

No. XXIV.

INTESTATE ESTATES. An Act for the better preservation and management of the Estates of deceased persons in certain cases. [1st October, 1847.]

Preamble.

9 Geo. IV c. 83 s. 12.

1 Vic. No. 4.

Curator of Intestate Estates

to give security.

Liability of sureties.

WHEREAS by an Act of Parliament passed in the ninth year of the reign of His late Majesty King George the Fourth intituled “*An Act to provide for the Administration of Justice in New South Wales and Van Diemen’s Land and for the more effectual Government thereof and for other purposes relating thereto*” it was amongst other things enacted “that in all cases where the executor or executors of any will upon being duly cited shall refuse or neglect to take out probate or where the next of kin shall be absent and the effects of the deceased shall appear to the Supreme Court to be exposed and liable to waste it shall be lawful for the said Court to authorize and empower the Registrar or other ministerial officer of the said Court to collect such effects and hold or deposit or invest the same in such manner and place or upon such security and subject to such orders and directions as shall be made either as applicable in all such cases or specially in any case by the said Court in respect of the custody control or disposal thereof” And whereas by an Act of the Governor and Council of New South Wales passed in the first year of the reign of Her present Majesty intituled “*An Act for the investment of Moneys belonging to Intestate Estates by the Supreme Court in the New South Wales Savings’ Bank at Sydney*” provision is made for the investment of moneys belonging to estates of persons dying intestate under the control of the Supreme Court of New South Wales in the said bank and for the withdrawal thereof And whereas it is expedient to extend the power of collecting managing and administering the estates of deceased persons in cases where there shall not be any person empowered to collect administer or manage the same and otherwise to regulate the powers and duties of the Judges of the said Supreme Court and of the officer appointed to collect the said estates Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That any officer appointed or to be appointed hereafter by the said Supreme Court to collect the estates of deceased persons under the provisions of the said Act of Parliament shall in respect of his said office be styled “Curator of Intestate Estates” and shall perform the duties and have the powers and rights and be subject to the liabilities hereinafter expressed declared and contained and such officer shall from time to time procure and give security by bond or recognizance to Her Majesty the Queen and Her Successors in the sum of two thousand pounds by himself and such sureties as Her said Majesty or Her Successors may think fit conditioned for the collection and due payment of and accounting for all moneys which shall come to his hands by virtue of his office of Curator of Intestate Estates Provided always that no surety for such officer shall be liable beyond the separate amount in which he may have bound himself and also that every such surety may withdraw from any further liability for the future under any such bond or recognizance by giving to Her Majesty’s Attorney General for New South Wales three months notice in writing of his intended withdrawal without prejudice nevertheless to his liability for any previous breach of the condition of such bond or recognizance.

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2. And be it enacted That the Curator of Intestate Estates shall from time to time so soon as conveniently may be after receiving information on oath of the death of any person leaving any personal estate liable to be collected by him apply to the said Court or one of the Judges thereof for an order authorizing him to collect manage and administer such estate and the said Court or Judge shall if satisfied that the case is within the provisions of the said Act of Parliament or of this Act make such order which order when made shall give to the Curator of Intestate Estates the same power over the personal estate of the deceased person except as hereby enacted as he would have had if letters of administration of such personal estate had been granted to the said officer subject nevertheless to any order or orders which may from time to time be made by the said Court or one of the Judges thereof on petition as hereinafter mentioned touching the said estate or the collection management or administration thereof Provided nevertheless that an order to collect manage and administer any estate shall not either before or after the same shall be made prevent the proving of any will or the obtaining of any letters of administration to the personal estate of any person dying intestate or limit or affect the powers or duties of any executor or administrator of the same estate.

Order to collect and effect thereof.

Order to collect &c. not to prevent the subsequent proving of a will &c.

3. And be it enacted That after an order to collect manage and administer the estates of deceased persons shall have been made all disputes and matters touching the collection management or administration of the same within the provisions of the said Act of Parliament or of this Act and all claims and demands thereon except as hereinafter provided shall be decided by the said Supreme Court or one of the Judges thereof on petition in like manner as if the matter were in the equitable jurisdiction of the said Court and the Judges of the said Court shall from time to time make such general rules and orders touching such petitions and the proceedings thereon as to them shall seem expedient and all petitions and orders presented and made under the provisions of the said Act of Parliament or of this Act and all affidavits used in support of or in opposition to such petitions or otherwise relating to the estates of such deceased persons as aforesaid and all accounts of the collection of intestates' estates passed or to be passed shall be filed in such office of the Supreme Court as the said Judges shall from time to time direct Provided nevertheless that if the said Supreme Court or the Judge to whom any petition shall be presented touching the matters aforesaid shall think it desirable that the matter in question should not be decided on petition the said Court or Judge shall order such proceedings to be instituted at Law or in Equity as shall be considered proper for the decision thereof.

