

No. XLIV.

INTESTATES' ESTATES
CLAIMS.

An Act to provide for the payment of claims on the late Registrar of the Supreme Court in respect of Intestate Estates. [12th October, 1849.]

Preamble. **W**HEREAS in pursuance of the 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*" John Edye Manning formerly Registrar of the Supreme Court of New South Wales was appointed to collect and manage the estates of persons dying intestate within the said Colony And whereas in virtue of such office the said John Edye Manning received various sums of money in respect of such Intestate Estates and having become insolvent failed to pay over the sum of eleven thousand two hundred and seventy-one pounds nineteen shillings and three-pence to the parties entitled to receive the same And whereas the sum of two thousand six hundred and eighty-nine pounds fifteen shillings and one penny has been recovered from the said John Edye Manning or from the persons who had become sureties for the due performance of his duties as such officer one part of which sum amounting to two thousand five hundred and seventy-five pounds six shillings and one penny

3 Geo. IV. c. 83.

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penny has been applied in part liquidation of such liabilities and the remainder in fees of office but the sum of eight thousand six hundred and ninety-six pounds thirteen shillings and two-pence still remains unliquidated and cannot be recovered from the said John Edye Manning And whereas it is expedient that the several persons having claims in respect of the sum so deficient should be indemnified and paid their just claims and that for this purpose a fund should be created out of which as it accrues the said claims may be paid from time to time in manner hereinafter mentioned And whereas various sums of money have from time to time been placed in the Savings' Bank of New South Wales to the credit of the estates of persons dying intestate in pursuance of an Act of the Governor and Council of New South Wales passed in the fourth year of Her present Majesty's reign intituled "*An Act for the investment of moneys*" 1 Vic. No. 4. "*belonging to Intestate Estates by the Supreme Court in the New South Wales Savings' Bank at Sydney*" and whereas by a certain other Act of the said Governor and Council passed in the eleventh year of Her Majesty's reign intituled "*An Act for the better preservation and management of the estates of deceased persons in certain cases*" 11 Vic. No. 21. it is enacted that in the first week in January in every 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 preceding to the Colonial Treasurer of the Colony for the public uses of the said Colony and in support of the Government thereof to be applied thereto in such manner as shall be directed by any Act or Acts of the said Governor and Council but subject nevertheless to the provisions hereinafter contained Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That subject to the proviso hereinafter contained all sums of money which have been so paid into the hands of the said Colonial Treasurer by the Trustees of the said Savings' Bank and which have not been otherwise specifically appropriated and also all sums of money which may hereafter be paid into the hands of the said Treasurer by the said Trustees under the provisions of the said last recited Act shall together with the several other sums in this Act mentioned in that behalf go to form and be a fund out of which as it accrues shall be paid from time to time in manner hereinafter mentioned the several claims in respect of the sums so deficient as aforesaid.

Moneys paid to Treasurer from Savings' Bank to go to form fund.

2. Provided always 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 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 directing him out of the said fund to pay the money mentioned in such order to the person entitled to receive the same in pursuance thereof but no interest shall be paid or be payable on any such sum of money by

Saving claims in or to intestate estates which may be hereafter established.

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by virtue of any such order or otherwise from the time the same shall have been paid to the Colonial Treasurer as aforesaid.

Curator to pay to
Treasurer all sums
unclaimed for six
years.

3. And be it enacted That the Curator of Intestate Estates for the time being shall in the first week of January in every year pay all sums of money which shall be in his hands to the credit of any intestate estate for the term of six years next preceeding to the Colonial Treasurer subject to the like provisions in all respects as are hereinbefore contained in respect of money to be paid to the said Treasurer by the Trustees of the Savings' Bank and the sums so paid shall be part of the aforesaid fund and be applied in manner hereinafter mentioned.

11 Vic. No. 24.

Curator's fees and
commission to go to
same fund.

4. And whereas the Curator of Intestate Estates is empowered under the said last recited Act of Council to receive the several fees specified in the Schedule thereto annexed and also a commission at the rate of five pounds per cent. on all sums of money which shall be collected by him whether personally or by any clerk or agent which said fees and commission nevertheless he is required to pay into the hands of the Colonial Treasurer Be it enacted That (subject to all payments to any agent of the said Curator) all sums of money which have hitherto been paid into the hands of the Colonial Treasurer by the said Curator of Intestate Estates as such fees or commission and also all sums of money which may hereafter be so paid as such fees or commission shall together go to and be part of the aforesaid fund and be applied in manner hereinafter mentioned.

Mode of obtaining
order for payment.

5. And be it enacted That any person claiming to be paid under the provisions of this Act any sum of money as being due to any intestate estate and which shall be unpaid by reason of the insolvency of the said John Edye Manning shall present a petition to the Supreme Court or one of the Judges thereof praying for the payment of the money so claimed (a copy of which petition shall be served on Her Majesty's Attorney General who shall if he shall think fit be heard in the matter of the petition and may adduce evidence in opposition thereto) and if the said Court or Judge shall be of opinion upon affidavit or other sufficient evidence adduced that the person petitioning is entitled to such sum of money or any part thereof the said Court or Judge shall make an order for the payment thereof or shall make such other order touching the matter as shall be just.

List of such orders to
be communicated to
the Governor who
shall authorize the
Colonial Treasurer to
pay same as far as
fund may extend.

6. And be it enacted That the Curator of Intestate Estates shall in the first week of February in every year make out and transnit to the Colonial Secretary a list or schedule of all orders which shall have been made by the Supreme Court or any Judge thereof under the last preceeding section of this Act during the year ending on the thirty-first day of December then next preceeding and of all orders made in any former year under the same section then remaining unpaid specifying the sums ordered to be paid thereby respectively and on such list or schedule being received by 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 to pay the aggregate amount of the sums of money appearing by such list to be then due and the Colonial Treasurer shall pay such aggregate amount if he shall have sufficient money belonging to the said fund in his hands (after deducting any payments made under the second section of this Act) or if not then he shall pay so much of such fund as shall be remaining into the hands of the Curator of Intestate Estates whose receipts in writing shall be good discharges to the said Colonial Treasurer for so much money as shall therein be expressed to have been received.

Mode of payment by
Curator.

7. And be it enacted That the Curator of Intestate Estates so soon as he shall receive such money shall pay the same to and amongst the

Deeds Registration.

the persons to whom sums of money respectively shall have been ordered to be paid if the amount be sufficient for that purpose but if not then a rateable dividend on the amounts so ordered to be paid to them. Provided always that every person in favour of whom any such order shall have been made shall be entitled to be paid such a rateable proportion of the sum mentioned therein (in preference to other claimants then applying under any similar order) as shall make his rateable dividend in the whole proportionably equal to whatever dividend shall then already have been paid to any such other claimant so that every person holding any such order shall in each year as far as possible be on an equal footing as to his rate of dividends paid and payable.

8. And be it enacted That the said Curator of Intestate Estates shall in the first week in the month of June in each year publish in the *New South Wales Government Gazette* an account of the several sums received and paid by him under the two last preceding sections in that year shewing the sums (if any) then lying in his hands unpaid with the names of the persons to whom paid or due and in what estates respectively.
