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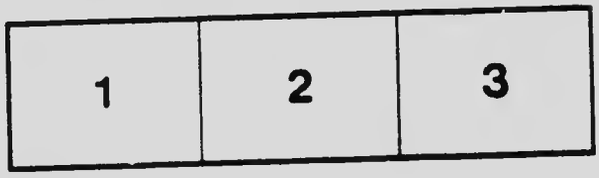

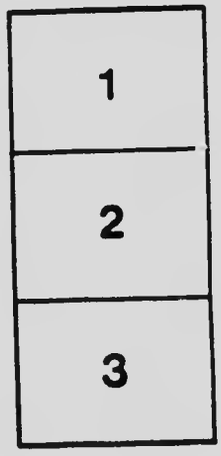

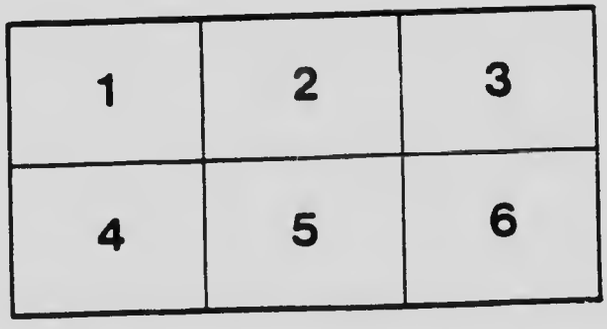

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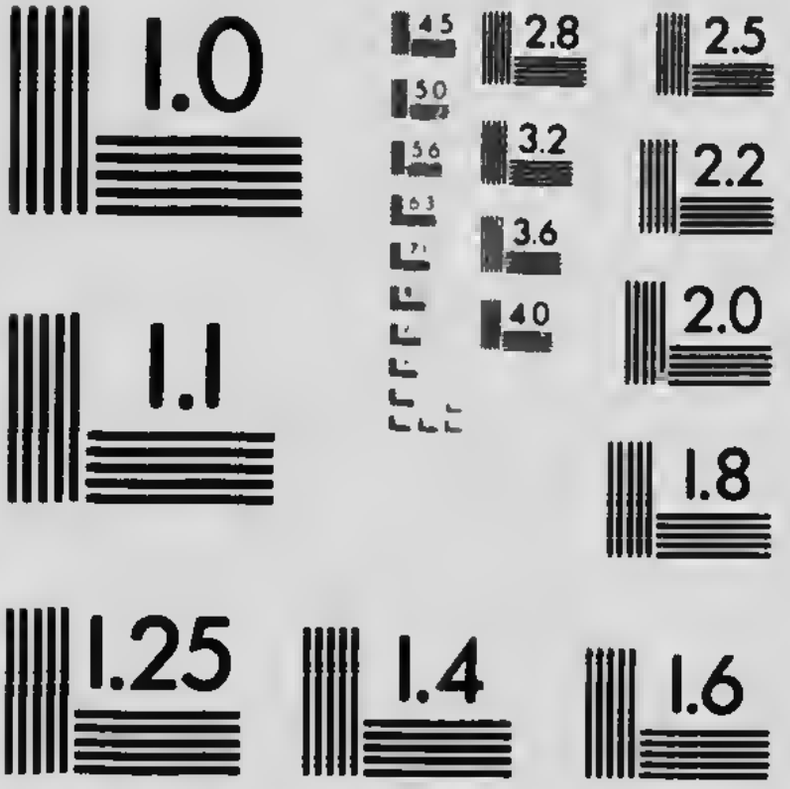

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COOTE'S COMMON FORM PRACTICE AND TRISTRAM'S CONTENTIOUS PRACTICE

AND

Practice on Motions in granting Probates and Administrations.

CANADIAN EDITION.

COOTE'S COMMON FORM PRACTICE

AND

TRISTRAM'S CONTENTIOUS PRACTICE

OF

The High Courts of Justice

IN GRANTING

PROBATES AND ADMINISTRATIONS.

Fourteenth Edition

BY

THOMAS HUTCHINSON TRISTRAM, K.C., D.C.L.,
CHANCELLOR OF LONDON, ETC., ETC.

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Barrister-at-Law,
Senior Clerk to the Senior Registrar, Principal Probate Registry,

AND

BERNARD H. H. THOMSON,
Clerk to the Senior Registrar, Principal Probate Registry,

ASSISTED BY

GORDON SIMPSON,
Clerk in the Contentious Department, Principal Probate Registry.

Canadian Edition

BY

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OF THE INNER TEMPLE, OSGOODE HALL, TORONTO, AND THE SOUTH EASTERN CIRCUIT, BARRISTER-AT-LAW.
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LONDON:
BUTTERWORTH & CO., 11 & 12, BELL YARD, TEMPLE BAR,
Law Publishers.

CANADA:
THE CANADA LAW BOOK CO., TORONTO, ONT.

1907.

PRINTED BY
WILLIAM CLOWES AND SONS, LIMITED,
LONDON AND BECCLES.

PREFACE

TO THE

CANADIAN EDITION.

IN presenting the first Canadian Edition of Tristram and Coote to the profession in Canada, I have kept in view two ends: First, to assist practitioners by noting to the English text all cases that have been decided by the Canadian Courts, as well as all rules and statutes that bear upon the text; and, secondly, to aid, so far as I can, in the assimilation of English and Canadian law.

An English text-book such as Tristram and Coote ought not only to be, as in fact it is, a standard work for English practitioners, but it ought as well to be the standard work for all parts of the Empire where English law is in force. With the development of great colonies such as Canada, with its ever-increasing output of statute law and a Bench of Judges whose decisions are respected by both the public and profession, a change has come in the practice of the Courts. English decisions are looked upon for guidance more than as binding precedents, and the decisions of the Canadian Courts and the bearing of Canadian Statutes have now the first place in the argument and decision of a question of law. With these changes, it is obvious that an English text-book must contain the Canadian Statutes, rules and decisions if it is to retain its place as the leading work on the subject in Canada. With the English and Canadian cases side by side, and the statutes of both countries similarly placed, the Canadian

practitioner will find all the law he requires upon any given point. He can examine the English and Canadian Statutes or rules, and learning what, if any, distinction exists, he can then examine the decisions upon the respective Statutes and rules, and come to his own conclusion on the case in point. It is hoped that the book in its present form may be of as much use to the profession in Canada as the original work and its subsequent editions have been in England. If this be the case, my object in producing this Canadian Edition will be fulfilled, and another link in the chain of a common Jurisprudence will be forged, and a step taken to more closely assimilate the practice and principles of the law of Probate in the two countries.

A. C. FORSTER BOULTON.

2, Pump Court Temple,
January, 1907.

PREFACE

TO THE

FOURTEENTH EDITION.

SINCE the last edition of this work was sent to press, certain alterations in the Common Form and Contentious Practice in relation to the granting of Probate and Administration have been made. These alterations will be found to have been incorporated in the present edition.

In the last two editions of the work, I had the advantage of the services of Mr. HENRY A. JENNER, one of the Principal Clerks of Seat in the Principal Probate Registry, and latterly District Probate Registrar at Chester, in revising for me the Common Form portion of the Practice in the Court of Probate. He, being in residence at Chester, he felt he could not satisfactorily undertake the work for this edition.

It has been considered that it would be a great convenience to Practitioners if some portions of the Common Form Practice were re-written, some transposed, and others re-arranged, with certain other additions and alterations. I thereupon, with the approval of Dr. PRITCHARD, D.C.L., the Senior Registrar of the Principal Probate Registry, requested Mr. BERNARD H. H. THOMSON, Clerk to the Senior Probate Registrar Principal Probate

Registry, to write and revise Part I. of the Common Form Practice. This he undertook to do.

I have carefully perused the proofs of all the parts of this work during their passing through the press, and I am satisfied that the manner in which Mr. THOMSON has re-written and revised his portion of it, will be of material assistance to Practitioners. He has cited from old Manuscripts, and from notes in the Registry, decisions on important Points of Practice, not heretofore reported, which, with Chap. XV., p. 252, containing a report of the Laws as to the execution of Wills in British Possessions abroad, will be found to be a useful addition to the work.

Mr. W. F. L. de QUETTEVILLE, Barrister-at-Law, Senior Clerk to the Senior Registrar in the Principal Probate Registry, has revised and brought up to date Part II., and Mr. GORDON SIMPSON, Clerk in the Contentious Department, in the Principal Probate Registry, has revised and brought up to date Part III. of this work, together with the Appendices, and has also prepared and added a new Time Table alphabetically arranged, and a Table of Fees taken in Contentious Business. These gentlemen, having great experience of the Practice in the Registry, have done their portions of the work to my entire satisfaction.

I wish to add that my thanks are due to Mr. Registrar HARDY for notes and suggestions which he has kindly given for insertion in this new edition.

THOMAS H. TRISTRAM.

12, KING'S BENCH WALK,
TEMPLE, E.C.
August, 1906.

PREFACE

TO THE

TENTH EDITION.

THE design of the present Edition of this work is to supply the Legal Profession with a complete Practice of the Contentious and Non-Contentious Business of the High Court of Justice in respect of Grants of Probates and Administrations.

The late Mr. Henry Charles Coote, F.S.A., formerly an experienced Proctor in Doctors' Commons, on the transfer in 1858 to the Court of Probate of the business of the Prerogative Court of Canterbury, and of the other Ecclesiastical Courts in matters of Probates and Administrations, published his Common Form Practice, the value of which was promptly appreciated and recognized by the Legal Profession; and there being a want felt of a Treatise on the Contentious Probate Practice, I wrote a short one on the subject, which appeared in the Second and in the subsequent Editions of Mr. Coote's Common Form Practice, published prior to the changes introduced by the Judicature Acts.

In 1881 I published a more comprehensive and separate work on the Contentious Probate Practice, and on the Practice on Motions and Summonses, but the severance of the Contentious from the Non-Contentious Practice having been found to be inconvenient, I undertook to re-unite them in the present Edition. In carrying out this design I have had the advantage of the co-operation of Mr. Henry Pickering Clarke, by his revising the Common Form Practice. The original text of the Common Form Practice, as written by Mr. Coote, has been as much as possible preserved, and the *more important* of the alterations and additions will be found distinguished by brackets.

In order to bring the two branches of the Practi within convenient compass, I have inserted only such the New Rules and Forms relating to Contentious Busine as are required in ordinary practice, and have omitted t rules and practice in appeals to the House of Lords.

The Common Form Practice is not affected by t Judicature Acts. It is regulated by the Rules for No Contentious Business issued in 1862 and subsequentl under the powers contained in the Probate Act, 185 and by the provisions contained in that and subseque statutes; and where these rules and statutes are silen it is regulated by the practice of the late Prerogati Court of Canterbury.

The Rules of 1862 embodied, with modifications, th general rules of practice which, at the time of the passi of the Probate Act, prevailed in the Prerogative Court Canterbury, and which had been introduced by the Judg of the Prerogative Court from time to time, for th greater security of property passing under Grants Probate or Administration.

The Contentious business of the Court is now regulate by the Judicature Acts, and by the Rules issued unde them, and where these Acts and Rules are silent, by th Court of Probate Act and the Rules of that Court; and i cases not otherwise provided for, by the practice of th Prerogative Court of Canterbury.

I desire here to record my acknowledgments and thank to the Right Honourable Judge Warren the Judge of th Probate and Matrimonial Division of the High Court o Justice in Ireland, for having supplied me with a serie of recent important Irish decisions on Probate Practice which are cited in Parts II. and III. of this work.

THOMAS H. TRISTRAM.

12, King's Bench Walk, Temple.
January 25th, 1888.

PREFACE

TO THE

FIRST EDITION.

HITHERTO there has been no attempt, in a monograph form, to explain the principles which regulate the granting of Probates and Letters of Administration; and the reason of this deficiency has been a natural one.

So long as the practice in Common Form was, by law, confined to certain select Practitioners, to whose skill and character no exception was raised, such a kind of explanation (*a*) was not required, either by the Public or the General Legal Profession.

This is not merely an excuse for a want of candour, which might, *primâ facie*, seem discreditable to the now existing practitioners; but is, I believe, the true and rational solution of a fact, to which an analogy may be found on the other side of the Channel, in the case of the French Notaries.

Like the Proctors, they have been accused of making this part of their art a mysterious property, in the knowledge of which neither the Public nor the General Profession should participate (*b*). But in the case of the

(*a*) If the reader is curious to know the conditions under which this practice (called *Common Form*) was formed and founded, he is referred to Mr. Edwin Edwards's "Sketch of the Origin and Early Progress of the Ecclesiastical Jurisdiction" (a most excellent book), and to "Law Magazine," vol. liii. p. 1, and vol. liv. p. 110, and "Law Magazine and Law Review," vol. i. p. 252.

(*b*) M. Laboulaye, the Professor of Comparative Legislation at the *Collège de France*, in an article in the *Revue Historique de droit Français et Etranger*, tom. i. p. 18, says of the Notaries, "de tout "temps les notaires ont fait de leurs actes une je ne sçais quelle "mystérieuse propriété, qu'ils ont tenue loin des yeux profanes."

Proctors, the duration of their property has determined The Legislature has thought good to abolish this ancien division of legal labour, and to throw upon the Genera Profession what was formerly a select and special practice It may, therefore, be considered that the interests of the Public require that some methodized information should be afforded for the guidance of the layman, and also o the Legal Practitioner, whose multiplied engagements will not readily permit him to compose for himself a manual of practice out of the *indigesta moles* of the Ecclesiastical Reports.

An attempt to supply this information is made in the ensuing pages, which have been written with the aid and co-operation of my esteemed and excellent friend William Kitching, Esq. (*c*). The subject-matter of this Work being his own *spécialité*, he most kindly consented to take a share in the labour, thus giving to these pages an accuracy and precision which the Practitioner will not fail to appreciate.

HENRY CHARLES COOTE.

DOCTORS' COMMONS.
1858.

(*c*) For many years in office in the Prerogative Court.

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B. & A.	Barnewall and Adolphus.
Beav.	Beaver's Rolls Court.
Bos. & Pul.	Bosanquet and Pullor.
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C. A.	Court of Appeal.
C.-B.	Contentious Business.
C. B.	Common Bench Reports.
C. D., Ch. D.	Law Reports, Chancery Division.
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Curt.	Curteis's Ecclesiastical Report.
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Dir. Ag.	Directions to Agents.
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Haro	Haro's Chancery Reports.
H. L.	House of Lords.
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J. P.	Justice of the Peace Reports.
Jur.	Jurist Reports.
K. B.	King's Bench.
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L. J.	Law Journal Reports.
L. R. Ir.	Law Reports, Ireland.
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[19] A. C.	Law Reports, Appeal Cases.
[19] Ch.	,, ,, Chancery Division.
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N.-C. B.	Non-Contentious Business.
P. C.	Privy Council Cases.
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Sw. & Tr.	Swabey and Tristram's Reports.
T. L. R.	Times Law Reports.
Vern.	Vernon's Chancery Reports.
Ves. / Ves. Sen.	Vesey's Chancery Reports.
W. N.	Weekly Notes.
W. R.	Weekly Reporter.
W. W. & D.	Willmore, Woollaston and Davisson, K. B. or Q. B.
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PART THE FIRST.

THE COMMON FORM PRACTICE OF THE PROBATE DIVISION OF THE HIGH COURT OF JUSTICE IN GRANTING Probates and Administrations.

CHAPTER I.

CONSTITUTION OF THE COURT.

THE jurisdiction and authority in relation to the granting or revoking of probates and letters of administration exercised by all courts and persons in England (*a*) were abolished by the Court of Probate Act, 1857 (20 & 21 Vict. c. 77), which came into force on January 11th, 1858; and the jurisdiction in such matters was vested in Her Majesty, to be exercised by the Court of Probate.[1]

(*a*) In the year 1857 there were no less than 372 ecclesiastical or other courts having this authority.

Canadian Cases.

[1] See Surrogate Court Act, R. S. O., 1897, c. 59, *post*, p. 664. The surrogate courts are courts of record, and have very considerable jurisdiction and powers. They are presided over by the

The powers of the Court of Probate.

The Court of Probate Act, 1857, provided that the Court of Probate should have the same powers throughout all England as the Prerogative Court of the Province of Canterbury had in relation to testamentary matters and effects of deceased persons within its jurisdiction; that it should be a court of record (s. 23), and should hold its ordinary sittings and have its principal registry in London or Middlesex (s. 4).

Practice.

It was also provided by this Act, that the practice of the Court of Probate (speaking generally) was to be according to that of the Prerogative Court of Canterbury, subject to any Rules and Orders of Court, the power to make which was, after the Act came into operation, vested in the judge of the court, to be exercised with the concurrence of the Lord Chancellor and the Lord Chief Justice, or other judge to be nominated by the latter.

District registries.

In addition to the principal registry district registries under the control of the Court of Probate were established

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Canadian Cases.

judge of the county court of the same county, and where there are two judges by the senior judge (R. S. O., [1897] c. 59, s. 5).

The surrogate court judge's "power and authority" are not exercised by him as a judge of the county court, but by virtue of the Surrogate Courts Act as judge of the surrogate court. The jurisdiction of a surrogate court extends over "matters and causes testamentary," and this includes all matters and causes relating to the grant and revocation of probate of wills or letters of administration.

Unless otherwise provided by this Act, or by the rules or orders respecting surrogate courts heretofore in force or hereafter to be made under this Act, the practice of the surrogate courts shall, so far as the circumstances of the case will admit, be according to the practice in Her Majesty's Court of Probate in England as it stood on the 5th day of December, 1859 (R. S. O., [1897] c. 59, s. 37).

The practice of the surrogate courts in Ontario is to apply the provisions of s. 59 of the Act more liberally than is the practice in the English courts with regard to the corresponding provision (s. 73, Court of Probate Act, 1857, *post*, p. 612) of the English Probate Act (*Carr* v. *O'Rourke*, 3 O. L. R. 632).

with districts and at places mentioned in the Schedule (A) to the Act, which is as follows :— [2]

Canadian Cases.

[2] *ADMINISTRATION—PLACE OF REFERENCE.*—A mortgage of lands held by deceased is property in the county where the lands lie, so as to give the surrogate court of that county jurisdiction (*Re Thorpe*, 15 Gr. 80). The reference in administration actions should *primâ facie* be to the place where the person whose estate is to be administered resided. G. O. Chy. 638 governs the case, and the practice laid down in *Macara* v. *Gwynne*, 3 Ch. Ch. 310, is inapplicable (*Thompson* v. *Fairbairn*, 10 P. R. 533). The testator lived and died in the county of S.; the defendant executor lived there, and one of the two parcels of land which made up the real estate of the testator was in that county. The other and smaller parcel of land was in the county of Y., and the plaintiff's solicitor practised there:—*Held*, that the reference should be to the master at the county town of S. (*Re Armstrong, Armstrong* v. *Armstrong*, 18 P. R. 55; and see also s. 19, sub-s. 1, R. S. O., 1897, c. 59, *post*, p. 669).

Where application for letters of administration to the estate of a deceased person is made in more than one surrogate court, preference will be given to that made by the party nearest in the order in which administration is usually granted, and jurisdiction to proceed was conferred on the surrogate court in which application was made by a mother as next-of-kin against that on behalf of creditors in another county (*Re Tougher*, 3 O. L. R. 144).

ADMINISTRATION SUITS—JURISDICTION OF COUNTY COURTS.—Where creditors whose claims in the aggregate were under $200 obtained the usual administration order, and it was shown that the value of the estate including lands was under $800, and although the real estate, which it was necessary to sell to satisfy such claims, was incumbered by mortgage to an amount which together with their claims exceeded $200, it was *held*, that the plaintiffs could not reckon the mortgage debt for the purposes of this suit, and therefore that the case was within the jurisdiction of the county court; and the plaintiffs were refused their costs (*In re Scott, Hetherington* v. *Stevens*, 15 Gr. 683).

An administration suit by a person interested to an amount less than $200 in an estate which considerably exceeded $800, and against which a debt proved (and the only debt proved) exceeded that sum, it was *held* not to be within the equity jurisdiction of the county court (*Goldsmith* v. *Goldsmith*, 17 Gr. 213).

SCHEDULE (A).

Districts and Places of District Registries throughout England and Wales.

Districts.	Places of District Registries.
County of Northumberland (*b*)	Newcastle-on-Tyne.
County of Durham	Durham.
Counties of Cumberland and Westmoreland	Carlisle.
West Riding of the county of York	Wakefield.
North Riding ditto East Riding ditto (*c*), including the city of York and Ainsty	York.
County of Lancaster, except the hundred of Salford and West Derby and the city of Manchester	Lancaster.
City of Manchester and hundred of Salford	Manchester.
Hundred of West Derby in Lancashire	Liverpool.
County of Chester (*d*)	Chester.
Counties of Carnarvon and Angelsea	Bangor.
Counties of Flint, Denbigh, and Merioneth	St. Asaph.
County of Derby	Derby.
County of Nottingham (*e*)	Nottingham.
Counties of Leicester and Rutland	Leicester.
County of Lincoln (*f*)	Lincoln.
Counties of Salop and Montgomery	Shrewsbury.
Northern division of Northampton and counties of Huntingdon and Cambridge (*g*)	Peterborough.
County of Norfolk (*h*)	Norwich.
Eastern division of the county of Suffolk and north division of the county of Essex	Ipswich.
Western division of the county of Suffolk	Bury St. Edmunds.
County of Bedford and southern division of Northamptonshire (*i*)	Northampton.
County of Warwick (*k*)	Birmingham.
County of Stafford (*l*)	Lichfield.

(*b*) Including the towns and counties of Newcastle-on-Tyne and Berwick-upon-Tweed.

(*c*) Including the town and county of Kingston-on-Hull.

(*d*) Including the city of Chester.

(*e*) Including the town of Nottingham.

(*f*) Including the city of Lincoln.

(*g*) Including the University of Cambridge.

(*h*) Including the city of Norwich.

(*i*) Including the town of Northampton.

(*k*) Including the city of Coventry.

(*l*) Including the city of Lichfield.

Districts.	Places of District Registries.
Counties of Radnor, Brecknock, and Hereford	Hereford.
Counties of Cardigan, Carmarthen (*m*), and Pembroke (*n*), with the deaneries of East and West Gower in the county of Glamorgan	Carmarthen.
Counties of Glamorgan (with the exception of the deaneries of East and West Gower) and Monmouth	Llandaff.
County of Worcester (*o*)	Worcester.
County of Gloucester (*p*), except the present Bristol County Court district	Gloucester.
Bristol and Bath present County Court districts	Bristol.
Counties of Oxford (*q*), Berks, Bucks	Oxford.
Eastern division of the county of Somerset, except the present Bath County Court district, and the part in Somersetshire of the present Bristol County Court district	Wells.
Western division of the county of Somerset	Taunton.
County of Devon (*r*)	Exeter.
County of Cornwall	Bodmin.
County of Wilts	Salisbury.
County of Dorset (*s*)	Blandford.
County of Hants (*t*)	Winchester.
Eastern division of the county of Sussex (*u*)	Lewes.
Western division of the county of Sussex	Chichester.
East division of the county of Kent (*x*)	Canterbury.

"The divisions of counties referred to in the schedule are the "divisions of the same counties described for election purposes in "the Act of the second and third years of King William the Fourth, "chapter sixty-four; and the cities and towns herein referred to are "to be taken to include the counties of such cities and towns as are "counties of themselves."

(*m*) Including the town of Carmarthen.
(*n*) Including the town of Haverfordwest.
(*o*) Including the city of Worcester.
(*p*) Including the city of Gloucester.
(*q*) Including the University of Oxford.
(*r*) Including the city of Exeter.
(*s*) Including the town of Poole.
(*t*) Including the town of Southampton and Isle of Wight.
(*u*) Including such of the Cinque Ports and their dependencies as are locally situate in the county of Sussex.
(*x*) Including the city of Canterbury and such of the Cinque Ports and their dependencies as are locally situate in the county of Kent.

Principal registry.

This table excludes the district of the principal registry; but an examination of the schedule will show by exhaustion that the ordinary jurisdiction was given to the principal registry in common form business (*y*) in cases of persons dying having their fixed abode in the city of London, the counties of Middlesex, Surrey, or Hertford, the western electoral division of the county of Kent, the southern electoral division of the county of Essex, or out of England.

The jurisdiction of the principal registry, however, is not restricted to these districts, but is made general by the 59th section, which provides that it shall not be obligatory for any person to apply for a grant at a district registry, but in every case application may be made through the principal registry.

Applications for grants of probate or administration may be made to a district registry if it appear by the affidavit of the applicant that the deceased at the time of his death had a fixed place of abode within the district in which the application is made. (See Court of Probate Act, 1857, s. 46.)[2a]

Restrictions upon the district registrars.

Certain restrictions are, however, placed upon the exercise of the powers of the district registrars.

In case of contention.

By the 48th section it is provided, that "the district "registrar shall not grant probate or administration in any

(*y*) The term "common form business" is, by the 2nd section, interpreted to be "the business of obtaining probate and administration "where there is no contention as to the right thereto, including the "passing of probates and administrations through the Court of Probate "in contentious cases when the contest is terminated, and all business "of a non-contentious nature to be taken in the court in matters of "testacy and intestacy, not being proceedings in any suit, and also the "business of lodging caveats against the grant of probate or adminis-"tration."[2b]

A similar definition appears at the beginning of the Rules in respect of non-contentious business (1862), viz:—"Non-contentious business "shall include all common form business as defined by 'The Court of "'Probate Act, 1857,' and the warning of caveats."

Canadian Cases.

[2a] The Surrogate Act, R. S. O., [1897] c. 59, s. 19, *post*, p. 669.

[2b] *Post*, p. 8.

"case in which there is contention as to the grant, until "such contention is terminated or disposed of by decree or "otherwise, or in which it otherwise appears to him that "probate or administration ought not to be granted in "common form." [20]

On the contention being terminated or disposed of, either in the Court of Probate or in a county court (which has a contentious jurisdiction in certain cases), the district registrar is competent to make a grant of probate or administration in common form.

Subsequent grants.

The 20th section of the Act of 1858 provides that second and subsequent grants are to be made at the principal registry or the registry where the original will is registered, or where the original grant of letters of administration was made.

Court of Probate merged in High Court of Justice.

The Court of Probate continued to exercise the jurisdiction for which it was created until it was abolished or became merged in the Probate, Divorce, and Admiralty Division of Her Majesty's High Court of Justice, under the provisions of the Supreme Court of Judicature Acts, 1873 and 1875 (36 & 37 Vict. c. 66, and 38 & 39 Vict. c. 77), which commenced and took effect on November 1st, 1875.

By the Supreme Court of Judicature Act, 1875, s. 18, it was enacted that the Rules and Orders of Court in force at the commencement of the Act in the Court of Probate, except as stated in the section quoted, should remain in force until altered or annulled by rules of court to be made after the commencement of the Act.

It was further enacted by the same section, that the president for the time being of the Probate, Divorce, and Admiralty Division should have, with regard to non-contentious or common form business and making rules, the same powers as those conferred on the judge of the Court of Probate by 20 & 21 Vict. c. 77, ss. 30, 53.[21]

Canadian Cases.

[20] The Surrogate Act, R. S. O., [1897] c. 59, ss. 33, *et seq.*, *post*, p. 674.

