

## TASMANIA.

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**THE ADMINISTRATION AND PROBATE  
ACT 1935.**


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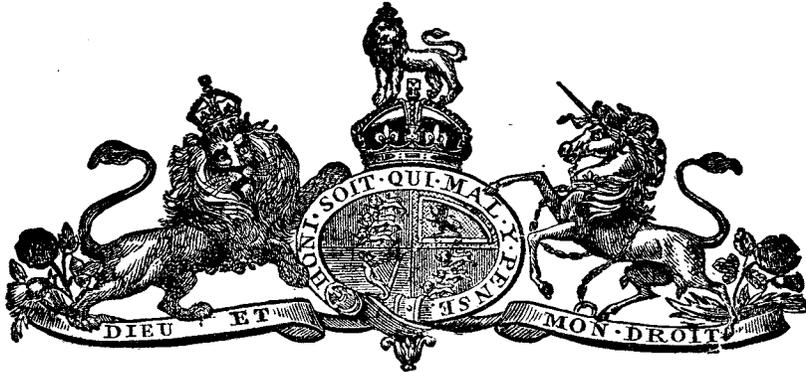
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1935.

ANNO VICESIMO SEXTO

GEORGII V. REGIS.

No. 38.

AN ACT to consolidate and amend the Law <sup>A.D.</sup> 1935.  
relating to the Administration of the  
Estates of Deceased Persons and the Grant-  
ing of Representation in respect thereof.

[18 October, 1935.]

**BE** it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows :—

## PART I.

Short title.

## PRELIMINARY.

**1** This Act may be cited as the *Administration and Probate Act* 1935.

**2**—(1) The enactments set forth in the first schedule are hereby Repeal, repealed to the extent indicated in that schedule.

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Exclusion of  
Imperial  
enactment.

(2) No Imperial enactment other than the *Australian Courts Act* 1828, so far as it relates to the administration of the estates of deceased persons shall apply in respect of the estate of any person dying after the commencement of this Act.

Interpretation.

**3** In this Act, unless the contrary intention appears—

“Administration” means, with reference to the real and personal estate of a deceased person, letters of administration, whether general or limited, or with the will annexed or otherwise; and in Part VI. includes exemplification of letters of administration or such other formal evidence of the letters of administration purporting to be under the seal of a court of competent jurisdiction as shall, in the opinion of a judge, be deemed sufficient :

“Administrator” means a person to whom administration is granted :

“Australasian Colony” means any State of the Commonwealth, the Dominion of New Zealand, Fiji, or any other British Colony or possession in Australasia to which the Governor by proclamation has declared that Part VI. shall apply :

“Conveyance” includes a mortgage, lease, assent, vesting declaration, vesting instrument, disclaimer, release, and every other assurance of property or of an interest therein by any instrument, except a will; and “disposition” includes a “conveyance” and also a devise or bequest and an appointment of property contained in a will :

“Court” means the Supreme Court :

“Income” includes rents and profits :

“Intestate” includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate :

“Lunatic” includes a lunatic, whether so found or not; and in relation to a lunatic not so found “committee” includes a person on whom the powers of a committee are conferred; and “defective” means a defective within the meaning of the *Mental Deficiency Act* 1920, for whose benefit a receiver has been appointed :

“Pecuniary legacy” includes an annuity, a general legacy, a demonstrative legacy so far as it is not discharged out of the designated property, and any other general direction by a testator for the payment of money, including all duties free from which any devise, bequest, or payment is made to take effect :

“Personal chattels” means carriages, horses, stable furniture and effects, motor-cars and accessories, garden effects, domestic animals, plate, plated articles, linen, china, glass,

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books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but does not include any chattels used at the death of the intestate for business purposes, nor money or securities for money : A.D. 1935.

“Personal representative” means the executor, original or by representation, or administrator for the time being of a deceased person :

“Possession” includes the receipt of rents and profits or the right to receive the same, if any :

“Probate” means the probate of a will, and in Part VI. includes exemplification of probate, or such other formal document purporting to be under the seal of a court of competent jurisdiction as shall, in the opinion of a judge, be deemed sufficient :

“Probate rules” means rules and orders made by the judges for regulating the procedure and practice of the Court in regard to non-contentious or common form probate business :

“Property” includes a thing in action and any interest in real or personal property :

“Purchaser” means a lessee, mortgagee, or other person who in good faith acquires an interest in property for valuable consideration, also an intending purchaser, and “valuable consideration” includes marriage, but does not include a nominal consideration in money :

“Real estate” means any real estate, including chattels real, which by virtue of Part II. devolves on the personal representative of a deceased person :

“Registrar” means the Registrar of the Supreme Court :

“Rent” includes a rent service or a rent-charge, or other rent, toll, duty, or annual or periodical payment in money or money’s worth, issuing out of or charged upon land, but does not include mortgage interest, and “rent-charge” includes a fee-farm rent :

“Representation” means the probate of a will and administration, and the expression “taking out representation” refers to the obtaining of the probate of a will or of the grant of administration :

“Securities” includes stocks, funds, or shares :

“The deceased” means the testator or intestate to whom the context relates :

“Tenant for life,” “land,” “settled land,” “settlement,” and “trustees of the settlement,” have the same meanings as in the *Settled Land Act 1884* :

“Trust corporation” means the Public Trustee or a corporation authorised by any Act, or appointed by the Court in any particular case, to be a trustee :

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“Trust for sale,” in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale; and “power to postpone a sale” means power to postpone in the exercise of a discretion:

“Will” includes codicil.

(2) References to a child or issue living at the death of any person include a child or issue *en ventre sa mere* at the death.

(3) References to the estate of a deceased person include property over which the deceased exercises a general power of appointment by his will.

(4) References to any statutes of distribution in an instrument *inter vivos* made, or in a will coming into operation after the commencement of this Act, shall be construed as references to Part V.; and references in such an instrument or will to statutory next-of-kin shall be construed, unless the contrary intention appears, as referring to the persons who would take beneficially on an intestacy under the provisions of Part V.

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 PART II.

## DEVOLUTION OF ESTATES.

Devolution of  
real estate on  
personal  
representative.

**4—**(1) Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased; in like manner as before the commencement of this Act chattels real devolved on the personal representative from time to time of a deceased person.

(2) The personal representatives for the time being of a deceased person are deemed in law his heirs and assigns within the meaning of all trusts and powers.

(3) The personal representatives shall be the representative of the deceased in regard to his real estate to which he was entitled for an interest not ceasing on his death as well as in regard to his personal estate.

Application to  
real estate of law  
affecting chattels  
real.

**5—**(1) Subject to the provisions of this Act, all enactments and rules of law, and all jurisdiction of any court with respect to the appointment of administrators or to probate or letters of administration or to dealings before probate in the case of chattels real, and with respect to costs and other matters in the administration of personal estate, in force before the commencement of this Act, and all powers, duties, rights, equities, obligations, and liabilities of a personal repre-

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representative in force at the commencement of this Act with respect to chattels real, shall apply and attach to the personal representative and shall have effect with respect to real estate vested in him, and in particular all such powers of disposition and dealing as were before the commencement of this Act exercisable as respects chattels real by the survivor or survivors of two or more personal representatives, as well as by a single personal representative, or by all the personal representatives together, shall be exercisable by the personal representatives or representative of the deceased with respect to his real estate. A.D. 1935.

(2) Where as respects real estate there are two or more personal representatives, a conveyance of real estate devolving under this Part shall not be made without the concurrence therein of all such representatives or an order of the Court, but where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, any conveyance of the real estate may be made by the proving executor or executors for the time being without an order of the Court, and shall be as effectual as if all the persons named as executors had concurred therein.

(3) Without prejudice to the rights and powers of a personal representative, the appointment of a personal representative in regard to real estate shall not, save as hereinafter provided, affect—

- i. Any rule as to marshalling or as to administration of assets :
- ii. The beneficial interest in real estate under any testamentary disposition :
- iii. Any mode of dealing with any beneficial interest in real estate, or the proceeds of sale thereof : or
- iv. The right of any person claiming to be interested in the real estate to take proceedings for the protection or recovery thereof against any person other than the personal representative.

6—(1) In this Part “real estate” includes—

- i. Chattels real, and land in possession, remainder, or reversion, and every interest in or over land to which a deceased person was entitled at the time of his death : and
- ii. Real estate held on trust or by way of mortgage or security, but not money to arise under a trust for sale of land, nor money secured or charged on land.

Interpretation  
“real estate.”

