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No. 76.

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3d Session, 3d Parliament, 13 Victoria, 1850.

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B I L L .

An Act to amend the Law relating to the  
Administration of the Estates of De-  
ceased Persons,

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Received and Read a first time, Monday, 10th  
June, 1850,

Second Reading, Monday, 17th June, 1850.

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Hon. Mr. CAMERON (of Cornwall.)

## BILL.

### An Act to amend the law relating to the Administration of the Estates of Deceased Persons.

**W**HEREAS the law relating to the administration of Preamble. the estates of deceased persons is greatly defective, and it is necessary that some improvement should be made therein: Be it therefore enacted, &c.

- 5 That from and after the passing of this Act no action or suit of any nature or kind soever shall abate or be discontinued by reason of the death of any of the parties to such action or suit, whether plaintiff or defendant, demandant or tenant, or by whatever name such parties may be called, but the same shall and may be proceeded with, by or against the personal representative of the party so dying, the death of such party being suggested on the proceedings, and the said suit or action being continued and carried on by *scire facias* in such form as the Judges 10 of the Superior Courts of Common Law shall by any rules from time to time to be made, direct and appoint.

- II. And be it enacted, That no personal representative of any deceased person shall be bound to plead or answer in any action, suit or bill, commenced, brought or 20 prosecuted against such personal representative, to enforce the payment of any debt, claim or demand alleged against such deceased person, until after the expiration of six months from the death of such deceased person.

- III. And be it enacted, That before any personal representative of any deceased person shall be required to pay any debt, claim or demand, made, prosecuted or brought against or on account of such deceased person, it shall and may be lawful for such personal representative, if he shall think fit so to do, to require that the said 30 debt, claim or demand shall be verified by the oath or affirmation, made before any commissioner for taking affidavits, or any magistrate, of some person cognizant thereof, who shall swear or affirm that the said debt, claim or demand is correct, and has not been settled or reduced 35 below the amount claimed, by payment or set off, or in any other manner whatsoever.

- IV. And be it enacted, That all persons having any claim, debt or demand against any deceased person or the personal estate of any deceased person, whether such 40 claim, debt or demand arise from or out of any record,

Actions not to abate by death of parties: how to be continued.

Delay to plead, &c. allowed to personal representative.

Oath or affirmation that the debt is due may be required.

preference on  
account of  
their nature.

5

specialty, simple contract, wrongful act or other cause whatever, shall be entitled to be paid equally out of the assets of such deceased person, without any preference or priority by reason of the nature of such claim, debt or demand, having regard only to the amount thereof : Provided always, that every such claim, debt or demand shall be filed within one year from the time of administration granted to the estate and effects of such deceased person, in the Probate or Surrogate Court by which such administration shall be granted ; for the filing of which claim, debt 10 or demand, and the entry thereof in a book to be kept for that purpose, the Registrar of such Court shall be entitled to receive the sum of *one shilling* and no more.

Account of  
assets to be  
filed : Court  
to make divi-  
dends, &c.

15

V. And be it enacted, That immediately after the expiration of one year from the time of administration granted of the estate and effects of any deceased person, the personal representative of such deceased person shall deliver into the Court by which such administration was granted, a statement in writing, verified by oath or affirmation, which oath or affirmation may be administered 20 by any commissioner for taking affidavits or any magistrate, of all the assets of such deceased person within the knowledge of such personal representative, and thereupon such Court shall from time to time declare such dividends payable out of the said assets, as the same may be 25 realized, as to the said Court shall seem meet ; and such personal representative shall be liable in an action for money had and received, to the parties entitled to such dividends, if not paid at the time or times when the same shall be declared payable by such Court as aforesaid. 30

Liability of re-  
presentative  
if not paid.

Proceedings if  
the personal  
representative  
do not file the  
statement of  
assets.

35

VI. And be it enacted, That if within three months after the expiration of the said year, such personal representative shall not deliver into the said Court, such statement in writing as in the next preceding clause mentioned, it shall and may be lawful for any claimant on the estate of such deceased person, who shall have filed his claim as aforesaid, to obtain from the said Court an order *ex parte* upon such personal representative, to deliver in such statement within a time to be specified in such order ; and if such order be not complied with, then 40 upon due proof of a personal service thereof upon such personal representative, the said Court shall and may in its discretion make an order for the imprisonment of such personal representative in any gaol or prison, until such statement shall be delivered into Court, and an order 45 made for the discharge of such personal representative from custody, upon the payment of such costs as such Court shall direct.

Plea of *plene  
administravit*  
to be verified  
on oath, &c.

50

VII. And be it enacted, That if in any action or suit against the personal representative of any deceased person, such personal representative shall file any plea of *plene administravit*, in any form whatever either in part

or in the whole, such plea shall and may be treated as a nullity unless it be accompanied by an affidavit or affirmation verifying the same, with a statement of the receipts and payments on account of the estate by the 5 personal representative.

VIII. And be it enacted, That the personal representative of any deceased person shall and may, as soon as he shall have paid or satisfied all such claims as aforesaid against the estate of such deceased person, as shall be 10 styled as aforesaid within a year from the time of administration granted, distribute the residue of the said estate among the legatees or next of kin, as the case may be, according to law; and thereupon such personal representative shall be absolutely discharged from any claim, suit, 15 action or proceeding of any other person on account of the estate of such deceased person, and shall and may plead the same as an absolute bar to any such action, suit or proceeding.

IX. And be it enacted, That after distribution of the 20 residue of the estate of any deceased person by the personal representative as aforesaid, any person having any such claim, debt or demand as aforesaid against the estate of such deceased person, shall and may proceed for the recovery thereof, by action of debt against all or 25 any of the parties to whom such residue shall have been distributed, and such parties shall be liable in such action to the extent of the residue received, and no more: Provided always that the claimant before instituting any such action shall furnish a statement of his claim to the said 30 parties against whom he claims the same, accompanied by an affidavit of the nature required by the third section of this Act.

X. And be it enacted, That for the purposes of this 35 Act proceedings may be had or taken in the said Probate and Surrogate Courts or either of them, at any time, without reference to any fixed or periodical sittings of such Courts.

XI. And be it enacted, That the term "personal representative" used in this Act, shall include and extend to all 40 and every person to whom probate or administration of of the estate of any deceased person shall be legally granted in any way, manner or form whatever.

XII. And be it enacted, That the following fees shall 45 be allowed to the Official Principal of the Court of Probate, and Judge of Surrogate Court, for services performed under this Act;

Declaring dividend—*one per cent.* upon amount thereof;  
Order to deliver statement *five shillings*;  
Order for imprisonment *ten shillings*.

XIII. And be it enacted, That this Act shall be in force in Upper Canada only.

After paying  
claims, the  
remainder to  
be distributed  
to legatees, or  
next of kin, &c.

Parties havin  
unpaid claims  
may proceed  
against those  
receiving such  
residue.

Proviso.

Time of pro-  
ceeding in Pro-  
bate or Surro-  
gate Courts.

Interpretation  
clause.

Fees.

Extent of Act.