[21] *Ib.*, s. 88, *post*, p. 690.

CHAPTER II.

JURISDICTION AND FUNCTIONS OF THE DIVISION IN COMMON FORM BUSINESS.[3]

Functions of the Probate Court.

THE Probate Division has exclusive jurisdiction in relation to the granting of probates of wills affecting personal and real estate (except copyholds and customary freeholds to which admission by the lord is requisite to perfect title), and to the granting of letters of administration of the personal and real estates of intestates. Its function is to determine what testamentary papers are entitled in whole or in part to probate, and who is entitled to be constituted the personal representative of the deceased. When the deceased has died testate, it decides which of his testamentary papers constitute his last will, whether he has appointed an executor, and who that executor is.

Canadian Cases.

3 "Common form business" shall mean the business of obtaining probate or administration where there is no contention as to the right thereto, including the passing of probates and administration through a surrogate court when the contest is terminated, and all business of a non-contentious nature to be taken in a surrogate court in matters of testacy and intestacy not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration (R. S. O. [1897] c. 59, s. 2, sub-s. 4).

ACCOUNTS. JURISDICTION OF PROBATE COURT WHEN RES JUDICATA.—A Court of Probate has no jurisdiction over accounts of trustees under a will, and the passing of accounts containing items relating to the accounts of both executors and trustees, is not, so far as the latter are concerned, binding on any other court, and a court of equity, in a suit to remove the executors and trustees, may investigate such accounts again and disallow charges of the trustees which were passed by the Probate Court (*Grant* v. *MacLaren*, 23 S. C. R. 310, appeal from the Supreme Court of New Brunswick).

When he has died intestate, or when he has died testate, but has either appointed an executor who has declined or is incompetent to act, or has omitted to appoint an executor, it determines who is to administer his estate. The decision of the court as to the title to administration in the case of the deceased having died wholly intestate, or intestate as to his residuary estate, is regulated by the statutes 31 Edw. III. st. 1, c. 11; 28 Hen. VIII. c. 5; the Land Transfer Act, 1897, and by the practice of the court. In the case of his having died testate as to his residuary estate, but without having appointed an executor or having appointed an executor who is unable or unwilling to act, it is regulated by the practice of the court.

Where the deceased has died before or since January 1st, 1898, the court has jurisdiction to grant probate or letters of administration in respect of the deceased's personal estate which is in England, or which since the deceased's death has been transmitted to, or is about to be transmitted to England. Where the deceased has died before January 1st, 1898, leaving real as well as personal estate in England, and his will contains any disposition of the real estate, the grant of probate will operate in respect of the real as well as of the personal estate, provided the will has been established as valid by an action in solemn form, and that all parties interested in the real estate have been parties to, or have been cited to be parties to, the action. Where a person dies after January 1st, 1898, leaving in England personal and real or only real estate, a grant of probate or administration will operate on the real estate, except in respect of copyholds and customary freeholds. Where, therefore, a deceased has left neither personal nor real property in England the court is without jurisdiction to make a grant.

Vesting of personal estate.

With regard to the personal estate of an intestate, the right of succession, which formerly appertained to the ecclesiastical ordinary, was transferred to the judge of the Court of Probate by 21 & 22 Vict. c. 95, s. 19, that

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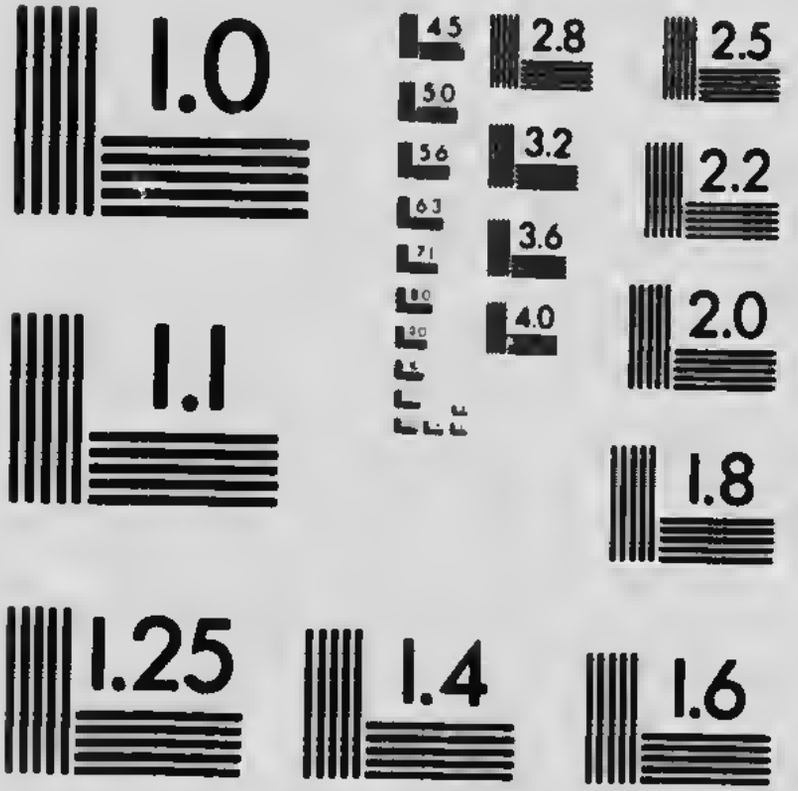

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section providing that "from and after the decease of "any person dying intestate, and until letters of adminis- "tration shall be granted in respect of his estate and "effects, the personal estate and effects of such deceased "person shall be vested in the judge of the Court of "Probate for the time being, in the same manner and "to the same extent as heretofore they vested in the "ordinary."

The Supreme Court of Judicature Act makes no provision for the *interim* vesting of personal estate. But, as there are no words in the Judicature Act repealing the above section, and as by s. 34 of the Act all causes and matters which would have been within the exclusive cognizance of the Court of Probate are assigned to the Probate, Divorce, and Admiralty Division of the High Court, it would seem that the *personalty* vests in the president of that Division until administration be granted.

To the estates of persons dying testate the executor succeeds if he accepts the office. Where, however, the executor declines to act, or is incapable of doing so, or where no executor is appointed, it would seem that the *personalty* vests in the president of the Division, until administration (with will) be granted.

Vesting of real estate.

It would seem that the *real* estate, where the Land Transfer Act, 1897, applies, in cases of testacy or intestacy in the interval between the death of the deceased and the issue of a grant of representation, as the Act has made no provision on the subject, vests in the heir-at-law (*a*).[4]

(*a*) *John* v. *John*, [1898] 2 Ch. 573; *Pilling's Trusts*, 26 Ch. D. 432; "An heir-at-law immediately on the death of his ancestor becomes "presumptively possessed or seised in law of all his lands" (Williams on Real Property, 18th ed., p. 83).

Canadian Cases.

[4] *LIABILITY OF LANDS FOR DEBTS.*—The liability of lands for debts under 5 Geo. II. c. 7 is not affected by the death of the debtor. He or his heir or his devisee after his death may sell or convey to a *bona fide* purchaser for value, at any time before

Effect of Land Transfer Act, 1897.

The Land Transfer Act, 1897 (60 & 61 Vict. c. 65), extended the jurisdiction of the Division by vesting the real estate (with certain exceptions specified in the Act) of a person dying on or after January 1st, 1898, in his personal representative (*i.e.* executor or administrator), and by directing it to be administered by him as if it were personal estate (see Appendix I., p. 669). The Act does not apply to Scotland or Ireland. Consequently, real property in these two countries does not vest in the personal representative of the deceased.[5]

The Act does not bind the Crown (*b*). Consequently, in cases where the real estate devolves on the Crown, it does not vest in the personal representative of the deceased, and it is excluded in terms from the operation of the grant.

(*b*) *Hartley*, [1899] P. 40.

Canadian Cases.

judgment has been entered against him or his personal representatives or executors against lands issued upon it; and such purchase will have a good title as against creditors (*Reed* v. *Miller*, 24 U. C. R. 610).

Since 27 Vict. c. 15, for the purpose of an execution against lands, heirs are *primâ facie* bound by a judgment against the executor or administrator of their ancestor, in the same way as next-of-kin are bound: and although they are not entitled as of course to have the issues tried over again, it is open to them to show, not only fraud and collusion, but that the judgment or decree, though proper against the executor or administrator, was in respect of a matter for which the heir's were not liable (*Lovell* v. *Gibson*, 19 Gr. 280, followed *Willis* v. *Willis*, 19 Gr. 573).

Under 5 Geo. II. c. 7 real estate in the colonies is liable to satisfy a judgment for damages in an action of covenant (*Nugent* v. *Campbell*, 3 U. C. R. 301).

[5] *DEVOLUTION OF ESTATES ACT.*—The Devolution of Estates Act, R. S. O., 1897, Ch. 127, vests the real as well as the personal estate of a deceased person in his personal representative for the purpose of paying his debts, but except in the case of a residuary devise, specially provided for by s. 7, the order in which different classes of property are applicable to the payment of debts has not been changed by the Act (*Re Hopkin's Estate*, 32 O. R. 315).

Executor's title to grant.

The title of the executor to probate continues paramount, and is not interfered with by the Act.

Title of other persons.

With regard to other grants of representation, it is provided by s. 2 (4), that where a person dies possessed of real estate, the court shall, in granting letters of administration, have regard to the rights and interests of persons interested in his real estate, and his heir-at-law, if not one of the next-of-kin, shall be equally entitled to the grant with the next-of-kin.

Where the death has occurred on or after the date above mentioned, probate and letters of administration are granted in respect "of all the estate which by law de-"volves to and vests in the personal representative of the "deceased."

In other respects the practice of the court has not been altered by the Act (see Rule of Court, p. 861).

Personal estate exempted from administration.

In certain cases, coming within the operation of the following statutes, personal estate is exempted from administration. The statutes, so far as they apply, are given in Appendix I., p. 593.

Navy money and effects.

1. The Navy and Marines (Property of Deceased) Act, 1865 (28 & 29 Vict. c. 111).

Officers' and soldiers' pension, prize money, and pay.

2. The Navy and Marines Wills Act, 1865 (28 & 29 Vict. c. 72).

Money and effects of merchant seamen.

3. 11 Geo. IV. & 1 Will. IV. c. 41, s. 5; 2 & 3 Will. IV. c. 53; 27 & 28 Vict. c. 36, s. 3.

4. The Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60).

Savings Bank deposits.

5. The Savings Bank Act, 1887 (50 & 51 Vict. c. 40); 24 & 25 Vict. c. 14, s. 14.

Shares in industrial or provident society.

6. Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39).

Deposit in building society.

7. The Building Societies Act, 1874 (37 & 38 Vict. c. 42).

Loan societies.

8. An Act to amend the Laws relating to Loan Societies (3 & 4 Vict. c. 110).

Friendly societies.

9. Friendly Societies Act, 1896 (59 & 60 Vict. c. 25).

10. The Superannuation Act, 1887 (50 & 51 Vict. c. 67). Sums payable to civil servants.
11. An Act for compensating the Families of Persons killed by accident (9 & 10 Vict. c. 93; 27 & 28 Vict. c. 95); Workmen's Compensation Act, 1897 (60 & 61 Vict. c. 37).[6] Workmen's compensation.

If a deceased person has by will exercised a power of appointment, such will must be proved, although the deceased did not die possessed of or entitled to any property of his own, and although the estate so appointed by the will is administered neither by the ordinary nor the executor. Personal estate appointed by will.

If a deceased has left property, of which he was trustee only, a representation is required, so far as regards his legal interest, and consequently without respect to the actual amount of the trust property. Trust property.

CHAPTER III.

GENERAL GRANTS.

SECTION I.—PROBATES.[6a]

Of what documents probate may be granted.

EVERY document purporting to be testamentary, and executed in accordance with the provisions of the Wills

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Canadian Cases.

[6] The Workmen's Compensation for Injuries Act, R. S. O., [1897] c. 160.

As to wills of personalty of soldiers and sailors, see *post*, p. 53, and the Wills Act, R. S. O., [1897] c. 128, s. 14, *post*, p. 693.

[6a] If there be any proof in the paper itself, or from clear evidence *dehors*, that it would convey the benefit which would be conveyed by it if considered as a will, and that death is the event that is to give effect to it, then, whatever its form, it may be proved as testamentary (*In re Nelson*, *McLennan* v. *Mohart*, 14 Gr. 199).

The Court may admit part of an instrument to probate and reject the rest (*Smith* v. *Miriam*, 25 Gr. 383).

Act, is entitled to probate in the English court if it dispose of property (personalty, or personalty and realty in the case of a testator dying before January 1st, 1898; realty or personalty, or both, in the case of a testator dying since that date) situated in England (*a*), or contain an appointment of executor (*b*).

Privileged wills.

A privileged will, that is to say, a will executed with less than the ordinary formalities prescribed by the Wills Act, is admitted to probate if it comply with the Navy and Marines (Wills) Acts, or is excepted from the operation of the Wills Act, 1837, by s. 11 of that Act. (See "Privileged Wills," pp. 53–57.)[6b]

Wills of British subjects.

A will of a British subject is entitled to probate if it is valid under Lord Kingsdown's Act (24 & 25 Vict. c. 114). (See p. 58.)

Foreign wills.

A will valid by the law of the country in which the testator was domiciled, and disposing of property in

(*a*) *Coode*, 36 L. J. 129; 1 P. & M. 449.

(*b*) *Jordan*, 37 L. J. 22; 1 P. & M. 555. But see *Barden*, 1 P. & M. 325. A writing executed in the same manner as a will merely revoking a former testamentary disposition is not entitled to probate: *Fraser*, 2 P & M. 40.

Canadian Cases.

An instance of a nuncupatious will being admitted to probate was that of *Ulich Howard*, deceased, Surrogate Court Home District U. C., 30 March, 1832, and in the same court *Collins*, 1839, and *Ritchie*, March, 1850.]

A testator made a will in May, 1890, and another will in January, 1891, by which the former was revoked, and a codicil in March, 1891, duly executed, and referring to the revoked will by date and using the words, "this my will," and revoking the appointment of an executor and appointing another in his place. It was held, under s. 24, Wills Act, *post*, p. 693, that the effect of the codicil, read in connection with the surrounding circumstances, was to revive the revoked will, and that it, with the codicil, constituted the will of the testator, and should be admitted to probate (*Purcell* v. *Bergin*, 20 A. R. 536). On appeal to the Supreme Court, it was held that the will of 1890 was not revived by the codicil, and that the will of January, 1891, was alone entitled to probate (*Macdonell* v. *Purcell*, *Cleary* v. *Purcell*, 23 S. C. R. 101; and *McLeod* v. *McNab*, 1891, A. C. 471).

[6b] *Ante*, p. 13.

England (*c*), may be proved in England. (See "Foreign Wills," pp. 59–64.)[6c]

A will need not consist of one document only. There may be two wills not inconsistent with each other (*d*), or there may be two or more testamentary papers, both or all executed as required by the statute, which, being read together, show a sufficient *consensus* to constitute one sole will, not a will and codicils (*e*). Probate of a will contained in two or more papers.

In these cases the court grants probate of the will as contained in these papers.

In other circumstances also probate may be taken of a codicil only. Probate of codicil only.

Where a will and first codicil were not forthcoming after the testator's death, the court granted probate of his second codicil, it not having been revoked by any of the modes indicated by the 20th section of the 1 Vict. c. 26 (*f*).

(*c*) Where a testator by his will revoked all previous testamentary dispositions made by him, and disposed only of his property in the United States of America, and appointed an executor, the Registrars held that a grant of administration should be made "save and except "as to property included in the will of deceased relating to her property "in the United States." An attested copy of the will was directed to be filed.

(*d*) *Griffith*, 2 P. & M. 457; *Lemage* v. *Goodban*, 1 P. & M. 57; *Harris*, 2 P. & M. 83; *Fenwick*, 1 P. & M. 319.

(*e*) *Morgan*, 1 P. & M. 823; 36 L. J. 64; *Harris*, 2 P. & M. 83; 39 L. J. 48; *Petchell*, 3 P. & M. 153; *Donaldson*, 3 P. & M. 45. See also *Townsend* v. *Moore*, [1905] P. 66

(*f*) *Black* v. *Jobling*, 1 P. & M. 685; 38 L. J. 74. Also note the case of *Gardiner* v. *Courthorpe*, 12 P. D. 14, where probate was decreed of a document of a codicillary character alone, as of a "substantive testa- "mentary document," the only other papers found being the drafts of two wills about which no evidence was forthcoming either as to their execution or revocation (BUTT, J., October, 1886).

Canadian Cases.

[6c] *ANCILLARY PROBATE, SURROGATE COURT.*—A will executed by a person when domiciled in the Province of Quebec before two notaries there, in accordance with the law of that province, not acted upon or proved in any way before any court there, is not within the Act respecting ancillary probates and letters of administration (51 Vict. c. 9 (O), now R. S. O., [1897] c. 59, ss. 78, 79, *post*, p. 687; and see *post*, p. 170) (*In re MacLaren*, 22 A. R. 18)

So also where a will was not forthcoming at the testator's death, the court granted probate of a codicil upon precisely the same ground (*g*).

So also where the will had been revoked, viz. by destruction, the court granted probate of a codicil alone (*h*).

Incorporated papers proved.

The court will include in its probate any documents incorporated in the will by the testator's reference. (See "Incorporation," p. 49.)

In that case probate is taken of the will as contained in the will itself and the incorporated document or documents.

Duplicate will.

If a will exist in duplicate, the executors will prove one part only. They will, however, be called upon to produce the other part, in order that the two may be collated. The duplicate is usually returned to the executor.

Revocation by the destruction of one part of a duplicate will.

If the other part cannot be produced, its absence will have to be satisfactorily accounted for. In respect of the absence of the other part, a question of law may arise. For if one part is destroyed by the testator, or by some one else in his presence and by his direction, with the intention of revoking it, the will is thereby revoked, and the other part is not entitled to probate.

Codicils proved with will.

If there be a codicil or codicils, such codicil or codicils must be proved with the will.

There is an exception to this rule where a codicil is litigated, which in no way alters the appointment of executors, and where there is a necessity or a reason for administering the estate *sub modo* without delay (*i*).

Probate of will without a known codicil.

In such a case probate is granted of the will only to the executors therein named, the question of the validity

(*g*) *Savage*, 2 P. & M. 78; 30 L. J. 25.

(*h*) *Turner*, 2 P. & M. 403, *et seq.*

(*i*) *Lord Sondes*, June, 1836; *James Boatwright*, December, 1835; *Sir James H. Craig*, March, 1812; and *Henry Hope*, March, 1812. In *Peter Cowcher*, the court granted probate of a will in common form without any reference to a disputed codicil (June, 1828). See also *Reay* v. *Cowcher*, 2 Hag. Ec. p. 249.

of any codicil thereto being reserved. Such a probate, of course, does not empower the executor to distribute the residue of the estate.

Probate has been granted of a will and certain codicils only where there were other codicils in India, power being reserved to the executor of proving the latter when they should arrive in England, and he undertaking to do so (*k*).

Separate probate of codicil.

If a codicil have been discovered at a period subsequent to probate of a will being taken, a separate probate of that codicil will be granted to the executor, provided it does not repeal or alter the appointment of executors made in the will (*l*). If different executors are appointed by the codicil, the probate of the will must be brought in and revoked, and a new probate will be granted of the will and codicil together (*m*). A similar rule applies where letters of administration (with will) have been granted, and the title to the grant is affected by the codicil.

Probate of earlier will.

It is most usual, as may be supposed, for the court to grant probate of the will latest in date; but, if the parties interested under such will have been cited to propound it and do not do so, the court grants probate in common form of the one preceding it [illegible] (*n*).

Conditional will.

So also if the later will [illegible]onal, *e.g.*, on an event which never occurred, the earlier one will be proved (*o*).[7]

(*k*) *Robarts*, 8 P. & M. 110.

(*l*) *Langdon* v. *Rooke*, 1 N. C. 254; *Wm. Beatson*, 6 N. C. 13.

(*m*) See *post*, "Revocations," p. 197.

(*n*) *Palmer and Brown* v. *Dent and Others*, 7 N. C. 556.

(*o*) *Hugo*, 36 L. T. 518. It is difficult to define accurately what is or is not, in the opinion of the court, a conditional will. For instance, the following will was held not to be conditional: "On leaving this "station for T. & M. in case of my death on the way this is a memo-"randum of my last will." Testator did not die on that journey, nevertheless the will was admitted to probate. *Mayd*, 6 P. D. 17.

Canadian Cases.

[7] A testator devised in fee, provided devisee "comes to live and reside on the land devised during the term of his natural life," with gift over "provided devisee does not come to reside on the

Joint and mutual wills.

In case of two persons making a joint will, probate may be granted on the death of the first dying; and again on the death of the survivor as the will of the latter (*p*).

Where two persons made a joint will containing a proviso that it was not to take effect until the death of both, it was held not to be entitled to probate until the death of the survivor.

It should be observed that joint and mutual wills are distinguishable. By a joint will is meant a single instrument by which two persons give effect to their testamentary wishes. A mutual will, on the other hand, is one of two testamentary documents made respectively by two persons giving each other similar rights in each other's property, and being, in fact, identical, so far as they can be, for the purpose of carrying out the intention of the two testators.

A joint will is revocable at any time by either of the testators during their joint lives, or after the death of one of them, by the survivor. (See Jarman on Wills, 5th ed., vol. i. p. 25.)

Mutual wills are revocable by the consent of the testators; they are revocable separately if notice be given by the cancelling testator to the other testator. They are irrevocable after the death of one testator by the survivor if the latter has taken any benefit under the will of the testator who predeceased him (*q*).

(*p*) Notice should be given to the record keeper at the probate registry, on the first occasion of the will being proved, to have it entered in the calendar of wills deposited during lifetime, otherwise the trace of it as the will of the survivor may be lost.

(*q*) These propositions were laid down by Lord CAMDEN in *Dufour* v. *Pereira*, 1 Dick. 419. (See Law Times, December 4th, 1897.) For

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said land so devised to him within one year after my decease:" —*Held*, that the condition as to residence was void for uncertainty; and that it was a condition subsequent, not a condition precedent to the acquisition of the land devised, but a condition of its retention (*In re Geo. M. Ross*, 7 O. L. R. 493).

Probate may be granted of a copy or draft or substance (as contained in an affidavit) of a lost will. (See "Motions," p. 298, and "Lost Wills," pp. 112–114.) Probate of lost will.

Who may prove.

If an executor be appointed he is entitled before all others to prove the will. Express appointment of executor.

An executor of a will is either expressly nominated, or he is appointed such according to the tenor of the will.

He may be appointed absolutely, for a limited time, place, or purpose (see "Limited Grants," p. 109, *et seq.*), conditionally, or contingently.

If a testator has, by his will, authorised another person to nominate an executor on his behalf, the appointment is equally binding on the court.

An executor according to the tenor is a person required or directed by the will to perform one or more of the duties of an executor, *e.g.* to pay the debts (*r*) or to administer generally the estate of the testator (*s*).[8] Executor according to the tenor.

A person merely named as trustee without any duty being assigned to him, or any bequest to him, is not an executor according to the tenor (*t*).

But where the testator used the word "trustee" in a

further information on this subject the reader is referred to Williams on Executors, 10th ed., pp. 7, 94, 95, 96; Jarman on Wills, 5th ed., pp. 27, 79; and to the following cases: *Hunt*, 3 P. & M. 250; *Stracy*, 1 Deane Eccl. Rep. 6; *Raine*, 1 Sw. & Tr. 144; *Lovegrove*, 2 Sw. & Tr. 453; *Piazzi Smith*, [1898], P. 7.

(*r*) *Cook*, [1902] P. 114.

(*s*) *Way*, [1901] P. 345.

(*t*) *Lowry*, 3 P. & M. 157.

Canadian Cases.

[8] *TRUSTEES OR EXECUTORS.*—Trustees and executors stand in a different position from creditors or *cestuis que trust* as to the right to have the estate administered in the court, and cannot, without experiencing some difficulty in carrying out the trusts, or administering the estate, file a bill for that purpose (*Cole* v. *Glover*, 16 Gr. 399; see also *McGill* v. *Courtice*, 17 Gr. 271, and *post*, p. 551; and the Act respecting Trustees, R. S. O., 1897, c. 129, s. 7).

loose sense, and clearly intended that the person named should act as executor, the court held him to be executor according to the tenor (*u*).

Who may be executors.

If a person is capable of making a will he is capable of being made an executor.

A minor or infant may be appointed sole executor, in which case his guardian takes a grant for his use and benefit. (See p. 120.)

Executor's title.

The executor's title is not defeasible by bankruptcy, insolvency, or felony (*x*).

Executor passed over.

Lunacy, idiocy, and mental imbecility are grounds upon which an executor may be excluded from probate (*y*). (See p. 128.)

But an executor cannot be passed over by reason of his bad character merely (*z*).[9]

(*u*) *Kirby*, [1902] P. 188; *Earl of Leven*, 15 P. D. 22. A testator by his will appointed his wife and two sons executors. One son having died, by codicil he appointed his wife and surviving son, and in place of his deceased son, G. B., trustees of his will, directing his said trustees, after paying all his funeral and other expenses, to distribute his residue as stated in his will. G. B. was held to be an executor according to the tenor: *Lush*, 13 P. D. 20.

(*x*) *Smethurst* v. *Tomlin and Banks*, 2 Sw. & Tr. 147.

(*y*) *Evans* v. *Tyler*, 2 Rob. 131.

(*z*) *Samson*, 3 P. & M. 48.

Canadian Cases.

[9] *MISCONDUCT CHARGED.* — Where the executors are charged with misconduct, a bill must be filed; an order for administration cannot be obtained on summary application (*Re Babcock's Estate*, 8 Gr. 409).

Under an administration order granted by a local master pursuant to G. O. Chy. 638, 639, he may investigate questions of wilful default and misconduct arising upon the accounts, and if he refuses the plaintiff should appeal. If an action is commenced the extra costs must be borne by the plaintiff. Where the misconduct is such as would entitle a plaintiff at the outset to apply for an injunction or receiver, an action should be brought (*Sullivan* v. *Harty*, 9 P. R. 500).

ACTION FOR RECEIVER.—When a bill was filed against an executor and trustee for the administration of an estate, and

A company, if appointed executor, may nominate a syndic to take administration (will) for its use and benefit (*a*). Company.

If a solicitor's or a trading firm be appointed executors, the appointment only applies to the members of the firm at the date of the will, unless a contrary intention is expressed in the will. Firm.

The court grants probate to a *feme coverte* executrix without requiring to be certified of her husband's assent. *Feme coverte.*

If no executor be appointed, or if there be no executor willing or competent to obtain probate, a similar grant, but called in distinction letters of administration with the will annexed, is made to some person or persons interested in the estate. (See p. 64.) If no executor.

Transmission of Executorship.

A probate does not necessarily expire with the death of the grantee. An executor having taken probate of his own testator's will becomes executor, *ipso facto*, not only of that will, but also of the will of any testator, of whom the other was sole or surviving executor, and so on, *ad infinitum*, upwards (*b*). Chain or transmission of executorship. Transmission upwards.

