When any probate or administration granted by any Court of competent jurisdiction in any of the Australasian States or in the United Kingdom, or any probate or administration granted by a foreign Court, is produced to and a copy thereof deposited with the Registrar, such probate or administration may be sealed with the seal of the Supreme Court, and thereupon shall have the like force and effect and the same operation in this State, and every executor and administrator thereunder shall have the same rights and powers, perform the same duties, and be subject to the same liabilities, as if such probate or administration had been originally granted by the Supreme Court. Probate and administration granted in other States or the United Kingdom or by foreign Court to be of like force as if granted in South Australia, on being re-sealed.
Ibid., s. 26 (1).
1354, 1918, s. 3.

18. (1) No administration shall be sealed under section 17 until such bond has been entered into as would have been required if such administration had been originally granted by the Supreme Court. No administration to be sealed until bond entered into.
537, 1891, s. 27.
1354, 1918, s. 4.

(2) No probate or administration so sealed shall be issued out of the Supreme Court until the payment of all probate and other duties (if any) which would have been payable before the delivery by the Registrar to the executor or administrator of the like probate or administration granted by the Supreme Court.

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As to foreign probate
or administration.

537, 1891, s. 28.

19. (1) In section 17, “probate or administration granted by a foreign Court” means any document as to which the Registrar is satisfied that it was issued out of a Court of competent jurisdiction in a foreign country other than an Australasian State, or the United Kingdom, and that in such country it corresponds to a probate of a will or to an administration in this State.

(2) In order to satisfy himself, as mentioned in subsection (1) of this section, the Registrar may accept a certificate from a Consul or Consular Agent in this State of the foreign country, or such other evidence as appears to him sufficient.

Definitions.

Ibid., s. 29.

20. For the purposes of sections 17 and 19—

“Australasian States” means all the States of the Commonwealth of Australia other than the State of South Australia, and includes the Dominion of New Zealand and the colony of Fiji, and any other British colonies or possessions in Australasia now existing or hereafter to be created, which the Governor may from time to time by proclamation declare to be Australasian States within the meaning of section 17 :

“United Kingdom” means Great Britain and Ireland, and includes the Channel Islands :

“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 Registrar, is sufficient :

“Administration” includes “exemplification of letters of administration,” or such other formal evidence of letters of administration purporting to be under the seal of a Court of competent jurisdiction as, in the opinion of the Registrar, is sufficient.

General Provisions Relating to Granting and Revoking Probate and Administration.

Practice of the
Court.

Ibid., s. 25.

21. The practice of the Court in its testamentary causes jurisdiction shall, except where otherwise provided by the rules, be according to the practice of the Supreme Court immediately before the coming into operation of this Act.

Provisions for evi-
dence in case of
foreign will.

Ibid., s. 30.

22. (1) On any non-contentious application for probate or administration, with the will annexed, relating to a will made in a foreign country other than any of the British dominions, the Court may—

(a) grant probate or administration on the Consul or Consular Agent in this State for the foreign country, or any other person acquainted with the law of such country, testifying, to the satisfaction of the Court, that the will is valid according to such law ; or

(b) issue

- (b) issue a commission to take evidence in the foreign country in support of the will and in proof of the law affecting the validity thereof.

(2) The provisions of the law for the time being in force with regard to commissions issued from the Court in actions depending therein shall, so far as applicable, apply to commissions issued under this section.

23. A will executed in any foreign country, and valid according to the law of such country for the purpose of passing either real or personal estate, shall be as valid for all purposes in this State as if duly executed according to the law of this State.

Will validly executed in foreign country to be valid in South Australia.
Ibid., s. 26 (2).

24. (1) The Court may—

- (a) require the attendance of any person whom it thinks fit to examine, or cause to be examined, in any action or other proceeding in respect of matters or causes testamentary, whether an action is depending or not ;
- (b) examine or cause to be examined, upon oath or affirmation, as the case may require, parties and witnesses by word of mouth ; and
- (c) either before or after, or with or without such examination, cause them, or any of them, to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may be.

Power to examine witnesses.

Ibid., s. 31.

(2) The Court may, by writ, require such attendance, and order to be produced before itself, or otherwise, any deeds, evidences, or writings, in the same form, as nearly as may be, as that in which a writ of *subpœna ad testificandum*, or of *subpœna duces tecum*, is now issued by the Court.

(3) Every person disobeying any such writ shall be considered as in contempt of the Court, and also be liable to forfeit a sum not exceeding One Hundred Pounds.

25. (1) The Court may, on motion or petition, or otherwise, in a summary way, whether any action or other proceeding is or is not pending in the Court with respect to any probate or administration, order any person to produce and bring into the office of the Court, or otherwise as the Court may direct, any paper or writing being or purporting to be testamentary which is shown to be in the possession or under the control of such person.

Order to produce any instrument purporting to be testamentary.

Ibid., s. 32.

(2) 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 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 before a Judge in Chambers, or upon interrogatories, respecting the same.

(3) Such

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(3) Such person shall answer such questions or interrogatories, and, if so ordered, shall produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in attending, or in answering such questions or interrogatories, or bringing in such paper or writing, as he would have been subject to in case he had been a party to an action in the Court and had made such default.

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

Caveats.

Ibid., s. 33.

26. (1) Caveats against the grant of probates or administrations may be lodged in the Probate Registry of the Court.

(2) Except where otherwise provided by this Act or by the rules, the practice and procedure with regard to such caveats in the Court shall correspond with the practice and procedure with regard to caveats in use in the Court immediately before the first day of February, eighteen hundred and ninety-two.

Where a will affecting real estate is proved in solemn form, or is the subject of a contentious proceeding, the persons interested in the real estate to be cited.

Ibid., s. 34.

27. (1) Where proceedings are taken under this Act for proving a will in solemn form, or for revoking the probate of a will on the ground of the invalidity thereof, or where in any contentious cause or matter under this Act the validity of a will is disputed, except where the will affects only personal estate, the devisees, and other persons having or pretending interest in the real estate affected by the will, shall, unless the Court otherwise directs, be cited to see proceedings or otherwise summoned, and, subject to the rules under this Act or under the Supreme Court Act, 1878, may be permitted to become parties or intervene for their respective interests in such real estate, in like manner as the next of kin, or others having or pretending interest in the personal estate affected by a will are cited or summoned.

Persons interested in certain cases not to be cited, and when not cited not to be affected by probate.

Ibid., s. 36.

28. (1) Nothing herein contained shall make it necessary to cite any person having or pretending interest in the real estate of a deceased person—

(a) in any case where the Court is not satisfied that the deceased was at the time of his decease seized of, or entitled to, or had power to appoint by will some real estate beneficially; or

(b) in any case where the will propounded or of which the validity is in question would not in the opinion of the Court, though established as to personality, affect real estate.

(2) In any of the cases mentioned in subsection (1), and in any other case in which the Court, with reference to the circumstances of the property of the deceased or otherwise, thinks fit, the Court may proceed without citing the persons interested in real estate: Provided that the probate, decree, or order of the Court shall not in

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any case affect any person in respect of his interest in real estate, unless such person has been cited or made party to the proceedings, or derives title under or through a person so cited or made party.

29. (1) There shall be one place of deposit under the control of the Court, at such place in Adelaide as the Governor, by notice in the *Gazette*, directs, in which every original will deposited with the Registrar under section 13, or brought into the Court, or of which probate or administration with the will annexed has already been granted or is granted under this Act, and such other documents as the Court directs, shall be deposited and preserved.

Place of deposit of original wills.

Ibid., s. 38.

(2) Such original wills and documents may be inspected under the control of the Court, and subject to the rules.

(3) Until the Governor gives a direction in this behalf such wills and other documents shall be deposited in the strong room attached to the office of the Court.

30. (1) An office copy of the whole or any part of a will, or an official certificate of the grant of or an office copy of any probate or administration, may be obtained from the Registrar on the payment of such fees as are fixed by rules.

Office copy of whole or part of will, or of probate or administration, may be obtained.

Ibid., s. 39.

(2) Any such office copy of a probate or administration under the seal of the Court shall be equivalent as evidence to the original probate or administration.

31. Every person to whom administration is granted shall give bond to the Public Trustee, with one or more surety or sureties, conditioned for—

Persons to whom administration granted to give bond.

- (a) duly getting in and administering the estate of the deceased ;
- (b) the delivery by such person at the office of the Public Trustee, within six months from the date of the administration, of a statement and account, verified by his declaration of all the estate of the deceased, and of his administration thereof ;
- (c) the delivery by such person to the Public Trustee of an account of his administration of such estate, verified by his declaration, whenever ordered by the Court so to do ; and
- (d) the performance by him of all acts and things by this Act required to be performed by administrators.

Ibid., s. 40.

32. Such bond shall be in a penalty of the amount under which the estate of the deceased is sworn ; but the Court may reduce the amount of such penalty in any case, and may also order that more bonds than one be given, so as to limit the liability of any surety to such amount as to the Court seems reasonable.

Penalty in bond.

Ibid., s. 41.

33. (1) A Judge may, upon being satisfied by affidavit that it is beneficial or expedient so to do, order that administration issue without

Court may dispense with bond where value of estate under £500.

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Ibid., s. 42.

without any administration bond being given where the estate is under Five Hundred Pounds in value.

(2) Such order may be obtained *ex parte* on the application of the person entitled to obtain administration.

Administration may be granted to duly authorised attorney.

1354, 1918, s. 8.

34. Any person entitled to probate or administration and being out of the jurisdiction, may, by power of attorney, appoint the Public Trustee or any person within the jurisdiction to act for him, and administration may be granted to the Public Trustee or to such last-mentioned person on behalf of the person appointing him, and upon such terms and conditions as the Court thinks fit.

After grant of administration no person shall have power to sue as executor.

537, 1891, s. 53.

35. Subject to the provisions of this Act, after any grant of administration no person shall have power to sue or prosecute any action, or otherwise act as executor of the deceased, as to the estate comprised in or affected by such grant, until such administration has been recalled or revoked.

Rights of executor renouncing, not acting, or not appearing when cited, to cease as if he had not been named in will.

Ibid., s. 54.

36. Whenever—

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

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

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

Ibid., s. 55.