Mode of proceeding under this Act.

4. And be it enacted That all orders which shall be made by the said Court or a Judge thereof shall be enforced by the same process as the like orders would be enforced by if they were made by the said Supreme Court in its equitable jurisdiction and that all affidavits made in respect of the collection management or administration of the estates of deceased persons under the provisions of the said Act of Parliament or of this Act or relating thereto or to any proceedings at Law or in Equity under the provisions of this Act or relating thereto may be sworn before a Commissioner of the Supreme Court for taking affidavits or (in places beyond the County of Cumberland) before any Justice of the Peace who is hereby empowered to administer the same anything in an Act passed in the ninth year of Her Majesty's reign intituled "*An Act for the more effectual abolition of Oaths and Affirmations taken and made in various Departments of the Government of New South Wales and to substitute Declarations in lieu thereof and for the suppression of voluntary and extra-judicial Oaths and Affidavits*" to the contrary notwithstanding.

Enforcing orders.

9 Vic. No. 9.

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Persons dying
beyond the jurisdic-
tion of the Court.

5. And be it enacted That the Curator of Intestate Estates shall apply for an order to collect manage and administer the estate of any deceased person and the said Court or Judge thereof shall have authority to make such order whenever such person shall have died beyond the jurisdiction of the said Court but leaving personal property within the jurisdiction thereof which would be held to be within the provisions of the said Act of Parliament or of this Act if such person had died within the jurisdiction of the said Court.

Cases where no
probate within six
months.

6. And be it enacted That when any person shall have died having made a will and named executors or an executor thereof bequeathing personal property within the jurisdiction of the said Court and probate thereof or letters of administration with the will annexed shall not have been obtained within six calendar months after the death of the testator the Curator of Intestate Estates upon information on oath being given to him of the said facts shall cite the executors named in the said will to come in and prove the same or shew cause within fourteen days after such citation why an order should not be made for the said officer to collect manage and administer the said estate and such citation shall be by notice under the hand of the Curator of Intestate Estates which notice shall (with respect to such of the said executors as shall have a place of residence within this Colony known to the said Curator) be served personally or by delivery at such residence and (with respect to such of them as may be out of the Colony or have no known place of residence within it) shall be twice inserted in the *Government Gazette* and if at the expiration of the said fourteen days the said will shall not be proved or cause shewn to the satisfaction of the said Court or a Judge thereof why the order should not be made such order shall upon the petition of the said officer be made accordingly.

The like where no
executor named or
no will made.

7. And be it enacted That when any person shall have died intestate (or if he shall have made a will without naming any executor thereof) leaving personal property within the jurisdiction of the said Supreme Court and letters of administration shall not have been obtained within three calendar months after the death of such deceased person the Curator of Intestate Estates upon information on oath being given to him of the said facts shall cite in manner aforesaid the widow and next of kin who may be entitled to administer to apply for and obtain letters of administration or shew cause within one calendar month after such citation why an order should not be made for the said officer to collect manage and administer the said estate and if at the expiration of the said one calendar month letters of administration shall not have been obtained or cause shewn to the Court or a Judge thereof why such order should not be made such order upon the petition of the said officer shall be made.

Suits by or against
Curator.

8. And be it enacted That in all proceedings under the said Act of Parliament or under this Act and in all proceedings at Law or in Equity the said officer shall sue and be sued by his name with the addition of the words "Curator of Intestate Estates" and it shall not be necessary for him or the person or persons suing him to state or prove his general authority to collect manage and administer the estates of the deceased persons leaving property within the provisions of the said Act of Parliament or of this Act but merely the order made on the petition of the said Curator for such purposes in the specific estate to which the proceedings may relate and whenever the office of "Curator of Intestate Estates" shall become vacant by the death or removal of the officer appointed for the time being to collect manage and administer the estates of deceased persons and another officer shall be appointed to that office during the pendency of any petition action suit or other proceeding such petition action suit or proceeding shall not abate

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abate or become defective but the petition action suit or other proceeding shall be continued by or against the officer newly appointed and his name be used in all future proceedings in lieu of the name of the officer so deceased or removed.