The conditions of this rule, however, are that the will

(*a*) A sealed copy of the resolution of the board of the company appointing the syndic is required to be filed with the papers when the grant is applied for. *Cringan*, 1 Hagg. 548; *Jackson and Gill* v. *Paulet*, 2 Rob. 345. See also *A. H. Ryder*, 2 Sw. & Tr. 128. If a corporation aggregate be appointed executors, administration (with the will annexed) will be granted to their syndic (*E. Darke*, 1 Sw. & Tr. 517; *Hunt*, [1896] P. 289), but the court will not make a grant of probate to a body corporate and to one or more individuals, all of whom have been appointed executors by a will (*Martin*, 90 L. T. 264).

(*b*) *J. Perry*, 2 Curt. 655.

Canadian Cases.

praying a receiver on the ground of the executor having become embarrassed, and of his misconduct, and the circumstances were such as to justify alarm on the part of the *cestui que trust*, the executor was charged with so much of the costs of the suit up to the hearing as was occasioned by the suit being for a receiver (*Bald* v. *Thompson*, 17 Gr. 154, and *post*, pp. 550, [551; and see the Surrogate Act, *post*, p. 664).

of each testator shall have been duly proved in the present High Court or in the Probate Court, or in any of the ecclesiastical or other courts of England which the latter court superseded (*c*), and that the grant is not limited in its operation.

The 86th section (now repealed by "The Statute Law "Revision Act, 1875") of the Probate Court Act, 1857, enacted that "all grants of probate and administra- "tions made before the commencement of this Act, which "may be void or voidable by reason only that the courts "from which respectively the same were obtained had "not jurisdiction to make such grants, shall be as valid as "if the same had been obtained from courts entitled to "make such grants."

The 87th section of the same Act provides that "legal "grants of probate and administration made before the "commencement of this Act, and grants of probate and "administration made legal by this Act, shall have the "same force and effect as if they had been granted under "this Act. . . ."

The 88th section of this Act further provides that where a grant made before the commencement of the Act did not operate over all the personal estate of the deceased, probate or administration may be granted only in respect to the "goods not covered" by the former grant.

Transmission downwards.

The office of executor is transmissible downwards equally *ad infinitum*, provided the same condition be observed, viz., that his executor make a will, which shall be afterwards duly proved, and in each case the chain of representation is taken up or handed down, not only in the case of a sole executor, but of many, where the survivor of them dies testate (*d*).

Transmission of executorship of will of *feme coverte* downwards.

The executorship of the will of a *feme coverte* may be carried *downwards* from her, through her executor, to the

(*c*) *Jermyn* v. *Baxter*, 5 Sim. 568; *contra*, *Fowler* v. *Richards*, 5 Russ. Ch. Rep. 39; *Gaynor*, 1 P. & M. 723; 17 W. R. 1003.

(*d*) *W. Smith*, 3 Curt. 31.

same extent and under the same conditions as any other executorship.

Transmission of executorship, through *feme* executrix upwards.

The chain of executorship is also extended *upwards*, through the medium of a *feme coverte* executrix, who has made her will by the common law, and has appointed an executor *jure repræsentationis*, and for the purpose of continuing the chain of representation (*e*).

Previously to the 19th April, 1887 (the date of the amended rules with regard to probate of wills of married women), in order to perfect the chain through a *feme coverte* executrix, it was required that the probate should contain an express limitation, referring to the testatrix's executorship, and if that had not been done, a separate and additional probate containing such limitation was required, or the first probate was amended, otherwise the chain was broken. But the whole practice as regards the wills of *femes covertes* is now changed. BUTT, J., on motion, ordered that general probate of a married woman's will be granted to the executor (*f*).

As a necessary consequence of that decision, the old restrictions and limitations in dealing with married women's wills in the probate registries were removed, and the new rules and orders to meet such cases were issued. (See *post*, p. 133.)

Chain of executorship through grant to attorney.

The chain of executorship is not broken by reason that the executor has proved his testator's will through an attorney (*g*): nor if the proving attorney die in the lifetime of the executor.

When there are more executors than one, the transmission of the executorship is made through the surviving

(*e*) *Birkett* v. *Vandercom*, 3 Hagg. Ec. 750, 751; *Barr* v. *Carter*, 2 Cox, 429; *Scammell* v. *Wilkinson*, 2 East, 558; *Stevens* v. *Bagwell*, 15 Ves. 155, 156; *Rachael Bayne*, Weekly Reporter, August 7th, 1858, 815; *John Hughes*, 4 Sw. & Tr. 210; 39 L. J. 165; *Richards*, 1 P. & M. 156; *Martin*, 3 Sw. & Tr. 1; 32 L. J. 5; *Bridger*, 4 P. D. 77; Williams on Executors.

(*f*) *Re Price*, 12 P. D. 137.

(*g*) *Donna Maria Vea Murguia*, 9 P. D. 236; and see *Bayard*, 7 N. C.

executor, he having, of course, taken probate of the will.[10]

The question of survivorship, which if not so simple as it might be imagined, is determined differently according as a new principle created by the Probate Court Act, 1857, or an old principle of the Prerogative Court left in existence by that Act, is to be held to apply.

Executorship transmitted through acting executor or survivor of acting executors.

Under the new law made by the statute, where there are more executors than one, the transmission is competent only through the *acting* executor, or the survivor of the acting executors.

The 79th section of the Court of Probate Act, 1857, provides, that "where any person, after the commence-"ment of the Act (*i.e.*, after January 11th, 1858), "renounces probate of the will of which he is appointed "executor or one of the executors, the rights of such "person in respect of the executorship shall wholly cease; "and the representation to the testator and the adminis-"tration of his effects shall and may, without any further "renunciation, go, devolve, and be committed in like "manner as if such person had not been appointed "executor." [10a]

The right of transmission is thus given to the proving executor, or the survivor of the proving executors, and the renunciation of the actual survivor, who has not proved, has the same effect, whether it be made after the death or in the lifetime of the proving executor or executors.[11]

Canadian Cases.

[10] *REPRESENTATIVES OF DECEASED EXECUTORS.*—The bill showed that the testator had appointed four executors, three of whom died, but stated that those so dying had never received any portion of the assets. In a suit for the administration of the estate a demurrer *ore tenus*, on the ground that the representative of such deceased executors should be parties, was overruled with costs (*Webster* v. *Leys*, 28 Gr. 471).

[10a] Surrogate Act, R. S. O., [1897] c. 59, s. 65, *post*, p. 683.

[11] *SURVIVING EXECUTOR.*—When executors are given

Executorship, how transmitted.

And by the 16th section of the Court of Probate Act, 1858, it is further enacted, that "whenever an executor "appointed in a will survives the testator, but dies without "having taken probate, and whenever an executor named "in a will is cited to take probate, and does not appear to "such citation, the right of such person in respect of the "executorship shall wholly cease; and the representation "to the testator and the administration of his effects shall "and may, without any further renunciation, go, devolve, "and be committed in like manner as if such person had "not been appointed executor." [12]

The right of transmission under these circumstances belongs only to the proving executor, or the survivor of the proving executors.

In those cases where the renunciation of an executor has been made before January 11th, 1858, the transmission of the executorship can only be made through a proving executor who has survived both or all the other executors, whether they have renounced or proved.

See also Chain of Executorship, how broken, p. 157.

Transmission of executorship, how evidenced.

The transmission of the executorship is evidenced by the existence and production of each independent probate (*h*).

(*h*) Formerly the court would grant administration with the will annexed of a remote testator to an executor in whom the representation

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express powers to sell lands, such powers can be exercised by a surviving executor (*In re Koch* v. *Wideman*, 25 O. R. 262).

EXECUTOR OF SURVIVING EXECUTOR.—A testator by his will directed his real and personal property to be sold, and the proceeds to be divided and distributed, and appointed two executors to carry out his will, both of whom died before the estate was realized:—*Held*, that the executor of the last surviving executor of the testator's will had power to sell and convey the land (*Re Stephenson, Kinna* v. *Malloy*, 24 O. R. 395).

[12] *EXECUTOR EXECUTOR.*—An executor of an executor represents the original testator, and is properly proceeded against on a claim against him (*Allan* v. *Parke*, 17 C. P. 105; and *post*, p. 160).

When executorship not transmitted.

If the executor be appointed for his life, his office is not transmissible to his own executor; and the same observation applies to the case where an executor is appointed to act only until a specified event or contingency shall take place.

Executrix during widowhood.

It has been said, that an executrix appointed during widowhood, and dying a widow, transmits the executorship to her own executors (*i*). But it is otherwise if she remarry, for, as, upon her remarriage, the probate granted to her ceases, she has then no power of transmitting the executorship.

In the following case, "I appoint my wife sole executrix "and in default of her I appoint J. K. and R. F. to be "executors;" the wife proved and died; it was held that probate should be granted to the others as executors substituted (*k*).

Proving a Will.[13]

The proceeding which confirms the title of an executor is called proving the will.

was vested by transmission: *Thomas* v. *Baker*, 1 Lee, 343; but it did not encourage the practice. In *Dawkins* v. *Eyton and Falkener* (Dr. Cottrell's MS. Cases), the latter says:—"The question was whether "executors of an executor could be obliged to take an administration "*de bonis non* to the first testator. It was said to be a common practice "to do it, and that courts of equity had frequently directed it; but "upon a day given to hear common lawyers, and no precedents being "shown of that sort, the court (Dr. Bettesworth) determined that an "executor who acted under a probate of the will of the last testator "had no occasion, at least ought not to be obliged, to take administra- "tion *de bonis non* of the first testator."

(*i*) *Bond* v. *Faikney*, 2 Lee, 371.

(*k*) *Foster, deceased*, 2 P. & M. 304.

Canadian Cases.

[13] *PROOF OF WILL.*—In an action to establish a will in the handwriting of the testator, purporting to be executed in the presence of two subscribing witnesses, who could not be found, and whose handwriting could not be proved, and probate whereof had been refused by the proper surrogate court, a motion for judgment asking to have the will established and probate thereof granted, was dismissed, and the application refused, notwithstanding

If there be several executors one may prove alone without notice to the others, and in this case power is reserved by the Court to grant probate to the latter whenever they or any of them shall duly apply for the same. Power reserved.

But this reservation of power is only made to an executor who is equal in degree. Therefore, when an executor for life takes probate, power is not reserved to the executor substituted upon his decease.

The executor to whom this power is reserved may at any time, either during the lifetime or after the death of the other executor, prove, or renounce execution of, the testator's will. (See "Double Probates," p. 173.)

An executor may also renounce. (See p. 223, *et seq.*) Renunciation.

Executor's Oath.[13a]

The proving executor is sworn or affirmed (as the case may be) to the truth of the will and the due performance of his duties as executor in a document called the *Oath* (see Rule 47 (1862), and for form of Oath, Appendix V., p. 1001). For this purpose, if he reside in England, he will attend before a commissioner for oaths of the Supreme Court. If the executor reside in any place out of England, he will be sworn by some one of the officers, functionaries, or persons empowered to administer oaths by the Acts 52 Vict. c. 10 (1889), and 54 & 55 Vict. c. 50 (1891) (see Chap. XVI. p. 276), *i.e.*, by any person having authority to administer oaths in that place. The executor and the commissioner or other person who administers the oath will mark the will and codicils or other testamentary papers to which the executor is sworn by signing their Swearing.

Canadian Cases.

that all parties interested consented on the ground that sufficient evidence had not been produced to show that such will was the will of the testator under R. S. O. 1887, c. 109, s. 12, now R. S. O. 1897, c. 128, s. 12, Wills Act, *post*, p. 693, and Surrogate Act, *infra* (*Williamson* v. *Williamson*, 17 O. R. 734).

[13a] The Surrogate Act, R. S. O., [1897] c. 59, ss. 38, 44; and S. C. Rules, *post*, p. 827.

names upon these documents (Rule 49 (1862)). It is not necessary that the *marking* be made under an exhibit (*l*).

Date of death.

In this oath the executor is bound to specify the day *on* which the testator died. If this cannot be done, though the fact of the decease be certain, application must be made to the registrars, who, upon satisfactory explanation that a more precise date cannot be given, will allow the grant to issue.

Description of testator or executor.

As a general rule the signature of a testator is to be adopted as his name, although it differs from the name written in the heading of the will.

If the testator has signed by the first of two or more Christian names and has omitted one or more of the others, on a certificate by the solicitor that the signature as it appears was his usual form of signature, probate is granted in the testator's full name. Failing this certificate, an affidavit showing a necessity for an *alias* is required and probate granted accordingly.

If, however, the testator has omitted his first Christian name, the grant issues in the name by which he has signed, and, on proof by affidavit that property stands in his full name, the *alias* will appear on the grant. But the practice

(*l*) "No affidavit is to be deemed sufficient which has been sworn "before the party on whose behalf the same is offered, or before his "proctor, solicitor, or attorney, or before a partner or clerk of his "proctor, solicitor, or attorney" (Rule 84).

"The registrars are not to allow any affidavit to be filed (unless by "leave of the judge) which is not fairly and legibly written, or in which "there is any interlineation, the extent of which at the time when the "affidavit was sworn is not clearly shown by the initials of the commis-"sioner, or other person before whom it was sworn" (Rule 58, N.-C.).

"No affidavit will be admitted in any matter in the Court of Probate "of which any material part is written on an erasure, or in the jurat of "which there is any interlineation or erasure" (Rule 53, N.-C.).

"Where an affidavit is made by any person who is blind, or who, "from his or her signature or otherwise, appears to be illiterate, the "registrar, commissioner, or other authority before whom such affidavit "is made, is to state in the jurat that the affidavit was read in the "presence of the party making the same, and that such party seemed "perfectly to understand the same, and also made his or her mark, or "wrote his or her signature, in the presence of the registrar, com-"missioner, or other authority before whom the affidavit is made" (Rule 83).

is to avoid, if possible, unnecessary aliases unless it can be shown to the satisfaction of the registrars that the testator held property in more than one name.

If the testator is described in the will as the "elder," but has not so subscribed, such description is not to be inserted.

If the testator is described in the will as the "younger," but does not so subscribe, he should, notwithstanding, be described as the "younger," or "*heretofore* the younger," as the case may be.

The testator's place of residence,[13b] stated in the will or codicil, must form part of his description, and any previous or subsequent residence may be added, provided that not more than three places (*m*) of residence be inserted.

When there is one executor or executrix only named in the will, he or she should be described as the "sole executor" or the "sole executrix."

When there are more executors than one, if they are all females, they are to be described as "the executrixes." If they are all males, or partly males and partly females, they are to be described as "the executors."

Identity of executor.

If the name of an executor or executrix is misspelt in the will, the words "in the will written" should be added to his or her correct name. Unless the two names are identical in sound, proof of identity is required.

If an executor be wrongly described in the will as "the elder," or "the younger," an affidavit is required in proof of the identity of the person intended.

If the executor (or rather, the person claiming to be the *persona designata*) be described by a wrong Christian name in the will, an affidavit will be required, deposing to facts which warrant the recognition of the person claiming to be executor.

Whenever it appears by the will that an executor or

(*m*) Where it can be shown that the deceased held property under more than three addresses the additional addresses may be inserted in the probate.

Canadian Cases.

[13b] The Surrogate Act, s. 38, *post*, p. 675; and S. C. Rules, *post*, p. 827.

executrix is related to the testator as father, mother, grandfather, grandmother, son, daughter, grandson, granddaughter, brother, sister, uncle, aunt, great uncle, great aunt, nephew, niece, great nephew, great niece, he or she is to be so described in the Oath.

If a testator describe an executor as "his nephew A., son of his brother B.," that executor must designate himself such in the Oath, if it be so.

The *true place of residence* (even if only temporary) of every deponent to the "oath" or affidavits must be inserted. A *club* will not suffice, unless it be the actual residence.

Inland Revenue Affidavit.[14]

The executor also makes an affidavit of property for the use of the Commissioners of Inland Revenue; and, when the deceased died before August 2nd, 1894, that is to say, previously to the Finance Act of that year coming into operation, and the value of the estate in respect of which probate duty is charged exceeds £10,000, he is also required to deliver a separate statement of the value of the property impressed with the estate duty payable under the Customs and Inland Revenue Act, 1889.

Estate duty. Finance Acts, 1894, 1896.

Probate duty.

The duties now payable in respect to probates and letters of administration depend upon the date of death of the deceased. Where the death has occurred since August 1st, 1894, the estate duty created by the Finance Act of that year, as amended by the Finance Act, 1896, is chargeable. If the death took place on or before August 1st, 1894, the probate duty imposed by the Customs and Inland Revenue Act, 1881, is payable.[14a]

Canadian Cases.

[14] Succession Duty Act, *infra*, s. 5.

[14a] *SUCCESSION DUTY.*—The Succession Duty Act, R. S. O., [1897] c. 24, and amending Acts, 62 Vict. c. 9; 5 Edw. VII. c. 6; and the Statute Law Amendment Act, 1906, c. 19, s. 11, *post*, p. 918.

RESIDUE PRO RATA.—A testator devised and bequeathed

It is provided by "The Customs and Inland Revenue "Act, 1880" (43 Vict. c. 14), s. 10 (1), that "together with "the affidavit to be required and received from the person "applying for a probate or letters of administration in "England, in conformity with sect. 38 of the Act passed "in the 55th year of the reign of King George the Third, "c. 184, there shall be delivered an account of the "particulars of the personal estate for or in respect of which "the probate or letters of administration is or are to be "granted, and of the estimated value of such particulars."

It is provided by "The Customs and Inland Revenue Act, "1881" (44 & 45 Vict. c. 12), s. 29, that this affidavit shall extend to the verification of the account of the estate and effects, and shall be in accordance with such form as may be prescribed by the Commissioners of Her Majesty's Treasury; and the Commissioners of Inland Revenue shall provide forms of affidavits stamped to denote the duties payable under the Act.

The Finance Act, 1894 (57 & 58 Vict. c. 30), abolished the then existing probate duty, account duty, and estate duty, and constituted a new duty called Estate duty which is payable on all property real or personal, settled or not settled, passing on the death of a person dying after the commencement of the Act, *i.e.*, after August 1st, 1894. Finance Act, 1894.

Canadian Cases.

all his real and personal estate to his executors and trustees for the purpose of paying a number of pecuniary legacies, some to personal legatees, and others to charitable associations, and provided that the residue of his estate should be divided *pro rata* among the legatees:—*Held*, that it was the duty of the executors to deduct the succession duty payable in respect of the pecuniary legacies before paying the amounts over to the legatees, and they had no right to pay such succession duty out of residue left after paying the legacies in full. When the residue of an estate is directed to be provided *pro rata* among prior legatees, they take such residue in proportion to the amount of their prior legacies (*Kennedy* v. *Protestant Orphan's Home*, 25 O. R. 235).

SURROGATE FEES.—Court fees on grant, see in *Re Dallas*, 29 U. C. R. 482; and Surrogate Act, *post*, pp. 691 and 692, Schedules A and B, and *post*, p. 63.

Under section 8 (3) of this Act the executor is required to specify in accounts annexed to the Inland Revenue affidavit all the property in respect of which estate duty is payable upon the death of the deceased, but is accountable only for the estate duty in respect of the personal property (wheresoever situate) of which the deceased was competent to dispose at his death.

Where the deceased died before the commencement of the Act, the pre-existing duties continue to be payable as if the Act had not passed.

For particulars of the various forms of Inland Revenue affidavit, and the duties payable under the Acts now in force, see Appendix IV., pp. 914–917.

Deduction of debts.

It is provided by the 28th section of "The Customs and "Inland Revenue Act, 1881" (44 & 45 Vict. c. 12), that on and after the 1st day of June, 1881, in the case of a person dying domiciled in any part of the United Kingdom, it shall be lawful for the person applying for the probate or letters of administration to state in his affidavit the fact of such domicile, and to deliver therewith or annex thereto a schedule of the debts due from the deceased to persons resident in the United Kingdom, and the funeral expenses, and in that case, for the purpose of the charge of duty on the affidavit the aggregate amount of the debts and funeral expenses appearing in the schedule shall be deducted from the value of the estate and effects as specified in the account delivered with or annexed to the affidavit.

The same section provides that the debts to be deducted must be debts due and owing from the deceased and payable by law out of any part of the estate and effects comprised in the affidavit, and are not to include voluntary debts expressed to be payable on the death of the deceased, or payable under any instrument which shall not have been *bonâ fide* delivered to the donee thereof three months before the death of the deceased, or debts in respect whereof any real estate may be primarily liable or a reimbursement

may be capable of being claimed from any real estate of the deceased or from any other estate or person.

The same section also provides that the funeral expenses to be deducted under the power given must include only such expenses as are allowable as reasonable funeral expenses according to law.

By reference to the Finance Act, 1894, it will be observed that in the case of a person dying after the commencement of the Act, the power to deduct debts, etc., no longer depends on the domicil of the deceased.

Reason of delay.

If probate has not been applied for within three years from the deceased's death, the reason of the delay is to be certified to the registrars (Rule 45 (1862)).

A certificate by the solicitor or an affidavit by the party must be filed in explanation of the delay. This certificate should contain a brief statement of the property, the reason why no grant has hitherto been applied for, and the cause of the grant being now wanted.

A stamp of the value of 2*s.* 6*d.* is charged in respect of the filing of the certificate, or 2*s.* if an affidavit.

(Form of Certificate or Reason of Delay, Appendix V., p. 976.)

Engrossing Wills, etc., for Probate.

Will engrossed.

The will and codicils (if any) are engrossed for probate on the official engrossment sheets obtainable from Messrs. Eyre and Spottiswoode, or from any bookseller, price 1*d.* per sheet. No other paper engrossments are accepted. Printed or type-written engrossments are also received by a direction of the president in November, 1896. Engrossments so made, however, should be carefully done, otherwise the print or type can be rubbed off, and they would be liable to be rejected.

Where there are alterations

If there be alterations in the will or codicil, and these alterations are verified by the signatures or initials of the

how engrossed.

testator and witnesses, or by a reference in the attestation clause, or are shown by affidavit to have been made before the execution of the will or codicil the will or codicil is engrossed fair, the alterations being incorporated, *i.e.*, words interlined, or interpolated, being inserted in the text, and words struck through being omitted. (See "Alterations," pp. 44–49.)

Collated copy of will for probate and registration.

But where no evidence can be given to prove that the alterations were made before the execution of the will or codicil, or where evidence is given that the alterations were made after the execution of the will or codicil, the consequence in either case is, as shown on p. 46, that the alterations are excluded from probate, and the following practice is adopted.

A copy of the will or codicil, as in its original state, *i.e.*, before the alterations were effected, is made by the practitioner, and is by him handed to the *receiver of wills* for collation with the other documents to lead the grant.

Registrar's fiat upon the copy.

Upon this copy one of the registrars signs the following fiat:—"Let probate of the will of , deceased, issue as "contained in this copy thereof."

A fee of 5*s.* is charged upon the fiat in addition to the fees for collating the copy.

The practice of registering affidavits of due execution of a will, of domicile, or as the case might be, was discontinued by an amended rule, dated January 14th, 1871 (see Appendix II., p. 816), and in lieu thereof a note signed by a registrar was directed to be made or the engrossed and registered copies of the will.

In cases, however, that present difficulty, the affidavits themselves may be registered by direction of a registrar.

Incorporated document engrossed and registered.

If, according to the general rule stated on p. 49, an incorporated document or paper is to be proved as part of the will which has incorporated it, such document or paper must be engrossed and registered in its entirety. (See "Incorporation of Papers by Reference," pp. 49–53, as to exceptions to the above rule.)

Fees.

For the fees payable on grants of probate, see Appendix II., "Fees of 1874," p. 893.[14b] Fees on the grant.

Where the grant is in respect to trust property only, or to other estate not liable to duty, the fee on the grant is 1*s.* whatever the value of the property may be.

The fees for registering and collating the will depend upon the number of folios it contains. The length of the folio in this case is ninety words. (See Appendix II., "Fees of 1874," p. 894.) Fees for registering and collating the will.

For the fees taken for the search made by an officer of the registry in order to ascertain whether any probate has already issued, see Appendix II., "Fees of 1874," p. 897. Fee for searching.

A filing fee of 2*s.* is charged upon affidavits, and 2*s.* 6*d.* on other documents brought into and filed in the registry. Filing fee.

No fee is charged for filing the will, codicils, oath, or the Inland Revenue affidavit.

Obtaining Probate.

Assuming the case to be a principal registry application, the following course is pursued:—

All the documents before specified, viz., the oath, affidavit for the Inland Revenue, the will, the engrossment of the will, and such other affidavits and documents as are required, are taken to the department of the *Receiver*. Documents to be taken to the receiver of wills.

That officer gives a receipt for the papers, for which a stamp of 1*s.* is required. Receipt given by receiver.

The necessary stamps are obtainable from the Receiver. Documents transferred to the Clerk of the Seat.

The engrossment of the will is collated by the examiners with the original, and on being found correct is transmitted with the other documents and the schedule of fees to the particular *Clerk of the Seat* to whom the matter belongs.

The Clerk of the Seat peruses all the documents thus Perfecting of probate.

Canadian Cases.

[14b] See Surrogate Fees, *ante*, p. 31.

left with him, and if he finds them correct and satisfactory, causes the usual form of probate to be filled up and annexed to the engrossment.

Issuing of probate.

By Rule 43 (Principal Registry) it is provided, that "no probate or letters of administration with the will "annexed shall issue until after the lapse of seven days "from the death of the deceased, unless under the direction "of the judge, or by order of two of the registrars," *i.e.*, the probate may not issue at an earlier date than the eighth day after the death of the testator, the day of his death being excluded in the computation.

By Rule 51 (District Registries) a like order may be made by *one* of the registrars of the principal registry when a grant is applied for at a district registry.

The probate is then transmitted by the Clerk of the Seat to the Registrar to be signed.

After this it is sent to the Sealer, who affixes the seal.

The probate is then delivered out by the Sealer to any person who shall produce to and leave with him the original receipt given by the Receiver.

Will registered.

The will, after probate, is *registered*, *i.e.*, copied in the public books of the court.

Record or act of the grant.

An entry or record of the grant, called a Probate Act, is made by the Clerk of the Seat.[15]

Section II.—Proof in Detail of Wills.

Execution.[15a]

Wills made before Wills Act.

A will without attesting witnesses, or with one attesting witness only, if made before the Wills Act came into

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Canadian Cases.

[15] S. C. Rules, *post*, p. 827.

[15a] *EXECUTION OF WILLS.*—A testator brought his will, which had been previously signed by him, to two persons to sign as witnesses. The witnesses signed in the testator's presence, at his request, and in the presence of each other, and they either saw or had the opportunity of seeing the testator's signature:—*Held*, that the will was validly executed (*Scott* v. *Scott*, 13 O. R. 551).