(2) A testator shall be deemed to have been entitled at his death to any interest in real estate passing under any gift contained in his will which operates as an appointment under a general power to appoint by will.

(3) An entailed interest of a deceased person shall be deemed an interest ceasing on his death, but any further or other interest of the deceased in the same property in remainder or reversion which is capable of being disposed of by his will shall not be deemed to be an interest so ceasing.

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(4) The interest of a deceased person under a joint tenancy where another tenant survives the deceased is an interest ceasing on his death.

(5) On the death of a corporator sole his interest in the corporation's real and personal estate shall be deemed to be an interest ceasing on his death and shall devolve to his successor.

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 PART III.

## EXECUTORS AND ADMINISTRATORS.

*Division I.—General Provisions.*

Summons to  
executor to prove  
or renounce.

57 Vict. No. 14,  
s. 6.

**7** The Court shall continue to have power to summon any person named as executor in any will to prove or renounce probate of the will, and to do such other things concerning the will as have heretofore been customary.

Right of executor  
to prove.

15 Geo. V. No.  
23, s. 5.

**8** Where a person appointed executor by a will—

i. Survives the testator but dies without having taken out probate of the will :

ii. Is cited to take out probate of the will and does not appear to the citation : or

iii. Renounces probate of the will—

his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his real and personal estate shall devolve and be committed in like manner as if that person had not been appointed executor.

Withdrawal of  
renunciation.

*Ib.*, s. 6.

**9** Where an executor who has renounced probate has been permitted, whether before or after the commencement of this Act, to withdraw the renunciation and prove the will, the probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of, and notices to, any other personal representative who has previously proved the will or taken out letters of administration, and a memorandum of the subsequent probate shall be endorsed on the original probate or letters of administration.

Executor of  
executor  
represents  
original testator.

*Ib.*, s. 7.

**10**—(1) An executor of a sole or last surviving executor of a testator is the executor of that testator. This provision shall not apply to an executor who does not prove the will of his testator, and, in case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on such probate being granted.

(2) So long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator.

(3) The chain of such representation is broken by—

i. An intestacy :

ii. The failure of a testator to appoint an executor : or

iii. The failure to obtain probate of a will—

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but is not broken by a temporary grant of administration if probate is subsequently granted. A.D. 1935.

- (4) Every person in the chain of representation to a testator—
- i. Has the same rights in respect of the real and personal estate of that testator as the original executor would have had if living: and
  - ii. Is, to the extent to which the estate, whether real or personal, of that testator has come to his hands, answerable as if he were an original executor.

**11** Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, all the powers which are by law conferred on the personal representative may be exercised by the proving executor or executors for the time being and shall be as effectual as if all the persons named as executors had concurred therein. Right of proving executors to exercise powers. *Ib.*, s. 8.

**12** Where a person dies intestate, his real and personal estate, until administration is granted in respect thereof, shall vest in the Chief Justice or in case there may not be a Chief Justice at any time, then in the senior puisne judge, in the same manner and to the same extent as formerly in the case of personal estate is vested in the Ordinary in England. How property to vest between death of person deceased intestate and grant *Ib.*, s. 9.

**13** In granting letters of administration the Court shall have regard to the rights of all persons interested in the real and personal estate of the deceased person, or the proceeds of sale thereof and, in particular, administration with the will annexed may be granted to a devisee or legatee, and any such administration may be limited in any way the Court thinks fit. Discretion of the court as to persons to whom administration is to be granted. *Ib.*, s. 10.

Provided that, where the deceased has died wholly intestate as to his real and personal estate, administration shall, if any application is made for that purpose, be granted to some one or more of the persons interested in the residuary estate of the deceased, unless by reason of the insolvency of the estate or of any other special circumstances it is expedient to grant administration to some person other than the person who but for this provision would by law have been entitled to the grant of administration.

**14**—(1) Representation shall not be granted to more than four persons in respect of the same property; and administration shall, if any beneficiary is an infant, or a life interest arises under a will, be granted either to a trust corporation, with or without an individual, or to not less than two individuals. Provisions as to the number of personal representatives. *Ib.*, s. 12.

Provided that the Court in granting administration may act on such *prima facie* evidence, furnished by the applicant or any other person, as to whether or not there is a minority or life interest, as may be prescribed by the probate rules.

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(2) If there is only one personal representative, not being a trust corporation, then during the minority of the beneficiary or the subsistence of a life interest, and until the estate is fully administered, the Court may, on the application of any person interested or of the guardian, committee, or receiver of any such person, appoint, in accordance with the probate rules, one or more personal representatives in addition to the original personal representative.

(3) This section applies to grants of representation made after the commencement of this Act, whether the deceased died before or after such commencement.

Power to grant representation of real and personal estate separately or together.

*Ib.*, s. 13.

**15** Representation may be granted in respect of the real estate of a deceased person or any part thereof, and either separately or together with his personal estate, and may also be granted in respect of real estate only where there is no personal estate, or in respect of a trust estate only, and a grant of letters of administration to any real estate may be limited in any way the Court thinks proper.

Provided that, where the estate of a deceased person is known to be insolvent, the grant of representation to the real and personal estate shall not be severed except as regards a trust estate.

Grant of representation to a trust corporation.

*Ib.*, s. 14.

**16—(1)** Where a trust corporation is appointed an executor in a will, either alone or jointly with another person, the court may grant probate to such corporation, either solely or jointly with another person, as the case may require, and the corporation may act as executor accordingly.

(2) Administration may be granted to any trust corporation either solely or jointly with another person, and the corporation may act as administrator accordingly.

(3) Representation shall not be granted to a syndic or nominee on behalf of any trust corporation.

(4) Any officer authorised for the purpose by any such corporation or by the directors or governing body thereof may swear affidavits, give security, and do any other act or thing which the Court may require on behalf of the trust corporation with a view to the grant of representation to the corporation, and the acts of such officer shall be binding on the corporation, and he shall be entitled to be kept indemnified by the corporation in regard to matters so authorised as aforesaid.

(5) Where at the commencement of this Act any interest in real or personal estate is vested in a syndic on behalf of any trust corporation acting as the personal representatives of a deceased person, the same shall, by virtue of this Act, vest in the corporation, and the syndic shall be kept indemnified by the corporation in regard to the interest so vested.

This subsection does not apply to securities registered in the name of a syndic, or to land, or to a mortgage or charge of which the syndic is registered proprietor under the *Real Property Act* 1862, but any such securities, land mortgage, or charge shall be transferred by the syndic to the corporation, or as the corporation may direct.

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(6) This section has effect whether the deceased died before or after the commencement of this Act ; and no such vesting or transfer as aforesaid shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture. A.D. 1935.

**17** Where any person resident in Tasmania has been, or hereafter may be, appointed to act in the affairs of a testator by an executor not resident in Tasmania, administration of the real and personal estate and effects of such testator, with an exemplification or other authenticated copy of the will or probate annexed, shall be granted to the person so appointed, upon such person giving his own bond to administer without any sureties. Grant to agent of executor.  
57 Vict. No. 14,  
s. 38.

**18** Where administration has been granted in respect of any real or personal estate of a deceased person, no person shall have power to bring any action or otherwise act as executor of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked. Executor not to act while administration is in force.  
15 and 16 Geo. V., c. 23, s. 15.

**19**—(1) While any legal proceeding touching the validity of the will of a deceased person, or for obtaining, recalling, or revoking any representation, is pending, the Court may grant administration of the real and personal estate of the deceased to an administrator, who shall have all the rights and powers of a general administrator, other than the right of distributing the residue of the real and personal estate, but shall be subject to the immediate control of the Court and shall act under its direction. Grant of administration *pendente lite*.  
*Ib.*, s. 16.

(2) The Court may assign to any administrator appointed under this section reasonable remuneration out of the real and personal estate of the deceased or the income thereof.

**20** If, while any legal proceeding is pending in any court by or against an administrator to whom a temporary administration has been granted, that administration is revoked, that court may order that the proceeding be continued by or against the new personal representative in like manner as if the same had been originally commenced by or against him, but subject to such conditions and variations, if any, as that court directs. Continuance of legal proceedings after revocation of temporary administrator.  
*Ib.*, s. 17.

**21**—(1) If, at the expiration of twelve months from the death of a person, any personal representative of the deceased to whom representation has been granted is residing out of the jurisdiction of the Court, the Court may, on the application of any creditor or person interested in the estate of the deceased, grant him special administration in the prescribed form of the real and personal estate of the deceased. Grant of special administration where personal representative is abroad.  
*Ib.*, s. 18.