37. If at the expiration of twelve months from the death of any person the executor to whom probate of the will, or the administrator to whom administration of the personal estate or of the estate of such deceased person has been granted, is residing out of this State, the Court may, upon the application of the widow, or of any creditor or next of kin, or of any person interested under the will, or of the Public Trustee, grant to the applicant special administration, limited to the collection, management, and distribution of the estate of such deceased person, and to cease upon the return of the executor or administrator to this State, and an order being made for the rescission thereof as hereinafter mentioned.

Special administrator to make certain affidavits.

Ibid., s. 56.

38. The person applying for any such special grant shall, in addition to the oath usually taken by administrators, make oath that the executor or administrator of such deceased person is resident out of this State, and if the applicant is not the Public Trustee, that he is thereby delayed in recovering or obtaining payment of moneys or the possession of estate to which he is by law entitled.

39. (1) On

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- 39.** (1) On the return to this State of the executor or administrator to whom probate or administration has originally been granted, such executor or administrator may apply to the Court, by petition, to rescind the special grant of administration. On return of original executor or administrator, special administration to be rescinded.
- (2) The Court, on the hearing of such petition, upon being satisfied that such executor or administrator *bona fide* intends to remain within this State until the estate of the deceased has been duly administered, may make an order to rescind the special grant, upon such terms and conditions as to security, costs, or otherwise as to the Court seems reasonable. Ibid., s. 57.
- 40.** Upon any order being made by the Court for the rescission of any grant of special administration, the special administrator shall duly account to the original executor or administrator, and pay over and deliver all goods and moneys received by him, and transfer all lands vested in him, as such special administrator, and then remaining undisposed of. On order being made for rescission, special administrator to account and pay over money.
- Ibid., s. 58.
- 41.** If such executor or administrator neglects to apply for an order for the rescission of such special administration, he shall, notwithstanding 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. Original executor or administrator liable, although special administration not rescinded.
- Ibid., s. 59.
- 42.** (1) Where, before the revocation of any probate or administration, or the rescission of any special administration, proceedings have been commenced by or against the executor or administrator who obtained such probate or administration, the Court in which such proceedings are pending may order the revocation or rescission of such probate or administration, and the grant of any probate or administration which has been made consequent thereon, to be notified upon the record. Revocation of grants not to prejudice actions.
- Ibid., s. 60.
- (2) Upon an order being made under subsection (1) hereof the proceedings shall be continued in the name of or against the new or original executor or administrator in like manner as if the proceedings had been originally commenced by or against such new or original executor, or administrator, but subject to such conditions and variations, if any, as the Court directs.
- 43.** All persons making any payment or transfer *bona fide* upon any probate, administration, or order granted in respect of the estate of any deceased person, under the authority of this Act, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate, administration, or order, or any subsequent revocation or rescission thereof. Persons making payments or transfers in certain cases to be indemnified.
- Ibid., s. 61.
- 44.** (1) No executor or administrator making any payment or transfer, or doing any act *bona fide* under or in pursuance of any probate Executor or administrator not liable for acts done *bona fide*.

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Ibid., s. 62.

probate or administration under this Act, shall, on the revocation or rescission of the probate or administration, be liable in respect of such payment, transfer, or act, if it was justified under the probate or administration.

(2) Nothing herein contained shall affect the rights of any person against the person to whom any such payment or transfer has been made.

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VESTING AND ADMINISTRATION OF ESTATES.

Vesting of intestate estates until administration.

537, 1891, s. 5.

45. From the decease of any person dying wholly or partially intestate, and until administration is granted in respect of his estate, or until an order has been obtained to administer the same, the estate of such deceased person within this State, in so far as not affected by his will, shall be vested in the Public Trustee, in like manner and to the like effect as, immediately after the coming into operation of the Court of Probate Act, 1858, the personal estate and effects of persons dying intestate in England vested in the Judge of the said Court of Probate.

Provisions Relating to Land.

Land to vest in executor or administrator of owner.

Ibid., s. 64.
854, 1904, s. 10.

46. (1) Land shall, after the death of the owner, and subject to any mortgage, trust, or equity affecting the same, pass to and become vested in his executor or administrator as if it were a chattel real.

(2) Such executor or administrator shall hold and deal with such land, and the same and the proceeds thereof, if sold, shall for all purposes be assets in his hands, and disposable and distributable for the payment of the debts and liabilities of the owner and under his will or intestacy as if such land had been a chattel real.

(3) No widow shall be entitled to her dower, nor husband to his curtesy, out of any lands passing under the provisions of this section.

(4) This section shall not affect the order in which, as between persons claiming under the owner the assets of his estate are liable for the payment of debts or legacies, nor shall this section be deemed to impose any charge on land for the payment of legacies.

Court may make special orders as to management of undivided lands.

537, 1891, s. 65.

47. The Court may from time to time, upon the petition of the executor or administrator, or any person beneficially interested, and after such previous notice as is prescribed by the rules and upon such inquiry as it thinks fit, direct the course of proceedings which shall be taken in regard to—

(a) the time and mode of sale of any lands passing under section 46 and devolving under an intestacy :

(b) the letting and management thereof until sale :

(c) the

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(c) the application for maintenance or advancement or otherwise of shares or interests of infants :

(d) the expediency and mode of effecting a partition if applied for; and generally in regard to the administration of the property for the greatest advantage of all persons interested.

48. (1) In any case wherein upon such inquiry the Court is satisfied that a partition of the land would be advantageous to the parties interested, the Court may appoint one or more arbitrators to effect such partition, and to exercise in regard thereto under its direction and control powers similar to those of commissioners acting under a decree for partition.

Court may order partition.

Ibid., s. 66.

(2) Upon the report and final award of the arbitrators setting forth the particulars of the land allotted to each party interested, the executor or administrator shall convey or transfer the land accordingly.

49. For the purposes of section 46—

Interpretation.

“ Land ” means and includes messuages, lands, tenements, rents, and hereditaments, whether corporeal or incorporeal and any share, estate, and interest in them, or any of them, whether the same is a freehold or chattel interest; and any possibility, right, or title of entry or action, whether the same is in possession, reversion, remainder, or contingency :

Ibid., s. 67.

586, 1893, s. 70.

“ Owner ” means and includes—

(a) any person (including a married woman) seised, or possessed of, or entitled to any estate or interest in land as before defined, whether legal or equitable (and as to a married woman, whether for her separate use or otherwise) which he or she had, or would were he or she of full age and not under coverture have had power to dispose of by will, and which but for this Act or the Intestate Real Estates Distribution Act, 1867, would go to his or her heir-at-law, or executor, or administrator, or to the heir-at-law of the person who was within the meaning of the interpretation clause of the Statute 3 and 4, William IV., c. 106, entitled ‘ An Act for the Amendment of the Law of Inheritance,’ the purchaser of such estate or interest in land :

(b) any person (including a married woman) seised, or possessed of, or entitled to any estate or interest in land as before defined (and as to a married woman, whether for her separate use or as her separate property, or otherwise) upon trust, or by way of security for money.

50. (1) In

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Construction of
word "heirs."
537, 1891, s. 68.

50. (1) In all Acts, deeds, and documents in force on or after the twenty-fourth day of October, eighteen hundred and sixty-eight, being the day on which the Intestate Real Estates Distribution Act, 1867, came into operation, the word "heirs" shall, in relation to the deceased owners of land passing under section 1 of such Act, and so far as regards such land, mean and include the executor or administrator of the deceased owner.

(2) In all Acts, deeds, and documents in force on or after the first day of February, eighteen hundred and ninety-two, being the day on which the Administration and Probate Act, 1891, came into operation, the word "heirs" shall, in relation to the deceased owner of land passing under section 64 of the said Act, or under section 46 of this Act, and so far as regards such land, mean and include the executor or administrator of the deceased owner.

Executor or ad-
ministrator to have
power of sale of real
estate for payment
of debts.

51. (1) Every executor or administrator shall, whether there is a charge of debts, or a trust for payment of debts, or not, have the same power of sale of real estate for payment of debts as an executor now has with regard to personal estate.

Ibid., s. 79.

(2) No person purchasing real estate of a deceased person from his executor or administrator shall be bound or concerned to inquire as to the existence of debts, the necessity for sale, or the application of the purchase-money.

Devisee of real
estate not to claim
payment of
mortgage out of
personal assets.

52. (1) When any person has died on or after the first day of February, eighteen hundred and ninety-two, seised of or entitled to any estate or interest in any land or other hereditaments in this State which are, at the time of his death, charged with the payment of money, by way of mortgage or other legal or equitable charge, including any lien for unpaid purchase-money, and such person has not, by his will, or deed, or other document, signified any contrary or other intention, the person becoming beneficially entitled to such land or hereditaments through or under the deceased person shall not be entitled to have the money satisfied out of the personal estate, or any other real estate, of the deceased; but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all money with which the same is or are charged, every part thereof, according to its value, bearing a proportionate part of the money charged on the whole.

Ibid., s. 75.

(2) The contrary or other intention mentioned in subsection (1) shall not be deemed to be signified by a direction for payment of debts out of, or a charge of debts upon, personal estate, or residuary real and personal estate, or residuary real estate, but such intention must be signified expressly and by distinct reference to the money charged.

(3) Nothing in this section contained shall affect or diminish any right of the mortgagee of such lands or hereditaments to obtain full payment or satisfaction of his mortgage debt, either out of the personal estate of the person so dying or otherwise,

nor

nor affect the rights of any person claiming under or by virtue of any will, deed, or document made before the first day of February, eighteen hundred and ninety-two.

Succession to Estates.

53. On the death of a married woman, and subject to the provisions of section 54, her estate shall, so far as not devised, bequeathed, or otherwise disposed of, and subject to any mortgage, trust, or equity affecting the same, and to the rights of her creditors and of other persons having claims against such estate, be held by her executor or administrator for division or distribution in manner following :—

Distribution of estate of married woman.

Ibid., s. 70.

- I. If she has left any child or remoter issue surviving her, her husband shall be entitled to one-third of her said estate :
- II. If she has not left any child or remoter issue surviving her, her husband shall be entitled to one-half of her said estate :
- III. In either case the residue of her said estate shall belong to the persons to whom it would have belonged had it been the whole of her personal estate, and had she died before the fourteenth day of November, eighteen hundred and eighty-four, intestate and not under coverture, such persons to take in the respective shares in which they would have taken such personal estate.