The plaintiffs were the devisees of the land in question in this

operation, is admissible to probate. An affidavit of two persons who knew and were well acquainted with the

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Canadian Cases.

action under the will of H. O'N.; the defendant A. O'N., the father of one of the plaintiffs, was one of the heirs-at-law, and had obtained conveyances of the land from the other heirs-at-law of H. O'N., and the defendant O. was the assignee of all the estate of A. O'N., and had besides a mortgage from A. O'N. on the land in question. On April 17th, 1877, H. O'N. signed a will in the presence of one witness; another witness was then called in, before whom the testator acknowledged his signature, and then both witnesses signed in the presence of the testator and of each other. On April 23rd, 1877, the testator, desiring to have two changes made, caused two of the sheets of the will to be re-written and read to him, and two new sheets were then put into the place of the old ones, the document pinned together, and on the last sheet, which was not one of those re-written, the date 17th was changed to 23rd; the same witnesses were then called in, and the testator then acknowledged his signature to the will and each of the two witnesses his. The two sheets taken out of the will were afterwards destroyed by one H. by the direction of the testator, but not in his presence. The testator died a few days after this without having made any other will. The will of April 23rd was offered for probate, but was refused by a surrogate court:—*Held*, that the will of April 17th was duly executed, but that the will of April 23rd was not duly executed, and probate was properly refused; and the will of April 17th was not revoked by the destruction of the two sheets out of the presence of the testator, nor by the defective execution of the will of April 23rd, the intention of the testator not being to cancel the whole of the earlier will, but only to make two changes in it, and he being under the belief that the later will was a valid one, it was adjudged that the earlier will should be admitted to probate (*O'Niel* v. *Owen*, 17 O. R. 525).

PROOF OF WILL.—On the investigation of title between vendor and vendee, under the ordinary jurisdiction of the Court, affidavits are admissible for some purposes. When, however, an affidavit was offered to prove the loss of a will, which had been proved in a surrogate court in New York, but had never been registered or proved in Ontario, and there was some reason for apprehending that there existed no legal means of proof of the will by the purchaser, should he be compelled to accept the title, the affidavit was held insufficient evidence (*Brady* v. *Wall*, 17 Gr. 699).

testator's handwriting and mode of subscription in the one case, and of one person similarly acquainted with his handwriting and subscription in the other case, will be taken in substitution for such want or defect of attestation. (See also Rules and Orders (1862), P.R., Nos. 17–23, as to wills of personalty dated before January 1st, 1838. For form of affidavit of handwriting, see Appendix V., p. 945.)

Wills Act. The manner in which a will shall be executed in order to comply with the requirements of the Wills Act, 1837, is defined by section 9 of that Act (p. 602), and, as regards the position of the testator's signature, by the Wills Act Amendment Act, 1852 (Lord St. Leonard's Act) (p. 610).

The Wills Act requires that "*it shall be signed at the "foot or end thereof by the testator or by some other person "in his presence and by his direction; and such signature "shall be made or acknowledged by the testator in the*

Canadian Cases.

The date of a will being thirty years old is not alone sufficient under all circumstances to prove that it is the real age of the writing, even if it comes from the proper custody; but some proof must be given of a concurrent possession of the property consistent with it, or of the existence of the will for thirty years (*Doe Stevens et al.* v. *Clement*, 9 U. C. R. 650).

In ejectment, in proof of the existence of a will, one H. swore that she saw the will, giving an explicit statement of its contents, and it also appeared that the devisees, of whom the heir-at-law was one, all submitted to and acted upon it; it was *held* sufficient evidence of the existence of the will (*Brown* v. *Morrow*, 43 U. C. R. 436).

It appeared that search for the will was made in the office in which it would have been had it been admitted to probate; in the different registry offices of the counties in which the several parcels of land of which the testator died seised were situate; among the papers of the owner of the several parcels; among the papers of the only executor of three named in the will who could be found; among the papers of the draftsman of the will, and among those of several of the devisees. This was *held* sufficient to let in secondary evidence of the will (*Ib.*, and *post*, pp. 112 and 113).

No will or codicil which has been revoked can be revived otherwise than as provided by the Wills Act (*Conlin* v. *Conlin* (1888), 24 U. C. L. J. 497; and *post*, pp. 44 and 45; S.C., Rule 10, *post*, p. 829.)

"*presence of two or more witnesses present at the same time,* "*and such witnesses shall attest and shall subscribe the will* "*in the presence of the testator, but no form of attestation* "*shall be necessary.*" [15b]

The expressions used in the above section of the statute have been defined as follows:—

Signature of testator.

"*Signed by the testator.*" A will may be signed by the testator with his name, initials, or mark.

By mark.

The testator's mark, whether accompanied by his name or not, is sufficient. The mark may be made with a pen or with some other instrument. A mark made with a stamp engraved with the testator's name (*n*) or with a seal engraved with his initials (*o*) has been held to be a good execution.

The placing of a wrong name against the mark of the testatrix, where the real name appeared at the commencement of the will, was held not to vitiate the mark (*p*).

"*By his direction.*" When a person signs for a testator by his direction, he may sign either the testator's name or his own name for the purpose of giving effect to such directions (*q*). The testator's signature may be made by one of the attesting witnesses (*r*).

Position of signature.

"*At the foot or end thereof.*" The Wills Act Amendment Act, 1852 (see p. 610), specifies certain cases in which the position of the testator's signature, though not strictly complying with the term "at the foot or end thereof," does not on that account invalidate the execution. But a signature in the testimonium clause or in the attestation clause is not necessarily sufficient unless it be shown that the testator intended it for his signature to the will (*s*).

The signature of the testator, if not on the paper on

(*n*) *Jenkyns* v. *Gaisford and Thring*, 32 L. J. 122.
(*o*) *Emerson*, 9 L. R. Ir. 448.
(*p*) *Clarke*, 1 Sw. & Tr. 22.
(*q*) *Clarke*, 2 Curt. 329.
(*r*) *Bailey*, 1 Curt. 914; *Smith* v. *Harris*, 1 Rob. 262.
(*s*) *Pearn*, 1 P. D. 70.

Canadian Cases.

[15b] Wills Act, R. S. O., [1897] c. 128, s. 12, *post*, p. 695.

which the will is written, must be physically connected with the will (*t*).

Acknowledgment of signature.

"*Acknowledged by the testator.*" An acknowledgment of the testator's signature may be made expressly by words, or by implication, *e.g.*, by the testator producing the will with his signature visibly apparent on the face of it to the witnesses, and requesting them to subscribe it, or assenting to a like request made by some other person in his presence (*u*).

The witnesses must have seen, or have had the opportunity of seeing, the testator's signature (*v*), even though they were unaware of the nature of the document they were asked to sign (*x*).

Presence of witnesses.

"*In the presence of two or more witnesses present at the same time.*" The signature of the testator must be made or acknowledged in the actual visual presence of the witnesses present at the same time; it is not sufficient that they should be in the same room (*y*).[16]

Subscription of non-attesting witness.

If out of three or more witnesses to a will or codicil one shall be shown not to have legally attested the

(*t*) *Horsford*, 3 P. & M. 211.
(*u*) *Inglesant* v. *Inglesant*, 43 L. J. 43.
(*v*) *Blake* v. *Blake*, 7 P. D. 102.
(*x*) *Daintree and Butcher* v. *Fasulo*, 13 P. D. 67, 102.
(*y*) *Brown* v. *Skirrow*, [1902] P. 3.

Canadian Cases.

[16] *WILL EXECUTION, WITNESSES TO.*—C. S. U. C., c. 82, s. 13 (now R. S. O., [1897] c. 128, s. 12), Wills Act, *post*, p. 693, does not repeal, but merely extends, the Statute of Frauds as to the execution of wills, and a will subscribed by the witnesses in accordance with either Act is sufficiently attested:—*Held*, therefore, that a will subscribed by two witnesses in the presence of the testator, though not of each other, was well executed; *held*, also, that although there was no positive evidence that one of the witnesses, who was dead, had subscribed in presence of the testator, the circumstances attending the execution of the will, and the fact of possession having for sixteen years gone along with it, would warrant the inference that the witness had so signed (*Crawford* v. *Curragh et al.*, 15 C. P. 55; and see also *per* Draper, C.J., in *Ryan* v. *Devereux*, 26 U. C. R. at p. 107, and *post*, p. 603).

instrument, the court will, notwithstanding, not exclude the subscription of such unnecessary and non-attesting witness from the probate and the registration (*z*).

But where a residuary legatee, who had been present at the execution of a will, wrote her name, at the request of one of the attesting witnesses, underneath the attestation clause, after the execution of the will, the court, being satisfied that she had not signed the will as a witness, directed her signature to be omitted from the probate (*a*). And the present practice is to exclude an unnecessary signature from the probate.

Attestation.

"*Shall attest and shall subscribe the will in the presence of the testator.*" The witnesses must subscribe the will in the presence of the testator after he has signed, though it is not necessary that they should subscribe in the presence of each other.

Presence of testator.

"*In the presence of the testator.*" The testator must have been able to see the witnesses subscribe their names if he had chosen to look (*b*).

No form of attestation is necessary; but to make a valid subscription and attestation, either the name of the witness, or some mark or name intended to represent his name, must be written or made by him in the presence of the testator (*c*).

Position of witnesses' signatures.

The attesting witnesses are not required to subscribe their names on any particular part of the will or codicil, provided the signatures were clearly intended to attest the testator's signature (*d*). But if their signatures appear on a separate sheet, it must be shown by affidavit that this sheet was physically connected (*e.g.*, with a pin) with the sheet on which the testator signed (*e*).

Evidence required.

In all cases where it is not evident by the wording of

(*z*) *J. Forest*, 2 Sw. & Tr. 334.

(*a*) *Sharman*, 1 P. & M. 661; 38 L. J. 47; *Smith*, 15 P. D. 2.

(*b*) *Jenner* v. *Ffinch*, 5 P. D. 106.

(*c*) *Sperling*, 3 Sw. & Tr. 272; 33 L. J. 25; see also *Hindmarsh* v. *Charlton*, 8 H. of L. 160; 1 Sw. & Tr. 433.

(*d*) *Davis*, 3 Curt. 748; *Chamney*, 1 Rob. 757.

(*e*) *Emma Whittle, dec.*, proved in July, 1905; *Braddock*, 1 P. D. 433.

the attestation clause that the will or codicil has been executed in accordance with the provisions of the statute (p. 602), or where the signature has been placed in the attestation clause or in the testimonium clause, an affidavit of due execution by one of the witnesses is required. (For form of affidavit, see p. 943.) The affidavit of execution speaks to the whole of the execution, and does not merely supply the deficiency. (See Amended Rule 4 (January, 1871), p. 816; and for form of affidavit, p. 943.)

Blind or illiterate testator.

If the testator be blind or obviously illiterate or ignorant, the court requires to be satisfied that the will or codicil was read over to him before its execution, or that the testator had knowledge of its contents at the time of execution. (See Rule 71 (1862), p. 806; and for forms of affidavit, p. 946.)

Mark.

This rule is applied to all cases where the testator's signature is by mark or cross only, or where it is so imperfectly or badly written as to indicate extreme feebleness or illiteracy on the testator's part.

Evidence required.

Where, in the case of signature by mark, evidence of reading over cannot be obtained, the court requires an affidavit that the testator was not illiterate or blind.[17]

Canadian Cases.

[17] *PROOF OF WILL.*—When the surrogate judge is satisfied of the inability to furnish proof of the execution of a will by the attesting witnesses, it may be proved by other sufficient evidence.

A will in testator's handwriting and signed by him was found in a place where testator was accustomed to keep his papers. The will purported to be signed in the presence of two persons who signed as witnesses, the handwriting being apparently that of two persons and distinct from that of the testator, and though due search was made for the witnesses, they could not be found, this being attributable to their being strangers, testator being under the belief, from the misreading of a text-book on wills, that strangers were the best witnesses. The surrogate judge being satisfied as to the inability to procure proof by the witnesses, and that the due execution of the will had been proved by other evidence, admitted it to probate.

Affidavit of execution dispensed with.

If both the attesting witnesses be dead (*f*), or have left the country, or have absconded, or have been applied to and have refused to make an affidavit, an affidavit by some other person who may have been present at the execution of the will or codicil is required; but "if no "affidavit of any such person can be obtained, evidence on "affidavit must be procured of that fact and of the hand-"writing of the deceased and the subscribing witnesses, "and also of any circumstances which may raise a pre-"sumption in favour of due execution" (Rule 7 (1862), p. 796) (*g*). (For forms of these affidavits, see pp. 943, 944.)

Where a will is *ex facie* duly executed probate will not necessarily be refused because the witnesses cannot recollect the circumstances (*h*).

Evidence against due execution.

If *both* witnesses agree in distinctly negativing the execution of a will or codicil, the court, on their affidavit being filed, refuses probate of the particular document. (See Rule 5 (1862), p. 796.)

(*f*) *Burgoyne* v. *Showler*, 1 Rob. 5; *Jane Thomas*, 2 Sw. & Tr. 255; 28 L. J. 33.

(*g*) In *Burgoyne* v. *Showler*, 3 N. C. 204, Dr. LUSHINGTON says, "I "apprehend that where a will on the face of it appears duly executed, "and *there is a clause of attestation of this kind, being not in the strict "form*, the presumption must be *omnia rite facta fuisse*. However, if "the party is put on proof of the will he is under the necessity of pro-"ducing the subscribed witnesses and any other evidence, if there be "any other, to establish the fact."

The same learned judge, in *Prudence Wills* (*ibid.* in note), where the attestation clause of the will was imperfect, said, "I apprehend that "where there is an attestation clause of this description and the names "of two witnesses, and the signature of the testatrix, the presumption, "in the absence of all evidence, is that the will was duly executed "according to the statute."

(*h*) *Wright* v. *Sanderson*, 9 P. D. 149; *Whiting* v. *Turner*, 89 L. T. 71.

Canadian Cases.

On appeal to the divisional court the judgment was affirmed (*Re Young*, 27 O. R. 698).

"When the will is itself in evidence with the testator's and witnesses' signatures thereon, post-testamentary letters of the testator are receivable in evidence to enable the Court to come to a right conclusion" (*Ib.*; Boyd; C.).

Fiat against a will.

When a will can be shown by an affidavit of the witnesses to it to be invalid, the registrar will write his fiat thereon, refusing probate. Fees: Fiat, 5*s.*; filing affidavit, 2*s.*; filing will, if not annexed to affidavit, 2*s.* 6*d.*

Date of will.

If there be no date to a will, or if there be an imperfect date only, one of the attesting witnesses must supply the date of execution by an affidavit.

If neither of the attesting witnesses nor any other person can make this affidavit, evidence must be given showing that search has been made and no will of presumably later date has been found. (For form of affidavit, see Appendix V., p. 946.)

Alterations.[18]

If interlineations, interpolations, obliterations, erasures, words or figures written upon erasures, or anything of the nature of an alteration or addition made by the testator or under his direction appear in the will, they are entitled to probate if—

Canadian Cases.

[18] *ALTERATION CANCELLATION.*—Section 5 of the Wills Act of 1868 (now ss. 21 and 22, R. S. O., [1897] c. 128), *post*, p. 693, which provides that no will shall be revoked otherwise than by "another will or codicil executed according to law, or by some writing declaring an intention to revoke the same, and executed in a manner in which a will is by law required to be executed," means a will, codicil, or other writing executed with the same formalities as are required in the case of the will or codicil which it purports to revoke (*In re* trusts of will of *Anne Parker*, 20 Gr. 389).

When a testatrix, having duly made and published her will, subsequently executed a testamentary paper, not, however, so as to pass real estate:—*Held*, that the disposition of personalty made thereby was substituted for the disposition made of it by the will, but the disposition made of the matter was not affected (*Ib.*).

It was *held*, under 32 Vict. c. 8, that a will is not revoked by destruction by the direction of the testator, unless the destruction took place in his presence. The birth of a child after the making of a will does not revoke the will (*Re Tobey*, 6 P. R. 272).

Any alteration or revocation made in or of the provisions of a will after January 1st, 1874, to be effectual must be attested in the

(1) Duly verified by the testator, *i.e.*, if each alteration has been authenticated in the manner prescribed by s. 21 of the Wills Act, 1837.[18a] This section provides that no alteration shall be valid unless executed in the same manner as required for the execution of a will or unless "the "signature of the testator and the subscription of the wit- "nesses (or the initials of the testator and witnesses) (*i*) be "made in the margin or on some other part of the will op- "posite or near to such alteration (*k*), or at the foot or end of "or opposite to a memorandum referring to such alteration" (*e.g.*, a recital of the alteration in the attestation clause), "and written at the end or some other part of the will." Verified by testator.

Alterations made in a will, if intended to be final and not merely deliberative (*l*), can be verified by a codicil made subsequently (*m*). The codicil may refer to the alterations in the will by implication only (*n*), or by re-execution of the will as altered.[18b] By subsequent codicil, or re-execution of will.

The mere circumstance, however, that an alteration has been dated by a testator as before the execution of his will, does not entitle such alteration to probate (*o*). (See Rules 8, 9 (1862) as to interlineations and alterations, and Rules 10, 11 as to erasures and obliterations, pp. 796, 797.)

(*i*) *Blewitt*, 5 P. D. 116, and the cases therein quoted, viz., *Wingrove*, 15 Jur. 91; *Hinds*, 16 Jur. 1161; *Amiss*, 2 Rob. 117; *Christian*, 2 Rob. 111; *Martin*, 1 Rob. 712.

(*k*) If an alteration which is unattested forms part of the same sentence in which an attested alteration occurs, it may be admitted to probate: *Wilkinson*, 6 P. D. 100.

(*l*) *E.g.*, made in pencil: *Hall*, P. & M. 256.

(*m*) *Tyler* v. *Merchant Taylors*, 15 P. D. 216.

(*n*) *Heath*, [1892] P. 253. See *Lushington* v. *Onslow*, 6 N. C. 188, and *Bradley*, 5 N. C. 188.

(*o*) *Adamson*, 3 P. & M. 253.

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same manner as a will requires to be attested, and that notwithstanding the will was made anterior to that date (*Smith* v. *Meriam et al.*, 25 Gr. 383).

[18a] Wills Act, s. 23, *ante*, p. 40.

[18b] *Ante*, p. 38.

Erasures.

Erasures must be verified by affidavit, and cannot be authenticated by marginal signatures.[18c]

Not verified by testator.

(2) Not duly verified by the testator: alterations which the testator has neglected to verify by one or other of the foregoing methods may be entitled to probate if proof can be adduced that they were made at a period preceding the execution of the will. Affirmative evidence of this character may be given by an attesting witness who observed the alterations, or whose attention was drawn to them, before or at the period of the execution, or from the draftsman of the will, who can depose that the parts apparently interpolated or altered accord with his draft, or from the writer or engrosser of the will, who can prove them to have been his own ministerial handiwork, either as the correction of his own error in copying, or as a change of intention on the part of the testator previously to the execution of the will. An affidavit from any one of the above persons, or from any other person who is from any other reason qualified to depose affirmatively, is sufficient to entitle the alteration to probate (*p*). (For forms of affidavit in verification of alterations, see p. 947.)

Absence of evidence.

If, however, no affirmative evidence can be obtained, alterations are presumed to have been made after the execution of a will, and are excluded from probate unless the will is incomplete without them (*q*).

(*p*) In *Doe* d. *Shallcross* v. *Palmer and Others*, L. J. Q. B. 367, where a holograph will appeared to have been altered by turning a devise of certain cottages to one person in fee into a limitation to him for life, with remainder in fee to another person who was not otherwise provided for in the will, it was held that certain declarations made by the testator before the will was executed that he intended to make a provision by his will for the person to whom the alterations referred, but not specifying the nature of the provision, was evidence to rebut the presumption of law, and proved that the alterations had been made in the will before its execution.

(*q*) *Cooper* v. *Bockett*, P. C. 149; 4 N. C. 685; 3 Curt. 659. See also Sir H. JENNER'S observations in 4 N. C. 695. *Cadge*, 1 P. & M. 543; but see *White*, 30 L. J. P. 55.

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[18c] S. 23, Wills Act, *ante*, p. 45.

Words or figures restored.

If obliterations are so incomplete that the original words or figures can be read or deciphered either with the naked or the assisted eye (*r*), the Court will restore them in all cases, and will grant probate of them, except where it is inferred that the testator intended to substitute other words, and it is ascertained that he did not carry out his intention(*s*).

If, however, the original words cannot be read either by the naked eye or through extrinsic aid, the court exercises two different principles in its way of dealing with them.

Bequest revoked.

If a testator has obliterated or erased the whole of a bequest or provision in his will, or has completely covered it by paper pasted over it, and has so effectually accomplished his purpose that the passage is not apparent, *i.e.*, cannot be made out on the face of the will, the revocation is complete under the 21st section of the Wills Act, and the court grants probate with a blank where the erasure was (*t*).

Amount of legacy restored.

But where part of a legacy only, viz., its amount or the name of the legatee, has been so covered or obliterated or erased, leaving the name of the legatee or the amount of the legacy untouched, the court infers that the testator's intention was only to revoke the original name or amount in the event of his having effectually substituted another, in which case the doctrine of dependent relative revocation becomes applicable; and by this doctrine, the obliteration or erasure being done with reference to another act, meant to be an effectual disposition, will be a revocation or not according to the efficiency of the relative act.

But the alteration in the name or amount, *i.e.*, the relative act, not being executed according to the statute, there is no revocation at all, and the court will restore and grant probate of the original words, for which others were sought to be substituted (*u*).

(*r*) The court will allow the use of artificial means to decipher the original words or figures, but will not resort to physical interference with the document: *Ffinch* v. *Coombe*, [1894] P. 191.

(*s*) See *Horsford*, 3 P. & M. 211; 23 W. R. 211; *Gilbert*, [1893] P. 183.

(*t*) *Horsford, supra; Townley* v. *Watson*, 3 Curt. 766; *Harris*, 1 Sw. & Tr. 538.

(*u*) In *Brooke* v. *Kent* (3 Moore, P. C. 341; 1 N. C. 98-100), the testator had erased in his will, with a knife, the amount of an annual

In these cases the court will exercise the right of ascertaining *aliunde*, by parol evidence, what the original words or figures were, in order to restore them (*x*).

Words excluded.

The court will exclude from probate any words introduced into a will by mistake or without the instructions or knowledge of the testator (*y*). But the court has no power to insert words in correction of an error or omission (*z*).

The court may exclude from probate and from registration words of atrocious, offensive, or libellous character (*a*); but it cannot exclude any words or sentences which do not come fully within such categories (*b*).

Date of will.

If the date given in the will is not the true date of execution, the correct date must be shown by affidavit.

Condition of will.

The vestiges or marks of a seal, wafer, pin, or fastener, appearing on a will or codicil, raise a presumption or, at least, a suspicion, that some further testamentary document may have been at one time affixed to it.

"If there are any vestiges of sealing-wax or wafers or "other marks upon the testamentary papers, leading to the "inference that a paper, memorandum, or other document "had been annexed or attached to the same, they must be

jointure of £200, and had substituted for it, in his own handwriting, a sum of £100. He had also written under the clause of attestation an explanatory memorandum of what he had done, but the memorandum was not attested as required by the Wills Act. It was held by the Judicial Committee of the Privy Council: first, that the 20th section of the Wills Act required that there should be on the part of the testator an intention of revoking; secondly, that the evidence adduced showed that the testator did not intend to revoke absolutely, but meant to revoke by substituting a different sum for that originally devised; thirdly, that the alteration could not take effect, because it was not executed according to the statute; and finally, that therefore the revocation was ineffectual, and the will must stand in its original state. See also *Hall*, 2 P. & M. 256.

(*x*) *Horsford*, *supra*.

(*y*) In *Brisco* v. *Baillie Hamilton*, [1902] P. 234, words wrongly describing certain property were excluded.

(*z*) *Harter* v. *Harter*, 3 P. & M. 11, 22; *Schott*, [1901] P. 190.

(*a*) *George Wartnaby*, 4 N. C. 477; *Marsh and Others* v. *Marsh and Others*, 1 Sw. & Tr. 536. In the latter case the court doubted, and the order was made with the consent of the other side.

(*b*) *Curtis* v. *Curtis*, 3 Add. 33; see *Honeywood*, 2 P. & M. 251.

"satisfactorily accounted for, or the production of such "paper, memorandum, or other document must be re- "quired; and if not produced its non-production must be "accounted for." (Rule 14 (1862).)

A portion of the last sheet, sufficient in size to have contained a codicil, may have been cut away, or even the commencing portion of a will may betray an analogous spoliation by its abruptness of initiation, or by absolute abscission.

Evidence to rebut.

In order to rebut the presumption of spoliation, evidence must be given, showing that, when the will was found on the occasion of the testator's death, it was in the identical condition in which the executor produces it to the court. (For Affidavit of Plight, see Appendix V., p. 945.)

Incorporation of Papers by Reference.

Where a testator, by his will or codicil, expressly refers to any other documents such as deeds, wills, or codicils, of himself or of other persons, or even refers to papers void or invalid *per se* (*c*) as carrying out or containing his own dispositions, such documents and papers are considered to be incorporated in and to form part of the will, and are included by the court in the probate.

Production required.

"If a will contain a reference to any deed, paper, "memorandum, or other document, of such a nature as to "raise a question whether it ought or ought not to form "a constituent part of the will, the production of such "deed, paper, memorandum or other document must be "required, with a view to ascertain whether it be entitled "to probate; and, if not produced, its non-production "must be accounted for." (Rule 12 (1862).)

In order that such document referred to in a will or codicil may be entitled to probate, it must be evident (1) that it is distinctly identified with the description in the

(*c*) *Sheldon* v. *Sheldon*, 3 N. C. 256; *Francis Willesford*, 3 Curt. 77; *Thomas Smartt*, 4 N. C. 38; *Countess Ferraris* v. *Lord Hertford*, 3 Curt. 468; *Wood* v. *Goodlake*, Privy Council, 1 N. C. 155; *Emma Hakewell*, 1 Deane, 14; *A. M. Ash*, *ibid.*, 181; *R. M. Bacon*, 3 N. C. 645.

testator's reference, (2) that it was in existence at the time of execution of the will or codicil which refers to it or at the time of execution of a subsequent codicil to the will or codicil containing such reference.

(1) Proof of identity.

Where the reference is not sufficiently precise or particular to identify of itself the document referred to, parol evidence is admissible to show what document answers the description contained in the will or codicil (*d*).

(2) Existence at time of execution of will,

"No deed, paper, memorandum, or other document can "form part of a will unless it was in existence at the time "when the will was executed" (Rule 13 (1862)) (*e*).

or of subsequent codicil.

There is an exception to this rule. A document referred to in a will as existing, but which in fact was not existing at the date of the will, is entitled to probate if it can be shown to have been in existence at the date of execution of a codicil to the will. But if the terms of the reference in the will indicate a document of a future character, there is no incorporation (*f*).

(*d*) *Allen* v. *Maddock*, 11 Moore P. C. Rep. 427; *Almosnino*, 1 Sw. & Tr. 508; *Garnett*, [1894] P. 90 (probate refused); *Eyre* v. *Eyre*, [1903] P. 131. Lord KINGSDOWN, in delivering judgment in the case of *Allen* v. *Maddock*, said, "It may be said on the present occasion, the Court "of Probate is to a certain extent a court of construction, for it has to "determine what is the meaning of the reference made by the testatrix "in her codicil, and whether any, and if any what, instrument found "at her death is thereby referred to. This question is one of fact, "which obviously must be explained, and can only be explained by "parol evidence. At first sight there is no difficulty, there is no "ambiguity, whatever in the expressions by which the reference is "made. Parol evidence must necessarily be received to prove whether "there is or is not in existence at the testatrix's death any such instru-"ment as is referred to by the codicil. For this purpose enquiry must "be made, and evidence must be offered, to show *what papers there "were, at the date of the codicil, which could answer the description "contained in the codicil;* and the court having by these means placed "itself in the situation of the testatrix, and acquired as far as possible "all the knowledge which the testatrix possessed, must say, upon a "consideration of these extrinsic circumstances, whether the paper is "identified or not."

