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No. 4.

4th Session, 3d Parliament, 14th Victoria, 1851.

BILL.

An Act for the better Administration of
the Estates of Deceased Persons.

Received and read a first time, Wednesday 21st
May, 1851.

Second reading Thursday, 29th May.

HON. MR. CAMERON (of Cornwall).

BILL.

An Act for the better Administration of the Estates of Deceased Persons.

WHEREAS the law relating to the administration of the Estates of deceased persons is greatly defective, and it is necessary that some improvement should be made therein:—Be it therefore enacted; &c.

Preamble.

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 the plaintiff or defendant, demandant or tenant, or by whatever name such parties
10 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
15 the Judges of the Superior Courts of Common Law shall by any rules from time to time to be made, direct and appoint.

Actions not to abate by death of parties; how continued.

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, after the expiration of one year from the death of such deceased person.

Actions against Personal representative to be brought within a year.

25 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,
30 it shall and may be lawful for such personal representative, if he shall think fit so to do, to require that the said 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
35 demand is correct, and has not been settled or reduced below the amount claimed, by payment or set off, or in any other manner whatsoever.

Personal representative may demand that the claim be sworn to.

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

All debts to be paid equally out of assets.

Provided the claim be fyled within six months.

debt or demand arise from or out of any record, specialty, simple contract, wrongful act or other cause whatsoever, 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, 5
 having regard only to the amount thereof: Provided always, that every such claim, debt or demand, verified as aforesaid, shall be fyled within six calendar months 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; 10
 for the fyling of which claim, debt 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. 15

Personal representative to fyle an attested account of assets.

V. And be it enacted, That immediately after the expiration of six calendar months 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 by any commissioner for taking affidavits or any magistrate, of all the assets of such deceased person within the knowledge of such personal representative, 20
 and thereupon such Court shall, from time to time upon the application of any such claimant who shall have filed his claim verified as aforesaid, have power to examine such personal representative on oath, and declare such dividends payable out of the said assets, as the same may 25
 be 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
 35

Court to declare dividends payable out of assets.

If personal estate be insufficient Court may direct the sale of real estate.

VI. And be it enacted, That whenever the personal estate of any deceased person shall be insufficient to pay all such claims, debts or demands as existed against such deceased person, and such deceased person shall have 40
 died seised or entitled to any such estate or interest in lands or tenements as might have been taken in execution therefor, it shall be lawful for such Probate or Surrogate Court having right to administration of the estate of such deceased person, on the application of any such 45
 claimant as aforesaid or of the said personal representative, to order and direct that any such estate or interest in lands shall be sold at such time and in such manner as such Court shall direct, and upon such sale, a deed or conveyance of such lands signed by the Registrar of such 50
 Court under the seal of such Court shall be sufficient to convey the estate and interest of such deceased person

How such estate shall be conveyed to purchaser.

therein to the purchaser at such sale, and the amount realized at such sale, beyond all costs and charges shall be assets in the hands of such personal representative, to be applied to the payment of such claims, debts or demands as aforesaid; and for the execution of any such deed such Registrar shall be entitled to the sum of ten shillings.

VII. And be it enacted, That if within one calendar month after the expiration of the said six calendar months, such personal representative shall not deliver into the said Court such statement in writing as in the fifth section mentioned, it shall and may be lawful for any such claimant 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 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 made for the discharge of such personal representative from custody upon the payment of such costs as such Court shall direct.

Personal representative neglecting to file account may be compelled to do so.

VIII. 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 personal representative.

Plea of *plene administravit* must be verified by affidavit, &c.

IX. 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 filed as aforesaid within six calendar months 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 thereafter such personal representative, shall be absolutely discharged from any claim, suit, 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.

When claims filed within six months are paid residue to be distributed according to Law.

X. And be it enacted, That after distribution of the 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

Parties receiving such residue liable to amount received.

of such deceased person shall and may proceed for the recovery thereof, by action of debt against all or 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 parties against whom he claims the same, accompanied by an affidavit of the nature required by the third section of this Act. 5 10

At what times proceedings may be had under this Act. XI. And be it enacted, That for the purposes of this 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. 15

Interpretation Clause. XII. And be it enacted, That the term "personal representative" used in this Act shall include and extend to all and every person to whom probate or administration of the estate of any deceased person shall be legally granted in any way, manner or form whatever. 20

Fees. XIII. And be it enacted, That the following fees shall 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*.
Order for sale, *ten shillings*.

Extent of Act. XIV. And be it enacted, That this Act shall not extend to Lower Canada. 25