54. The following provisions shall have effect as regards the estate of any person dying after the first day of February, eighteen hundred and ninety-two, and leaving a widow or widower but no issue, so far as such estate is not devised, bequeathed, or otherwise disposed of, and subject to any mortgage, trust, or equity affecting the same, and to the rights of the creditors of such person and of others having claims against his or her estate :—

Succession of widow or widower.

Ibid., s. 71.

- I. Such estate shall, in all cases where its net value does not exceed Five Hundred Pounds, belong to the widow or widower absolutely :
- II. Where the net value of such estate exceeds Five Hundred Pounds, the widow or widower shall be entitled to Five Hundred Pounds thereof absolutely and shall have a charge upon the whole of such estate for such Five Hundred Pounds, with interest thereon from the date of the death of the intestate at eight per centum per annum until payment :
- III. The provision for the widow or widower intended to be made by this section shall be in addition and without prejudice to her or his interest and share in the residue of the estate remaining after payment of the sum of Five Hundred

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Hundred Pounds, in the same way as if such residue had been the whole of the deceased person's estate, and the provisions of this section had not been enacted.

Succession of illegitimate child.
Ibid., s. 72.
854, 1904, s. 13.

55. (1) So far as regards succession to any estate under any will or under the total or partial intestacy of a woman, her illegitimate child shall have the same right and title as if he were legitimate.

Next of kin of illegitimate child.

(2) So far as regards succession to any estate under any will or under the total or partial intestacy of an illegitimate child, his next of kin on his mother's side shall have the same right and title as if such child were legitimate.

General Provisions relating to Administration of Estates.

Statement and account to be delivered.

537, 1891, s. 44.

56. Every administrator shall, within six months from the date of the administration, deliver at the office of the Public Trustee a statement and account, verified by his declaration, of all the estate of the deceased and of his administration thereof.

Power to Court to assign bond.

Ibid., s. 43.

57. (1) The Court may, on application made on motion, petition, or summons in a summary way, and on being satisfied that the condition of any bond given under section 31 has been broken, order the Public Trustee to assign such bond to some person to be named in such order, or may give leave to the Public Trustee to sue on such bond.

(2) Such person, his executors or administrators, or the Public Trustee, as the case may be, shall thereupon be entitled to sue on the said bond in his or their own name or names, as if the same had originally been given to him or them instead of to the Public Trustee, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the conditions of the said bond.

Proceedings to compel account.

Ibid., s. 45.

854, 1904, s. 10.

58. (1) If at any time any administrator—

(a) makes default in compliance with section 56 ; or

(b) being ordered to deliver an account of his administration as mentioned in section 31, neglects to deliver the same verified as aforesaid for one month after the date appointed for that purpose ;

the Public Trustee or any person interested may cause the administrator to be summoned before a Judge to show cause why he should not deliver such account forthwith.

(2) In case the administrator, being duly served with such summons, does not attend before the Judge at the time and place mentioned therein, or does not show any reasonable cause to the contrary, the Judge may from time to time order the administrator to deliver the statement and account, or the account, verified as aforesaid

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aforesaid, either forthwith or within such further time as the Judge thinks fit to allow.

(3) On default in compliance with any order under subsection (2), a Judge may order the administrator in default to pay to the Public Trustee or person so applying any sum not exceeding One Hundred Pounds for every such default.

(4) Proceedings being taken under this section shall not prevent the Court from ordering the assignment of the bond to any person with a view of enforcing the penalty thereof as mentioned in section 57, or giving leave to the Public Trustee to sue on the bond.

(5) All costs and expenses of and incidental to the summoning of any administrator pursuant to this section shall either be chargeable to or paid out of the estate in respect of which such administrator is summoned, or shall be paid by such administrator, as the Judge orders.

59. (1) In the administration of the estate of every person who has died on or after the first day of January, eighteen hundred and eighty, no debt or liability of such person shall be entitled to any priority or preference by reason merely that the same is secured by or arises under a bond, deed, or other instrument under seal, or is otherwise made or constituted a specialty debt; but all the creditors of such person, as well specialty as simple contract, shall be treated as standing in equal degree, and be paid accordingly out of the assets of such deceased person, whether such assets are legal or equitable, any statute or other law to the contrary notwithstanding.

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

537, 1891, s. 74.

(2) This section shall not prejudice or affect any bond, deed, or other instrument under seal given or executed before the coming into operation of Act No. 140 of 1879; but all such bonds, deeds, or other instruments shall be entitled to priority or preference, according to the law in force before the passing of such Act.

(3) This section shall not prejudice or affect any lien, charge, or other security which any creditor holds or is entitled to for the payment of his debt.

60. (1) Any executor, administrator, or creditor of a person dying on or after the first day of February, eighteen hundred and ninety-two, may file with the Registrar a declaration that he believes the estate of the deceased to be insufficient for the payment of its liabilities.

Filing of declaration that estate insufficient to pay debts.

Ibid., s. 76.

(2) On such a declaration being filed by a creditor, he shall, if probate or administration has been granted, serve a copy of the declaration with a memorandum of the date of filing on the executor or administrator.

(3) If probate or administration is granted after the filing of the declaration by a creditor, the Registrar shall, on issuing the probate or administration, issue therewith to the executor or administrator a copy of the declaration with a memorandum of the date of filing.

(4) After

(4) After the service on or issue to the executor or administrator of the copy and memorandum where the declaration has been filed by a creditor, or after the filing of the declaration by an executor or administrator, the executor or administrator shall administer the estate so far as concerns the payment of liabilities in the same manner so far as practicable as it would have been administered for the benefit of creditors under a decree of the Supreme Court.

(5) The Court may, on the application, *ex parte* or otherwise, of the executor or administrator or of a creditor, order that any action against the executor or administrator shall not proceed beyond judgment without the leave of the Court.

(6) Any person entitled to make a claim against the estate under section 61 shall be deemed a creditor for the purposes of this section.

Rules in insolvency administration to prevail in certain cases.

Ibid., s. 77.

61. (1) In any administration by the Public Trustee under section 87 where the estate proves insufficient for the payment in full of the debts and liabilities of the deceased, and in any administration by an executor or administrator under section 60, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future or contingent liabilities respectively, as are in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent.

(2) All persons who in any such case would be entitled to prove for and receive dividends out of the estate of the deceased person, may come in under the administration of such estate, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

Estate how administered.

Ibid., s. 78.

62. In an administration by the Supreme Court, or under section 91, by the Public Trustee, of the estate of a person dying on or after the first day of February, eighteen hundred and ninety-two, and in the administration of any such estate by the executor or administrator under section 60, the following provisions shall have effect :—

I. The executor or administrator shall have no right of retainer :

II. A creditor who has at any time obtained judgment against the executor or administrator shall not, by reason of the judgment, have any priority over other creditors :

III. Legal assets shall, subject to this Act, be administered in the same manner as equitable assets.

Court may order sale of infant's property.

Ibid., s. 80.

63. The Court may, on the application by petition, summons, or otherwise of any executor, administrator, or trustee in whom any real or personal property, whether specifically devised or bequeathed or not, belonging to any infant is vested, or on the like application of

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of the guardian of the estate or the next friend of any infant beneficially entitled to any real or personal property, whether specifically devised, or bequeathed or not, order that such property, or any part thereof, be sold in any case in which the Court considers it for the benefit of the infant that such sale should be effected:

64. (1) The Court may, where it thinks it beneficial so to do, give leave to an executor, administrator, or trustee of a deceased person, or to the Public Trustee—

Court may give leave to postpone realisation or carry on business.

(a) to postpone, for such period as the Court thinks expedient, the realisation of the estate or trust property :

Ibid., s. 81.

(b) to carry on, for such period or periods as the Court from time to time thinks expedient, the business or affairs of the testator or intestate, and for that purpose to use his estate, or such portion thereof as the Court directs.

(2) An executor, administrator, or trustee acting in pursuance of leave given under this section shall not be answerable for consequent loss, except in case of breach of trust, negligence, or wilful default.

(3) An order under this section may be made either *ex parte* or on such notice as the Court in any case thinks proper, and may be varied from time to time as the Court thinks fit.

65. (1) Every administrator who is possessed of or entitled to any property, whether personal or real, belonging to any person who—

Administrator to pay over money and deliver property to Public Trustee.

(a) is not *sui juris*, or

(b) is not resident in this State, and has no duly authorised agent or attorney therein :

Ibid., s. 82 (part).

shall deliver, convey, or transfer such property to the Public Trustee immediately after the expiration of one year from the date of the death of the intestate or testator, or within six months after such sooner time as the same or such portion thereof as is available for that purpose, has been sold, realised, collected, or got in.

(2) The Public Trustee shall then administer such property according to law, and in accordance with any will affecting such property.

66. The delivery, conveyance, or transfer by an administrator to the Public Trustee of any property, pursuant to section 65, shall have the effect of discharging all parties to the bond given to the Public Trustee, upon the granting of the administration, from further responsibility in respect of the property so delivered, conveyed, or transferred.

Administration bondsmen relieved.

Ibid., s. 87.

67. (1) A Judge may, on being satisfied by affidavit that it is beneficial or expedient so to do, order—

Judge may dispense wholly or partially with compliance with section 65.

(a) that any administrator, or proposed administrator, shall not be bound by section 65 ; or

Ibid., s. 82 (part).

(b) that

(b) that any administrator, or proposed administrator, shall not be bound by the said section 65 until after a certain time to be mentioned in the order.

(2) The time mentioned in any order made under subdivision (b) of subsection (1) may be extended by a subsequent order.

(3) Any order under subsection (1) or (2) may be obtained *ex parte* on the application of the administrator or proposed administrator.

(4) An order under subdivision (a) of subsection (1) may be granted notwithstanding that an order has already been made under subdivision (b) of subsection (1).

(5) The making of any order under this section shall, if the Court so directs, have the effect of discharging from further responsibility all parties to the bond, if any, given to the Public Trustee upon the granting of the administration.

(6) The Public Trustee, or any person interested, may issue a summons requiring the administrator, or proposed administrator, to appear before a Judge to show cause why any order made under this section should not be set aside, and the Judge may set aside such order, or vary the same, or make such other order as seems to him best.

Maintenance, education, and advancement of person not *sui juris*.

Ibid., s. 91.