(*e*) *Singleton* v. *Tomlinson*, 3 App. Cas. 414; *Smart*, [1902] P. 238.

(*f*) *Mathias*, 3 Sw. & Tr. 100; *Lady Truro*, 1 P. & M. 201; *Sunderland*, 1 P. & M. 198; *Mary Reid*, 38 L. J. (P. & M.) 1; *Durham* v. *Northen*, [1895] P. 66; *Smart*, *supra*.

If such document be referred to in a codicil, though not then in existence, it will equally be entitled to probate if the date of its making can be shown to have preceded that of a subsequent codicil.

Originals produced.

In the case of deeds as well as of documents not valid *per se*, the court requires, where it has authority to demand it, that the original be produced. In the case of a deed, it will permit it to be delivered out to the trustees after probate, it being first duly registered.

But the court will also permit a copy of a deed, or of a part of it, to be brought in and proved (*g*). And occasionally, when the deed is in the hands of a person who will not part with it, the court, having no power to enforce its production, will decree probate without it (*h*). But if the paper in question be invalid and inoperative *per se*, and made provable by reference only, the court will enforce its production, for such a paper, unlike a deed, must be proved, *ex necessitate*, as a will or codicil is, in order to give it operation and legal existence (*i*).

When not engrossed.

The court, on motion, has allowed probate to issue without embodying a settlement, owing to its length and the consequent expense of engrossment, upon an affidavit being filed giving its date and description (*k*).

Where part only of a document is material, the court does not insist on the whole being proved (*l*).

Subjects of reference.

Foreign will.

Where an English will ratified and confirmed a foreign will, the latter was held to be incorporated; and where a foreign will confirmed an English one, probate of both was granted (*m*). But if the testator clearly intended the English will to take effect as a separate testamentary disposition of property not disposed of by the foreign will, the court may dispense with the incorporation of the latter

(*g*) *Thomas Dickins*, 1 N. C. 399; *Sibthorpe*, 1 P. & M. 106.
(*h*) *Thomas Battersbee*, 2 Rob. 440; *Sibthorpe*, *supra*.
(*i*) *Sheldon* v. *Sheldon*, 3 N. C. 257.
(*k*) *Lansdowne*, 3 Sw. & Tr. 294; *Dundas*, 32 L. J. P. & M. 165.
(*l*) *Limerick*, 2 Rob. 313.
(*m*) *Lord Howden*, 43 L. J. 26; *Lockhart*, W. N. (93) 80.

on a copy verified by affidavit being filed. A note to that effect is made on the probate (*n*).

Former will. Where a testator in his last will referred to a former will of his own, put up therewith, as far as any of the provisions therein contained might be applicable to existing circumstances at the time of his death, etc., such former will was admitted to probate, together with the last will of the testator (*o*).

Will of another person. The will of a testatrix's father having been referred to by her in her will, as containing the names of persons to whom she wished to bequeath a part of her estate, an office copy of the first-mentioned will was required to be proved as part of the testatrix's will, and was included in the probate (*p*). The registrars have sometimes, owing to the length of the will, allowed a marginal note to be made upon the probate, stating when and where the invoked will was proved, instead of registering it.

Revoked will. Where a testatrix in her will referred to a revoked will of her late husband, as containing the trusts and purposes to which she wished her own property to be applied, such revoked will was admitted as part of her own (*q*).

Will or codicil not duly executed. If a testator duly make and execute a codicil referring to his will, which was not properly executed, the will is entitled to probate (*r*).

So, if a testator, by a codicil duly executed, refer to a prior one not duly attested, the latter is admissible to probate (*s*).

Copy of will (original abroad). So, also, if a testator, in a duly executed codicil, refer to a copy of his will, the original being in another country, probate is granted of that copy of the will and of the original codicil (*t*).

Practice on proving. With the above exceptions, if an incorporated document or paper is to be proved as part of the will which has incorporated it, such document or paper must be engrossed

(*n*) *Astor*, 1 P. D. 150.
(*o*) *James Gordon Duff*, 4 N. C. 474.
(*p*) *Emma Darby*, 4 N. C. 428.
(*q*) *Countess of Durham*, 1 N. C. 368.
(*r*) *W. Claringbull*, 3 N. C. [illegible]; *E. Hill*, 4 N. C. 404; *Allen* v. *Maddock*, 1 Deane, 325.
(*s*) *J. F. Smith*, 2 Curt. 796; *Ingoldby* v. *Ingoldby*, 4 N. C. 493.
(*t*) *Mercer*, 2 P. & M. 99.

and registered in its entirety. In such a case the will is described in the executor's oath as "the will as contained in paper writings marked A and B."

SECTION III.—PRIVILEGED WILLS.

The wills of soldiers being "in actual military service" and of mariners or seamen being "at sea" are excepted from the operation of the Statute of Frauds (29 Car. II. c. 3) by s. 23 thereof, and from the Wills Act (1 Vict. c. 26) by s. 11 thereof. These statutes provide that such persons may dispose of their *personal* estate as they might have done before these Acts were passed.[18d]

The formalities required for making a privileged will are simply a declaration in writing, or orally, of the mode in which the testator wishes his personal estate to be disposed of after his death. If the declaration is made orally, the court must have before it evidence sufficient to satisfy it of the substance of the declaration, and of the fact that it was intended to be testamentary. But the wills of seamen and mariners are now, in certain respects, subject to the Navy and Marines (Wills) Acts (28 & 29 Vict. c. 72, and 60 & 61 Vict. c. 15), and an Order in Council of December 28th, 1865.[18e] Nuncupative will.

Soldiers' Wills.

The words "any soldier being in actual military service" in s. 11 of the Wills Act have been defined as follows:—

The term "soldier" includes an officer, a surgeon (*u*), and a member of an irregular corps which has been made subject to the provisions of the Army Act, 1881, or to the Indian Articles of War (*x*). "*Soldier.*"

The words "in actual military service" are confined to those "on an expedition," following the term "in "*In actual military service.*"

(*u*) *Drummond* v. *Parish*, 3 Curt. 522; *Hayes*, 2 Curt. 388; *Donaldson*, 2 Curt. 386.

(*x*) The military status of irregular troops was established in the year 1901 with regard to the Imperial Yeomanry, the Natal Police, and the South African Constabulary.

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[18d] *Ante*, p. 13. [18e] *Ante*, p. 14.

expeditione" of Roman law (*y*). A state of war must exist, and the testator must have taken some step towards joining the forces in the field. Going into barracks with a view to getting a subsequent order to embark or start for the front is a step of this description (*z*). A soldier belonging to a force which has received an order for mobilization with a view to some step being taken forthwith for active service is held to be in actual military service (*a*).

A soldier in actual military service may make a will of personalty at and after the age of fourteen (*b*).

Seamen's Wills.

"*Mariner or seaman*"

The words "any mariner or seaman being at sea" in s. 11 of the Wills Act have been defined as follows:—

The term "mariner or seaman" includes a purser of a man-of-war (*c*), a surgeon in the Navy (*d*), a chaplain in the Navy, and probably the whole profession of whatever rank.

A merchant seaman is a "mariner or seaman" within the meaning of the section (*e*).

"*at sea.*"

The words "at sea" have been held to mean "on maritime service," and apply to persons serving on board vessels permanently stationed in a harbour (*f*) or on service in a river (*g*). Where a man has joined a vessel on service and has commenced a voyage in it, a will made in the course of that voyage will be within the exception (s. 11 of the Wills Act), even although such will was in fact made on shore (*h*).

Navy and Marines (Wills) Act.

Certain restrictions have been imposed on the wills of

(*y*) *Drummond* v. *Parish*, *supra*.
(*z*) *Hiscock*, [1901] P. 78.
(*a*) *Gattward* v. *Knee*, [1902] P. 99.
(*b*) *Farquhar*, 4 N. C. 651; *Hiscock*, *supra*. For Roman law relating to military wills, see Justinian's Institutes, Lib. II. tit. 12. 1, 2, 3, 4.
(*c*) *Hayes*, 2 Curt. 338.
(*d*) *Saunders*, 1 P. & D. 16.
(*e*) *Morrell* v. *Morrell*, 1 Hagg. 51; *Milligan*, 2 Rob. 108; *Parker*, 2 Sw. & Tr. 375.
(*f*) *McMurdo*, 1 P. & M. 540.
(*g*) *Patterson*, 79 L. T. 123; *Austen*, 2 Rob. 611.
(*h*) *Lay*, 2 Curt. 375.

seamen and marines by the Navy and Marines (Wills) Acts (28 & 29 Vict. c. 72, and 60 & 61 Vict. c. 15), and by an Order in Council of December 28th, 1865. (See Appendix, pp. 704, 782, and 711.)

The Acts apply to petty officers or seamen, non-commissioned officers of marines, marines, and other persons "forming part, in any capacity, of the complement of Her Majesty's vessels, or otherwise belonging to "Her Majesty's naval or marine force, exclusive of "commissioned, warrant, and subordinate officers, and "assistant engineers, and of kroomen."

Persons exempted from the Act.

The following are the persons whose wills may be considered to be exempt from the operation of the Act:— 1. Admirals or Flag Officers. 2. Commodores. 3. Captains. 4. Commanders. 5. Lieutenants. 6. Masters. 7. Second Masters. 8. Pilots. 9. Physicians. 10. Surgeons. 11. Assistant Surgeons. 12. Chaplains. 13. Secretaries to Flag Officers. 14. Inspectors of Hospitals. 15. Deputy Inspectors of Hospitals. 16. Inspectors of Machinery. 17. Chief Engineers. 18. Assistant Engineers. 19. Mates. 20. Naval Instructors. 21. Paymasters. 22. Assistant Paymasters. 23. Boatswains. 24. Gunners. 25. Carpenters. 26. Commissioned Officers of Marines.

Members of the coastguard service are subject to this Act for the reason that, although employed ashore, they are borne upon the books of a ship. Pensioners of the navy or marines also come under the operation of this Act.

Naval assets under 28 & 29 Vict. c. 72.

A will made before entering the service is not valid to pass wages, prize money, bounty money, grant, or other allowance in the nature thereof, or other money payable by the Admiralty, or any effects or money in charge of the Admiralty (*i.e.*, naval assets) (s. 3).

A will written or contained on the same instrument as a power of attorney is invalid (s. 4).

Formalities required.

The formalities required for a will which shall be valid to pass naval assets are laid down by s. 5. (See p. 704.)

Prisoner of war.

The formalities required for a will made by a prisoner of war are laid down by s. 6. (See p. 705.)

If, having regard to the special circumstances of the

death of the testator, the Admiralty are of opinion that compliance with the requirements of the Act may be dispensed with, the testator's naval assets may be paid to the person entitled thereto (s. 7).

If the will be valid under this Act, whether moneys be due or not from the Admiralty, general probate of the will is granted. If, however, the will be not valid to pass the testator's naval assets, the latter are excluded from the operation of the probate. (For form of oath, see p. 1007.)

Inspector of Seamen's Wills.

The Order in Council, dated December 28th, 1865 (see p. 711), provided for the deposit of seamen's wills at the Admiralty. Wills of seamen or marines intended to pass naval assets are sent to the Secretary of the Admiralty to be examined and registered by the Inspector of Seamen's Wills either during the lifetime of the testator or after his death. The inspector, with the consent of the testator, issues to the executor or other person most beneficially interested under the will, directions as to the steps to be taken for taking out representation or otherwise dealing with the naval assets.

In all cases where the wills of persons subject to this Act (*i*) are offered for probate a certificate (endorsed on the will) must be obtained from the Inspector of Seamen's Wills (at the Admiralty Offices, Spring Gardens, Charing Cross) that there is no objection to probate issuing.

Merchant seamen.

Under the provisions of the Merchant Shipping Act, 1894 (s. 177), the Board of Trade may refuse to hand over a merchant seaman's property disposed of by his will unless the will has been executed in accordance with the formalities prescribed by sub-s. (1) of the Act. (See Appendix I., p. 770.)

Soldiers' and seamen's property exempted from duty.

The property of any common seaman, marine, or soldier slain or dying in the service of His Majesty is exempt from probate or estate duty (see 55 Geo. III. c. 184, and Finance Act, 1894). But if the representative of any such persons applies for a grant under s. 33, Customs and Inland Revenue Act, 1881, or s. 16, sub-s. (1),

(*i*) The Act was amended by 60 & 61 Vict. c. 15, under which the wills of naval pensioners dying since June 3rd, 1897, are exempt from these regulations.

Finance Act, 1894, the fixed duties payable under these sections should be paid.

If the representatives of the common seaman, marine, or soldier, find that the fixed duty (30*s.* or 50*s.*) is less than the Legacy or Succession duty otherwise payable, they can obtain exemption from Legacy or Succession duty by paying the fixed duty where the "estate" exceeds £100 and does not exceed £500 in gross value.

SECTION IV.—FOREIGN WILLS, GRANTS ACCORDING TO FOREIGN LAW, AND PRIVILEGED WILLS OF BRITISH SUBJECTS.[19]

(For the purposes of this section, the word "foreign" is intended to apply to all countries out of the jurisdiction of the English Court of Probate.)

Privileged Wills of British Subjects.

Made out of the United Kingdom.

A will of personal estate (*k*) *made out of the United Kingdom* by a British subject (or naturalised British subject (*l*)), whatever his domicil may be when the will was made or at the time of his death, is entitled to probate in England on evidence that it is valid (1) by the law of the place where it was made, *or* (2) by the law of the place where the testator was domiciled at the time he made his will, *or* (3) by the law of that part of the British Empire where the testator had his domicil of origin. (See

(*k*) Including leaseholds: *Grassi*; *Stubberfield* v. *Grassi*, [1905] 1 Ch. 584.

(*l*) *Gally*, 1 P. D. 488.

In the case of a naturalised British subject his powers may be restricted by his certificate of naturalisation: *Carlo Gatti*, 39 L. T. 639.

Canadian Cases.

[19] *TESTATOR OUT OF JURISDICTION.*—When a testator dies out of the jurisdiction of the court, an administration order will not be granted, unless it is clearly shown that there are no personal assets here in respect of which ancillary letters probate could be obtained (*Re Armour*, *Moore* v. *Armour*, 10 P. R. 448; Surrogate Act, *post*, p. 687, s. 78).

24 & 25 Vict. c. 114, s. 1 (Lord Kingsdown's Act), p. 700.)

In order to obtain probate of a will of this description, besides the usual formalities, an affidavit as to the British status of testator must be filed (for form, see p. 948); and if coming under (1) or (2), an affidavit showing the validity of the will under the law of the foreign place by a person conversant with that law (for form, see p. 948); if under (3), an affidavit showing where the testator had his domicil of origin (for form, see p. 948); and if the law of the place of domicil of origin differ from the English law, an affidavit as to the validity of the will by the law of such place.

Made in the United Kingdom.

A will *made in the United Kingdom* by a British subject, wherever domiciled at the time of making the same or at the time of death, is entitled to probate if valid by the law of that part of the United Kingdom where it was made. (See 24 & 25 Vict. c. 114, s. 2 (Lord Kingsdown's Act), p. 700.) In this case, besides the usual formalities, an affidavit as to the British status of the testator, and as to the place where the will was made, must be filed (for form, see p. 948), together with an affidavit (if the will was made in Scotland) as to the validity of the will by Scotch law.

Change of domicil.

Section 3 of the above Act, which provides that subsequent change of domicil does not revoke a will, has been held to apply to wills generally and not merely to wills of British subjects (*m*).[19a]

Lord Kingsdown's Act does not apply to the case of an Englishwoman, whose domicil of origin is English, making a will since her marriage with a foreigner, since, by the 10th section of the Naturalization Act, 1870, she is

(*m*) *Groos*, [1904] P. 269.

Canadian Cases.

[19a] The Court should ascertain the domicil of the testator or intestate (*In re Goodhue*, 19 Gr. 366). The wife's domicil is that of her husband (*McDonald* v. *McDonald*, 5 L. J. U. C. 66; and *Edwards* v. *Edwards*, 20 Gr. 392; and *post*, p. 59, *et seq.*).

"deemed to be a subject of the State of which her husband "is for the time being a subject."

Foreign Wills.

Probate will be granted of an authentic copy of a foreign will upon proof that the testator was domiciled in the country in question, and that the foreign court has adopted the will as a valid testament, or that it is valid by the law of that foreign country (*n*).

Foreign wills already proved abroad.

When a will has been proved in any foreign, colonial, or other court outside the jurisdiction of the Court of Probate in England, probate is granted of a copy duly authenticated by the official having the custody of the original without evidence as to law, provided the deceased was domiciled in the country where the will was proved.

Translation.

A translation of the foreign will, if not made in English, and of the foreign certificates of authentication, must be annexed to the foreign documents. The translator, if he be not an English notary, or a person whose competency is vouched for by his official position, files an affidavit as to his qualification, and verifies the translation. Welsh wills may be translated by any person on evidence of his competency being filed.

The executor is sworn to the foreign original or copy, but the translation alone is engrossed and registered.

India Office copies.

Copies of the India Office copies of wills proved in India are accepted as authentic if signed by one of the Under Secretaries of State for India.

Austrian Consulate Court at Constantinople.

A copy of the will of an Austrian subject proved in Austrian Consulate Court at Constantinople is accepted as valid on proof of the Austrian status of testator.

Notarial wills.

A sealed copy of a will issued by a foreign notary having the custody of the original may, in certain cases (*a*),

(*n*) *Deshais*, 4 Sw. & Tr. 14, 15, 17; 34 L. J. 58.

(*a*) French and Italian notarial copies are accepted without question. A certified copy (from the master's office) of the notarial "grosse copy" of a will filed in the master's office of the Supreme Court of the Cape of Good Hope is accepted here as if it were a copy of the original.

be admitted to probate without evidence of law, if the notarial certificate annexed show that the necessary formalities have been complied with. It is, however, advisable that the direction of the Clerk of the Seat should be taken with regard to such wills before lodging the papers for probate.

Holograph wills.

A will deposited during the lifetime of a testator with a foreign notary, or after his death by order of a court, if certified to be *holograph*, may be received without further proof.

A will not being holograph, although certified as having been deposited with the notary (issuing a copy) by order of a court after the death, will not be accepted without further evidence as to law.

Foreign wills not already proved abroad.

The original will of a person (*b*) domiciled in a country out of the jurisdiction of the English court may be admitted to probate on proof that it is valid by the law of such country.

Proof of law.

It is usual to prove foreign law by an affidavit of an expert in the particular law. The expert must be a person conversant with the foreign law on the ground of his having a sufficient professional status, but must not have derived his knowledge merely from having studied the law in a foreign country (*c*).

The law of a foreign country may be shown by the certificate of the ambassador under seal of the embassy (*d*), or by the affidavit of the consul or vice-consul, but not by a clerk of the consulate.

Colonial law.

As regards colonial law, the certificate of the Secretary of State for the Colonies will be accepted.[20]

Scotch law.

Scotch law may be proved by a writer to the Signet, or

(*b*) For wills of British subjects, *supra*.
(*c*) *Bonelli*, 1 P. D. 69.

Canadian Cases.

[20] The words, "His Majesty's possessions out of Upper Canada," used in 16 Vict. c. 19, s. 5 (C. S. U. C. c. 32, s. 11), now R. S. O., 1897, c. 73, s. 43, include England:—*Held*, therefore, that the probate of a will executed there under the seal of the Prerogative Court of Canterbury was properly received in evidence (*Coltman et al. v. Brown*, 16 U. C. R. 133).

by a member of the Scotch Bar; but not by a law agent or a solicitor other than a writer to the Signet.

Grants to persons entitled by foreign law.

In making a grant to a person claiming under a foreign will,[21] regard may be had to the law of the domicil in determining to whom the grant should be given. Where it is clear from the terms of a will that the testator intended to entrust a person named therein with the powers of an executor, probate will be granted to that person. But, where the powers granted to a person in the will fall short of the powers of executors according to English law, administration (with the will annexed) will be granted to him with powers as near as may be to those granted by the will, so that he may be able to perform in this country the duties imposed upon him (*e*). But a grant will not be made to a person disqualified by English law, *e.g.*, a minor (*f*).

(*d*) *Klingemann*, 3 Sw. & Tr. 19, following *Anne Dormoy*, 3 Hag. Ec. 767

(*e*) *Earl*, 1 P. D. 450; *Briesemann*, [1894] P. 260; *Von Linden*, [1896] P. 148.

(*f*) *Duchess of Orleans*, 1 Sw. & Tr. 253.

Canadian Cases.

[21] *FOREIGN LETTERS OF ADMINISTRATION—ADMINISTRATORS DESCRIBING THEMSELVES AS EXECUTORS.*—In an action on a note endorsed to the plaintiff, in the state of New York, by the administrators of the payee, to prove the administrators' authority, an exemplification of letters of administration was put in, granted by the surrogate court of the county of Otago in New York, where the payee had died, and purporting to be signed by the surrogate, who certified it to be a copy of the original record of the letters, and a seal was affixed described as his seal of office. Attached to this was a certificate under the great seal of the state of New York, purporting to be signed by the governor, verifying the signature and office of the surrogate judge and the seal of his court:—*Held*, sufficient. *Held*, also, immaterial that the administrators had added to their names "executors" instead of "administrators," the addition being surplusage (*Hard* v. *Palmer*, 21 U. C. R. 49).

FOREIGN PROBATE.—An American probate of the will may be received as corroborative evidence of the representative character of the executor (*Sloan* v. *Whalor*, 15 C. P. 319; *McConnell* v. *McConnell*, 9 C. L. T. 409; *Re Reddan, post*, p. 175; and R. S. O., 1897, c. 127).

If the person entrusted with a grant by the court of the domicil, or entitled by the foreign law, is not the person to whom a grant would be given by English law, a registrar's order is required (*g*). The applicant should be described in the "oath" as "the person entrusted with "the administration of the estate by the court having "jurisdiction at the place of domicil of the deceased at the "time of his death," or as "the person entitled to the "administration of the estate by the law of" (the country where the deceased was domiciled at his death). The place of domicil of the deceased must be sworn, and, in cases of intestacy, the oath should contain a statement that the deceased left relations. (For form of oath, see p. 1040.)

The applicant's right to a grant in England must be proved by filing either the certificate of the foreign administration under seal, or, if there has been no grant abroad, an affidavit of the foreign law by an advocate. (For form of affidavit of foreign law, see p. 942.) [22]

(*g*) The court will apply to the word *executor* the same sense of limited duration which the French law attributes to it, and will pass over such executor if his time has expired: *Laneuville* v. *Anderson and Guichard*, 2 Sw. & Tr. 214.

The following definition of the powers or qualifications of a French executor is by a French advocate:—

"An executor with *seizin* of the property given to him by the will is "entitled for one year from the death of the deceased to act as such to "the exclusion of any other person, absolutely and without interference. "At the expiration of one year from the death of the testator, although "he remains executor, he has from that time only the limited powers "that an executor *without seizin* has. An executor without having the "seizin of the estate given to him by will has only the position of a "supervisor or overlooker in respect to the administration of the estate. "He can only act under the directions or orders of the court. He can, "however, bring any matter he considers proper to the attention of the "court."

It is no longer the practice to consider the term "*heritier universel*" as equivalent to our "executor," and to grant probate to a person so described in the will.

Canadian Cases.

[22] *FOREIGN TESTATOR.*—When a testator dies in a foreign country, having assets in this province, the court, at the instance of

The English court will be guided in some instances by the particular law which the country of domicil applies to the deceased person's estate, and not by the general law of the country (*h*). [23]

English and foreign wills.

Where a testator has made two wills [23a]—one relating to his property in England, and the other only to his only property in a colony or foreign country—upon an attested copy of the colonial or foreign will annexed to an affidavit being filed, probate will issue of the English will alone, but the probate will contain a reference to the affidavit (*i*).

Where a testator made two wills, one according to the law of Belgium (where he had resided for many years and died), disposing only of his property in Belgium, and the other in English form disposing of his English property, on the renunciation of the Belgian executor, and on an affidavit that, according to the Belgian law, the Belgian will operated on his Belgian property only, probate was decreed to the English executor of both wills, as together constituting the last will of the deceased (*k*).

Original in custody of foreign court.

Where a foreign translation of a will made in English, and valid under Lord Kingsdown's Act, of a British subject

(*h*) *Maltass* v. *Maltass*, 1 Rob. 67.
(*i*) *Astor*, 1 P. D. 150; *Callaway*, 15 P. D. 147; *De la Rue*, 15 P. D. 185.
(*k*) *Bolton*, 12 P. D. 202.

Canadian Cases.

a legatee, will restrain the withdrawal of the assets from the jurisdiction, notwithstanding that they may be creditors of the testator resident where the testator was domiciled at the time of his death, and that there are no creditors resident in this province (*Shaver* v. *Gray*, 18 Gr. 419).

[23] In making an ancillary grant, a discretion rests with the judge as to whom to appoint (*In re O'Brien*, 2 O. R. 329).

[23a] *TWO TESTAMENTARY PAPERS TREATED AS ONE WILL—SURROGATE COURT FEES—TRUST ESTATE.*—A testator executed two testamentary papers on the same day, the one as to his individual estate, the other as to property held in trust:—*Held*, that they were to be admitted to probate as making together the last will of the testator. *Held* also, that the statute imposing fees of $1 and 50 cents respectively per $1000 did not apply to the trust estate (*Re Reid*, 32 C. L. J. 200; and see *ante*, p. 31).

domiciled in Belgium had been registered in France, the original being also retained there, the court granted probate of a copy of the English original limited until the original will in question should be brought into the registry (*l*).

Original will part of foreign probate.

In the case of a Russian will proved in Russia, the court allowed a copy of it to be made from the Russian probate, and permitted that copy to be proved here. The *original* will in this case was itself part of the Russian probate, and it was allowed to be given out of the probate registry (*m*).

Foreign next-of-kin.

As the word "children" in the Statute of Distributions means children according to the English law, and therefore does not include children who, though legitimate according to the law of another country, are illegitimate according to the English law, *e.g.*, children legitimated only by the subsequent marriage of their parents (*n*), it would seem that the Probate Division would refuse administration of the estate of a domiciled Englishman to such a child as being next-of-kin.

SECTION V.—LETTERS OF ADMINISTRATION WITH THE WILL ANNEXED.

Under what Conditions granted.[23b]

(Where the deceased died before 1898, the year in which the Land Transfer Act came into force, in considering the application of what is stated herein, all references to the heir-at-law or other persons interested in the real estate, which affect their title to take out a representation to the deceased, are to be ignored, and the matter considered entirely apart from them.)

Administration (will).

It has been already shown that a will may be proved

(*l*) *Lemme*, [1892] P. 89.
(*m*) *Clarke*, 15 W. R. 881; 16 L. T. 366; 36 L. J. 72.
(*n*) *In re Goodman's Trusts*, 14 Ch. D. 619.

Canadian Cases.