(2) The Court may, for the purpose of any legal proceeding to which the administrator under the special administration is a party, order the transfer into court of any money or securities belonging to the estate of the deceased person, and all persons shall obey any such order.

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(3) If the personal representative capable of acting as such returns to and resides within the jurisdiction of the Court while any legal proceeding to which a special administrator is a party is pending, such representative shall be made a party to the legal proceeding, and the costs of and incidental to the special administration and such legal proceeding shall be paid by such person and out of such fund as the court in which the proceeding is pending directs.

Administration  
with will annexed.  
*Ib.*, s. 19.

**22** Administration, with the will annexed, shall continue to be granted in every case where such grant has hitherto been customary, and in such case the will of the deceased shall be performed and observed in like manner as if probate thereof had been granted to an executor.

Administration  
during minority  
of executor.  
*Ib.*, s. 20.

**23**—(1) Where an infant is appointed or becomes sole executor of a will, administration, with the will annexed, shall be granted to his guardian, or to such other person as the Court thinks fit, until the infant attains the age of twenty-one years; at which time, and not before, probate of the will may be granted to him.

(2) The appointment in a will by a testator of an infant to be an executor shall not operate to transfer any interest in the property of the deceased to the infant, or to constitute him a personal representative for any purpose, unless and until probate is granted to him after he has attained full age.

Rights and  
liabilities of  
administrator.  
*Ib.*, s. 21.

**24** Every person to whom administration of the real and personal estate of a deceased person is granted shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.

Administration  
bonds.  
15 and 16 Geo. V.,  
c. 49, s. 167.

**25**—(1) Every person to whom a grant of administration is made shall give a bond (in this section referred to as "an administration bond") to the Registrar by the name of "The Registrar of the Supreme Court" and subject to the provisions of this section, if the Registrar so requires, with one or more sureties conditioned for duly collecting, getting in, and administering the real and personal estate of the deceased.

(2) The Registrar shall have power to enforce any administration bond or to assign it in accordance with the provisions of this section to some other person.

(3) An administration bond shall be in such form as may be prescribed.

(4) Where it appears to the satisfaction of the Court or of a judge that the condition of an administration bond has been broken, the Court or judge may, on an application in that behalf, order that the bond shall be assigned to such person as may be specified in the order, and the person to whom the bond is assigned in pursuance of the order shall be entitled to sue thereon in his own name as if it had been originally given to him instead of the Registrar, and to recover thereon as trustee

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for all persons interested the full amount recoverable in respect of the breach of the condition thereof. A.D. 1935.

(5) Without prejudice to any proceedings instituted before the commencement of this Act, an administration bond given before such commencement under any enactment hereby repealed may be enforced, or assigned by the obligee, as if it had been given to the Registrar under this section.

(6) Nothing in this section shall require the Public Trustee or any person obtaining administration to the use or for the benefit of His Majesty to give an administration bond.

(7) Probate rules and orders may be made for providing that sureties to administration bonds shall not be required when the grant is made to a trust corporation or to two or more individuals or in any other proper case.

*Division II.—Duties, Rights, and Obligations.*

**26** The personal representative of a deceased person shall, when lawfully required so to do, exhibit on oath in the Court a true and perfect inventory and account of the real and personal estate of the deceased, and the Court shall have power as heretofore to require personal representatives to bring in inventories. Duty of personal representative as to inventory. 15 Geo. V., c. 23, s. 25.

**27**—(1) For any debt (including arrears of rent) due to a deceased person, and for any injury to or right in respect of his personal estate in his lifetime, his personal representative shall have the same right of action as the deceased would have had if alive. Rights of action by and against personal representatives. *Ib* s. 26.

(2) The personal representative of a deceased person may maintain for any injury committed to the real estate of the deceased within six months before his death any action which the deceased could have maintained, but the action must be brought within one year after his death, and any damages recovered in the action shall be part of the personal estate of the deceased.

(3) A personal representative may distrain for arrears of a rent charge due or accruing to the deceased in his lifetime on the land affected or charged therewith, so long as the land remains in the possession of the person liable to pay the rent charge or of the persons deriving title under him, and in like manner as the deceased might have done had he been living.

(4) A personal representative may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living. Such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made—

- i. Within six months after the termination of the lease or tenancy: and
- ii. During the continuance of the possession of the lessee or tenant from whom the arrears were due.

The statutory enactments relating to distress for rent apply to any distress made pursuant to this subsection.

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(5) An action may be maintained against the personal representative of a deceased person for any wrong committed by the deceased within six months before his death to another person in respect of his property, real or personal, but the action shall be brought within six months after the personal representative of the deceased has taken out representation. Any damages recovered in the proceedings shall be payable as a simple contract debt incurred by the deceased.

(6) Nothing in this section affects any right of action conferred by the *Fatal Accidents Act 1934*.

Protection of persons acting in probate or administration.

*Ib.*, s. 27.

**28**—(1) Every person making or permitting to be made any payment or disposition in good faith under a representation shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the representation.

(2) Where a representation is revoked, all payments and dispositions made in good faith to a personal representative under the representation before the revocation thereof are a valid discharge of the person making the same; and the personal representative who acted under the revoked representation may retain and reimburse himself in respect of any payments or dispositions made by him which the person to whom representation is afterwards granted might have properly made.

Liability of person fraudulently obtaining or retaining estate of deceased.

*Ib.*, s. 28.

**29** If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives, or holds any real or personal estate of a deceased person, or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the real and personal estate received or coming into his hands, or the debt or liability released, after deducting—

- i. Any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death: and
- ii. Any payment made by him which might properly be made by a personal representative.

Liability of estate of personal representative.

*Ib.*, s. 29.

**30** Where a person as personal representative of a deceased person (including an executor in his own wrong) wastes or converts to his own use any part of the real or personal estate of the deceased, and dies, his personal representative shall be, to the extent of the available assets of the defaulter, liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

Rules for adapting provisions.

*Ib.*, s. 31.

**31** Provision may be made by rules of court for giving effect to the provisions of this Part so far as relates to real estate, and in particular for adapting the procedure and practice on the grant of letters of administration to the case of real estate.

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## PART IV.

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## ADMINISTRATION OF ASSETS.

**32**—(1) The real and personal estate, whether legal or equitable, of a deceased person to the extent of his beneficial interest therein, and the real and personal estate of which a deceased person in pursuance of any general power disposes by his will, are assets for payment of his debts, whether by specialty or simple contract, and liabilities, and any disposition by will inconsistent with this enactment is void as against the creditors, and the Court shall, if necessary, administer the property for the purpose of the payment of the debts and liabilities.

Real and personal estate of deceased are assets for payment of debts. *Ib.*, s. 32.

This subsection takes effect without prejudice to the rights of encumbrancers.

(2) If any person to whom any such beneficial interest devolves or is given, or in whom any such interest vests, disposes thereof in good faith before an action is brought or process is sued out against him, he shall be personally liable for the value of the interest so disposed of by him, but that interest shall not be liable to be taken in execution in the action or under the process.

**33**—(1) On the death of a person intestate as to any real or personal estate, such estate shall be held by his personal representatives—

Trust for sale. *Ib.*, s. 33.

- i. As to the real estate upon trust to sell the same: and
- ii. As to the personal estate upon trust to call in, sell, and convert into money such part thereof as may not consist of money—

with power to postpone such sale and conversion for such a period as the personal representatives, without being liable to account, may think proper, and so that any reversionary interest be not sold until it falls into possession, unless the personal representatives see special reason for sale, and so also that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold except for special reason.

(2) Out of the net money to arise from the sale and conversion of such real and personal estate, after payment of costs, and out of the ready money of the deceased, so far as not disposed of by his will, if any, the personal representative shall pay all such funeral, testamentary and administration expenses, debts, and other liabilities as are properly payable thereout, having regard to the rules of administration contained in this Part, and out of the residue of the said money the personal representative shall set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will, if any, of the deceased.

(3) During the minority of any beneficiary or the subsistence of any life interest, and pending the distribution of the whole or any part of the estate of the deceased, the personal representatives may invest the residue of the said money, or so much thereof as may not have been distributed, in any investments for the time being authorised by law for the investment of trust money, with power at the discretion of the personal representatives, to change such investments for others of a like nature.

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(4) The residue of the said money, and any investments for the time being representing the same, including (but without prejudice to the trust for sale) any part of the estate of the deceased which may be retained unsold and is not required for the administration purposes aforesaid, is in this Act referred to as "the residuary estate of the intestate."