68. (1) The Public Trustee or any administrator of an intestate may apply, in such manner as the Court approves, the whole or any part of the income arising from any property under his control, belonging to any person not *sui juris*, towards the maintenance or education, or for the advancement in life or benefit of, such person.

(2) If there is no income from such property sufficient to maintain and educate such person, or to provide moneys required for his advancement in life or otherwise for his benefit, a Judge may authorise the Public Trustee or administrator to sell such property, or any part thereof, so far as the same does not consist of money, and to apply the proceeds of such sale, and also any property consisting of money, or any part thereof, in or towards the maintenance and education, advancement, or benefit of such person.

(3) Any money applicable for maintenance or education under this section may, with the approval of a Judge, be paid by the Public Trustee or administrator to the legal or natural guardian of such person as aforesaid, either with or without requiring an account of the same.

(4) An order under this section may be obtained by the Public Trustee or administrator *ex parte*.

Public Trustee and other persons may obtain judicial advice or direction.

Ibid., s. 99.

69. (1) The Public Trustee shall, and any trustee, executor, or administrator may, when in difficulty or doubt, apply to a Judge for advice or direction as to matters connected with the administration of any estate, or the construction of any will, deed, or document.

(2) Such

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(2) Such application may be made either *ex parte* or upon summons served upon any of the parties interested.

(3) Any person interested in any estate, who is dissatisfied with the conduct of the Public Trustee in any matter connected with the management or administration thereof, may apply to a Judge by summons to be served upon the Public Trustee to review such conduct.

(4) A Judge may, upon the hearing of an application under this section, make any order, declaratory or otherwise, that he sees fit as to the administration of the estate, or the construction of the will, deed, or document, which is the subject of the application, and also as to the costs of the application.

(5) Any such order made in the absence of an interested party shall have the same effect, or be of the same force or validity, so far as regards protection to the Public Trustee, or other trustee, or the executor, or administrator, as if the same had been a decree or order made in an action where all parties concerned were represented.

(6) The Judge may refer any question arising on an application under this section for the opinion of the Supreme Court by way of special case, or may direct an issue to be tried by, or an action to be instituted in, the Supreme Court.

70. (1) The Court may allow to any executor, administrator, or trustee, whether of the estate of a deceased person or otherwise, such commission or other remuneration out of the estate or trust property, and either periodically or otherwise, as is just and reasonable.

Commission may be allowed to executors, administrators, or trustees.

Ibid., s. 63.

(2) No allowance shall be made to any administrator who neglects—

(a) to deliver the statement and account required by section 56, as by such section required, or within such reasonable time as is allowed by the Court; or

(b) to dispose of any estate with which he is chargeable according to the due course of administration.

(3) Every administrator so neglecting to dispose of any estate with which he is chargeable shall be charged with interest at the rate of Seven Pounds per centum per annum for such sum and sums of money as from time to time have been in his hands, whether he has or has not made interest thereof.

Payment of Certain Moneys in Deceased Estates without Grants.

71. Where the personal representative of a deceased person is entitled under the Civil Service Act, 1874, or any Act amending the same or substituted therefor, to any sum not exceeding One Hundred Pounds, such sum may, with the Treasurer's consent and on such terms and conditions as he approves, be paid to the person

Sums under One Hundred Pounds payable to personal representative of civil servant.

Ibid., s. 73.

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person who appears to the Treasurer to be entitled to take out letters of administration of the estate of the deceased, or to probate of his will; or, if such person is an infant, then to his guardian, or to such other person on his behalf as the Treasurer thinks fit.

Payment by bank three months after death of customer to the widow or husband of sums not exceeding £50 without proof.

854, 1904, s. 15.

72. (1) Whenever on the death of an ordinary customer or depositor the moneys standing to his credit on the books of any bank do not exceed Fifty Pounds, and probate of his will or letters of administration of his estate is or are not produced to the manager of the bank within three months after the death of the customer or depositor, the manager of such bank may pay such money to the widow or husband of such customer or depositor without any proof other than the death of such customer or depositor and the identity of the widow or husband as the case may be.

(2) Every payment so made shall be valid, and be an effectual release to the bank against all claims and demands on account thereof.

(3) The next of kin, legatees, executors, or administrators of the deceased customer or depositor shall have all such remedies against the persons to whom such moneys were paid as they would have had against the bank if such payment had not been made by the bank as aforesaid.

PART IV.

PART IV.

THE PUBLIC TRUSTEE.

DIVISION I.

DIVISION I.—THE OFFICE OF PUBLIC TRUSTEE.

Public Trustee.

537, 1891, s. 7
(part).

816, 1903, s. 2.

1174, 1914, s. 4.

73. (1) The Public Trustee shall have and exercise the powers, authorities, and duties by this Act conferred upon him.

(2) The person who immediately before the coming into operation of this Act was Public Trustee shall hold such office under this Act, but may be removed by the Governor at any time.

(3) The Governor may from time to time appoint another person to be Public Trustee.

(4) The Governor may appoint Acting or Deputy Public Trustees, and such officers, clerks, and persons as he thinks fit to assist the Public Trustee in his duties, and may assign to them such duties as he thinks fit.

Incorporation of Public Trustee.
537, 1891, s. 9.

74. The Public Trustee, and his successors in office, shall continue to be a body corporate under the name of "Public Trustee," and shall by that name be capable of exercising all the functions of an incorporated body, and have perpetual succession and a seal, and may by that name sue and be sued, plead and be impleaded, in all Courts and before all Justices of the Peace and others.

75. The

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DIVISION I.

75. The seal of the Public Trustee shall be attached to all deeds executed by him.

Seal.
Ibid., s. 10.

76. The Public Trustee shall be subject to the general control and supervision of the Governor, and shall, before entering upon the duties of his office, and also from time to time, whenever required by the Governor so to do, give security to the satisfaction of the Governor for the collection and due payment of and accounting for all real and personal property which comes to his hands, or becomes vested in him by virtue of his office.

Public Trustee to be under control of Governor, and to give security.
Ibid., s. 14.

77. The Public Trustee shall be incapable of becoming, as Public Trustee, the trustee, guardian, committee, administrator, executor, agent, or attorney of any person or persons in respect of any property otherwise than as Public Trustee under this Act.

Public Trustee incapable of acting as trustee for property except under this Act.
Ibid., s. 15.

78. From and after the first day of January, eighteen hundred and eighty-one, wherever the expression "Curator of Intestate Estates" occurs in any Act, document, deed, or instrument, the same shall be read and construed as if the expression "Public Trustee" were substituted therefor.

"Curator of Intestate Estates" to be read as if "Public Trustee" substituted therefor.
Ibid., s. 83.

DIVISION II.—APPOINTMENT OF PUBLIC TRUSTEE TO ADMINISTER ESTATES AND TRUSTS.

DIVISION II.

79. The Court may order that administration, either with or without a will annexed, be granted to the Public Trustee, or may make an order authorising the Public Trustee to administer the estate of a deceased person—

Court may order administration to be granted to Public Trustee in certain cases.

I. Where, in the opinion of the Court, the deceased has died insolvent, or a creditor of his would be entitled to obtain administration of his estate, or to institute an action for the administration of such estate. In any case coming under this subdivision, where probate or administration has been granted to any person other than the Public Trustee, the Court may order that the same be revoked, but such revocation shall not affect the validity of any proceedings taken or act done under such probate or administration :

Ibid., s. 48.
854, 1904, s. 4
1174, 1914, s. 13.

II. Where the deceased has died wholly or partially intestate, leaving estate within this State, but not a widow, or husband, or lawful next of kin resident therein and of the age of twenty-one years :

III. Where the deceased has made a will without leaving any executor thereof resident within this State, and willing to act and capable of acting in the execution of such will, and there is no person of the age of twenty-one years in the said State entitled to obtain administration with such will annexed :

IV. Where

- iv. Where the deceased has made a will and appointed an executor or executors thereof, and probate of such will has not been obtained within four months from the death of the testator :
- v. Where any person entitled to obtain administration, with or without a will annexed, does not obtain the same within three months after the death of the deceased :
- vi. Where probate or administration has been granted to any person who desires to retire from the office of executor or administrator. In such a case the Court may revoke the probate or administration, without prejudice to any proceedings or act thereunder :
- vii. Where the estate, or portion thereof, is liable to waste, or is of a perishable nature, or is in danger of being lost or destroyed, or where great loss or expense may be incurred by reason of delay, and the executor or person entitled to administration, with the will annexed, or husband, or the widow or next of kin—
- (a) is absent from the locality of the estate ; or
 - (b) is not known ; or
 - (c) has not been found ; or
 - (d) is unfit or incapable :
- viii. Where any executor or any person entitled to administration with the will annexed, or the husband or widow, or any of the lawful next of kin, requests the Public Trustee, in writing, to apply for such order :
- ix. Where part of an estate, already partly administered, is unadministered owing to the death or incapacity of the executor or administrator.

On whose application order may be made.

537, 1891, s. 49 (part).

Court may appoint Public Trustee to be trustee, guardian, or committee, &c.

Ibid., s. 95.
1174, 1914, s. 10.

80. (1) An order may be made under section 79 on the application of the Public Trustee, or of any person interested in the estate, including a creditor, or of a guardian or blood relation of any person interested in the estate who is under the age of twenty-one years.

(2) Such order may be obtained either *ex parte* or upon such notice to such persons as the Court in any case directs.

81. In any case in which the Court might appoint—

- (a) a trustee of a will, settlement, or other disposition of trust property ;
- (b) a guardian of the person and estate of an infant ;
- (c) a committee of any lunatic's estate ; or
- (d) a next friend or guardian *ad litem* to any person for the purposes of any proceedings in any Court,

the Court may appoint the Public Trustee to be such trustee, guardian, committee, or next friend or guardian *ad litem*.

82. (1) With

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DIVISION II.**82.** (1) With the consent of the Court—

- (a) executors, whether appointed before or after the passing of this Act, may, unless expressly prohibited, appoint the Public Trustee sole executor ;
- (b) administrators, with or without a will annexed, whether appointed before or after the passing of this Act, may, unless expressly prohibited, appoint the Public Trustee sole administrator ; and
- (c) Trustees, whether appointed before or after the passing of this Act, and whether appointed by or under a will, settlement, declaration of trust, or otherwise howsoever, may, unless expressly prohibited, and notwithstanding the terms of the trust as to the number of trustees, appoint the Public Trustee (if he consents thereto) sole trustee in their place.