[23b] The Surrogate Act, *post*, p. 680, ss. 57 and 58.

by the executor, and that probate will be granted to him; but a will may also be proved by other persons, and a grant of administration with the will annexed will be made to them in the following instances:—

1. Where no executor has been appointed;
2. Where the executor appointed by the testator has died, either in his lifetime or after his death, without proving; **Under what conditions granted.**
3. Where the executor has renounced, or been cited by the usual process of the court, and has not appeared;
4. Where the court shall use the discretion given to it by the 73rd section of the Court of Probate Act, 1857;
5. Where the executor is incompetent by reason of his minority, lunacy, residence out of the jurisdiction, or other disability (but in such cases a grant would generally be made for his use and benefit).

To whom granted.

1. To persons interested in the residue.

Failing an executor, administration (with will) is granted to the person appointed trustee of the residuary estate disposed of by the will.

Residuary legatee or devisee in trust.

If the residuary legatee or devisee in trust has power, under the will, to nominate a trustee in his stead, a grant will be made to the substituted trustee, on the renunciation of the trustee named in the will. The deed of nomination must be produced when the grant is applied for.

Where the Court of Chancery substituted other persons as trustees in the place of a surviving residuary legatee in trust, administration (will) was granted to them (*o*).

To universal or residuary legatee or devisee.

If there be no universal or residuary legatee or devisee in trust, a grant will be made to the beneficial universal or residuary legatee or devisee (*p*).

(*o*) *Woodfall* v. *Arbuthnot*, 3 P. & M. 108.

(*p*) *Bigg and Others* v. *Keen*, 1 Lee, 124; *Cunningham* v. *Ross*, 2 Lee 487.

To residuary legatee or devisee for life.

If the residuary estate be given to one person for life, and afterwards to another, the residuary legatee or devisee for life is entitled to the grant in preference to the residuary legatee or devisee substituted at his death; but if the life tenant die or renounce, or, being cited, do not appear to the citation, the grant will be made to the substituted residuary legatee or devisee.

To substituted residuary legatee or devisee.

To appointee of residuary legatee or devisee for life.

A residuary legatee or devisee for life may have a power of appointing the residue by will or deed. If such power be exercised, the appointees are entitled as if they had been substituted by the testator. Their title is shown by the will or deed in which the power of appointment is exercised.

And where a testator by his will bequeathed the whole of his property to his executors, in trust for such persons as a certain married woman named in such will should by deed or will, notwithstanding her coverture, appoint, and she executed a deed of appointment and assignment of all her interest under the will, the court granted administration with the will annexed of the testator's personal estate to the nominees or appointees under the deed, on the renunciation of the executor (*q*).

Personal representative of residuary legatee.

The personal representative of an absolute residuary legatee is entitled to take, should the interest of the latter have vested by survivorship, or, as being a child of the testator, under the 33rd section of the Wills Act, 1837.

Rules in making grants to residuary legatees.

If there be several persons equally interested in the residuary estate, any one may take without the consent of or notice to the others.

If the residue of the personalty be given to two persons, and the share of one of them has lapsed to the testator's husband, widow, or next-of-kin, a grant is made indifferently to the remaining residuary legatee or to the husband, widow, or next-of-kin, the residuary devisee, if there be real estate, being first cleared off.

The representatives of the residuary legatee in such a

(*q*) *J. J. Martindale*, 1 Sw. & Tr. 8, 9; *Pine*, 1 P. & M. 390.

case would not be entitled to a grant without clearing off the next-of-kin and all persons entitled in distribution to the lapsed portion of the residuary estate.

If there be a residuary legatee or devisee taking one portion of the residue absolutely, while a life interest is given to another in the remaining portion of the residue, the grant will be made to the one or the other indifferently, according to priority of application.

If two or more persons have been appointed residuary legatees, the personal representative of any one of them, who may be dead, will not be allowed to take a grant unless all living persons interested in the residuary estate of the deceased are cleared off.

And it is almost superfluous to say that the representative of a sole residuary legatee stands in precisely the same position as the deceased whom he represents (*r*).

If the residue be left to such only of the testator's children as shall attain twenty-one years, so as not to vest until then, but the interest and profits be directed in the meantime to be applied to their maintenance, the court will make a grant to their guardian, in preference to the person substituted on the contingency of all the children dying before they have attained a vested interest in the property bequeathed.

A residuary legatee and a residuary devisee are equally entitled to a grant.

Where there is a residuary devisee in trust he should be cleared off before a grant can be made to a residuary legatee, and where there is a residuary legatee in trust he should be cleared off before a grant can be made to a residuary devisee.

If there be no executor or residuary legatee, a grant is not made to a husband, widow, or next-of-kin without clearing off the residuary devisee, and if there be no executor or residuary devisee, a grant is not made

(*r*) The representative of a residuary legatee for life has no interest: *Wetdrill* v. *Wright*, 2 Phill. 248.

to the heir-at-law without clearing off the residuary legatee.

A grant is not made to the representative of a deceased residuary legatee without clearing off the residuary devisee.

To assignee of residue by voluntary assignment.

Where a residuary legatee has assigned all his right and interest in and to the residuary estate, the assignee, on the renunciation of the executor and the residuary legatee, may take administration (will), unless there be any person entitled to be cleared off in respect to any real estate of the deceased.

Spes successionis.

Administration (with will) is granted on account of the *spes successionis* to one of the next-of-kin of an universal legatee on his renunciation and consent, and the renunciation of any person having an interest in the residuary real estate (if any). (See also p. 87.)

The court will grant administration (with the will annexed) to a next relative who may be considered to have a *spes successionis*.

For instance, a testator leaves all his property to his mother, who is also his only next-of-kin, appointing her sole executrix. If the mother renounces and consents, administration (will) may go to her son (*s*).

A residuary legatee or devisee whose name or whose husband's or wife's name appears as a witness to a will, even if an extra and unnecessary witness, forfeits his or her legacy or devise, and therefore also his or her right to a grant of administration (will).[24]

(*s*) In *Hinckley*, the court granted administration (with the will annexed) to the next-of-kin of the testator's next-of-kin, who was entitled to the lapsed residuary estate, and who had renounced and consented (1 Hagg. E. R. 477).

Canadian Cases.

[24] *FORFEITURE OF LEGACY.*—A testator, after appointing executors, and expressing full confidence in them, provided "that in case any of the legatees offer obstructions to the proceedings of my said executors in the fulfilment of the powers hereby conferred," then that such persons should suffer the penalty of "being

But inasmuch as s. 15 of the Wills Act, 1837, only makes void a *beneficial* legacy or devise given to an attesting witness, or to the husband or wife of such, this rule does not apply to a *trustee* of the residuary estate.

2. To husband or widow, next-of-kin, or heir-at-law.

If the residuary legatee and devisee renounce, administration (will) is granted to the husband, widow, or next-of-kin, as if they were entitled under the old statute 28 Henry VIII. c. 3, but not to their representatives in case of their deaths.

If the residue be not disposed of, or the bequest of the residue has lapsed, administration (will) is granted to the deceased's husband or widow (*t*).

(*t*) Administration (will) of *feme coverte*:—

The words of the Married Women's Property Act, 1882, "a married "woman shall, in accordance with the provisions of this Act, be capable "of acquiring, holding, and disposing, by will or otherwise, of any real "or personal property as her separate property in the same manner as "if she were a *feme sole*, without the intervention of any trustee," are now unreservedly accepted. And the *jus mariti* is regarded only in cases of the partial intestacy of married women, in the same way as are the rights of next-of-kin in the cases of other deceased persons.

Grants of "special general administration (will)," as they were termed, are therefore no longer necessary; and the executor takes a general probate, which is held to avail for all the testatrix's estate which vests in her personal representative, whether disposed of by the will or not. Administration (will) is also granted on the same conditions and under like circumstances as obtain in cases of wills of men.

By the former practice of the old court, the husband was entitled to take a general grant of administration (will) to his wife if there were

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Canadian Cases.

debarred of all claims to any part or portion of my estate, under any pretence whatsoever, in the same manner as if he, she, or they had actually predeceased me without issue; and such shall be and are hereby declared to be debarred therefrom accordingly, any law or practice to the contrary notwithstanding: "—*Held*, in an administration suit by a legatee against the executors, on the application of other legatees, made parties in the master's office, that an inquiry might properly be directed whether any of the legatees had forfeited his or her share under the above provision. The original decree, not containing such a clause for inquiry, was amended in that respect on motion after the master's report (*Miller* v. *McNaughton*, 9 Gr. 545).

The next-of-kin or heir-at-law.

If there be no husband or widow, or if there be one and he or she has renounced, or died since the testator's decease, the like grant is made to the testator's next-of-kin, or to his heir-at-law if the deceased died possessed of real estate.

Where the persons interested under a will in the residuary estate cannot be found or heard of, the court will not make a grant to the testator's husband or widow, or his next-of-kin or heir-at-law, without citing the former.

3. To legatee.

Administration (will) is granted to a legatee on the renunciation of the residuary legatee or devisee.

If the residue has lapsed or is undisposed of in the will, a grant will be made to a legatee on the renunciation of the husband, widow, or next-of-kin and heir-at-law (if there be real estate), and the persons entitled in distribution to the personal estate under the Statutes of Distribution.

4. To creditor.

A creditor may take administration (will) on the renunciation of the executor and residuary legatee and devisee.

If the residue is not disposed of or the bequest of the residue has lapsed, a creditor may take administration (will) on the renunciation of the executor, husband or widow, or next-of-kin or heir-at-law, and the persons

no executor, or the executor had renounced: *Salmon and Breese* v. *Hays*, 4 Hagg. 386. In *Dawson* (2 Rob. 136; 7 N. C. 317) the grant was made to the husband agreeably to the old practice under the particular circumstances of the case, notwithstanding the residuary legatee or a legatee applied for a limited grant. But in *Dawson*, although the grant was made to the husband, the court observed, "Had there "been another party applying for the grant, I should have required "the question to be argued." In later years, and up to April, 1887, the court preferred granting a limited administration (will) to the residuary legatee.

Administration (will) of a *feme coverte* was formerly granted to the husband, or his personal representative, on the legatees under the will renouncing or being cited: *Dempsey* v. *King*, 2 Rob. 397; *M. Bailey*, 2 Sw. & Tr. 136.

These grants of administration (will) of the effects of *femes coverles* do not comprise within them the testatrix's rights, as executrixes of other testators, to appoint executors.

entitled in distribution to the personal estate under the Statutes of Distribution.

The court will grant administration to a creditor in equity (*u*).

To assignees in bankruptcy.

If a testator has died a bankrupt or insolvent, the court will grant administration (will) to his assignee, on the renunciation of the executor and residuary legatee and devisee.

So, the assignee of the residuary legatee and devisee who is a bankrupt or insolvent, is entitled to administration (will) of the testator, on the executor and residuary legatee and devisee renouncing, or being cited and not appearing.

Persons entitled after residuary legatee.

Generally speaking, if the residue is not disposed of or the bequest of the residue has lapsed or the residuary legatee or devisee renounces, the persons entitled to the grant are—

(1) The husband or widow, (2) the next-of-kin, or heir-at-law (if there be real estate), (3) the persons entitled in distribution to the personal estate, (4) a legatee or a creditor.

Cases in which the court under the 73rd section of the Court of Probate Act, 1857, may pass over an executor or residuary legatee are dealt with in Part II. under "Motions."

Administration (Will) Oath.[24a]

The oath for administration (with the will annexed) (for form of oath, see p. 1035, *et seq.*) should be so worded as to clear off all persons having a prior right to the grant (see Rule 37 (1862)), and show the capacity in which the intended administrator is entitled. In other respects the wording follows that of the oath for an executor.

If the deceased did not die possessed of any real estate and it be necessary to clear off a prior right that would

(*u*) *Fairlamb* (called *Fairland*) v. *Percy and Others*, 3 P. & M. 217.

Canadian Cases.

[24a] The Surrogate Act, *post*, p. 680, s. 58; and S. C. R., 11, *post*, p. 829.

exist if there were real estate, it should be done by a statement in the oath that "the deceased did not die "possessed of real estate."

The practice as to swearing, and description of testators and deponents, is the same as in probates. (See pp. 27–29.)

Swearing, decriptions, reason of delay, proof of identity, proof in detail of wills, incorporation, alterations, etc.

The practice as to reason of delay, proof of identity of the deceased, proof in detail of the will, incorporation, alterations, etc., is the same as in probates. (See p. 28, *et seq.*)

Administration (Will) Bond.

In all cases where administration (will) is granted the administrator is required to give bond for his faithful administration of the estate committed to his charge under the same regulations which govern an intestacy. (For form of Administration (Will) Bond, which differs from an Administration Bond, see p. 971.)

The practice as to bonds, sureties, penalty, etc., is dealt with under "Letters of Administration" (pp. 90–97).

The bond must be delivered by the administrator before the same commissioner as administered the "Oath."

Inland Revenue Affidavit.

The practice as to Inland Revenue affidavits is dealt with under "Probates" (p. 35).

Fees.

The fees payable on grants of Letters of Administration with the will annexed are the same as in the case of a probate. (See p. 35.)

SECTION VI.—LETTERS OF ADMINISTRATION.[25]

Under what Conditions granted.

Letters of Administration of the estate of a deceased person will be granted in the following instances:—

Canadian Cases.

[25] *FOREIGNERS DYING IN ITINERE.*—The law of England as to granting probate or administration is the law to be

1. Where the deceased has died wholly intestate.
2. Where the deceased has left a will appointing no

Canadian Cases.

administered by our probate and surrogate courts. When a party domiciled in New York died suddenly *in itinere* in the county of Wentworth, in this province, having trifling personal effects of less value than £5:—*Held*, that the surrogate court of Wentworth had jurisdiction to grant administration of his effects. Such administration should be granted only to an inhabitant of this province (*Grant* v. *Great Western Railway Company*, 7 C. P. 438). Affirmed on appeal (5 L. J. 210).

The deceased was a resident of Buffalo, New York, being, at the time of his death, which occurred in the county of Lincoln, Ontario, not possessed of any real or personal property in this province, the plaintiff (his widow) obtained letters of administration from the surrogate court of York:—*Held*, that the grant of letters by the surrogate court of York was valid and effectual; and, *semble*, that even if the deceased had left real or personal estate in some other county, the administration obtained in York had effect over the personal estate of the deceased in all parts of Ontario until revoked (*Jennings* v. *Grand Trunk R. W. Co.*, 15 A. R. 477).

FOREIGN MORTGAGES.—When a person resident in a foreign country dies possessed of mortgages on land situate in the province, the surrogate court of the county where the land lies may grant administration when the surrogate court of no other county has jurisdiction (*In re Thorpe*, 15 Gr. 76).

LEGACY PAID WITHOUT ADMINISTRATION.—When no letters of administration had been taken out, and a legatee was entitled to a very small sum, an order was made for payment out of the amount to the solicitor of the legatee without letters of administration, he undertaking to apply it as intended (*Ross* v. *Ross*, 4 Ch. Ch. 27).

PAYMENT UNDER AN INVALID GRANT.—The 57th and 58th ss. of the Surrogate Act (R. S. O. 1877, c. 46, now R. S. O., [1897] c. 59, ss. 63 and 64, *post*, p. 682), protect parties *bonâ fide* making payments to an executor or administrator, notwithstanding any invalidity in the probate or letters of administration, but they do not protect payments made to third parties by an infant assuming to act as administrator of the estate (*Merchants' Bank* v. *Monteith*, 10 P. R. 334).

EXECUTOR DECLINING TO ACT.—Under 21 Hen. VIII. c. 4, one or more of several executors has power to convey when

executor and disposing only of copyhold or other real property which, under the Land Transfer

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Canadian Cases.

the others decline to act (*Doe* d. *Ellis* v. *McGill*, 8 U. C. R. 224).

An action was brought to recover damages because of the death of a workman, the plaintiff alleging that she was his widow. Her status was put in issue, and she obtained *pendente lite* letters of administration as the deceased's widow, and by amendment claimed also as administratrix :—*Held*, that the rule that letters of administration relate back to the time of the bringing of the action applied so as to validate the action (*Trice* v. *Robinson* (1888), 16 O. R. 433 ; distinguished *Doyle* v. *Diamond Flint Glass Company*, 7 O. L. R. 747, 8 O. L. R. 499 ; and see *Morton* v. *Grand Trunk R. W. Company*, 8 O. L. R. 372 ; and *post*, p. 107).

SMALL ESTATE.—The fact that an estate is small, that no imputation is made against the executors, and that it is inadvisable to incur legal expenses, are no answer to a motion by a legatee against the executors for the usual administration order (*In re Falconer*, 1 Ch. Ch. 273). When one of the executors swore that the personal estate had not exceeded $50, the Court, before it would make an administration order, required the applicant to file an affidavit stating that he had reason to believe, and did believe, that the proceedings would show a substantial balance of personal estate to be divided among the legatees (*Foster* v. *Foster*, 19 Gr. 463).

TIME—SPECIAL CIRCUMSTANCES.—An order for the administration of an estate of a deceased person was refused, on the ground that twelve months had not elapsed from the death of the deceased, no special circumstances being shown (*Grant* v. *Grant*, 9 P. R. 211).

SMALL CLAIM.—The court refused to make a decree for the administration of an estate at the instance of a legatee, whose claim, including interest, amounted to only $28, and that although it was alleged there were other legacies remaining unpaid amounting in the aggregate to a considerable sum (*Reynolds* v. *Coffin*, 19 Gr. 627).

In the case of small estates an administration suit can only be justified when every possible means of avoiding the suit had been exhausted before suit brought (*McAndrew* v. *Laflamme*, 19 Gr. 193).

When a next friend had filed a bill for a minor without having observed this rule, and the suit did not appear to have been necessary in the interest of the minor, the next friend was charged with all the costs (*Ib.*).

Act, 1897, does not vest in his personal representative.

Canadian Cases.

PERSONAL REPRESENTATIVE'S APPLICATION OR JOINDER—DEFICIENCY OF ASSETS.—The fact of there being a deficiency of assets in an intestato's estate by which all creditors become entitled to share *pari passu*, is sufficient to justify an application by an administrator for an administration order, notwithstanding that the estate consists solely of personalty (*Swetnam* v. *Swetnam*, 10 C. L. J. 135).

An administrator is entitled *ex parte* to an administration order when the liabilities of the estate exceed tho assets (*Re Hallelette*, 10 C. L. J. 249).

An administration order will not be granted at tho instance of an administrator on a deficiency of assets, on the ground that the debts are within the jurisdiction of the division courts to which the A. J. Acts do not apply, as a plea of *plene administravit* would defeat the action (*Marsh* v. *Marsh*, 7 P. R. 129).

The plaintiff the administrator, as a creditor, was held entitled to the order, but tho debts amounting to about $300 only, and the estate to $700, consisting of funds in court, the accounts were directed to be taken before the referee (*Ib.*).

FRAUDULENT ADMINISTRATION.—One I., who died in 1870 in Ireland, had deposited money at the branch of defendant's bank in Cobourg in 1869. Letters of administration were granted on April 25, 1872, by the probate court of the district registry at Ballina in Ireland, to J. G., at whose house I. died, who represented himself to be his cousin-german and only next-of-kin. An exemplification thereof was recorded in the Superior Court of Montreal, and on this the bank, in September, 1872, paid over the amount to G.'s attorney in Montreal, who handed to the bank the receipt which he had obtained from G. It appeared, moreover, that G. had obtained the administration by fraud, not being I.'s next-of-kin. In August, 1872, administration was granted by the Court of Probate in Ireland at Dublin to the plaintiff I.'s brother, and in May, 1872, tho plaintiff notified defendant's manager at Cobourg not to pay over any money except to himself. The evidence showed that the probate court at Ballina had power to grant the administration, and by C. S. L. C. c. 91 the administrator of any one dying abroad is recognized and has the same power in Lower Canada as in the country where he was appointed or resides: —*Held*, (1) that the Ballina administration though obtained by

3. Where the deceased died before 1898, leaving a will containing only a devise of real property (*x*).
4. Where the deceased made a will disposing only of personalty abroad.

The court will grant administration to the persons entitled to representation in case of intestacy, notwithstanding it is suggested that, *de facto*, there is a document purporting to be a will, if the executor and the persons interested thereunder have been cited to propound it, and have not appeared to the citation (*y*).

To whom granted.

Administration is granted, subject to the rights of the heir-at-law who is equally entitled, where the deceased died on or after January 1st, 1898, and where there is real estate, with the intestate's next-of-kin, in the order following, viz. (*z*):—

1. To *husband* or *wife* of the intestate.

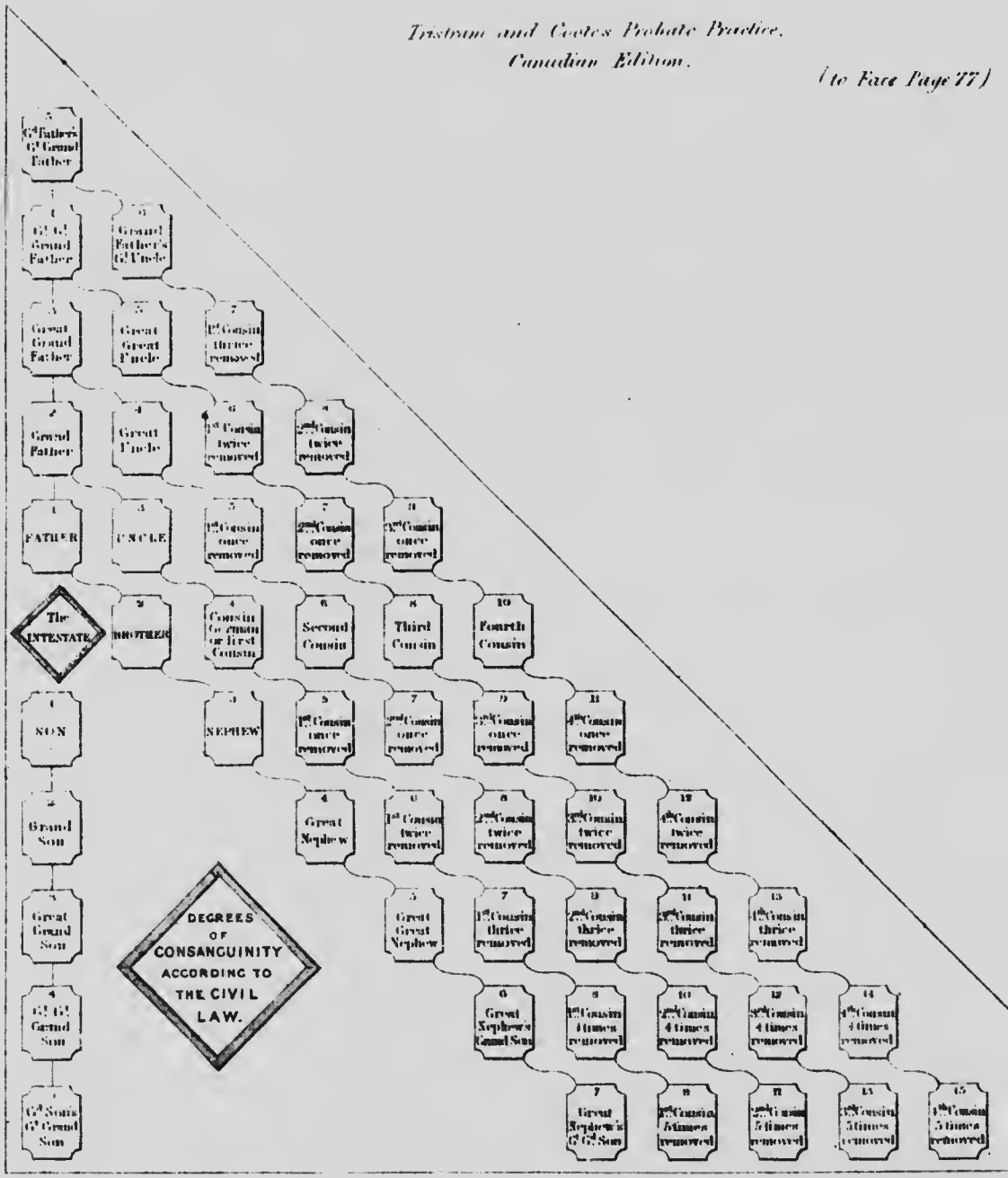
(*x*) *Bootle*, 3 P. & M. 177. See also *Jordan*, 1 P. & M. 555. Where a deceased made a will disposing only of real estate in Scotland, and appointing no executor, administration was granted as in the case of an intestacy, the deceased being described in the grant as having died intestate, save as to the real estate in Scotland. A copy of the Scotch will was filed.

(*y*) *Whiting* v. *Deal and Orchard*, 2 Spinks, 57; *Perry* v. *Dyke*, 1 Sw. & Tr. 12; *Morton* v. *Thorpe and Others*, 3 Sw. & Tr. 180, 181, and the cases therein referred to. Where the deceased died insane, leaving a will, which was, upon the face of it, marked with insanity, the court granted administration as in an intestacy, but directed the will to be filed: *Bourget*, 1 Curt. 591.

(*z*) This list includes only those persons who are entitled by relationship or marriage.

Canadian Cases.

fraud was valid until revoked by some expressed judicial act, and was not revoked by the mere issue of the Dublin grant. (2) That by the law of Lower Canada, J. G. was entitled under that grant to receive payment at Montreal. (3) That although the money was payable at Cobourg, the defendants paid it rightfully at their head office at Montreal. (4) That defendants were bound to pay it on demand made under the Ballina grant, notwithstanding the notice served on them. (5) That it was a payment made in Montreal


DEGREES OF CONSANGUINITY ACCORDING TO THE CIVIL LAW.
The INTESTATE
FATHER
UNCLE
BROTHER
SON
NEPHEW
Grand Father
Great Grand Father
Grand Father's Uncle
Great Great Uncle
Great Uncle
Grand Son
Great Grand Son
Great Nephew
Great Great Nephew
Great Nephew's Grand Son
Great Nephew's G.G. Son
Cousin German or first Cousin
Second Cousin
Third Cousin
Fourth Cousin

2. To *child or children* (as next-of-kin) of an intestate widower or widow.
3. To *grandchild or grandchildren* (as next-of-kin) of widower (or widow) dying without child.
4. To *great grandchildren* or other descendants (as next-of-kin) of widower (or widow) dying without child or grandchild.
5. To *father* (as next-of-kin) of bachelor or spinster.
   To *father* (as next-of-kin) of widower (or widow) dying without issue.
6. To *mother* (as next-of-kin) of bachelor (or spinster) dying without father.
   To *mother* (as next-of-kin) of widower (or widow) dying without issue or father.
7. To *brothers or sisters* (as next-of-kin) of bachelor or spinster dying without parent.
   To *brothers or sisters* (as next-of-kin) of widower or widow dying without issue or parent.
8. To *grandfathers or grandmothers* (as next-of-kin) of bachelor or spinster dying without parent, brother, or sister.
   To *grandfathers or grandmothers* (as next-of-kin) of widower or widow dying without issue or parent, brother, or sister.
9. To *uncles, aunts, nephews, nieces, great-grandfathers, great-grandmothers* (as next-of-kin) of bachelor or spinster dying without parent or grandparent, brother or sister.
   To *uncles, aunts, nephews, nieces, great-grandfathers, great-grandmothers* (as next-of-kin) of widower or widow dying without issue, parent or grandparent, brother or sister.[25a]

Canadian Cases.

in good faith to the ostensible creditor under articles 1144 and 1145 of the *L. C. Code Civile* (*Irwin* v. *Bank of Montreal*, 38 U. C. R. 375; and see *Book et al.* v. *Book*, 15 O. R. 119).