(5) The income (including net rents and profits of real estate and chattels real after payment of rates, taxes, rent, costs of insurance, repairs, and other outgoings properly attributable to income) of so much of the real and personal estate of the deceased as may not be disposed of by his will, if any, or may not be required for the administration purposes aforesaid, may, however such estate is invested, as from the death of the deceased, be treated and applied as income, and for that purpose any necessary apportionment may be made between life tenant and remainderman.

(6) Nothing in this section affects the rights of any creditor of the deceased, or the rights of the Crown in respect of any duty payable under the *Deceased Persons' Estates Duties Act 1931*.

(7) Where the deceased leaves a will, this section has effect subject to the provisions contained in the will.

22 Geo. V. No. 23.

Administration of assets.  
15 and 16 Geo. V., c. 23, s. 34.

**34**—(1) Where the estate of a deceased person is insolvent, his real and personal estate shall be administered in accordance with the rules set out in Part I. of the second schedule.

(2) The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect of all assets of the deceased, but the right of retainer shall only apply to debts owing to the personal representative in his own right, whether solely or jointly with another person. Subject as aforesaid, nothing in this Act affects the right of retainer of a personal representative or his right to prefer creditors.

(3) Where the estate of a deceased person is solvent, his real and personal estate shall, subject to the rules of court and the provisions hereinafter contained as to charges on property of the deceased, and to the provisions, if any, contained in his will, be applicable towards the discharge of the funeral, testamentary, and administration expenses, debts, and liabilities payable thereout in the order mentioned in Part II. of the second schedule.

Charges on property of deceased to be paid primarily out of the property charged.  
*ib.*, s 35.

**35**—(1) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in property which at the time of his death is charged with the payment of money, whether by way of mortgage, equitable charge, or otherwise, including a lien for unpaid purchase money, and the deceased has not, by will, deed, or other document, signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

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(2) Such contrary or other intention shall not be deemed to be A.D. 1985. signified by—

- I. A general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate: or
- II. A charge of debts upon any such estate—

unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) Nothing in this section affects the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

**36**—(1) A personal representative may assent, in the appropriate form in the fourth schedule, to the vesting in any person who, whether by devise, bequest, devolution, or appropriation, may be entitled thereto, either beneficially or as a trustee or personal representative, of any estate or interest in real estate to which the testator or intestate was entitled or over which he exercised a general power of appointment by his will, and which devolved upon the personal representative.

Effect of assent or conveyance by personal representative. *Ib.*, s. 36.

(2) The assent shall operate to vest in that person the estate or interest to which the assent relates, and, unless a contrary intention appears, the assent shall relate back to the death of the deceased.

(3) The statement in an assent that a person assents as personal representative shall have the like effect as regards implied covenants as would follow from the like statement in a deed of conveyance.

(4) An assent to the vesting of any estate or interest shall be in writing, signed by the personal representative, and shall name the person in whose favour it is given, and shall operate to vest in that person the estate to which it relates.

(5) An assent to the vesting in a named person of a partial interest in property shall operate as an assent in favour of the remaindermen.

(6) A conveyance of an estate or interest by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties, and legacies of the deceased have been discharged or provided for.

(7) An assent or conveyance given or made by a personal representative shall not, except in favour of a purchaser of an estate or interest, prejudice the right of the personal representative or any other person to recover the estate or interest to which the assent or conveyance relates, or to be indemnified out of such estate or interest against any duty, debt, or liability to which such estate or interest would have been subject if there had not been any assent or conveyance.

(8) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any such duty, debt, or liability, but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of any such

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duty, debt, or liability, if reasonable arrangements can be made for discharging the same; and an assent may be given subject to any estate or charge by way of mortgage.

(9) In this section "purchaser" means a purchaser for money or money's worth.

(10) No stamp duty or registration fee shall be payable in respect of an assent given as provided by subsection (1) hereof.

Validity of conveyance not affected by revocation of representation.

**37—**(1) All conveyances of any interest in real or personal estate made to a purchaser, either before or after the commencement of this Act, by a person to whom probate or letters of administration have been granted are valid, notwithstanding any subsequent revocation or variation, either before or after the commencement of this Act, of the probate or administration.

(2) This section takes effect without prejudice to any order of the Court made before the commencement of this Act, and applies whether the deceased died before or after such commencement.

Right to follow property and powers of the court in relation thereto.

**38—**(1) An assent or conveyance by a personal representative to a person other than a purchaser does not prejudice the rights of any person to follow the property to which the assent or conveyance relates or any property representing the same into the hands of the person in whom it is vested by the assent or conveyance, or of any other person, not being a purchaser, who may have received the same or in whom it may be vested.

(2) Notwithstanding any such assent or conveyance, the Court may, on the application of any creditor or other person interested—

- i. Order a sale, exchange, mortgage, charge, lease, payment, transfer, or other transaction to be carried out which the Court considers requisite for the purpose of giving effect to the rights of the persons interested;
- ii. Declare that the person, not being a purchaser, in whom the property is vested is a trustee for those purposes;
- iii. Give directions respecting the preparation and execution of any conveyance or other instrument, or as to any other matter required for giving effect to the order; and
- iv. Make any vesting order or appoint a person to convey in accordance with the provisions of the *Trustee Act 1898*.

(3) This section does not prejudice the rights of a purchaser or a person deriving title under him, but applies whether the deceased died before or after the commencement of this Act.

Powers of management.

**39—**(1) In dealing with the real and personal estate of the deceased, his personal representatives shall, for the purposes of administration, or during a minority of any beneficiary or the subsistence of any life interest or until the period of distribution arrives, have—

- i. The same powers and discretions, including power to raise money by mortgage or charge, whether or not by deposit

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of documents, as a personal representative had before the commencement of this Act with respect to personal estate vested in him : and A.D, 1935.

- ii. All the powers, discretions, and duties conferred or imposed by law on trustees for sale, and so that every contract entered into by a personal representative shall be binding on and be enforceable against and by the personal representative for the time being of the deceased, and may be carried into effect, or be varied or rescinded, by him ; and, in the case of a contract entered into by his predecessor, as if it had been entered into by himself.

(2) Nothing in this section shall affect the right of any person to require an assent or conveyance to be made.

(3) This section applies whether the deceased died before or after the commencement of this Act.

**40**—(1) The personal representative may appropriate any part of the real or personal estate, including things in action, of the deceased in the actual condition or state of investment thereof at the time of appropriation, in or towards satisfaction of any legacy bequeathed by the deceased, or of any other interest or share in his property, whether settled or not, as to the personal representative may seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased : Provided that—

Powers of personal representative as to appropriation.

- i. An appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest :
- ii. An appropriation of property, whether or not being an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to a trust, shall not, save as hereinafter mentioned, be made under this section except with the following consents—
  - (a) When made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person :
  - (b) When made in respect of any settled legacy, share, or interest, the consent of either the trustee thereof, if any (not being also the personal representative), or the person who for the time being may be entitled to the income :

If the person whose consent is so required as aforesaid is an infant or a lunatic or defective, the consent shall be given on his behalf by his parents or parent, testamentary or other guardian, committee, or receiver, or if, in the case of an infant, there is no such parent or guardian, by the Court on the application of his next friend :

- iii. No consent, save of such trustee as aforesaid, shall be required on behalf of a person who may come into existence after the time of appropriation, or who cannot be found or ascertained at that time :

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- iv. If no committee or receiver of a lunatic or defective has been appointed, then, if the appropriation is of an investment authorised by law or by the will, if any, of the deceased for the investment of money subject to the trust, no consent shall be required on behalf of the lunatic or defective : and
- v. If, independently of the personal representative, there is no trustee of a settled legacy, share, or interest, and no person of full age and capacity entitled to the income thereof, no consent shall be required to an appropriation in respect of such legacy, share, or interest, provided that the appropriation is of an investment authorised as aforesaid.

(2) Any property duly appropriated under the powers conferred by this section shall thereafter be treated as an authorised investment, and may be retained or dealt with accordingly.

(3) For the purposes of such appropriation, the personal representative may ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased as he may think fit, and shall for that purpose employ a qualified valuer in any case where such employment may be necessary ; and may make any conveyance, including an assent, which may be requisite for giving effect to the appropriation.

(4) An appropriation made pursuant to this section shall bind all persons interested in the property of the deceased whose consent is not hereby made requisite.