Appointment of
Public Trustee by
executors,
administrators, and
trustees.

Ibid., s. 18.

(2) Executors whose duties continue in the nature of a trusteeship after their administration is closed shall for the purpose of subsection (1) hereof be deemed to be trustees.

(3) Where there are more trustees, executors, or administrators than one, any one trustee or executor (whether before or after proving the will), or any one administrator, may apply to the Court to have the Public Trustee appointed sole trustee, executor, or administrator.

(4) All applications to the Court under this section may be by petition, summons, or otherwise ; and the Court may make such order as it thinks fit : Provided that, in the case of an application under subsection (3) hereof, the Court shall not appoint the Public Trustee if there is any trustee, executor, or administrator willing, and, in the opinion of the Court, suitable to act.

(5) Where to the appointment of a trustee, executor, or administrator the consent of any person is requisite, and such person refuses to consent to the Public Trustee being appointed, or where the person to consent is an infant, or lunatic, or a person of unsound mind, or is absent from the said State, or is under any other disability, then an appointment of the Public Trustee may be made under this section without such consent.

83. (1) Pending any action touching the validity of the will of any deceased person, or for obtaining or revoking any grant of probate or administration, the Court may by order appoint the Public Trustee to be the administrator of the estate of such deceased person.

Public Trustee may
be appointed ad-
ministrato*r pendente*
lite.

537, 1891, s. 46.

(2) The Public Trustee shall thereupon have all the rights and powers of a general administrator other than the right of distributing the residue of such estate, and he shall be under the immediate control of the Court, and act under its direction.

84. The

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Remuneration of
Public Trustee
acting *pendente lite*.

Ibid., s. 47.

84. The Court may direct that the Public Trustee, acting as such administrator pending action, shall receive out of the estate of the deceased such reasonable remuneration as the Court thinks fit, not exceeding Five Pounds per centum on moneys collected up to One Thousand Pounds, and not exceeding Two Pounds Ten Shillings per centum on the excess over One Thousand Pounds.

Where there is
reasonable ground to
believe that any
person has died, the
Public Trustee may
obtain an order to
administer without
strict legal proof of
death.

Ibid., s. 50.

85. (1) Whenever it appears to the Court—

- (a) that there is reasonable ground to suppose that any person has died, leaving property within this State, and
- (b) that such person has died intestate or his will has not been duly proved within a reasonable time after his death,

the Court may order the Public Trustee to administer the estate of such person without requiring strict proof of his death.

(2) Such order shall be in force until revoked.

(3) Such order shall empower the Public Trustee to administer the estate of the supposed deceased person for the benefit of his creditors, and to pay and discharge his debts and liabilities as if he were dead, and the Public Trustee had obtained an order to administer the estate under section 79.

Proceedings after
payment of creditors
under order of
administration.

Ibid., s. 51.

1174, 1914, s. 6.

86. (1) Where an order has been made under section 79 or section 85, the Court may, subject to subsection (3), order—

- (a) that probate be granted to any executor entitled to probate of the will of the deceased, or that letters of administration with such will annexed be granted to any person entitled to such letters; or
- (b) whether such probate or letters of administration be granted or not or whether there be a will or not, that all estate vested in or under the control of the Public Trustee be vested in or transferred or delivered to any person or persons entitled thereto, whether in trust or beneficially.

(2) Upon probate or administration with the will annexed being granted pursuant to an order made under subdivision (a) of subsection (1), the administration or order for administering granted in favor of the Public Trustee shall be revoked without affecting the validity of any proceedings or act under such administration or order.

(3) In case of an order having been made under section 85, no order shall be made under this section unless the Court thinks that the special circumstances of the case and the lapse of time since the order to administer justify an order under this section.

Public Trustee may
receive properties
subject to trusts.

Ibid., s. 15.

87. (1) In addition to the cases provided for by sections 88 and 81, the Court, in any case in which it sees fit, may, on the application of any person holding any money or other property in trust for any purpose, not being exclusively a religious purpose, make an order authorising the Public Trustee to receive and administer such money or other property.

(2) Such

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(2) Such order may be made however the trust may have been created or arisen, whether by or under a will, settlement, or other disposition of property, or otherwise howsoever.

(3) The Court may order that the costs and expenses of and incidental to the application be paid out of such money or property, and, in case the money or property is held in trust for public or charitable purposes, may, if it thinks fit, direct that no Court fees shall be payable.

88. (1) Any person may appoint the Public Trustee executor or trustee of his will, either solely or jointly with any other person or persons.

Public Trustee may be appointed trustee or executor of wills.

537, 1891, s. 93.

(2) The Public Trustee shall, on the death of such person, accept the office of trust so reposed in him.

1354, 1918, s. 6.

(3) Where the Public Trustee is appointed executor or trustee jointly with any other person, all moneys belonging to the estate, and received on account thereof, shall be received by and remain subject to the control of the Public Trustee alone, and shall be held by him on account of the estate, and in such case the receipt of the Public Trustee only shall be a sufficient discharge to persons paying money belonging to the estate.

(4) Notwithstanding anything contained in subsection (2) hereof, the Public Trustee may, by leave of a Judge, refuse to accept the office of executor or trustee of any will where in the opinion of a Judge the complicated, uncertain, or risky nature of the trusts or duties to be performed render it undesirable that the Public Trustee should act.

(5) Upon such refusal the right of the Public Trustee as such executor or trustee shall wholly cease, and the representation of the testator and the administration of his estate shall go and devolve and be committed in like manner as if the Public Trustee had not been appointed.

89. The Public Trustee may continue to hold and administer a certain sum of Two Thousand Two Hundred and Ten Pounds known as the Catherine Helen Spence Memorial Fund, and a certain sum of Two Thousand Pounds known as the Tom Price Memorial Scholarship Fund, as if since the passing of the Administration and Probate Amendment Act, 1914, an order had been made under section 15 thereof authorising him to receive and administer such sums.

Catherine Helen Spence and Tom Price Memorial Funds.

1174, 1914, s. 16.

90. The following documents may be deposited for safe custody with the Public Trustee, namely:—

Certain documents may be deposited with the Public Trustee for safe keeping.

(a) any will whereof the Public Trustee is appointed the executor or one of the executors:

Ibid., s. 21.

(b) any

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(b) any settlement, declaration of trust, or other instrument whereby any trust is declared or created concerning any property of any kind, and the Public Trustee is appointed a trustee or one of the trustees.

Public Trustee need not give security. 537, 1891, s. 49 (part).

91. The Public Trustee need not, on obtaining administration, enter into any bond or give any security.

No action to be instituted after Public Trustee has obtained administration.

92. After the grant of administration to the Public Trustee, or the making of an order authorising him to administer the estate of a deceased person, no person shall institute any action or other proceeding for the administration of such estate, and any such action or proceeding previously commenced shall, on the application of the Public Trustee, be stayed on such terms as to costs and otherwise as the Court thinks fit.

Ibid., s. 49 (part). 1174, 1914, s. 5.

Provisions as to administrators to apply to Public Trustee when administering under order.

93. When an order has been made under this Act authorising the Public Trustee to administer the estate of a deceased person—

Ibid., s. 17.

- I. All the provisions of this Act as to an administrator, *mutatis mutandis*, shall apply to the Public Trustee, so far as such application is practicable and is not inconsistent with any of the provisions of this Act, to the same extent as if administration of such estate had been granted to the Public Trustee; and
- II. For the purposes of any other Act, and subject to the provisions thereof, the Public Trustee shall be deemed to be the administrator of such person.

DIVISION III.

DIVISION III.—ADMINISTRATION OF ESTATES BY THE PUBLIC TRUSTEE.

Public Trustee may pay over to Curator of another State.

854, 1904, s. 6.

94. When the Public Trustee has obtained an order to administer the estate in this State of any person who at the time of his death was domiciled in one of the other States of the Commonwealth of Australia, or in the Dominion of New Zealand, and whose estate in the other State or the said Dominion is being administered by the Curator of such other State or Dominion, or by an executor or administrator duly appointed by the Supreme Court of such State or Dominion, the Public Trustee may pay over to the Curator of the State or Dominion in which the deceased was domiciled at the time of his death, or to such executor or administrator, the balance of the estate, after payment of his debts in this State and the charges provided for in this Act or the Rules, without seeing to the application of any money so paid, and without incurring any liability in regard to such payment.

Public Trustee may receive from the Curator of another State.

95. (1) When the Curator of any State of the Commonwealth of Australia (other than this State) or of the Dominion of New Zealand

Zealand has in the said State or Dominion obtained administration of the estate of any deceased person whose estate in this State is being administered by the Public Trustee, and who at the time of his death was domiciled in this State, the Public Trustee may receive from the Curator of such other State or Dominion the balance of the deceased's estate in that State or Dominion, after payment of creditors and all charges provided for under the law of such State or Dominion. Ibid., s. 7.

(2) Such balance shall, when so received, form part of the estate of the deceased, and shall be dealt with according to the law of this State, but no commission shall be paid to or deducted by the Public Trustee.

96. For the purposes of sections 94 and 95 "Curator," when used in reference to any State of the Commonwealth of Australia or the Dominion of New Zealand, means and includes the Curator of Intestate Estates or the Public Trustee for the time being of such State (other than this State) or of the said Dominion, as the case may require, or the officer discharging in such State or Dominion duties corresponding or similar to those discharged in this State by the Public Trustee. Meaning of "Curator."
Ibid., s. 3.

97. In any case such as mentioned in section 94 or 95 of this Act, the Public Trustee, if satisfied that the total of the assets in the estate, wherever situated or recoverable, is insufficient for the payment in full of all creditors and all charges provided for by law, may make or receive under such of the said sections as is applicable to the case such payments as appear to be necessary for the due administration of the estate, notwithstanding that the creditors in this State or elsewhere have not been paid in full. Balances of estate may be paid or received under sections 94 and 95, notwithstanding deficiency of estate.
1174, 1914, s. 14.

98. The Public Trustee having had administration granted to him, or being authorised to administer under section 79, shall, where there are creditors of the deceased person, administer the estate in the same manner as it would have been administered for the benefit of creditors under a decree of the Supreme Court, and shall, subject to the approval of the Court, have, for the purposes of such administration, power of sale of real estate. Duties of Public Trustee on obtaining administration.
537, 1891, s. 49(3).