9. And be it enacted That the Curator of Intestate Estates shall make or cause to be made an inventory or list of all the personal estate of the persons whose estates he shall have been ordered to collect manage and administer and shall retain the same in his office and shall keep an account of all his receipts payments and dealings in every such estate and shall retain all letters received and copies of all letters written by him and all deeds papers and writings of and relating to such estates and shall permit all persons to inspect and take copies of the same and of all proceedings relating thereto at all reasonable hours or shall furnish office copies thereof on payment of the fees mentioned in the Schedule hereto annexed and shall convert into money all such personal estate as shall not consist of money unless order be made to the contrary by the said Court or a Judge thereof.

Accounts to be kept
&c.

10. And be it enacted That the Curator of Intestate Estates shall at such times as he shall think fit cause advertisements to be inserted in the *New South Wales Government Gazette* and such other public papers as he shall deem expedient calling upon the creditors of the persons whose estate he shall have been ordered to collect manage and administer to come in and prove their debts before him and the said Curator of Intestate Estates shall allow any claim which may be made before him if the same shall amount to the sum of twenty pounds or upwards upon the like proof as would be required by the Master in Equity for proof of a claim made before him upon a reference to take an account of debts in a suit instituted by a creditor on behalf of himself and others against an executor or administrator and shall allow any claim not amounting to the sum of twenty pounds upon the affidavit of the claimant alone or where he shall think fit to call for further evidence upon such further evidence as he shall require and the said Curator of Intestate Estates shall as soon after the expiration of the time allowed for proof of debts as he conveniently can pay the debts proved if the whole thereof can be paid and if not shall declare and pay a dividend thereon and if he shall collect any further assets after making such payment he shall in case any part of the debts proved remain unpaid pay the same and any debts subsequently proved before him (or a dividend thereon as the case may be) but such debts as shall be subsequently proved shall first be paid a dividend in proportion to their amount equal to the dividend paid to creditors having previously proved their debts and after payment of all debts fees and expenses incident to the collection management and administration of such personal estate shall pay over the residue to the personal representative of the intestate or testator (as the case may be) so soon as such representative shall have been duly constituted.

Payment of debts.

11. Provided always and be it enacted That nothing in this Act contained shall be construed to repeal or affect (except as herein expressly enacted) the provisions of the said recited Act of Council or any general rule or rules made or to be made by the Judges of the said Court with respect to the investment of money belonging to the estates of intestate persons in the New South Wales Savings Bank save and except that any order for the withdrawing of any such money may be made by the said Court or one of the Judges thereof.

Investments in
Savings Bank.

12. And be it enacted That after the expiration of twelve calendar months from the time fixed by the advertisement for creditors to come in and prove their debts if no debt shall be proved or no creditor having proved his debt shall remain unpaid it shall be lawful for any Judge of the Supreme Court if he shall think fit so to do to

Payment to relatives
&c. in petty cases.

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order the Curator of Intestate Estates to pay any sum not exceeding fifty pounds to any person claiming to be a party in distribution or to be a legatee under a will without letters of administration having been obtained or the will being proved and without legal proof of the right or title of the party so claiming and the said Curator of Intestate Estates shall pay the money so ordered to be paid or if necessary shall remit the same in such manner as he shall think most safe and convenient.

Passing Curator's
accounts and adver-
tising same &c.

13. And be it enacted That the Curator of Intestate Estates shall once in every quarter of a year on a day to be fixed by a Judge of the Supreme Court or oftener if required by the said Court pass his accounts in each estate before one of the Judges of the said Court but the passing of such accounts shall not prevent his being thereafter liable to any claim which may be at any time made on him in respect of any sum received and not accounted for or any sum which might have been received by him but for his wilful neglect or default and the Curator of Intestate Estates shall in every year in the month of January transmit to Her Majesty's Principal Secretary of State for the Colonies a return of all moneys paid received and invested in the Savings' Bank in respect of all the estates of deceased persons entrusted to him for collection during the preceding year distinguishing the particular estate in which the same have been so received paid or invested and he shall also publish twice in every year in the months of January and July a like return in the *New South Wales Government Gazette* in respect of the six months preceding.

Discharge to Cura-
tor on winding up
estate.

14. And be it enacted That the Curator of Intestate Estates shall have the same power to require a release and discharge upon the winding up any estate in his charge and handing over the property which may be in his hands to the person or persons entitled thereto as any executor administrator or any other trustee now has in the like circumstances.

Agents to Curator.