(5) The personal representative shall, in making the appropriation, have regard to the rights of any person who may thereafter come into existence, or who cannot be found or ascertained at the time of the appropriation, and of any other person whose consent is not required by this section.

(6) This section does not prejudice any other power of appropriation conferred by law or by the will, if any, of the deceased, and takes effect with any extended powers conferred by the will, if any, of the deceased, and, where an appropriation is made under this section in respect of a settled legacy, share, or interest, the property appropriated shall remain subject to all trusts for sale and powers of leasing, disposition, and management, or varying investments, which would have been applicable thereto or to the legacy, share, or interest in respect of which the appropriation is made, if no such appropriation had been made.

(7) If, after any real estate has been appropriated in purported exercise of the powers conferred by this section, the person to whom it was conveyed disposes of it or any interest therein, then, in favour of a purchaser, the appropriation shall be deemed to have been made in accordance with the requirements of this section and after all requisite consents, if any, had been given.

(8) In this section, a settled legacy, share, or interest includes any legacy, share, or interest to which a person is not absolutely entitled in possession at the date of the appropriation, also an annuity, and "purchaser" means a purchaser for money or money's worth.

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(9) This section applies whether the deceased died intestate or not, and whether before or after the commencement of this Act, and extends to property over which a testator exercises a general power of appointment, and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise. A.D. 1935.

**41**—(1) Where an infant is absolutely entitled under the will or on the intestacy of a person dying before or after the commencement of this Act to a devise or legacy, or to the residue of the estate of the deceased, or any share therein, and such devise, legacy, residue, or share is not under the will, if any, of the deceased, devised or bequeathed to trustees for the infant, the personal representatives of the deceased may appoint a trust corporation or two or more individuals not exceeding four (whether or not including the personal representatives or one or more of the personal representatives), to be the trustee or trustees of such devise, legacy, residue, or share for the infant, and to be trustees of any land devised or any land being, or forming part of, such residue or share for the purposes of the *Settled Land Act* 1884, and of the statutory provisions relating to the management of land during a minority, and may execute or do any assurance or thing requisite for vesting such devise, legacy, residue, or share in the trustee or trustees so appointed. Power to appoint trustees of infants' property.

(2) On such appointment the personal representatives, as such, shall be discharged from all further liability in respect of such devise, legacy, residue, or share, and the same may be retained in its existing condition or state of investment, or may be converted into money, and such money may be invested in any authorised investment.

(3) Where a personal representative has, before the commencement of this Act, retained or sold any such devise, legacy, residue, or share, and invested the same or the proceeds thereof in any investments in which he was authorised to invest money subject to the trust, then, subject to any order of the Court made before such commencement, he shall not be deemed to have incurred any liability on that account, or by reason of not having paid or transferred the money or property into Court.

**42**—(1) A personal representative, before giving an assent or making a conveyance in favour of any person entitled, may permit that person to take possession of the land, and such possession shall not prejudicially affect the right of the personal representative to take or resume possession nor his power to convey the land as if he were in possession thereof, but subject to the interest of any lessee, tenant, or occupier in possession or in actual occupation of the land. Obligation of personal representative as to giving possession of land and powers of the Court.

(2) Any person who as against the personal representative claims possession of real estate, or the appointment of a receiver thereof, or a conveyance thereof, or an assent to the vesting thereof, or to be registered as the proprietor thereof under the *Real Property Act* 1862, may apply to the Court for directions with reference thereto, and the Court may make such vesting or other order as may be deemed proper, and the provisions of the *Trustee Act* 1898, relating to vesting orders and to the appointment of a person to convey, shall apply in respect thereof.

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(3) This section applies whether the deceased died before or after the commencement of this Act.

Power to postpone distribution.

**43** Subject to the foregoing provisions of this Act, a personal representative is not bound to distribute the estate of the deceased before the expiration of one year from the death.

## PART V.

## DISTRIBUTION OF RESIDUARY ESTATE OF INTESTATE.

Succession on intestacy.

**44**—(1) The residuary estate of an intestate shall be distributed in the manner, or be held on the trusts, set forth in this section.

(2) If—

i. The net value of the residuary estate does not exceed one thousand pounds : or

ii. The intestate leaves no issue—

the residuary estate shall be held upon trust for the surviving husband or wife absolutely.

(3) If the net value of the residuary estate exceeds one thousand pounds, and the intestate leaves issue, the residuary estate shall, subject to the provisions of subsection (4) hereof, stand charged with the payment to the surviving husband or wife of the sum of one thousand pounds with interest thereon at the rate of four pounds per centum per annum from the date of the death until paid or appropriated, and subject to providing for such sum and interest, where payable, the residuary estate shall be held—

i. As to one-third of the balance upon trust for the surviving husband or wife : and

ii. As to the remaining two-thirds thereof on the statutory trusts for the issue of the intestate.

(4) If the intestacy is partial only any benefit to which the surviving husband or wife is entitled under the will of the intestate shall, subject to any contrary intention expressed in the will, be taken as being given in or towards satisfaction of the interest of the surviving husband or wife under paragraph i. of subsection (2) hereof or of the charge of one thousand pounds provided by subsection (3) hereof, as the case may be ; and such interest or charge shall take effect, and the payment thereof be made, only if the surviving husband or wife brings such benefit into account at a valuation to be made as at the death of the intestate, in accordance with the requirements of the personal representative.

(5) If the intestate leaves issue, but no husband or wife, the residuary estate shall be held on the statutory trusts for the issue of the intestate.

(6) If the intestate leaves no widow or widower, and no issue but one or both parents, the residuary estate of the intestate shall be held in trust for such parent, or for both in equal shares, as the case may be.

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(7) If the intestate leaves no widow or widower, and no issue or parent, the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate and in the following order, namely, on the statutory trusts—

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- i. First, for the brothers and sisters of the intestate, whether to the whole blood or the half blood :
- ii. Secondly, if no person takes an absolutely vested interest under paragraph i. hereof, for the grandparents of the intestate, and, if more than one survive the intestate, in equal shares :
- iii. Thirdly, if no person takes an absolutely vested interest under paragraph i. or paragraph ii. hereof, for the uncles and aunts of the intestate (whether brothers or sisters of a parent of the intestate of the whole blood or the half blood) —

and, if no person takes an absolutely vested interest under any of the foregoing paragraphs hereof, the residuary shall be held in trust for the next-of-kin of the intestate according to the civil law ; but there shall be no representation in relation to persons entitled under this provision.

(8) A husband and wife shall, for all purposes of distribution or division under the foregoing provisions of this section, be treated as two persons.

**45**—(1) In default of any person taking an absolute interest under the provisions of section forty-four, the residuary estate of the intestate shall belong to the Crown as *bona vacantia*, and in lieu of any right of escheat. *Bona vacantia.*

(2) The Governor, out of any property devolving on the Crown under this section, may make such provision, if any, as he may think fit for dependants, whether kindred or not of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

(3) All the provisions of this section shall have effect in respect of any property of an intestate which, at the commencement of this Act, had become the property of His Majesty by way of escheat, whether so found on inquisition or not.

**46**—(1) Where under this Part the residuary estate of an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely:—

Statutory trusts  
in favour of issue  
and other  
relatives.

- i. to trust, in equal shares if more than one, for all or any of the children or child of the intestate, living at the death of the intestate, who attain the age of twenty-one years or marry under that age, and for all or any of the issue living at the death of the intestate who attain the age of twenty-one or marry under that age of any child of the intestate who predeceases the intestate, such issue to take through

*Ib.*, s. 47.

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all degrees, according to their stocks, in equal shares if more than one, their share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking:

- ii. The statutory power of advancement, and the statutory provisions which relate to maintenance and accumulation of surplus income, shall apply, but when an infant marries such infant shall be entitled to give valid receipts for the income of the infant's share or interest:
  - iii. Where the property held on the statutory trusts for issue is divisible into shares, then any money or property which, by way of advancement or on the marriage of a child of the intestate, has been paid to such child by the intestate or settled by the intestate for the benefit of such child (including any life or less interest and including property covenanted to be paid or settled) shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so paid or settled in or towards satisfaction of the share of such child or the share which such child would have taken if living at the death of the intestate, and shall be brought into account at a valuation (the value to be reckoned as at the death of the intestate) in accordance with the requirements of the personal representatives:
  - iv. The personal representatives may permit any infant contingently interested to have the use and enjoyment of any personal chattels in such manner and subject to such conditions (if any) as the personal representatives may consider reasonable, and without being liable to account for any consequential loss.
- (2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest—
- i. The residuary estate of the intestate and the income thereof and all statutory accumulations, if any, of the income thereof, or so much thereof as may not have been paid or applied under any power affecting the same, shall go, devolve, and be held under the provisions of this Part as if the intestate had died without leaving issue living at the death of the intestate:
  - ii. References in this Part to the intestate "leaving no issue" shall be construed as "leaving no issue who attain an absolutely vested interest":
  - iii. References in this Part to the intestate "leaving issue" or "leaving a child or other issue" shall be construed as "leaving issue who attain an absolutely vested interest."
- (3) Where under this Part the residuary estate of an intestate or any part thereof is directed to be held on the statutory trusts for any class of relatives of the intestate, other than issue of the intestate, the same

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shall be held on trusts corresponding to the statutory trusts for the issue of the intestate (other than the provision for bringing any money or property into account) as if such trusts, other than as aforesaid, were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate. A.D. 1935.