99. (1) The Public Trustee shall require administrators and other persons to deliver, convey, or transfer to him all property to which he becomes entitled under the provisions of this Act. Public Trustee to require transfer to him of property to which he is entitled.

(2) For the purpose of ascertaining whether any administrator, or other person, is possessed of or entitled to any property which should be so delivered, conveyed, or transferred, the Public Trustee may institute such inquiries as he thinks proper regarding the particulars of estates under administration and held in trust, and may, by summons under his hand, require any administrator or other 537, 1891, s. 84.

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other person to appear before him, and answer all questions that he may put to such administrator or other person with reference to any estate.

(3) The Public Trustee shall pay or tender to the person so summoned the same amount as such person would have been entitled to had he been summoned as a witness to the Supreme Court.

Penalty on failure to attend, &c.

(4) Any administrator or other person who, after receiving such summons, fails to attend at the time and place mentioned therein, or who neglects to truly answer the questions put to him by or on behalf of the Public Trustee, shall forfeit and pay a penalty not exceeding Ten Pounds for each offence.

Power to summon administrator or other person before Judge.

100. (1) If—

(a) any administrator or other person fails to deliver, convey, or transfer to the Public Trustee all property to which the Public Trustee is entitled under the provisions of this Act; or

(b) the procedure in the last section provided fails to elicit the particulars required,

Ibid., s. 85.

the Public Trustee may issue a summons requiring such administrator, or other person, or any person who is supposed to be in possession of information relevant to the matter under investigation, to appear before a Judge, at a time and place to be therein mentioned, for the purpose of being examined touching such matters, and to produce any books, papers, deeds, or documents.

Order for transfer of property.

(2) The Judge, if he is of opinion that such administrator or other person is possessed of or entitled to any property that should be delivered, conveyed, or transferred to the Public Trustee, may make an order requiring such administrator or other person to deliver, convey, or transfer all such property to the Public Trustee within such time as the Judge deems expedient.

(3) Such order may be made in the absence of the person summoned, if the summons has been duly served upon him.

Order as to costs.

(4) The Judge may order such administrator or other person to pay all costs and expenses of and incidental to such summons and any examination consequent thereon.

(5) If the Judge does not so order, then such costs and expenses shall be paid by the administrator of the estate with reference to which the proceedings have been taken, out of the general funds of such estate in priority to all other claims, or, if the Judge so orders, out of any particular portion of such funds.

Result of disobedience to summons.

101. (1) Any administrator or other person who—

(a) after receiving any summons under section 100 to appear before a Judge, fails to attend at the time and place mentioned;

Ibid., s. 86.

(b) upon

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- (b) upon attending, refuses to be sworn or neglects to answer any question that is put to him by or on behalf of the Public Trustee ;
- (c) having been summoned to produce any books, papers, deeds, or documents, fails to produce the same without valid excuse, or, if so required, hand such books, papers, deeds, or documents over to the Public Trustee ; or
- (d) disobeys any order made by a Judge upon the hearing of any such summons ;

shall be guilty of contempt of Court.

(2) A Judge may make an order for the arrest of such administrator or other person, and his imprisonment, either for such period as the Judge thinks fit or until he has purged his contempt to the satisfaction of a Judge.

(3) The Judge may also order such administrator or other person to pay the costs of such proceedings.

102. (1) All moneys belonging to any estate received by the Public Trustee under this Act shall forthwith be paid by him to an account at some incorporated or chartered bank in Adelaide, to be approved by a Judge, and shall then, until required for payment to the persons entitled thereto, be invested by the Public Trustee.

Moneys received by Public Trustee to be paid into bank and invested.

Ibid., s. 88.

854, 1904, s. 9.

1174, 1914, s. 8.

(2) Where there is no trust requiring the investment of the moneys in specified securities, such moneys shall be invested—

- (a) in bonds, bills, notes, or other securities of or guaranteed by the Government of this State ;
- (b) on loan to the trustees of the Savings Bank of this State ;
- (c) on deposit with any incorporated or chartered bank carrying on business in this State, and approved by the Treasurer thereof ;
- (d) on loan to the Treasurer of this State ; or
- (e) in any investments in which a trustee is by section 4 of the Trustee Act, 1893, or by any amendment of that section or any enactment substituted therefor, authorised to invest trust funds.

(3) Where there is a trust requiring the investment of the moneys in specified securities, such moneys shall be invested accordingly.

103. The Public Trustee may, with the approval of the Court, postpone for any period the sale, realisation, and conversion into money of any estate coming into his possession or under his control, and in the meantime may demise or lease any real estate or chattels real to such person, at such rent, upon such terms and conditions, and in such manner (not inconsistent with the tenure of such real estate or chattels real) as the Court approves.

Power of postponement of sale and leasing of real estate and chattels real.

537, 1891, s. 89.

104. (1) No

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Indemnity to persons having dealings with Public Trustee.

Ibid., s. 90.

104. (1) No person purchasing or selling any estate, or receiving or paying any money from or to or having any other transaction with the Public Trustee, which requires the authority of the Court, shall be bound or entitled to require evidence that such authority has been given, further than the order or an office copy of the order giving such authority.

(2) Such order or office copy shall, so far as all persons having any such transaction as aforesaid with the Public Trustee are concerned, be conclusive evidence of the regularity of such transaction on the part of the Public Trustee.

(3) The receipts in writing of the Public Trustee for any moneys payable to him under this Act shall be sufficient discharges for the same to the persons paying the same, who shall not afterwards be liable for any misapplication thereof.

Settlement on marriage of female infant.

Ibid., s. 92.

105. If the Public Trustee has under his control the property of any female under the age of twenty-one years who marries, a Judge may authorise the Public Trustee to deliver, transfer, or convey such property to such two or more persons as trustees, upon such trusts, to be defined by deed, as a Judge may approve.

Real estate and securities not to be disposed of by Public Trustee without approval of Supreme Court.

Ibid., s. 96.

106. The Public Trustee shall not, without the approval of the Court—

(a) enter into any agreement for the sale, mortgage, lease, or other disposal of any real estate vested in him under the authority of this Act; or

(b) enter into any agreement for the sale or other disposal of any securities in which the funds under the control of the Public Trustee are invested.

Public Trustee to give notice to beneficiary of money or other property to which beneficiary is entitled.

Ibid. s. 97.

107. When any money in the hands of the Public Trustee becomes payable to any beneficiary, or when any beneficiary is entitled to the conveyance, transfer, or delivery of any other property, whether real or personal, vested in or under the control of the Public Trustee, the Public Trustee shall, when practicable, give notice to the beneficiary that such money is payable to him, or that he is entitled to the conveyance, transfer, or delivery of such property.

Administration of Public Trustee may be referred to Supreme Court.

Ibid., s. 98.

108. (1) Upon petition to the Court, by any person showing to the satisfaction of the Court that he has an interest in any property for the time being administered by the Public Trustee, the Court may summon the Public Trustee to attend at a time and place in the summons mentioned for the purpose of answering the allegations of the petition.

(2) The Court, on the hearing of such summons, may—

(a) make such order in relation to the conduct of the Public Trustee as trustee guardian, or committee in the matter giving rise to such petition as the Court thinks fit; and

(b) order

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- (b) order the Public Trustee to produce or to pay and deliver over all money, books, and documents in his possession, control, or custody to any person or persons named in such order.

109. (1) When an estate is in course of administration by the Public Trustee, and any claim is made by any person against such estate, whether as a creditor or beneficiary, the Public Trustee, if in doubt as to the validity of such claim, may institute such inquiries as he thinks proper regarding such claim, and may, by a summons signed by him, require the claimant and any other persons to appear before a Judge at any time and place therein mentioned, and then, or at any adjournment of the application, to answer all questions that may be put to them respectively with reference to such claim: Provided that the Public Trustee shall pay or tender to any person so summoned the same amount as such person would be entitled to if he had been summoned as a witness to the Supreme Court.

Public Trustee may hold inquiry as to validity of claim against the estate.

1174, 1914, s. 19.

(2) If the claimant, after receiving a summons under this section, fails to attend at the time and place therein mentioned, or at any adjournment of the application, or if he refuses or fails to truly answer any question put to him by or on behalf of the Public Trustee, it shall be lawful for the Public Trustee, by direction of a Judge, either with or without proceeding under subsection (3) hereof, to reject the claim.

(3) If the claimant or any other person, after receiving a summons under this section, fails to attend at the time and place therein mentioned, or at any adjournment of the application, or refuses or fails to truly answer any question put to him by or on behalf of the Public Trustee, he shall, if a Judge so directs, forfeit and pay a penalty not exceeding Ten Pounds, which shall be recoverable in a summary manner before a Special Magistrate or two Justices of the Peace, and sections 125 and 126 shall apply to and in respect of such penalty and the recovery thereof.

110. (1) When the Public Trustee is administering any estate, and there is property vested in him to the credit of such estate, but there is not sufficient money available to make payments required to be made on account of such estate, whether to beneficiaries or creditors, or for expenses of administration, or otherwise, the Public Trustee may, with the approval of a Judge, advance and pay, for or on account of such estate, any sum of money which he is authorised or required to pay: Provided that no greater amount shall be so advanced and paid than the value of the property so vested in the Public Trustee.

Public Trustee may make advances for purposes of administration.

Ibid., s. 20.

(2) The sums so advanced, with interest thereon at a rate to be fixed by the Judge, shall be a first charge upon all the property in the estate.

111. The power conferred on a trustee by section 2 of the Trustee Act, 1907, is hereby conferred on the Public Trustee.

Powers of trustees under s. 2 of Act No. 944 of 1907 conferred on Public Trustee.

Ibid., s. 9.

112. (1) In

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Charges for carrying
on trusts.

537, 1891, s. 100.

854, 1904, s. 12.

1174, 1914, s. 11.

112. (1) In order to defray the expenses incidental to the establishment and maintenance of the office of Public Trustee, there shall be charged, on all moneys received by the Public Trustee on account of estates coming under his control, a commission according to the scale of charges contained in the Second Schedule.

(2) Such commission shall be deducted by the Public Trustee from the moneys received by him as aforesaid, and shall be paid by him, together with any fines which have been received by him, to the Treasurer.