15. And be it enacted That the Clerks to the several Benches of Magistrates within the Colony of New South Wales shall at the request of the Curator of Intestate Estates act as his agents in the collecting and getting in of all property within their districts respectively belonging to deceased persons whose estates shall have been duly ordered to be collected and where any such property shall be situate in any part of the Colony to which there shall have been no such Clerk appointed the Curator of Intestate Estates shall appoint as his agent to collect and get in the property of the deceased such person as he shall think fit and such clerks and agents shall collect all such property and convert the same (if so directed) into money and remit the proceeds or pay debts due by the deceased person out of the same and otherwise act in the premises under the direction of the Curator of Intestate Estates who shall not be answerable for any act or omission of any such clerk or agent not in conformity with any such direction or which shall not have happened by the said Curator's own default or neglect.

Fees to be taken and
appropriation thereof.

16. And be it enacted That the Curator of Intestate Estates shall take retain and receive the fees set out in the Schedule hereunto annexed and also a commission at the rate of five pounds per centum on all sums of money which shall be collected by him whether personally or by any clerk or agent as aforesaid and pay the same into the Colonial Treasury Provided that in respect of all sums of money which shall be collected or come to the hands of any Clerk to a Bench of Magistrates or other agent employed by the said Curator he shall make an allowance at the rate of three pounds per centum to such clerk or agent out of such commission as a remuneration for his services.

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17. And be it enacted That in the first week of January next and in the first week of the same month in every succeeding year the Trustees of the New South Wales Savings' Bank shall pay all sums of money which shall on the first day of that month have been in the said bank to the credit of any intestate estate for the term of six years next preceeding to the Colonial Treasurer of the Colony for the public uses of the said Colony and in support of the Government thereof and the said sums shall be applied thereto in such manner as shall be directed by any Act or Acts of the said Governor and Legislative Council subject to the provisions hereinafter contained and that the Curator of Intestate Estates shall on the said first day of January in every year or within two days next following furnish to the Trustees of the said Savings' Bank and also to the Colonial Treasurer an account of all sums of money which shall be so payable which account shall be a sufficient authority for the said Trustees to pay the sums mentioned therein to the said Colonial Treasurer.

Payments to Colonial
Treasurer after six
years.

18. And be it enacted That if at any time after any such sum of money shall have been so paid to the said Colonial Treasurer any person shall present a petition to the Supreme Court or one of the Judges thereof praying for the payment to him of such sum or any part thereof (a copy of such petition being previously served on the Curator of Intestate Estates) and the said Court or Judge shall be of opinion upon any affidavit or other sufficient evidence adduced that the person petitioning is entitled to the same sum or any part thereof the said Court or Judge shall make an order for payment thereof after deducting any costs and expenses which may have been incurred by the Curator of Intestate Estates or otherwise in respect of such application or shall make such other order touching the premises as shall be just and on any such order being served on the Colonial Secretary the same shall be immediately communicated to His Excellency the Governor and thereupon it shall be lawful for the said Governor and he is hereby required to issue a warrant under his hand to the Colonial Treasurer of the said Colony to pay the money mentioned in such order to the party entitled to receive the same in pursuance thereof but no interest shall be paid or be payable on any such sum of money by virtue of any such order or otherwise from the time the same shall have been paid to the Colonial Treasurer as aforesaid.

Provision for parties
subsequently claim-
ing.

19. And be it enacted That the Colonial Treasurer shall issue and pay the money mentioned in such warrant as aforesaid to the person or persons to whom the same shall be payable by virtue of such order as aforesaid.

Treasurer to pay
under Governor's
warrant

20. And be it enacted That the said Colonial Treasurer shall in his accounts be allowed credit for all sums of money paid by him in pursuance of any such warrant as aforesaid and that the receipts of the respective persons to whom the same shall be so paid shall be full and valid discharges to the said Treasurer in passing his said accounts for any such sum or sums as shall be therein mentioned to have been received.

and to receive credit
for the same.

21. Provided always and be it enacted That nothing in this Act contained shall extend or be held applicable to that part of the Colony comprehended within the District of Port Phillip or interfere in any way with the duties of the Deputy Registrar of the Supreme Court in that District.

Act not to extend to
Port Phillip.

Savings Banks.

SCHEDULE REFERRED TO.

	£	s.	d.
For every order to collect where effects shall appear to be above £50...	0	7	6
Where effects shall appear to be £50 or under...	0	5	0
For every order to pay money if £10 and under £20 ...	0	2	6
If £20 and under £50 ...	0	5	0
If £50 and under £100 ...	0	10	0
And on every £100 above the first ...	0	2	6
For every common order...	0	2	6
For every special order ...	0	5	0
For every office copy 3d. per folio.			
On every audit of accounts including the direction to invest assets if the amount which shall have been in the Curator's hands be under £20	0	5	0
If £20 and under £50 ...	0	7	6
If £50 and under £100 ...	0	10	0
For every £100 above the first ...	0	2	6