**47** Where any person dies leaving a will effectively disposing of part of his property, this Part shall have effect as respects the part of his property not so disposed of subject to the provisions contained in the will and subject to the following modifications— Partial intestacy.  
*Ib.*, s. 49.

- i The requirements in section forty-six as to bringing property into account shall apply to any beneficial interests acquired by any issue of the deceased under the will of the deceased, but not to beneficial interests so acquired by any other persons : and
- ii. The personal representative shall, subject to his rights and powers for the purposes of administration, be a trustee for the persons entitled under this Part in respect of the part of the estate not expressly disposed of unless it appears by the will that the personal representative is intended to take such part beneficially.

## PART VI.

## PROBATE AND ADMINISTRATION GRANTED IN THE UNITED KINGDOM OR A BRITISH POSSESSION.

**48—(1)** When probate of the will or letters of administration to the estate of any deceased person who has left any property, whether real or personal, within the State, has or have been at any time granted by any court of competent jurisdiction in the United Kingdom or any of the Australasian Colonies— Resealing of  
probate, &c.  
granted beyond  
the State in  
certain cases.  
57 Vict. No. 4,  
s. 4.

- i. The executor or administrator therein named, whether he be within the jurisdiction of the court or not, may, either personally or by some proctor on his behalf, produce the same to the Registrar, and deposit a verified copy thereof in his office : or
  - ii. Any person duly authorised by power of attorney under the hand and seal of such executor or administrator may, either personally or by some proctor on his behalf, produce such probate or letters of administration and power of attorney, accompanied by an affidavit that such power of attorney has not been revoked, to the Registrar, and may deposit, verified copies thereof in his office.
- (2) When such documents have been produced and verified copies thereof deposited as aforesaid by or on behalf of such executor or administrator or person so authorised by power of attorney, such probate or letters of administration shall be sealed with the seal of the Court, and shall

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have the like force and effect and the same operation in this State as if it or they had been originally granted in this State; and every such executor of any such will and administrator of any such estate and person authorised by power of attorney as aforesaid shall perform the same duties and shall have the same rights, and every such executor and administrator and person authorised by power of attorney as aforesaid, and the estate of every such deceased person, shall be subject to the same liabilities and obligations as if such probate or letters of administration had been originally granted by the Court

Procedure.

*Ib.*, s. 5.

**49**—(1) Before the seal of the Court is affixed to any such probate or letters of administration, the person applying therefor, or some proctor on his behalf, shall give public notice in the Gazette and two newspapers published in different parts of the State of his intention to apply for such seal to be affixed, and an affidavit shall be filed stating that such advertisement was duly published at least fourteen days before the making of such affidavit, and that no caveat has been lodged up to the morning of making the application.

*Ib.*, s. 6.

(2) Any person may lodge with the Registrar a caveat against the sealing of any such probate or letters of administration, and such caveat shall have the same effect and shall be dealt with in the same manner as if it were a caveat against the granting of probate or of letters of administration.

Seal not to be affixed till duty is paid, &c.

*Ib.*, s. 7.

**50**—(1) The seal of the Court shall not be affixed to any such probate of the will or letters of administration until the prescribed statements of the estate of such deceased person are filed, and until all such probate, stamp, and other duties, if any, have been paid as would have been payable if such probate or letters of administration had been originally granted by the Court.

(2) No such letters of administration shall be so sealed until such affidavits have been filed and such bond has been entered into as would have been required if such letters had been originally granted by the Court.

(3) Any such statement may be made and verified by the executor or administrator, as the case may be, or by some person on his behalf, and any such bond may be entered into by such administrator outside Tasmania before any commissioner of the Court for taking affidavits

Security for payment of debts may be required.

*Ib.*, s. 8.

**51** The Court or a judge, on the application of any creditor of the estate of any deceased person, may require that adequate security be given for the payment of debts due from such estate to creditors residing in this State, before the seal of the Court is affixed to the probate of the will or letters of administration of the estate of such deceased person under this Part.

Person procuring the sealing to become executor or administrator.

*Ib.*, s. 9.

**52** Upon the sealing as aforesaid of any such probate or letters of administration to the estate of any deceased person, every such executor or administrator therein named, or person by such executor or administrator duly authorised as aforesaid by power of attorney, as

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the case may be, shall be deemed to be for every purpose the executor or administrator of the estate of such deceased person within the jurisdiction of the Court. A.D. 1935.

**53** The Governor, on being satisfied that the legislature of any British possession has made adequate provision for the recognition in that possession of probates and letters of administration granted by the Court, may, by proclamation, declare that this Part shall, subject to any exceptions and modifications specified in the proclamation, apply to that possession, and thereupon, while such proclamation is in force, this Part shall apply accordingly. Application of Act may be extended.  
*Ib.*, s. 12.

## PART VII.

## PROTECTION OF REPRESENTATIVES.

**54**—(1) Any personal representative may, at any time after representation has been granted to him, advertise for claims against the estate of the testator or intestate as provided by this Act. Personal representative may advertise for claims.

(2) Every such advertisement shall contain the name of the testator or intestate and the names and additions of the executor or administrator, and shall require all claims against the estate of the testator or intestate to be sent to the Registrar in writing on or before a day to be specified in the advertisement as hereinafter provided. 31 Vict. No. 4,  
s. 4.  
62 Vict. No. 35.

(3) All such advertisements shall be published in the Gazette and in one newspaper published in Hobart and one published in Launceston; if the testator or intestate resided elsewhere in this State than either of those cities, one of such advertisements may be published in a newspaper, if any, published at any place which is nearer than the nearer of the said cities to the place where he so resided.

(4) If the personal representative has reason to believe that any person having any claim against the estate of the testator or intestate is resident in any other State or in New Zealand, he shall publish an advertisement in a newspaper published in the city or district in that State or in New Zealand, as the case may be, where he believes such person to have been resident at the date of the death of the testator or intestate; or, if the personal representative has reason to believe that any person having any claim against the estate is resident outside Australia and New Zealand, he shall cause an advertisement to be published in the London Gazette.

(5) The executor or administrator shall have regard to the business carried on by the testator or intestate in his lifetime in determining the places at which advertisements should be published.

(6) The day specified as that on or before which claims against the estate are to be sent to the Registrar shall be the same in every such advertisement relating to such estate.

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(7) The day to be specified as aforesaid shall, if the advertisements are published—

- i. Only in this State, be not less than one nor more than two :
- ii. In any other State or New Zealand, be not less than two nor more than four :
- iii. In London, be not less than four nor more than eight — months after the last of such publications.

(8) The personal representative shall file with the Registrar an affidavit stating what advertisements have been published as aforesaid, and the Gazettes and newspapers in which the advertisements are so published, and the same when so filed shall be *prima facie* evidence of the publication of the advertisements and of the dates of publication.

(9) All claims against the estate of any testator or intestate which shall be sent to the Registrar as directed by any such advertisement shall be recorded by the Registrar in a book to be called "The Claims Book," and within one week after the receipt thereof by the Registrar shall be transmitted by him to the personal representative.

Personal representative may distribute assets.

**55** After the day specified in the advertisement for claims to be sent in, the personal representative shall be at liberty to pay and distribute the assets of the testator or intestate in his hands, in due course of administration, so far as respects the claims of which he then has notice, whether as a result of such claims being filed as provided by this Act or otherwise; and, if after satisfying, or retaining sufficient to satisfy, the claims of which he has notice as aforesaid there is any residue or surplus of assets, he may pay or distribute the same amongst the legatees or next-of-kin entitled thereto.

Filing of accounts.