(3) The Treasurer shall carry the same to a separate account, to which shall be charged all expenses of and incidental to the establishment and maintenance of the said office.

(4) The Court or any one or more of the Judges thereof shall have power, subject always to the provisions of subsections (3) and (4) of section 122, to make rules, revoking, amending, altering, or varying the scale of charges mentioned and prescribed in the Second Schedule.

(5) Notwithstanding anything in this section, the Public Trustee, with the approval of a Judge, may, as regards any estate coming under his control—

(a) fix the commission to be charged at a less rate than that contained in the said Second Schedule, or than that for the time being in force as regards estates generally, or

(b) refrain from charging any commission.

Court may allow
Public Trustee com-
mission on property
conveyed in specie.

854, 1904, s. 8.

113. The Court may allow to the Public Trustee such commission as is just and reasonable—

(a) on all property, real or personal other than money and over the value of One Hundred Pounds, which comes to the hands of the Public Trustee under the authority of this Act; and

(b) on any money or property received by him under or in pursuance of any Act in which no provision for any allowance to the Public Trustee is made.

Costs and expenses,
how to be defrayed.

537, 1891, s. 101.

114. (1) All costs and expenses of and incidental to any proceedings to obtain judicial advice and other applications to the Court, and all costs and expenses incurred by the Public Trustee in instituting and carrying on or defending any action or suit, and all other costs and expenses incurred by the Public Trustee in the performance of his duties under this Act, or in connection with any estate, which are not ordinarily incurred in the administration of estates, shall be charged against the estate in respect of which such costs and expenses are incurred.

(2) The Public Trustee, by leave of the Court, may sell all or any of the property, whether real or personal, belonging to such estate, to obtain funds for the payment of such costs and expenses.

115. (1) The

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115. (1) The Public Trustee shall keep full and accurate accounts of all estates and matters coming under his control, and of all his dealings and transactions in relation to such estates.

Public Trustee to keep accounts.

Ibid., s. 102.

(2) Such accounts shall be audited by the Commissioner of Audit half-yearly.

116. (1) In the first week in every January the Public Trustee shall pay to the Treasurer, for the public revenue of the State, all sums of money not belonging to a person not *sui juris* which, on the first day of that month, have been in his hands to the credit of any intestate estate and unclaimed for the term of six years next preceding.

Public Trustee to pay unclaimed moneys to Treasurer.

Ibid., s. 103.

(2) If any land has remained vested in the Public Trustee for twenty years, and he is ignorant of any person beneficially entitled to or interested therein, he may, by leave of the Court to be given after such advertisements as the Court in each case directs, sell such land and convey or transfer it to the purchaser, and shall pay the purchase-money, less costs and expenses, to the Treasurer, for the public revenue of the State.

117. (1) If, at any time after any such money has been so paid to the Treasurer—

Provision for parties subsequently claiming who may petition the Supreme Court, etc.

(a) any person presents a petition to the Court praying for the payment to him of such money, or any part thereof (a copy of such petition being previously served on the Public Trustee); and

Ibid., s. 104

(b) the Court is of opinion, upon affidavit or other sufficient evidence, that the person petitioning is entitled to such money, or any part thereof—

the Court shall make an order for payment thereof, after deducting any costs and expenses which have been incurred by the Public Trustee, or otherwise, in respect of such application, or shall make such other order as is just.

(2) On any such order being served on the Treasurer, he shall pay the money mentioned in such order to the person entitled to receive the same in pursuance thereof, and the receipt of such person shall be a valid discharge for such sum.

(3) No interest shall be paid on any such money by virtue of any such order or otherwise, from the time the same has been paid to the Treasurer.

118. (1) The public revenue of the State shall be responsible for the due application of all moneys which come into the hands of the Public Trustee, and for the payment of all judgments, decrees, rules, or orders which are given or made against the Public Trustee.

Responsibility of Government for acts of Public Trustee.

Ibid., s. 105.

(2) The Public Trustee shall not be responsible for such moneys, nor for any act, deed, or omission to a greater extent than a trustee would by law be responsible in a similar case.

PART

PART V.

MISCELLANEOUS.

Probate to be evidence of wills concerning real estate.

1354, 1918, s. 9.

119. (1) The probate of any will or letters of administration with the will annexed 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.

(2) The copy attached or annexed to such probate or letters of administration, purporting to be a copy of such will, shall be evidence of the contents of such will.

(3) The probate of any will or letters of administration shall be evidence of the death, and the date of the death of the testator or intestate.

No will to be registered or admissable in evidence until proved.

567, 1893, s. 38.

120. (1) No will of any person dying on or after the twenty-sixth day of October, eighteen hundred and ninety-three, shall be registered, or be admissable or receivable in evidence, except in criminal proceedings or upon application for probate or letters of administration, until administration in respect of the estate comprised therein has been issued or obtained.

(2) In this section "administration" means any probate or letters of administration with or without a will annexed and any rule or order of any Court or Judge, and any deed or document of any kind whatsoever whereby any person becomes entitled at law to administer, take charge of, or become receiver of any property of deceased persons.

Inspection of documents in Lands Titles or General Registry Office.

537, 1891, s. 108.

121. Where the inspection of any deeds or other documents in the Lands Titles or General Registry Office is required by the Registrar for the purposes of the Probate and Succession Duty Act, 1876, or of this Act, the Registrar-General shall produce such deeds or documents to the Registrar, or any person appointed by him in writing to make such inspection.

Court may make rules.

Ibid., s. 112.

122. (1) The Court, or any one or more Judges thereof, shall have power from time to time to make such rules as to the said Court, Judge, or Judges appear expedient—

- (a) for regulating the procedure and practice of the Court in its testamentary causes jurisdiction, and the fees payable upon all proceedings so far as regards common form business ;
- (b) for the guidance of executors and administrators in relation to lands passing under section 46 ;
- (c) for defining the duties of the Registrar and other officers thereof ;
- (d) for determining what shall be deemed contentious and what non-contentious business ;
- (e) for regulating the procedure and practice under Part III. and Division III. of Part IV. ;
- (f) for

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PART V.

(f) for prescribing forms ; and

(g) generally for carrying the provisions of this Act into effect.

(2) The Court, or any one or more Judge or Judges thereof, shall also have power, by rules made for that purpose, to revoke, amend, add to, or alter any such rules, or any rules in existence at the commencement of this Act.

(3) All such rules shall be approved by the Governor, and shall thereafter be published in the *Gazette*, and shall take effect from a time to be therein specified ; and shall be laid before both Houses of Parliament within fourteen days after the making thereof, if Parliament is then sitting, or if Parliament is not then sitting, within fourteen days after the commencement of the then next Session of Parliament.

Rules to be approved by Governor, published in *Gazette*, and laid before Parliament.

(4) If either House of Parliament, by resolution passed within thirty-six days next after any such rules are laid before it, resolve that the whole or any part thereof ought not to continue in force, the whole of such rules, or such parts thereof as may be specified in the resolution (as the case may be), shall, from the passing of such resolution, cease to be binding.

(5) The powers hereby given for making rules shall not affect any powers in that behalf contained in the Supreme Court Act, 1878.

123. All affidavits or declarations made under this Act or the rules shall be sworn or made before the Registrar, or any District Registrar, notary public, or commissioner for taking affidavits in the Supreme Court, and any such declaration shall be sufficient if the declarant states therein that he makes the same in pursuance of this Act.

Affidavits,
Ibid., s. 113.

124. Any person who knowingly and wilfully makes a false oath or declaration under this Act, or the rules, shall be guilty of perjury.

Person making a false oath guilty of perjury.
Ibid., s. 114.

125. All proceedings before Justices, or a Special Magistrate and Justices, shall be regulated by Ordinance No. 6 of 1850 and any amendment thereof, or any other Act or Acts for the time being in force relating to summary proceedings of Justices.

Proceedings before Special Magistrate and Justices.
Ibid., s. 115.

126. (1) In every case of the adjudication of a fine or pecuniary penalty under this Act, and of the non-payment of such fine or pecuniary penalty, any Special Magistrate may commit the offender or person making default in payment to any gaol in this State for any time not exceeding three months, the imprisonment to cease on payment of the sum due and the costs of such proceedings as have been taken for the recovery thereof.

On non-payment of penalties, &c., Special Magistrate may imprison.

Ibid., s. 116.

(2) This section shall not affect any remedy under the said Ordinance No. 6 of 1850, or the Act No. 298 of 1883-4, for the recovery of any fine or any pecuniary penalty.

127. (1) There

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Appeal to Local Court from order made by Justices.

Ibid., s. 117.

127. (1) There shall be an appeal from any order of Justices made under the provisions herein contained, and from any conviction by Justices, or by a Special Magistrate and Justices, for any offence against this Act, and from any order dismissing any information under this Act.

(2) Such appeal shall be to the Local Court of Adelaide of Full Jurisdiction only.

(3) The proceedings on such appeal shall be conducted in manner appointed by the said Ordinance No. 6 of 1850, and the Act No. 298 of 1883-4, or any other Act or Acts for the time being in force regulating appeals to Local Courts, but the Local Court of Adelaide aforesaid may make such order as to payment of the costs of such appeal as the Court thinks fit, although such costs may exceed Ten Pounds.

(4) Nothing in this Act contained shall affect any of the provisions of the Act No. 298 of 1883-4.

Court may, on appeal, state a case for opinion of Supreme Court.

Ibid., s. 118.

128. (1) The Court of Appeal, upon the hearing of any appeal under section 127, may state one or more special case or cases for the opinion of the Supreme Court.

(2) The Supreme Court shall hear and decide such special case or cases according to the practice of the Supreme Court on special cases.

(3) The Supreme Court shall make such order as to the costs of any such special case as to such Court appears just.

(4) Any Justice or Justices, or Special Magistrate and Justices, or the Local Court of Adelaide, shall make an order in respect of the matters referred to the Supreme Court in conformity with the certificate of the said Supreme Court, or of any Judge thereof, which last-mentioned order shall be enforced in manner provided by this Act or otherwise for the enforcement of orders of Justices.

(5) Save as herein, or by Act No. 298 of 1883-4, or any other Act in that behalf provided, no conviction, order, or proceeding of any Justice or Justices, or Special Magistrate and Justices, or of any Local Court made under the authority of this Act, shall be appealed against or removed by *certiorari* or otherwise into the Supreme Court.