[25a] The Devolution and Estates Act, R. S. O., 1887, c. 127; and Crown Administrations, R. S. O., 1897, c. 70.

10. To *cousins german* (as next-of-kin) of bachelor or spinster dying without parent or grandparent, brother or sister, uncle or aunt, nephew or niece.

To *cousins german* (as next-of-kin) of widower or widow dying without issue, parent or grandparent, brother or sister, uncle or aunt, nephew or niece.

11. To *persons entitled in distribution* to the personal estate who are not next-of-kin.

Right of husband.

The statute 31 Edw. III. c. 11, directed the ordinaries to "depute of the next and most lawful friends of the "deceased person intestate to administer his goods." The right of a husband to a grant of administration of his deceased wife's *personal* estate is considered to be founded on this statute, and was expressly confirmed by the statute 29 Car. II. c. 3, which directs that the husbands of *femes covertes* dying intestate "may demand and have "administration of their rights, credits, and other personal "estates, and recover and enjoy the same as they might "have done before" the making of the Statute of Distributions (22 & 23 Car. II. c. 10).

The husband's right to administer his wife's estate will not vest in his trustee in bankruptcy (*a*).

Where a wife leaves real estate, but no personal estate, the husband, unless he is the tenant by courtesy of the real estate, has no interest.

Wife judicially separated.

Where a wife has been separated, by voluntary deed or by a decree of the court, or has obtained a protection order against her husband, administration limited to that portion of the wife's property comprised in the deed, or which by virtue of the decree of judicial separation or protection order vested in her as a *feme sole* is granted to her next-of-kin, and a further administration in respect to the rest of her estate is granted to the husband (*b*).

(*a*) In special circumstances a grant may be made to his trustees: *Jane Turner*, 12 P. D. 18. See also *post*, p. 81, *et seq.*

(*b*) *Harding, deceased*, 2 P. & M. 394.

If the husband of an intestate wife has survived her, but has died without having taken administration, the court, on the ground of his interest, will grant administration to his legal personal representative: provided the wife left no real estate, but if she possessed any, her heir-at-law has priority, and must be cleared off before such a grant be made (*c*). To the husband's legal personal representative.

But this rule being founded on the assumption that the beneficial interest vested in the husband and devolved to his representative, and on the principle that the grant ought to follow the interest, is liable to be departed from in cases where it can be shown that the beneficial interest ceased on the husband's death, and that the wife's separate property has, upon his decease, by the terms of the instrument constituting it, reverted to her own family (*d*). Exception.

Another instance of a husband's representative being passed over is where the 33rd section of the Wills Act applies.

Thus, where a daughter who had a legacy under her father's will died in his lifetime leaving issue and also her husband surviving, but who afterwards died likewise in the father's lifetime, the court gave administration limited to the legacy to a son of the daughter without requiring the renunciation or consent of the husband's representative (*e*).

On the renunciation of the legal personal representative of a husband who survives his wife, and of her heir-at-law, if there be real estate, administration of the wife's estate is granted to her next-of-kin if the husband dies intestate: if he dies testate, it is given to the residuary legatee under Representative of husband renouncing.

(*c*) *Allen* v. *Humphreys*, 8 P. D. 10.

(*d*) *Fielder and Fielder* v. [illegible], 8 Hagg. E. R. 769; *ibid.*, vol. iii. 290; *Mary Pountney*, 4 Hagg. E. R. 200; *Austen and Hosmar* v. *Hodges* (December, 1860). In this case a general administration of the effects of a *feme coverte* was granted to her next-of-kin, notwithstanding the opposition of the husband's representatives.

(*e*) *Councell*, 2 P. & M. 814.

his will, and on the renunciation of the latter to the wife's next-of-kin.

Right of widow.

The statute 21 Hen. VIII. c. 5, s. 3, directed the ordinary to grant administration of the goods of the person deceased "to the widow or the next-of-kin or to both," as by the discretion of the same ordinary should be thought good.

The widow of the intestate takes administration in preference to the next-of-kin or heir-at-law, unless a case of unfitness on her part is established so as to induce the court (in exercise of the discretion given to it by 21 Hen. VIII. c. 5, s. 3) to exclude her (*f*).

A divorced husband or wife has no title to a grant, for the obvious reason that the relations of husband and wife no longer existed at the time of the death.

Right of next-of-kin and heir-at law.

The right of the next-of-kin is expressly confirmed by the statute 21 Hen. VIII. c. 5, s. 3 (*supra*). And the Land Transfer Act, 1897, enacts (s. 2 (4)) that the "heir-"at-law, if not one of the next-of-kin, shall be equally "entitled to the grant with the next-of-kin," where a person dies possessed of real estate.

If the intestate has left no widow or husband, as the case may be, the next-of-kin and heir-at-law, if there is real estate, are equally entitled to administration.

Heirship.

The heir-at-law, on applying for a grant, will prove his title by an affidavit of heirship. (Form, p. 963.)

Custom of gavelkind.

Administration of a wife's estate was granted to her son as one of her heirs, according to the custom of gavelkind, on the renunciation of her husband (*M. E. Sutton, deceased*, April, 1899).

Those persons only are to be ranked as next-of-kin of

(*f*) *Conyers* v. *Kitson*, 3 Hagg. 557; *Lambell* v. *Lambell*, 3 Hagg, 568; *Bodden*, 28 L. T. (N.S.) 368; *Stevens*, [1898] P. 126. But as a rule the widow is not passed over on the grounds of misconduct without being cited (*Ihler*, 3 P. & M. 50; *Middleton*, 14 P. D. 28).

an intestate who were such at the time of the intestate's death.

Although the next-of-kin and heir-at-law are equally entitled to a grant, yet, in the case of the renunciation of the husband of an intestate, the heir-at-law must be cleared off, if there is real estate, before a grant is made to the next-of-kin who has no interest in the estate.

But on the renunciation of the widow of an intestate, it is not necessary to clear off the heir-at-law before making a grant to the next-of-kin.

For "Foreign Next-of-kin," see p. 64.

Foreign next-of-kin.

On the renunciation of the husband of an intestate a grant is not made to the husband's receiver in bankruptcy without clearing off the heir-at-law.

To husband's receiver in bankruptcy.

The heir-at-law of a married woman who died intestate leaving real estate is entitled to a grant in preference to the representative of her husband, who survived her and died without taking a grant (*g*).

A grant is not made to a person who (though not one of the next-of-kin) is entitled in distribution to the personal estate, without clearing off the heir-at-law as well as the next-of-kin of the intestate.

To person entitled in distribution.

A grant is not made to the representative of a next-of-kin of an intestate without clearing off the heir-at-law.

To the representative of next-of-kin.

It is almost superfluous to say that the executor or administrator of a deceased person, who was entitled to the whole of an intestate's property, is also entitled to a grant of administration as fully as such deceased person would have been.

The court will grant administration to a stranger nominated by all the next-of-kin (*h*), but only if there be special circumstances to justify the grant, viz., under 20 & 21 Vict. c. 77, s. 73 (*i*).

To the nominee of next-of-kin.

(*g*) *Roberts*, [1898] P. 149.

(*h*) *Farrell* v. *Brownhill*, 3 Sw. & Tr. 468.

(*i*) *Hopkins*, 3 P. & M. 235; *Teague and Ashdown* v. *Wharton*, 2 P. & M. 360; *Richardson*, 2 P. & M. 244; *Bullar*, 22 L. T. (N.S.) 140; *Hale*, 3 P. & M. 207; *C. Potter*, [1899] P. 265.

To the husband of a next-of-kin.

The court gives administration to the husband of a sole next-of-kin, being the sole person entitled to the estate, on her renouncing and consenting or being cited and not appearing to the process (*k*). But in a case where there are other persons interested in the estate, they also must renounce and consent.

Notice to other next-of-kin.

Rule 28 (1862) directs, that "where administration is "applied for by one or some of the next-of-kin only, there "being another or other next-of-kin equally entitled "thereto, the registrars may require proof by affidavit or "statutory declaration that notice of such application has "been given to such other next-of-kin."

To persons entitled in distribution to the personal estate.

If the widow, next-of-kin, and heir-at-law, having an interest, have renounced or be all dead, administration will be granted to any person entitled in distribution to the intestate's personal estate. Persons entitled in distribution to the personal estate are allowed a preference over the legal personal representatives of the next-of-kin (*l*).[20]

(*k*) *Haynes* v. *Matthews*, 1 Sw. & Tr. 462; *Wenham* v. *Wenham*, 6 N. C. 17.

(*l*) *Carr*, 1 P. & M. 291.

Canadian Cases.

[20] *RECEIVER OF LEGATEE'S SHARE.*—The right of a judgment creditor of a legatee or devisee under a will to bring an action for the administration of the estate of the testator is doubtful. A receiver appointed at the instance of the judgment creditor to receive the interest of the judgment debtor in the estate of his father for satisfaction of the judgment debt, was given leave to bring an action for administration, no opinion being expressed as to his status (*Mones* v. *McCallum*, 17 P. R. 102).

A receiver appointed by the Court to aid a judgment debtor in recovering his claim, by receiving the judgment debtor's share in an estate which could not be reached by execution, after the refusal of the judgment debtor to allow the use of his name, was authorized on giving security to him to take proceedings in his name for the administration of the estate, and, if necessary, for the removal of the executor, reversing above case (*Mones* v. *McCallum*, 17 P. R. 398).

A summary order was made for the administration of the personal estate of a testator. The order was not entered as a judgment, as it

The distribution of an intestate's personal estate is regulated by 22 & 23 Car. II. c. 10; 29 Car. II. c. 3; 1 Jac. II. c. 17; and 53 & 54 Vict. c. 29, and may be concisely stated as follows:—

If the intestate die leaving a *husband*, he is entitled to all the estate.

If the intestate leave a *wife*, she is entitled to one-third, and the next-of-kin, if descendants, to the remainder:

Canadian Cases.

should have been by Rule 583, owing to a mistake of an officer of the Court. A company who were execution creditors of one of the legatees and devisees of the testator obtained an order appointing the company receiver of the share of the execution debtor, and served notice of this receivership upon the executors of the testator, but received no notice of the proceedings under the administration order. The company, however, was informed of the proceedings, and, upon an *ex parte* motion, procured the administration order to be properly entered as a judgment, and then applied for the carriage of the proceedings under it:—*Held*, that the status of the company was not that of assignee of the legatee, but only of a chargee or lien-holder upon the fund or property to which the legatee was entitled, and that the company would not have been entitled in the first instance to ask *in invitum* for a summary order to administer; and the slip which was made in not having the order to administer properly entered did not give them any additional right in that respect, but notice of the proceedings should have been given to the company in order that they might be bound by what was done (*Re Morphy*, *Morphy* v. *Niven*, 11 P. R. 321).

A receiver appointed, as the company were here, has a right to assert his claims actively, though he may require in some instances the sanction of the Court; and a contention having been raised as to a forfeiture of the interest of the legatee, leave was given to the company to assert their claim by an action (*Re Morphy*, *Morphy* v. *Niven*, 11 P. R. 321).

MOTION FOR DISTRIBUTION.—On a motion for distribution under the report of the master, an application was made on behalf of the plaintiff for the allowance of a lump sum for the costs and disbursements of the motion. The judge in chambers made the usual order, and declined to allow any sum for costs and disbursements over and above the amount found in the report (*Re Fleury*, *Fleury* v. *Fleury*, 9 P. R. 87).

the issue of deceased next-of-kin, being descendants, sharing with them by representation.[27]

If there be no descendants, and the intestate died on or before September 1st, 1890, she is entitled to one-half, and the next-of-kin take the other half. For example, if the intestate leave a wife and father, a moiety goes to each. If he leave a wife, mother, brother and sister, the wife is entitled to half, and the mother, brother and sister take the other half equally among them. If the intestate leave a wife, mother, brothers and sisters, nephews and nieces, the wife is entitled to half, and the mother, brothers and sisters, and nephews and nieces, being children of a brother or sister, who predeceased the intestate, to the other half equally; the nephews or nieces, as representing a deceased brother or sister, jointly taking a share equal to that of each of the others. But if the husband dies after September 1st, 1890, without issue, and the net value of his real and personal estate does not exceed £500, the wife is entitled under the Intestates' Estates Act, 1890 (53 & 54 Vict. c. 29), to the whole, but where it exceeds £500, she has a charge upon the whole estate for £500, with interest at 4 per cent. until payment, in addition to her share in the balance of the residue. This Act applies, however, only where the husband dies wholly intestate (*m*).[28]

(*m*) *Twigg* v. *Black*, [1892] 1 Ch. 579.

Canadian Cases.

[27] *DOWER PAYMENT BEFORE SALE.*—In an administration suit the testator's widow agreed that the real estate should be sold free from her dower, and the master by his report approved of this, but the sale was delayed at the instance of the creditors in order to obtain a better price; the widow therefore petitioned for payment of a small sum towards the allowance that might be made to her in lieu of dower; the creditors were too numerous to be all served with the petition, but many of them, including the plaintiff, having consented thereto, and there being no opposition, the Court granted what was prayed (*In re Thompson, Biggar* v. *Dickson*, 1 Ch. Ch. 323).

[28] The Devolution of Estates Act, R. S. O., [1897] Ch. 127, does

If there be no descendants, father, mother, brother, sister, nephew or niece (children of a brother or sister, who died in the intestate's lifetime), then subject to the provisions in her favour stated in the preceding paragraph, the wife is entitled to one-half, and the next-of-kin, *i.e.*, all those in the same degree of kindred, are entitled to the other half equally among them.

If there be no next-of-kin, or the intestate be a bastard, one-half goes to the wife, and the other half to the Crown.

Children take between or among them equally, grandchildren and more remote descendants taking with them *per stirpes.*

Grandchildren take *per stirpes* and not *per capita* (*n*), great-grandchildren and more remote descendants taking with them *per stirpes.*

The same observation applies to further descendants.

If there be no widow or child the *father* takes all the estate.

So the *mother* (if no father) takes all, if there be no brothers or sisters, or nephews and nieces taking *per stirpes.* No other kindred than these is entitled to share with the mother.

Brothers and sisters share among themselves equally, nephews and nieces, being children of brothers or sisters who died in the lifetime of the deceased, taking with them *per stirpes.*

Grandfathers and grandmothers share among themselves equally. If there be only one, that one takes all.

Grandparents do not share with brothers or sisters of deceased (Lord Chancellor JEFFREYS).

Nephews and nieces share together with uncles, aunts, great-grandfathers and great-grandmothers equally, they

(*n*) *Walker* v. *Gammage*, 37 Ch. D. 517.

Canadian Cases.

not apply where there is a partial intestacy, as in this case, where a testator failed to dispose of his residuary estate (*Re Twigg's Estate*, [1892] 1 Ch. followed; *In re Harrison*, 2 O. L. R. 217).

being all in the third degree; and so on with other kindred according to their degree, all those in the same degree taking an equal share (*o*).

Administration is granted, on the renunciation of the mother (being the only next-of-kin) and the heir-at-law where there is real estate, of the estate of a bachelor or spinster, to a brother or sister, or a nephew or niece entitled in distribution to the personal estate.

If the widow, next-of-kin, and all other persons entitled to share distributively be dead, administration will be granted, subject to any right the heir-at-law may have, to the legal personal representative of any one of them, for in such a case they all rank equally.

Distinction between co-executors and co-administrators.

It is the practice to allow one of two or more executors, without reference to the other or others, to take administration to a deceased whom their testator was entitled to represent (*p*). But this rule is not applied to the case of co-administrators, who take administration in such circumstances jointly (*q*). Any one of two or more co-administrators, however, is allowed to take administration on the other or others renouncing or consenting (*r*).

(*o*) The former customs of London, the province of York, and certain other places, were abolished by 19 & 20 Vict. c. 94. By that Act, "An "Act for the uniform Administration of Intestates' Estates," it was enacted, "that from and after the 31st day of December, 1856, the "special customs concerning the distribution of the personal estate of "intestates observed in the City of London, or in relation to the citizens "and freemen of such city, and in the province of York, and certain "other places, shall, with reference to all persons dying on or after "the 1st day of January, 1857, wholly cease and determine, and the "distribution of the personal estate of all persons so dying shall take "place as if such custom had never existed, and as if the rules for the "distribution of the personal estate of intestates generally prevalent "in the province of Canterbury had prevailed throughout England and "Wales, any law or statute to the contrary notwithstanding."

(*p*) *F. Naylor*, 2 Rob. 410; 15 Jur. 686.

(*q*) *Ibid.*

(*r*) *Hancock* v. *Lightfoot*, 3 Sw. & Tr. 557. In *J. R. Crook* (August 2nd, 1855) Sir JOHN DODSON decreed administration to one of three administrators without notice to the others, of whom one was a lunatic, and the other was resident abroad.

On the ground of interest, administration will be granted to a person having an indirect and derivative interest in an intestate's estate, as being one of the next-of-kin, or the residuary legatee, of a next-of-kin of the intestate. But the applicant must be unable to become the personal representative of his own deceased, through the latter being already legally represented, and such legal representative refusing to take the requisite grant (*s*). **To persons having a derivative interest.**

Administration of a wife's estate is granted to the residuary legatee of the husband on the executor, who has proved the will of the latter, renouncing administration (*t*), and subject to the right of any person entitled to the real estate (if any).

A creditor of a sole person entitled to an intestate's estate may take administration to the intestate, on the renunciation and consent of that person or his representative (*u*).

On the renunciation and consent of a person entitled to the whole estate of an intestate, a grant may be made to the next-of-kin of that person. **To persons having spes successionis.**

Thus, on the renunciation and consent of the father of an intestate who has died a bachelor, administration will be granted to his brother as "the natural and lawful son "of , who is the natural and lawful father and "next-of-kin of the deceased," though he has no interest in the estate. It is so granted on the principle that the intestate's brother may be considered to have indirectly, as his father's next-of-kin, a *spes successionis* to the property in question.

On the renunciation and consent of the husband of an intestate, a grant may be made to his daughter.

For form of renunciation and consent, see Appendix, p. 1071.

On the same grounds, also, administration will be

(*s*) *Vide* "Administration (Will)" and "Administration *de Bonis non*," *post*.

(*t*) *Amelia Vizer* (wife of Robert Vizer), August, 1853.

(*u*) *Emma Fraser*, 1 P. & M. 327; 16 L. T. 154; 36 L. J. 63.

granted to the sister of the deceased as the daughter of the father (*x*).

On the renunciation and consent of the father of the sole next-of-kin of a widow who died intestate without issue, administration has been granted to a grandchild of the father, son of his deceased son.

If a widow, intestate, leave a daughter who is her only next-of-kin and the sole person entitled to her personal estate, administration will be granted to the daughter's son and only next-of-kin, on her own and her husband's consent, and subject to clearing off the heir-at-law.

The court will grant administration to the child of a brother, a next-of-kin of intestate, on his renunciation and consent, and that of all other next-of-kin and all other persons entitled beneficially to the deceased's estate.

Administration has been granted to the son of a deceased father of an intestate on the renunciation and consent of the deceased father's representative (his widow), the son being entitled in distribution to the father's estate.

On the same principle the court has granted administration to a nephew, who was not entitled in distribution (*y*).

(*x*) *Roeters* v. *Cotton* (Dr. Cottrell's MS. Cases), decided by Dr. BETTESWORTH, December 2nd, 1730. The father of an intestate renounced, and his sister took a grant. The father's assignees in bankruptcy called it in, and asked for a revocation. The court held it to be well made, and refused.

(*y*) *H. J. Cookson*, November, 1841. In "*Keane's Case*," the court granted administration to a nephew, being the son of the deceased's brother, who was the sole next-of-kin, and only person entitled to the personal estate of the deceased, on the renunciation and consent of that brother: *Mary Keane*, 1 Hagg. Ec. 692; *G. Johnson*, 2 Sw. & Tr. 559; *Williams*, 2 P. & M. 81.

In "*Blagrave's Case*," the court granted administration to the son of a deceased brother, who was the sole next-of-kin, on the renunciation of his executrix and universal legatee, and of certain nephews and nieces entitled with him in distribution: *A. Blagrave*, 2 Hagg. Ec. 83. The court said, "Though the party has not a direct interest, he is acting "under a person entitled to a moiety of the property."

The principle which governed the court in making the grants in *Keane* and *Blagrave* may be further elucidated by the unreported case of *John Scale: John Scale*, bye-day after Hilary Term, 1835.

In this case a nephew of the intestate applied for administration on

No *spes* through a husband.

A wife has no *spes* through her husband, and the practice of treating the husband as if he had one through his wife would seem to be founded on the former's *jus mariti* rather than on a *spes successionis*.

To creditors.

If the widow, and the next-of-kin of an intestate, and all persons entitled to share with them in distribution, or the representatives of any of them, who have died subsequently to the deceased, renounce, or have been cited and have not appeared, a creditor is competent to take administration, provided the heir-at-law is also cleared off.[29]

the renunciation of the widow and daughter. But the court rejected the application, on the ground that the nephew's chance of succeeding to any part of the deceased's estate, as being through his cousin the daughter, "was too remote and contingent to be considered an interest "in the deceased's estate, and that he could not, by any fiction of law, "be held to be the daughter's natural agent."

So, in *Gibbon*, the court refused to grant to a nephew of the intestate's next-of-kin, but allowed the daughter of the latter to take administration: reported in Waddilove's Digest, p. 9, s. 56.

Canadian Cases.

[29] *PERSONAL REPRESENTATIVE ALSO A CREDITOR.* —The personal representative may file a bill as a creditor simply upon the testator's estate against a devisee of lands under the will, after the personal estate is exhausted (*Tiffany* v. *Tiffany*, 3 Gr. 158).

A creditor recovered judgment against his debtor, who having afterwards died intestate, the creditor had himself appointed administrator of his estate, and thereupon, without suing out execution against lands, filed a bill against the real representatives of the intestate for relief under 13 Eliz.:—*Held*, that the peculiarity of his position as both creditor and personal representative did not entitle him to relief in this court without first suing out execution on his judgment. But, the pleadings being sufficient to warrant it, the decree for administration was made with such costs as would have been incurred in taking out the ordinary administration order, the plaintiff paying to the defendants their costs of answer and of the hearing (*Duffy* v. *Graham*, 15 Gr. 547).

Under s. 59 of the Surrogate Act, *post*, p. 681, the surrogate court has a general power as to appointment of an administrator where, by reason of the insolvency of the estate of the deceased, it is necessary or convenient to exercise such power. See also ch. 129,

A creditor's title is said to be inferior to that of all others (*z*); and the ground for granting administration to him is the obvious one, viz., that he may be enabled to recover his debt (*a*).

Bond *pro ratâ.*

The court now requires every creditor-administrator, before taking administration, to enter into a bond to pay the debts of the deceased rateably without any preference of his own debt (*b*).

With regard to this subject, the condition was formerly "not *unduly* preferring his own debt." In the case, however, of *Davis* v. *Parry*, [1899] 1 Ch. 602, ROMER, J., decided that a creditor-administrator did not "*unduly*" prefer his own debt by retaining it out of assets in his hands in priority to other creditors, and was, therefore, entitled to retain his own debt, notwithstanding the wording of the administration bond he had entered into.

For form of bond, see Appendix V., p. 972.

By specialty or on simple contract.

It is a matter of indifference whether he be a creditor by specialty or on simple contract.

It is equally indifferent what the amount of his debt is, or whether it be barred by statute (*c*);[80] these questions

(*z*) *Graham* v. *Maclean*, 2 Curt. 663; *Dimes* v. *Cornwall and Lyon*, 7 N. C. 381; 2 Rob. 142. In *Farrands* a principal creditor having the consent of other creditors was, in the case of an insolvent estate, preferred to the next-of-kin: *Farrands*, 1 P. D. 439.

(*a*) *Webb* v. *Needham*, 1 Add. 497.

(*b*) *Brackenbury*, 2 P. D. 272; 36 L. T. 744; 25 W. R. 698.

(*c*) *Coombs* v. *Coombs*, 1 P. & M. 288; 15 W. R. 287; 15 L. T. 329; 36 L. J. 21; also 14 W. R. 975; 14 L. T. 635; 35 L. J. 78. The court will order such a creditor to give a bond to distribute the assets *pro ratâ* amongst the other creditors: see "Bond *pro ratâ*."

Canadian Cases.

R. S. O. [1897], ss. 33, 34, and ch. 132, R. S. O. [1897], and *post*, p. 208.

[80] *PROVING CLAIM AFTER TIME.*—A creditor who had not come in pursuant to advertisement, was allowed to do so after the master had reported as to the debts, and after a decree on further directions, but he was required to pay all costs of his application (*Andrews* v. *Maulson*, 1 Ch. Ch. 316).

only become a subject for consideration when two or more creditors contend, *inter se*, for a grant, and cannot otherwise arise. For a creditor does not make a special affidavit of his debt on taking administration, but swears in general terms only, in his oath, that he is a "creditor."

Creditor in equity.

The court will grant administration to a creditor in equity (*d*), but not to a person who has bought up a debt after the death of the intestate (*e*).

Where creditors have contended, *inter se*, for administration the court has preferred one having a judgment debt (*f*), or a specialty debt (*g*), or a debt of a larger amount (*h*) than the other creditors can show.

(*d*) *Fairlamb* v. *Percy and Others*, 3 P. & M. 217.

(*e*) *Baynes* v. *Harrison*, 1 Deane, 16. But see 36 & 37 Vict. c. 66, ss. 25, 26.

(*f*) *Lord Carpenter* v. *Shelford and Others*, 2 Lee, 503. So Dr. BETTESWORTH ruled in *Standwick* v. *Coussemaker*, November 4th, 1790 (Dr. Cottrell's MS.).

(*g*) But see 32 & 33 Vict. c. 46, which provides, that "in the administration of the estate of every person who shall die on or after the 1st "day of January, 1870, no debt or liability of such person shall be "entitled to any priority or preference by reason merely that the same "is secured by or arises under a bond, deed, or other instrument under "seal, or is otherwise made or constituted a specialty debt; but all the "creditors of such person, as well specialty as simple contract, shall be "treated as standing in equal degree, and be paid accordingly out of "the assets of such deceased person, whether such assets are legal or "equitable, any statute or other law to the contrary notwithstanding."

(*h*) *Kearney* v. *Whittaker*, 2 Lee, 325.

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The Trust and Loan Company, a company duly notified in a creditor's suit to come in and prove their claim in the master's office under the decree, neglected to do so, relying upon a supposed remedy at law. They were accordingly foreclosed by the decree upon further directions, and subsequently an assignee of their claim, the legal remedy having proved illusory, applied to be allowed to prove the claim notwithstanding the foreclosure and the lapse of more than two years. The application was granted, as it appeared that no other rights had intervened, that no other incumbrancers would be prejudiced, and that the only opposition to the motion was on the part of the debtor. The application under the circumstances was *held* to be properly made in chambers, but that if

The court has preferred a simple contract creditor having a large debt against the deceased to a judgment creditor under 1 & 2 Vict. c. 110, s. 18 (*i*).