**56**—(1) After the day specified in the advertisement for claims to be sent in, the personal representative shall file with the Registrar an account in writing, under the hand of such representative, of all the assets of the testator or intestate which have come to his hands, possession, or knowledge, or to the hands or possession of any other person for him; and of the payment and distribution, or retainer, of so much of the same assets as have been paid, distributed, or retained, and of the assets, if any, then remaining in his hands, and with the names and additions of the legatees or next-of-kin to whom any of the assets have been paid or delivered.

(2) In such account the personal representative shall be entitled to have credit for payments made by him before the day specified in the advertisement for claims to be sent in, except as against claimants of whose claims he has notice and who are prejudiced by such payments.

(3) Upon such account being filed, the executor or administrator shall be deemed to have duly administered the assets so accounted for, so far as the same have been paid or distributed, and shall be released from all claims and demands on him as executor or administrator in respect of the assets so paid or distributed, except at the suit or on the behalf of persons who have filed claims on or before the day

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specified for that purpose, or of whose claims the executor or administrator has otherwise then had notice, and except also at the suit or on the behalf of persons having claims against the estate who are resident in any other State or New Zealand, where the advertisement has not been published as aforesaid, and any such person resident elsewhere than in any other State or New Zealand where the advertisement has not been published in London as provided by section fifty-four.

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**57** Save as respects such release, nothing herein contained shall prevent any legatee, next-of-kin, or other person, having any claim against the estate, from taking such proceedings as he might have taken if this Act had not been passed; and nothing herein contained shall prevent an executor or administrator from declaring the estate in his hands insolvent.

Rights of claimants.

**58** If any proceeding in the Court shall be instituted for the administration of the estate of a testator or intestate, the personal representative shall stay all proceedings under this Act from the time he receives notice of such suit or other proceeding; but he shall be allowed his costs of any proceedings he may have taken under this Act up to that time.

Proceedings under this Act to be stayed in certain cases.

**59** If after such account as aforesaid, or any account of future assets, as hereinafter mentioned, has been filed, it is made to appear that any claim entered therein was erroneously allowed or satisfied, or that any payment entered therein was erroneously made or charged, or that any part of the assets had been omitted in such account, the release to the personal representative hereinbefore mentioned shall nevertheless be and remain in force, save only as respects such error or omission.

Release to be in force except as to errors or omissions.

*Ib.*

**60** Nothing contained in this Part shall prejudice or affect any right or remedy which a person having any claim against the estate of a testator or intestate has against any legatee or next-of-kin who has received assets of the testator or intestate; and an executor or administrator having or retaining assets as a legatee or next-of-kin shall be responsible to any such person in the same way as any other legatee or next-of-kin.

Rights of claimants against legatees and next-of-kin preserved.

**61** If, after filing such account as provided by this Part, any further assets shall come to the hands, possession, or knowledge of the personal representative, or to the hands or possession of any other person for him, he shall be at liberty to dispose of and account for, and shall be deemed to have duly administered, and shall be released from the same, in the same manner, and to the same extent, as is hereinbefore provided with respect to the original assets; save only that persons of whose claims he has notice at the time of the payment or distribution of such future assets shall have the same rights and remedies as respects those assets which persons of whose claims the executor or administrator had notice at the time of the payment or distribution of the original assets had with respect to such original assets.

Further assets to be disposed of and accounted for in same manner as original assets.

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Interpretation.

**62** In this Part "State" means State of the Commonwealth, and includes any territory of the Commonwealth, and "claim" includes any debt due by a testator or intestate, and also any matter or thing for which an executor or administrator is in that character liable or responsible at law or in equity.

## PART VIII.

## SUPPLEMENTAL.

Land subject to  
*Real Property*  
*Act.*38 Vict. No. 1,  
s. 10.

**63**—(1) Where land held under the *Real Property Act* 1862 or any interest therein devolves under this Act upon the personal representative of a deceased person the personal representative shall produce to the Recorder of Titles—

- i. The probate, letters of administration or other authority constituting him as such personal representative : and
- ii. An application in the form prescribed under the said Act to be registered as proprietor of such land or interest

(2) The Recorder shall enter in the register and on the instrument evidencing title to the land or interest transmitted—

- i. The date of such probate, letters of administration, or authority :
- ii. The date and hour of production of the same to him : and
- iii. Such other particulars as he may think necessary—

and thereupon the personal representative shall be the registered proprietor of such land or interest.

(3) The Recorder shall endorse a memorandum of such registration on such probate, letters of administration, or other authority produced to him.

Court may make  
order for adminis-  
tration of effects  
of deceased  
person.See 38 Vict. No.  
1, sec. 26.

**64** The Court may make all such orders as may be necessary for the due administration of the real and personal estate and effects of any deceased person, and also for the payment out of such real and personal estate and effects to the persons administering the same of any costs, charges, and expenses which may have been lawfully incurred by them, and also such commission or percentage, not exceeding five pounds per centum, for their pains and trouble therein as shall be just and reasonable ; and if any executor or administrator shall neglect to pass his accounts, or dispose of the real and personal estate and effects of any deceased person, at the time and in the manner directed, it shall be lawful for the Court, on the application of any person aggrieved by such neglect, to order and direct that such executor or administrator shall pay interest at a rate not exceeding eight pounds per centum per annum for such sums of money as from time to time shall have been in his hands, and the costs occasioned by the application.

Concealment, &c.  
of will actionable.  
*Ib.*, s. 17.

**65** If any person retains or conceals, or is privy to the retention or concealment of, a will with intent to defraud any person, the person defrauded and any person claiming under him, shall have an action for damages against such firstmentioned person for any loss sustained by reason of such retention or concealment.

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**66**—(1) Nothing in this Act shall derogate from the powers of the Court which exist independently of this Act. A.D. 1935.

(2) Nothing in this Act shall affect the operation of the *Deceased Persons' Estates Duties Act 1931*. General saving

(3) Save as otherwise expressly provided, this Act does not apply in any case where the death occurred before the commencement of this Act, but except as aforesaid the provisions of Division I. of Part III. shall apply whether the death occurred before or after such commencement.

**67**—(1) The provisions set forth in the third schedule shall, until otherwise prescribed as hereinafter provided, apply to proceedings in respect of the estates of persons dying before or after the commencement of this Act. Transitory provisions.

(2) The judges, in the exercise of their powers under the *Supreme Court Civil Procedure Act 1932*, may make rules of court for the purposes of this Act. Rules of court.  
23 Geo. V. No. 58.

(3) Any such rules may modify, alter, or repeal, all or any of the provisions in the third schedule.

**FIRST SCHEDULE.**

Regnal Year and Number.	Title of Act.	Extent of Repeal.
4 Wm. IV. No. 12	<i>An Act for extending to Van Diemen's Land certain Statutes passed in England in the Ninth year of His late and the First year of His present Majesty for the Amendment of the Law</i>	Sections 3 and 4
18 Vict. No. 9	<i>The Common Law Procedure Act</i>	Sections 137 and 138
21 Vict. No. 4	<i>An Act for the Relief of Executors and Administrators</i>	The whole Act
33 Vict. No. 13	<i>The Escheat Act 1869</i>	The whole Act
38 Vict. No. 1	<i>The Deceased Persons' Estates Act 1874</i>	The whole Act
45 Vict. No. 12	<i>The Deceased Persons' Estates Act 1881</i>	The whole Act
49 Vict. No. 20	<i>The Deceased Persons' Estates Act 1885</i>	The whole Act
57 Vict. No. 4	<i>The Probate (Foreign) Act 1893</i>	The whole Act
57 Vict. No. 14	<i>The Probate Act 1893</i>	The whole Act
62 Vict. No. 35	<i>The Executors and Administrators Relief Act 1898</i>	The whole Act
6 Ed. VII. No. 17	<i>The Distribution of Intestates' Property Act 1906</i>	The whole Act
4 Geo. V. No. 7	<i>The Deceased Persons' Estates Act 1913</i>	The whole Act
23 Geo. V. No. 58	<i>The Supreme Court Civil Procedure Act 1932</i>	Subsection (1) of Section 11

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**SECOND SCHEDULE.****PART I.—RULES AS TO PAYMENT OF DEBTS AND LIABILITIES WHERE THE ESTATE IS INSOLVENT.**

1. The funeral, testamentary, and administration expenses have priority.

2. Subject as aforesaid, 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 and contingent liabilities respectively, and as to the priorities of debts and liabilities as are in force at the death of the deceased person under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.