Governor may stay or compound any proceedings.

Ibid., s. 119.

129. The Governor may stay or compound proceedings for any penalty, and may reward any person who informs of any offence against this Act, or assists in the recovery of any penalty.

In the name and on behalf of His Majesty, I hereby assent to this Bill.

H. L. GALWAY, Governor.

SCHEDULES.

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SCHEDULES.

FIRST SCHEDULE.

ACTS CONSOLIDATED AND REPEALED.

Section 3.

Reference to Act.	Title of Act.	Extent of Repeal.
No. 537 of 1891..	The Administration and Probate Act, 1891	The whole Act, except sections 106, 107, 109, 110, and 111.
No. 567 of 1893..	The Succession Duties Act, 1893....	Section 38.
No. 586 of 1893..	The Trustee Act, 1893	Section 70.
No. 816 of 1903..	The Administration and Probate Amendment Act, 1903	The whole.
No. 854 of 1904..	The Administration and Probate Amendment Act, 1904	The whole.
No. 1174 of 1914.	The Administration and Probate Amendment Act, 1914	The whole.
No. 1354 of 1918.	The Administration and Probate Amendment Act, 1918	The whole.

SECOND SCHEDULE.

SCALE OF CHARGES.

In all cases the Public Trustee's charge is to be exclusive of commissions and expenses necessarily paid to auctioneers or agents, of all legal costs, and of cash disbursed for postages, telegrams, advertising, surveys, valuations, travelling expenses, and other expenses incurred for the benefit of the estate. Section 11

For realising the Property of an Estate.

Not exceeding £10,000 2½ per cent. commission.
For the excess over £10,000 1 " "

For collecting Rents, Interest, Dividends, or Profits.

For the first £1,000 5 per cent. commission.
Over £1,000 2½ " "

For the Investment of Money.

Nil.

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THE ADMINISTRATION AND PROBATE ACT, 1919.

Table showing how the Sections of the Acts Consolidated have been dealt with.

Section of Repealed Act.	Remarks.	Section of Consolidating Act.
The Administration and Probate Act, 537, 1891 s. 1	Short title and commencement	—
Ibid. s. 2	Division into parts	—
“ s. 3	Repeal.....	—
“ s. 4	As amended by 1174, 1914, s. 3. Definitions of “personal representative,” “prescribed,” “regulations,” “The Real Property Act,” and “The Northern Territory” omitted as unnecessary	4
“ s. 5	—	45
“ s. 6	—	5
“ s. 7	As amended by 1174, 1914, s. 4	6, 73
“ s. 8	—	7
“ s. 9	—	74
“ s. 10	—	75
“ s. 11	Provisions relating to Public Trustee of the Northern Territory omitted	—
“ s. 12		—
“ s. 13		—
“ s. 14		—
“ s. 15	—	76
“ s. 16	Words “and Palmerston” omitted as relating to Northern Territory	77
“ s. 17	—	9
“ s. 18	—	10
“ s. 19	—	11
“ s. 20	—	12
“ s. 21	—	13
“ s. 22	—	14
“ s. 23	—	15
“ s. 24	—	16
“ s. 25	—	8
“ s. 26	—	21
“ s. 27	As amended by 1354, 1918, s. 3	17, 23
“ s. 28	As amended by 1354, 1918, s. 4	18
“ s. 29	—	19
“ s. 30	“Colonies for the time being on the mainland of Australia” and Tasmania, interpreted as “States of the Commonwealth of Australia”	20
“ s. 31	—	22
“ s. 32	—	24
“ s. 33	—	25
“ s. 34	“Office of the Court” interpreted as meaning “Probate Registry of the Court”	26
“ s. 35	—	27
“ s. 36	Repealed by 1354, 1918, s. 5	—
“ s. 37	—	28
“ s. 38	Repealed by 1354, 1918, s. 5	—
	Reference to “section 21” obviously intended for “section 20”	29

Administration and Probate Act.—1919.

Table showing how the Sections of Acts Consolidated have been dealt with—continued.

Section of Repealed Act.	Remarks.	Section of Consolidating Act.
The Administration and Probate Act, 537, 1891 s. 39	The word "Rules" is substituted for the words "Third Schedule," the Third Schedule having been repealed by Rules, 29th December, 1904	30
Ibid. s. 40	—	31
" s. 41	—	32
" s. 42	—	33
" s. 43	The words "both at law and in equity and as to the said person his executors or administrators" omitted as unnecessary	57
" s. 44	—	56
" s. 45	As amended by 854, 1904, s. 10	58
" s. 46	—	83
" s. 47	—	84
" s. 48	—	79
" s. 49	As amended by 1174, 1914, s. 5	80, 91, 92,
" s. 50	—	98
" s. 51	As amended by 1174, 1914, s. 6	85
" s. 52	Repealed by 1354, 1918, s. 5	86
" s. 53	—	—
" s. 54	—	35
" s. 55	—	36
" s. 56	—	37
" s. 57	" Payments " altered to " payment " ..	38
" s. 58	—	39
" s. 59	—	40
" s. 60	—	41
" s. 61	—	42
" s. 62	—	43
" s. 63	—	44
" s. 64	As amended by 854, 1904, s. 10	70
" s. 65	As amended by 854, 1904, s. 10	46
" s. 66	—	47
" s. 67	—	48
" s. 68	As amended by 586, 1893, s. 70	49
" s. 69	The words "personal representative" interpreted to mean "executor or administrator"	50
" s. 70	Covered by saving clause	—
" s. 71	" Unmarried " interpreted to mean "not under coverture"	53
" s. 72	—	54
" s. 73	As amended by 854, 1904, s. 13	55
" s. 74	—	71
" s. 75	—	59
" s. 76	—	52
" s. 77	Reference to "section 49" obviously intended for "section 48"	60
" s. 78	—	61
" s. 79	—	62
" s. 80	—	51
" s. 81	—	63
" s. 82	—	64
" s. 82	—	65, 67

*Administration and Probate Act.—1919.**Table showing how the Sections of Acts Consolidated have been dealt with—continued.*

Section of Repealed Act.	Remarks.	Section of Consolidating Act.
The Administration and Probate Act, 537, 1891 s. 83	—	78
Ibid. s. 84	—	99
“ s. 85	—	100
“ s. 86	—	101
“ s. 87	“ Curator of Intestate Estates ” omitted as obsolete	66
“ s. 88	As amended by 854, 1904, s. 9, and 1174, 1914, s. 8	102
“ s. 89	—	103
“ s. 90	—	104
“ s. 91	—	68
“ s. 92	—	105
“ s. 93	—	88 (1), (2), (3)
“ s. 94	As substituted by 1354, 1918, s. 6	79 (4), (5)
“ s. 95	As amended by 1174, 1914, s. 10	81
“ s. 96	—	106
“ s. 97	—	107
“ s. 98	—	108
“ s. 99	—	69
“ s. 100	As amended by 1174, 1914, s. 11	112
“ s. 101	—	114
“ s. 102	“ Auditor-General ” interpreted to mean “ Commissioner of Audit ”	115
“ s. 103	—	116
“ s. 104	—	117
“ s. 105	Word “ now ” omitted as obviously imposing a qualification that is not intended	118
“ s. 108	—	121
“ s. 112	—	122
“ s. 113	Words “ or regulations ” omitted as unnecessary	123
“ s. 114	—	124
“ s. 115	—	125
“ s. 116	—	126
“ s. 117	Words “ or any regulation ” omitted as unnecessary	127
“ s. 118	—	128
“ s. 119	Words “ or any regulation ” omitted as unnecessary	129
“ First Schedule	Acts repealed	—
“ Second Schedule	—	2nd Sched.
“ Third Schedule	Repealed by rules, 29th December, 1904	—
The Succession Duties Act, 567, 1893 s. 38	—	120
The Trustee Act, 586, 1893 . . s. 70	—	49
The Administration and Probate Amendment Act, 816, 1903 s. 1	Short title	—
Ibid. s. 2	Effect is given to this section by re-drafting 537, 1891, s. 7	73
The Administration and Probate Amendment Act, 854, 1904 s. 1	Short title	—
Ibid. s. 2	Incorporation	—

*Administration and Probate Act.—1919.**Table showing how the Sections of Acts Consolidated have been dealt with—continued.*

Section of Repealed Act.	Remarks.	Section of Consolidating Act.
The Administration and Probate Amendment Act, 854, 1904 s. 3	Definition of "Curator of any (or such) other State" redrawn, so as to render definition of "State" unnecessary ...	96
Ibid. s. 4	As amended by 1174, 1914, s. 13.....	79
" s. 5	Covered by.....	88, 92
" s. 6	—	94
" s. 7	—	95
" s. 8	—	113
" s. 9	—	102
" s. 10	—	46, 58, 70
" s. 11	Omitted as relating to the Northern Territory.....	—
" s. 12	Words "or any of the rules, forms, and fees . . . in the Third Schedule" omitted because of repeal of Third Schedule by rules, 29th December, 1904	112
" s. 13	—	55
" s. 14	As substituted by 1174, 1914, s. 15.....	81
" s. 15	—	72
The Administration and Probate Amendment Act, 1174, 1914 s. 1	Short title	—
Ibid. s. 2	Incorporation.....	—
" s. 3	Amendment of "personal representative" unnecessary in consequence of omission of definition of "personal representative".....	4
" s. 4	—	6 (7), 73 (4)
" s. 5	—	92
" s. 6	—	86
" s. 7	Repealed by 1354, 1918, s. 7	—
" s. 8	—	102
" s. 9	—	111
" s. 10	—	81
" s. 11	—	112
" s. 12	Covered by.....	1
" s. 13	—	79
" s. 14	—	97
" s. 15	—	87
" s. 16	—	89
" s. 17	—	93
" s. 18	—	82
" s. 19	—	109
" s. 20	—	110
" s. 21	—	90
The Administration and Probate Act, 1354, 1918 s. 1	Short titles	—
Ibid. s. 2	Incorporation.....	—
" s. 3	—	17
" s. 4	—	18
" s. 5	Repeal of ss. 35, 37, and 52 of 537, 1891..	—
" s. 6	—	88 (4), (5)
" s. 7	Repeal of s. 7 of 1174, 1914	—
" s. 8	—	34
" s. 9	—	119
" s. 10	—	6 (8)