

## No. VIII.

An Act to amend in certain particulars the Act <sup>INTESTATE ESTATES.</sup> passed for the better preservation of the Estates of deceased persons. [9th December, 1851.]

WHEREAS under the Act of His Excellency the Governor of New Recital. South Wales and the Legislative Council thereof passed in the eleventh year of the reign of Her present Majesty intituled "An Act <sup>11 Vic. No. 24 ss. 6 and 7.</sup> for the better preservation and management of the Estates of deceased persons in certain cases" an Order for the Curator of Intestate Estates to collect the personal estate of a deceased person cannot be applied for in certain cases until after the expiration of three months from the time of the death of the party or in certain other cases until after the expiration of six months from such death. And whereas it is expedient that in the cases hereinafter mentioned provision should be made for the granting of Orders to collect before the expiration of those periods and for the granting of such Orders when Executors or the persons primarily entitled to Letters of Administration shall renounce Probate or shall be unwilling or unable from any cause to take out Letters of Administration. Be it therefore enacted by His Excellency the Governor of New South Wales with the advice and consent of the Legislative Council thereof That the Curator of Intestate Estates shall apply for and may at any time after the death of any deceased person and without previous citation obtain an Order to collect manage and administer the estate of such person in any of the cases mentioned respectively in the sixth and seventh sections of the said recited Act where the Supreme Court of New South Wales or the Judge applied to for such Order shall be satisfied by affidavit that the effects of the deceased will otherwise be probably purloined lost or destroyed or that great expense will be incurred by delay in the matter.

2. And be it enacted That the like Order shall or may be applied for and may be obtained in any of the said cases (after due citation as mentioned in the said sections respectively and after the expiration of thirty days after the death of the deceased person) where the said Court or the Judge applied to shall be satisfied by affidavit that there is no reasonable probability of Probate or Letters of Administration being obtained within the aforesaid periods of six months or three months (as the case may be) after the death of such deceased person.

3. And be it enacted That whenever the Curator of Intestate Estates shall have received information on oath that any person has died either having made a Will or Intestate and that the several persons named as Executors have renounced Probate of such Will or that all the persons primarily entitled to Letters of Administration have by a memorandum or declaration in writing filed in the Office of the Registrar of the Supreme Court declined to take out such Letters the said Curator shall apply for an Order to collect manage and administer the estate of such deceased person and the Supreme Court of New South Wales or any Judge thereof shall or may thereupon without citation and at any time after the death of the deceased person if satisfied of those facts make such Order accordingly.

4. And be it enacted That in all cases where an Order to collect shall have been or shall be made under the said recited Act or under <sup>Curator to act as the Court or a Judge shall direct.</sup> this

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this Act or under the Statute passed in the ninth year of the reign of King George the Fourth in that behalf it shall be lawful for the Court or any Judge thereof on the Petition of the Curator or any person interested in the estate to make such Order or Orders from time to time touching the collection sale investment and disposal of the estate as to such Court or Judge shall seem meet.

Curator may with consent of a Judge depute an Official Assignee in Insolvency as Collector &c.

5. And be it enacted That it shall be lawful for the Curator at any time or times hereafter with the consent in writing of one of the Judges to depute the actual collection of any estate or estates and the goods debts and moneys therein to one of the Official Assignees in Insolvency and thereafter every Assignee so deputed in respect of every estate committed to him under this section shall be deemed an Agent of the Curator within the meaning of the aforesaid recited Act and shall be bound to account from time to time to him as and when such Curator (or as the Supreme Court or any Judge thereof) shall from time to time require and shall pay over all balances in his hands to the Curator monthly or oftener if so required and shall be entitled to retain to his own use out of the property realized and moneys collected by him a commission of not less than three nor more than five per cent. as one of the Judges may in each case appoint as a remuneration for his services therein.

Curator or his Agents not liable for acts done in the performance of their duties.

6. And be it enacted That neither the Curator of Intestate Estates nor any of his Agents shall be personally liable to any person in respect of goods or chattels in the possession of any Intestate at the time of his death which shall be sold by the Curator or any such Agent as the goods of such Intestate unless such Curator or Agent shall know or have actual notice before the sale that such goods or chattels were not in fact the property of such Intestate and generally neither the Curator nor any of his Agents shall be liable for any act done by him or them *bonâ fide* in the supposed and intended performance of their duties respectively unless it shall be shewn that such act was done not only illegally but wilfully or with gross negligence Provided always that in case of any sale by the Curator or his Agents of goods or chattels belonging in fact to any third person the amount realized by such sale thereof shall be paid over by him or them to the owner upon proof by him of such ownership unless the same shall have been applied in the payment of the debts of the deceased or shall have been distributed according to any Will of the deceased or in the ordinary course of administration whilst the said Curator or any such Agent was in ignorance and without actual notice of the claim of such person to the goods or chattels so sold.