**PART II.—ORDER OF APPLICATION OF ASSETS WHERE THE ESTATE IS SOLVENT.**

1. Property of the deceased, undisposed of by will subject to the retention thereof of a fund sufficient to meet any pecuniary legacies.

2. Property of the deceased not specifically devised or bequeathed, but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.

3. Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.

4. Property of the deceased charged with, or devised or bequeathed (either by a specific or general description), subject to a charge for the payment of debts.

5. The fund, if any, retained to meet pecuniary legacies.

6. Property specifically devised or bequeathed, rateably according to value.

7. Property appointed by will under a general power, rateably according to value.

8. The order of application may be varied by the will of the deceased.

**THIRD SCHEDULE.***Powers of the Court.*

Power to examine witnesses.

57 Vict. No. 14,  
s. 6.

1. The Court may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any action or other proceedings in respect of matter or causes testamentary, and may examine or cause to be examined upon oath parties and witnesses by word of mouth, and may, 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, and 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 or as nearly as may be as that in which a writ of *subpœna ad testificandum* or of *subpœna duces tecum* is now issued;

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and every person disobeying any such writ shall be considered as in contempt of the Court, and also be liable to a penalty of one hundred pounds.

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2. The Court shall have the like powers, jurisdiction, and authority for enforcing the attendance of persons required by it as aforesaid, and for punishing persons failing, neglecting, or refusing to produce deeds, evidence, or writings, or refusing to appear or to be sworn, or make affirmation or declaration, or to give evidence, or guilty of contempt, and generally for the trial or determination of questions of fact, and for enforcing all orders, decrees, and judgments made or given by the Court under this Act, and otherwise in relation to the matters to be inquired into and done under this Act, or by or under the orders of the Court under this Act, as are vested in the Court for such purposes by the *Supreme Court Civil Procedure Act 1932*.

Powers of the Court to enforce orders.

*Ib.*, s. 7.

3. The Court may, on motion or petition or otherwise, in a summary way, whether any action or other proceeding shall or shall not be pending in the Court with respect to any probate or administration, order any person to produce and bring into the Registry any paper or writing being or purporting to be testamentary which may be shown to be in the possession or under the control of such person, and if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the Court may direct such person to attend for the purpose of being examined in open Court or upon interrogatories respecting the same, and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the Court and had made such default; and the costs of any such motion, petition, or other proceeding shall be in the discretion of the Court.

Order to produce any instrument purporting to be testamentary.

*Ib.*, s. 8.*Procedure.*

4. Subject to the Rules of Court the witnesses and, where necessary, the parties in all contentious matters where their attendance can be had, shall be examined orally in open Court: Provided always that, subject to the Rules of Court, the parties shall be at liberty to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party orally in open Court as aforesaid and after such cross-examination may be re-examined orally in open Court as aforesaid by or on behalf of the party by whom such affidavit was filed.

Mode of taking evidence in contentious matters.

*Ib.*, s. 10.*Practice.*

5. The practice and procedure of the Court under this Act shall, except where otherwise provided, be, so far as the circumstances of the case will admit, according to the practice of the Court of Probate under the Act of the Imperial Parliament, intituled the *Court of Probate Act 1857*, and the rules made thereunder.

Practice of the Court.

*Ib.*, s. 11.*Chamber Practice.*

6.—(1) It shall be lawful for a Judge to hear in chambers such part of the business of the Court under this Act as can, in the opinion of such Judge, with advantage to the suitors, be heard in chambers, and such other business as any Rule of Court shall direct to be heard

Judge may sit in chambers.

*Ib.*, s. 12.

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before a Judge in Chambers: Provided always that no question shall be heard in chambers which either party shall require to be heard in open Court.

(2) A Judge in chambers, may grant probate of a will or letters of administration of the estate of an intestate as fully and effectually as the Court now has power to do, anything to the contrary contained in any law or charter to the contrary notwithstanding.

Powers of Judge sitting in chambers.  
*Ib.*, s. 13.

7. A Judge in chambers shall, in respect of the business to be brought before him, have and exercise the same power and jurisdiction as the Court; but all Orders made by such Judge as aforesaid may be reversed, discharged, or altered by the Court within such time and under such conditions as may be prescribed.

*Registrar.*

Registrar may issue subpoenas to produce papers, &c.  
*Ib.*, s. 14.

8. It shall be lawful for the Registrar, and whether any action or other proceeding shall or shall not be pending in the said Court, to issue a subpoena in the usual form requiring any person to produce and bring into the Registry of the Court, as in the said subpoena may be directed, any paper or writing being or purporting to be testamentary which may be shown to be in the possession, within the power, or under the control of such person; and such person, upon being duly served with the said subpoena, shall be bound to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default as if he had been a party to an action in the said Court and had been ordered by a Judge to produce and bring in such paper or writing.

The Registrar to do all acts heretofore done by surrogates.  
*Ib.*, s. 15.

9. Subject to the Rules of Court, the Registrar shall be invested with, and shall and may exercise, with reference to proceedings in the Court under this Act, the same power and authority which Surrogates of the Judge of the Prerogative Court of *Canterbury* could or might, before the passing of the Act of the Imperial Parliament intituled the *Court of Probate Act 1857*, have exercised in chambers with reference to proceedings in the said Prerogative Court, and non-contentious business may be transacted and probate of will or letters of administration may, upon application for that purpose, be issued in the usual form by such Registrar as heretofore, or in conformity with the Rules of Court and the duties thereby imposed on him.

**THE FOURTH SCHEDULE.****FORM I.—OLD SYSTEM LAND.****ASSENT BY PERSONAL REPRESENTATIVE IN FAVOUR OF A PERSON ABSOLUTELY ENTITLED FREE FROM INCUMBRANCES.**

I, A.B. (&c.), being the personal representative of X.Y., late of (&c.) , deceased, do this day of , 19 , hereby, as such personal representative, in pursuance of the provisions of section thirty-six of the Administration and Probate Act, 1935, assent to the vesting in C.D., of (&c.), of all that farm (&c.) [or all the property described in the schedule hereto] for all the estate or interest of the said X.Y. at the time of his death [or, for an estate in fee simple, *as the case may be.*]

As witness, &c.

Signed by the said A.B. on the day  
abovenamed in the presence of—

NOTE.—The expression “conveyance” includes an assent; but an assent will relate back to the death unless a contrary intention appears.

*Administration and Probate.*FORM II.—LAND UNDER THE REAL PROPERTY  
ACT, 1862.

A.D. 1935.

(D)

[Tasmania.]

## TRANSFER BY WAY OF ASSENT.

I, A.B., [*here state Christian name and surname in full*], of [*here state residence and occupation*], being the personal representative of X.Y., late of [*here state residence and occupation*], being registered as the proprietor of an estate [*here state nature of the estate or interest*], subject, however, to such encumbrances, liens, and interests as are notified by memorandum underwritten or endorsed hereon in all of land situated in the [*here state fully situation of land*], containing [*here state area, exclusive of roads intersecting the same, if any*], be the same a little more or less [*if the land to be dealt with contain all that is included in an existing grant or certificate of title, refer thereto for a description of parcel and diagram, otherwise set forth the boundaries in chains, links, or feet, referring to plan (if any) deposited in the Lands' Titles Office, and also to the existing grant or certificate of title; also state rights-of-way, privileges, or easements (if any) intended to be conveyed*] do hereby, as such personal representative, in pursuance of section thirty-six of the Administration and Probate Act, 1935, transfer, by way of assent, to the said C.D. all the estate and interest of the said X.Y. in the said piece of land above described. [*Insert here date from which assent is to operate if not from date of death.*]

In witness whereof I have hereunto subscribed my name this day of . 19 .

Signed on the day above named by the said A.B., in the presence of [*the witness must be one of the officers or persons named in section twenty-nine of the Real Property Act, 1886*].

[*If the witness be not one of the officers or persons named in section twenty-nine of the Real Property Act, No. 5, he must make the following acknowledgment before one of such officers or persons.*]

Appeared before me at , the day of , 19 , the attesting witness to this instrument, and declared that he personally knew , the person signing the same, and whose signature the said attested, and that the name purporting to be the signature of the said is his own handwriting, and that he freely and voluntarily signed such instrument.

NOTE.—A transfer in the ordinary form includes an assent, but an assent to the above form will relate back to the date of death unless a contrary intention appears.

NOTE.—The purchaser or his solicitor must sign the certificate endorsed that this instrument is correct for the purposes of the *Real Property Act*. Any person falsely or negligently so certifying is liable to a penalty of £50 (sec. 107, *Real Property Act*, 1862).