Administration of wife's effects to her husband's creditor.

Administration of a wife's estate will be granted to a creditor of her husband, or to the husband's assignee in bankruptcy or insolvency, on the husband renouncing, or failing to appear to citation, unless the wife's heir-at-law has right to the grant, in which case he must also be cleared off.

To creditor of *feme coverte*.

The court will grant administration of the effects of a *feme coverte* to her creditor for a debt incurred since her marriage, on the husband being first cited or renouncing, and subject to the heir-at-law being cleared off.

Administration has been granted of the effects of a *feme coverte* to an antenuptial creditor of her own, her husband having been first cited (*k*).

The Married Women's Property Act, 1882, gives a creditor of the separate estate of a deceased *feme coverte* the same right to representation as a creditor of a *feme sole*.

To intestate's assignees in bankruptcy and insolvency.

If the intestate has died a bankrupt or insolvent, the court will grant to his provisional or official assignee (*l*), on the renunciation of his next-of-kin and heir-at-law, if there is real estate. For though the assignee has the entire legal right and interest in the intestate's property, the next-of-kin and heir-at-law have statutory rights to the administration (*m*); unless, of course, the court shall see fit to exercise the discretion given to it under the 73rd section of the Court of Probate Act, 1857.

(*i*) *Ernest* v. *Eustace*, 1 Deane, 273.
(*k*) *Huddlestone* v. *Huddlestone*, 2 Rob. 424.
(*l*) *Belcher* v. *Maberley*, 2 Curt. 629.
(*m*) *Drewe and Others* v. *Long*, and also against *Rolfe and Cayford*, 1 Spinks, 397.

Canadian Cases.

the claim had been adjudicated upon its merits, the motion should have been made in court (*Cameron* v. *Wolfe Island Co.*, 6 P. R. 91).

Upon the subject of assignees of a deceased (a bankrupt), Sir J. DODSON has remarked, "They certainly are not "merely creditors, for although they may be appointed "for the benefit of the creditors, yet their appointment as "assignees divests them of the character of mere creditors, "and clothes them with a new one. By Act of Parliament, the whole property of the bankrupt vested in "them; they represent the estate, and are enabled to act, "in all respects, on behalf of the estate" (*n*).

To the assignee of next-of-kin (a bankrupt).

If the sole next-of-kin being the only person entitled to the estate of the intestate be a bankrupt or insolvent, the court will grant to his assignee on his renunciation and consent.

The court will also grant administration to the assignee under a deed of assignment registered pursuant to law.

To a receiver.

A general administration was granted to a "receiver," who had authority from the Court of Chancery to collect, etc., the widow and all parties having been cited (*o*).

To an official manager.

Upon the same reasoning the court will grant to the official manager of a joint stock company which is in the course of being administered under the Winding-up Acts, administration of the effects of a deceased contributory, such official manager being a creditor to the extent of the required contribution from the deceased (*p*).

To assignee by voluntary assignment.

If a sole next-of-kin and only person entitled to the estate has assigned the whole of his right and interest in the intestate's estate, the court will grant to the assignee on the renunciation and consent of the former (*q*).

To guardians of union or parish.

The court will grant administration of a pauper's effects to the nominee of the guardians of the union or parish in which he shall have died chargeable to the union,

(*n*) See note (*m*) on p. 92.

(*o*) *Mayer, deceased*, 3 P. & M. 39.

(*p*) *Angas* v. *Henderson*, May 31st, 1851. A citation to the above effect was decreed by Sir H. JENNER-FUST, but the case proceeded no further.

(*q*) *Almes* v. *Almes*, 2 Hagg. Ec. 155, Appendix.

as being creditors under 12 & 13 Vict. c. 103, ss. 16 and 17 (*r*).[30a]

Creditor of bastard's estate.

If a creditor is desirous of obtaining administration of the estate of a bastard, who has died a bachelor, or spinster, or a widower or widow without issue, he will proceed as directed by the 75th Rule (1862) (*s*).

By that rule it is provided that "in all cases where "application is made for letters of administration (either "with or without a will annexed) of the goods of a "bastard dying a bachelor or a spinster, or a widower or "widow without issue; or of a person dying without "known relation, notice of such application is to be given "to Her Majesty's procurator-general (or in case the "deceased died domiciled within the duchy of Lancaster, "to the solicitor for the duchy in London), in order that "he may determine whether he will interfere on the part "of the crown; and no grant is to be issued until the

(*r*) These sections are to the following effect:—Where, in the event of death, a pauper shall have in his possession or belonging to him any money or valuable security for money, or property, the guardians of the union or parish wherein such pauper shall die may reimburse themselves the expenses inourred by them in and about the burial of such pauper, and in and about the maintenance of such pauper at any time during the twelve months previous to the decease. And it shall be lawful for the guardians of any union or parish to pay the costs of the burial of any poor person dying out of the limits of such union or parish who was at the time of the death in receipt of relief from such guardians; and that the cost of burying any such poor person by or under the direction of any guardians or overseers shall be recoverable in like manner and from the same parties, as the cost of any relief (if given to such person when living) would have been recoverable.

(*s*) A creditor of a bastard or a person having no relations, takes a grant of the personal estate only, the real estate (if any) vesting at once in the crown without a grant: see administration to *H. C. Saward*, January, 1899.

Canadian Cases.

[30a] The surrogate courts of Ontario grant letters probate of wills to trust corporations, authorized by law to accept and execute the office of executor under the provisions of the Ontario Joint Stock Letters Patent Act, where any such corporation has been appointed such executor by the will of a deceased testator (R. S. O., 1887, c. 157, ss. 4, 74, 75; and see R. S. O., 1897, c. 190 and c. 191; and the Ontario Trust Companies Act, R. S. O., 1897, c. 206).

"officer of the crown has signified the course which he "thinks proper to take."

Notice to the crown.

The creditor's notice referred to in the rule will state necessary particulars respecting the deceased, the amount of the creditor's debt, and the nature and amount of the deceased's assets.

If the crown decline taking administration, the King's proctor (or solicitor for the duchy) will signify by letter to the creditor, that he does not object to administration being granted to him, or does not intend to interfere on behalf of the crown, and the creditor is thereupon entitled to take administration.

Creditor of deceased without relations.

If a creditor is desirous of obtaining administration of the estate of a person who has died without leaving any known relations, he will first give the notice referred to in the rule just quoted to the King's proctor, or the solicitor for the duchy.

If the crown will not take administration (*t*) after this notice, the King's proctor, or the solicitor for the duchy, signifies by letter the resolution come to by the advisers of the crown as in the other case.

Upon the receipt of this letter the creditor takes steps to support his application for administration in accordance with Rule 76 (1862).

By that rule it is provided, that "in the case of persons "dying intestate without any known relation, a citation "must be issued against the next-of-kin, if any, and all "persons having or pretending to have any interest in the "personal estate of the deceased, and the service thereof "upon them shall be effected as required by Rule 70. "Such citation must also be served upon the King's "proctor, or upon the solicitor for the duchy of Lancaster, "as the case may require."

The creditor will make an affidavit, in accordance with Rule 68 (1862), in order to lead the citation.

(*t*) *Clayton* v. *The Next-of-Kin in special of Mary Anne Brown and all persons in general*, 28 L. J. 126

This affidavit states the nature and amount of the creditor's debt and of the estate, and that he has no security by which the debt may be recovered without administration.

After this he will enter the caveat required by Rule 66 (1862), and will extract a citation against "the next-of-"kin, if any, and all persons having, or claiming, any "interest in the estate of the deceased" (*u*).

For the forms of affidavit and citation, see Appendix V., pp. 949 and 978, and p. 950 for affidavit as to advertisements for next-of-kin.

The citation is served in the manner directed by Rules 70 and 76 (1862), viz., by separate insertion of an abstract in such London and local newspapers as the registrars may direct (pp. 806-807).

For the form of abstract, see Appendix, p. 986.

If no person appear to the citation, the court on motion grants administration to the creditor.

He files a declaration of the deceased's estate, and gives justifying security under Rule 42 (1862) (p. 802).

For the form of declaration, see Appendix V., p. 990. For form of affidavit of justification, see Appendix V., p. 946.

To Crown.

Of a bastard's effects.

If the intestate be a bastard, who has died leaving no husband or widow or lawful issue, the court grants administration of his personal estate to the nominee of the Crown, duchy of Cornwall, or duchy of Lancaster, as the case may be. The Crown not being bound by the Land Transfer Act, 1897, the grant, when made to its representative, does not extend to any real estate of the bastard (*x*).

The nominee files a declaration in lieu of an inventory of the estate and effects.

For the form of declaration, see Appendix, p. 990.

Of effects of a person without known relations.

If a person die intestate, having no known relations, the nominee of the Crown takes administration of the

(*u*) *Vide post*, Part II., Chap. II.
(*x*) *Hartley*, [1899] P. 40.

personal estate only after citing the next-of-kin (if any) and all other persons having any interest in the estate.

He files a declaration of the estate and effects.

Such grant made to the solicitor of the Treasury and his successors in office.

In each of these cases the grant, if made to the solicitor of the Treasury, is made to him and to his successors in the office pursuant to the Treasury Solicitor Act, 1876, under 39 Vict. c. 18, which also provides that no further grant of administration shall be necessary when a grant is so made.

Grants made to the solicitors to the duchies of Cornwall or Lancaster do not devolve on their successors in office, and a further grant would be necessary on the death of the particular grantee if any estate remained to be administered.

Administration bond dispensed with on such grants.

The 81st section of the Court of Probate Act, 1857, contains a proviso, that it shall not be necessary for the solicitor for the affairs of the Treasury, or the solicitor of the duchy of Lancaster, applying for or obtaining administration for the use and benefit of Her Majesty, to give an administration bond.

Administrator's Oath.[30b]

The person applying for letters of administration is sworn or affirmed (as the case may be) to his due administration of the intestate's estate and to his qualification or interest in an "oath" which, *mutatis mutandis*, resembles the oath of an executor or administrator (with the will annexed). (For forms of oaths, see Appendix, pp. 1009, *et seq.*)

The oath is to be so worded as to clear off all persons having a prior right to the grant, and is to set forth, when the fact is so, that the party applying is the only next-of-kin, or one of the next-of-kin, of the deceased. (See Rule 37 (1862).)

Persons applying for administration are to be described in the oath as follows:—

Canadian Cases.

[30b] Surrogate Act, *post*, p. 664, ss. 27, 38, and 73, sub-s. 2; and S. C. R., 11, *post*, p. 829.

A husband as ... "the lawful husband."
A wife ... ... "the lawful widow and relict."
A father ... ... "the natural and lawful father and "next-of-kin."
A mother ... ... "the natural and lawful mother "and only next-of-kin."
A child ... ... "the natural and lawful child, and "only next-of-kin," or "the "natural and lawful child, and "one of the next-of-kin."
A brother ... ... "the natural and lawful brother."
A sister ... ... "the natural and lawful sister."

If there be no parents living, the brother or sister is further to be described as "one of the "next-of-kin," or the "only "next-of-kin."

An uncle ... ... "the lawful uncle" } and "one of
An aunt ... ... "the lawful aunt" } "the" or "only "next-of-kin."

A nephew ... ... "the lawful nephew" } and "one of
A niece ... ... "the lawful niece" } "the" or "only "next-of-kin."

A grandparent, grandchild, cousin, etc., is to be described as "lawful" and "one of the "next-of-kin," or "only next-"of-kin."

An heir-at-law ... "the heir-at-law."
An heiress-at-law as "the sole heiress-at-law," or "one "of the co-heiresses-at-law."

If an intestate leave a brother or sister who are cleared off, and a nephew or niece apply for a grant, he or she should be described not as "next-of-kin," but as "the "natural and lawful child of A. B., the natural and lawful "brother (or sister) of the intestate who died in his lifetime, "and as such one of the persons entitled in distribution to "his personal estate."

The *true* place of residence (even if only temporary) of every deponent must be inserted in the "oath" or affidavits. A *club* will not suffice, unless it be the actual residence. Place of residence.

In the oath the administrator is bound to specify the day "on" which the deceased died. If this cannot be done, though the fact of the decease be certain, upon satisfactory explanation that a more precise date cannot be given, the grant will be allowed to issue. Date of death.

Rule 48 (1862) provides for further proof of the identity of the deceased or of the party applying, if necessary (p. 803).

The intended administrator will be sworn to his oath and other affidavits by any officer, functionary or person authorized to administer oaths, as in the case of an executor. (See p. 276, Chap. XVI., "Oaths, Affidavits, Affirmations.") Swearing.

Bond.[30q]

The administrator is required to give a bond for his due administration of the estate about to be committed to him. Administration bond.

By the Court of Probate Act, 1857, the law and practice of administration bonds were put upon a new footing.

By the 80th section, so much of the 21 Hen. VIII. c. 5; 22 & 23 Car. II. c. 10; and 1 Jac. II. c. 17, as required any surety, bond or other security to be taken from a person to whom administration was committed was repealed. This section has itself now been repealed by the Statute Law Revision Act, 1875.

The 81st section enacts that "every person to whom "any grant of administration shall be committed shall "give bond to the judge of the Court of Probate to enure "for the benefit of the judge for the time being, and, if "the Court of Probate or (in the case of a grant from the "district registry) the district registrar shall require, with Its nature.

Canadian Cases.

[30q] The Surrogate Act, *post*, p. 684, ss. 68, 69, 70, and 71; and S. C. R., 7, *post*, p. 828.

"one or more surety or sureties, conditioned for duly "collecting, getting in, and administering the personal "estate of the deceased, which bond shall be in such form "as the judge shall from time to time by any general or "special order direct."

Sureties. The sureties must be, as far as possible, responsible persons (see Rule 41 (1862)). Married women, spinsters, and widows are accepted; but in the case of a married woman, an affidavit must be filed showing that she has separate estate, equal in amount to the value of the personal estate and annual value of the real estate (if any) of the deceased.[30d]

Solicitors' clerks and accountants are not accepted at the principal registry.

Guarantee societies. Guarantee societies are now allowed as sureties, even though by the deed of settlement of the society the directors may not be personally liable; the society's seal is affixed to the bond; and an affidavit as to the sufficiency of the society, with balance sheet, etc., is filed. For form, see Appendix, p. 964.

Number of sureties. Where the estate does not exceed £50, one surety only is joined with the administrator.

In the case of a husband or his representative administering to his wife one surety only is required, whatever may be the amount of the estate, and whatever may be the form of the grant (*y*). The husband's attorney is also allowed to participate in this privilege.

In all other cases two sureties are required.

Number increased. In order to facilitate the finding of the requisite security the court will permit the number of the sureties to be increased (*z*).

Foreign sureties. In May, 1893, the President directed with regard to sureties, that: (1) The administrator of a foreign subject

(*y*) *C. Noel*, 4 Hagg. 208, and Rule 39 [1862].
(*z*) *Herbert* v. *Sheill and Others*, 3 Sw. & Tr. 481.

Canadian Cases.

[30d] S. C. R., 32, 33, 34, 35, *post*, p. 832.

resident abroad (*a*) may, if it be proved by affidavit that the deceased left no debts in England, or by leave of a judge at chambers, be allowed to give bond with foreign sureties; (2) In all other cases sureties residing in the United Kingdom, the Channel Islands, or the Isle of Man, are to be required except by leave of a judge at chambers.

Sureties dispensed with.

The court or a district registrar can dispense with sureties altogether, taking only the bond of the intended administrator upon sufficient ground being shown, *e.g.*, where the estate is in the hands of the Chancery Division (*b*), where the applicant is the nominee of a public department (*c*), or where the debts had been paid (*d*).

Justification of sureties.

In ordinary cases the sureties to administration bonds do not justify.

There are cases, however, where they may be compelled to justify. This is done either in accordance with rules specially applying to the cases in question, or by a special order of the judge.

The following are instances where the court has directed justifying security to be given by an administrator:—

1. On the application of a next-of-kin (*e*) at least to the extent of the applicant's share of the estate (*f*).
2. On the application of a legatee to the extent of his legacy (*g*).
3. In cases of presumed death.
4. In grants for the use and benefit of lunatics, unless made to the committee of the lunatic.

(*a*) The words "resident abroad" are intended to refer to the administrator, not to the deceased.

(*b*) *H. Cleverley*, 2 Sw. & Tr. 337; *L. M. de la Farque*, *ibid.*, 631; *Jackson* v. *Jackson*, *ante*.

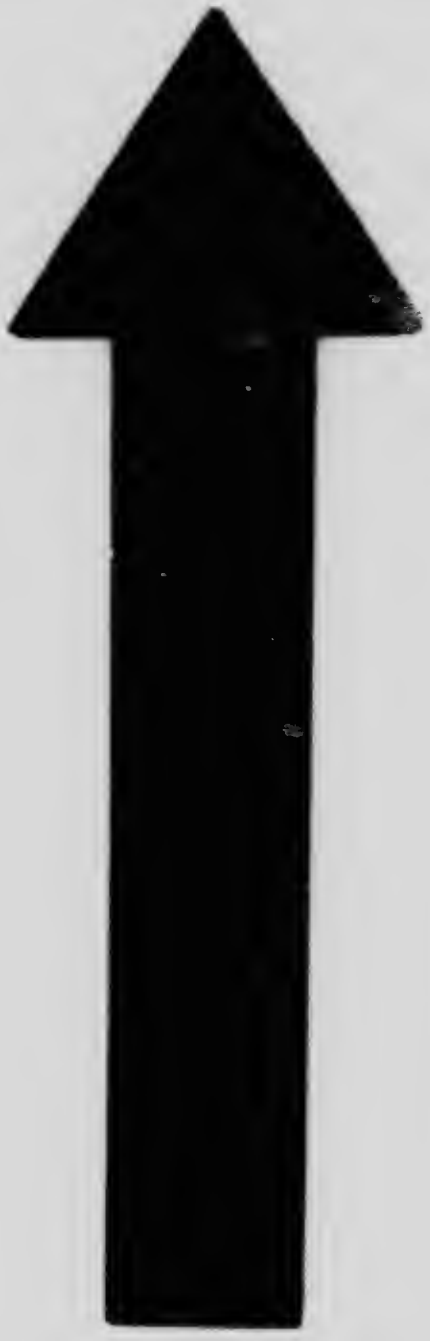
(*c*) *Bryan*, [1905] P. 88. Whenever a receiver in bankruptcy is the administrator, sureties are now dispensed with. A receiver in bankruptcy as administrator of A. was entitled to take out administration to B. He was allowed to give bond without sureties: *L. Thacker*, *deceased*, August, 1897.

(*d*) *Unwin*, 87 L. T. 234.

(*e*) *Coppin* v. *Dillon*, 4 Hagg. 376.

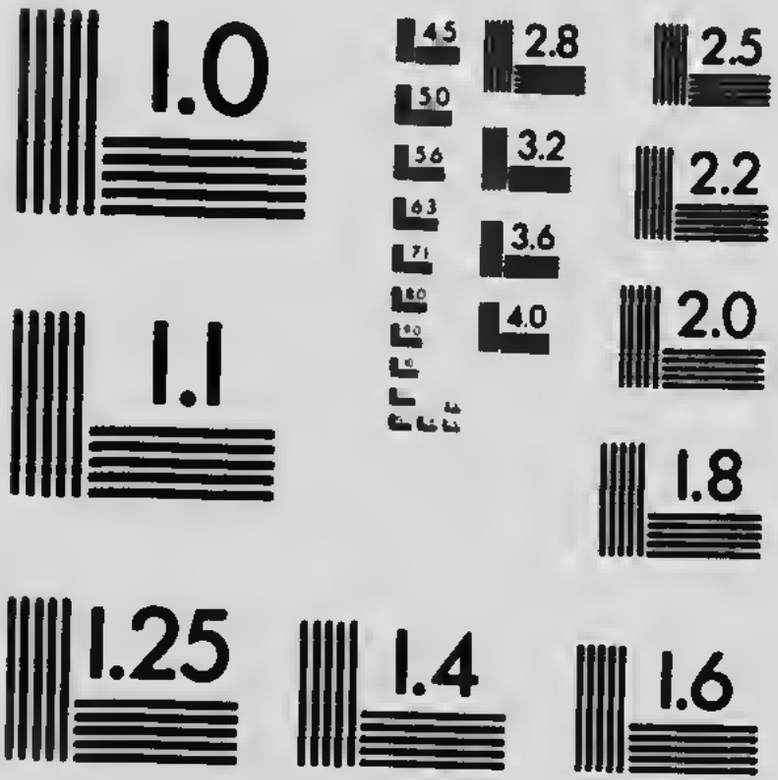
(*f*) *Jackson* v. *Jackson*, 1 P. & M. 14.

(*g*) *Pickering* v. *Pickering*, 1 Hagg. 480.



MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



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5. In grants under the 73rd section of the Court of Probate Act.
6. In grants following citations which have not been served personally and to which no appearance has been entered.
7. In grants of administration *pendente lite*.[30c]

Creditors are not, as a rule, entitled to require an administrator who is a next-of-kin, or a guardian of a next-of-kin, to give justifying security (*h*). But this rule will be departed from where a strong case is made out for the departure (*i*).

A person who desires to obtain an order for justifying security should enter a caveat, and, when warned, enter an appearance and apply (by summons) to a registrar.

The sureties, so required to justify, severally make affidavit that they are each solvent to the amount of half the penalty of the bond.

For the form of this affidavit, see p. 946.

Where the administratrix is a married woman she is now required to execute the bond as principal, and her husband cannot do so in her stead; he may, however, become a surety.

Married woman.

A married woman may be a surety to an administration bond on proving by affidavit that she has separate property equal to the value of the estate to be dealt with.

No substitution or discharge of sureties.

The court will not discharge the original sureties to an administration bond and allow other sureties to be substituted for them (*k*).

(*h*) *Hughes* v. *Cook and Others*, 1 Lee, 387; *Hickman* v. *Black*, 2 Lee, 251.

(*i*) *John* v. *Bradbury and Others*, 1 P. & M. 248; 36 L. J. 33; 38 L. T. 867; *Hughes* v. *Cookson*, 1 Lee, 366; *Hickman* v. *Black*, 2 Lee, 251. The case alluded to in *John* v. *Bradbury and Others*, is *Bush, deceased*, decided in chambers. There, at the instance of a creditor, the judge ordered the intestate's husband to give security, he being an insolvent debtor.

(*k*) *Stark*, 1 P. & M. 76; 35 L. J. 42.

Canadian Cases.

[30c] The Surrogate Act, *post*, p. 680, s. 56.

The 82nd section of the Probate Act of 1857, referring to administration bonds, enacts, that "every such bond shall "be in a penalty of double the amount under which the "estate and effects of the deceased shall be sworn, unless "the court or district registrar, as the case may be, shall "in any case think fit to direct the same to be reduced, "in which case it shall be lawful for the court or district "registrar so to do; and the court or district registrar "may also direct that more bonds than one shall be given, "so as to limit the liability of any surety to such amount "as the court or district registrar shall think reasonable" (*l*). **Penalty.** **Penalty may be reduced.** **More bonds than one may be given.**

Rule 38 (1862) directs that "administration bonds are "to be attested by an officer of the principal registry, by "a district registrar, or by a commissioner or other person "now or hereafter to be authorized to administer oaths "under 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, but "in no case are they to be attested by the proctor, "solicitor (*m*), attorney, or agent of the party who executes them. The signature of the administrator or "administratrix to such bonds, if not taken in the principal registry, must be attested by the same person "who administers the oath to such administrator or "administratrix." **Execution.**

See also corresponding Rule 44 (District Registries).

In the case of the bond being executed before an officer of the court, a fee of 1*s.* 6*d.* is charged for "superintending

(*l*) In *Geo. Parrott* (October, 1858) the administrator was by the order of the registrar allowed to give two bonds, each bond with one surety only, and with a penalty to the amount only under which the effects were sworn. Where the estate was sworn under £3000, and the intestate's debts were shown to amount to £45, the judge reduced the penalty of the bond and allowed the administratrix (who was the only person entitled to the deceased's personalty) to enter into a bond with sureties for double the amount of the debts, viz., £100: *M. Gent*, 1 Sw. & Tr. 54. See also *Jackson* v. *Jackson and Jackson*, 1 P. & M. 14; 13 L. T. 336; 35 L. J. 4.

(*m*) It is held by the registrars that, under this rule, the extracting solicitor cannot attest the execution of the sureties, although strictly he is not *their* solicitor.

"and attesting the execution" of the bond; and if th execution be not completed on one occasion, a further fe of 1*s.* is charged for each subsequent attestation.

The penalty of the bond is double the gross amount the personal estate and the annual value of the real estat (if any) sworn to in the oath.

The sureties may execute the bond, either before th same commissioner or qualified person who took the bon of the administrator, or before any other duly qualifie person.

Execution by the sureties. The attestation clause or clauses of the bond mus contain the names or name of the parties or part executing the bond.

Seals may now be printed (by order of the President dated April 19th, 1902), but a circle made with a pen ha been held not to be a seal.

Stamp duty. The stamp duty upon the bond is regulated by the Stamp Act, 1891 (54 & 55 Vict. c. 39): see schedule. By this Act the stamp upon a bond is 5*s.* Where the estate however, does not exceed £100, or where the bond is given by the widow, child, father, mother, brother, or sister of any common seaman, marine, or soldier dying in the service of His Majesty, no stamp duty is payable.

The stamp duty depends on the value of the estate to be administered, and not on the penalty of the bond.

Assignment of bond. The court may order or permit an administration bond to be assigned to a person for the purpose of being sued on at law, under the 83rd section of the Court of Probate Act, 1857, which provides that the "court may, on appli- "cation made on motion or petition in a summary way, "and on being satisfied that the condition of any such "bond has been broken, order one of the registrars of the "court to assign the same to some person, to be named in "such order; and such person, his executors or adminis- "trators, shall thereupon be entitled to sue on the said "bond in his own name, both at law and in equity, as if

"the same had been originally given to him instead of to "the judge of the court, and shall be entitled to recover "thereon as trustee for all persons interested the full "amount recoverable in respect of any breach of the "condition of the said bond."

It is enacted by the 15th section of the Court of Probate Act, 1858, that "bonds given to any archbishop, bishop, "or other person exercising testamentary jurisdiction in "respect of grants of letters of administration made prior "to the 11th day of January, 1858, or in respect of grants "made in pursuance of the Court of Probate Act or of "this Act, whether taken under a commission or requisi- "tion executed before or after the said 11th day of "January, shall enure to the benefit of the judge of the "Court of Probate, and, if necessary, shall be put in force "in the same manner and subject to the same rules (so "far as the same may be applicable to them) as if they "had been given to the judge of the said court subse- "quently to that day."

The court, however, will only order the assignment of a bond when it is satisfied that the application is made *bonâ fide;* that a *primâ facie* case of a breach of the condition has been made out, and that the applicant is the proper person to sue (*n*).[31]

(*n*) *Young*, 35 L. J. 126; 1 P. & M. 180.

Canadian Cases.

[31] *ADMINISTRATION BOND, ASSIGNMENT OF.*—The bond being conditioned to exhibit an inventory into the Court of Probate on the first Monday in June, and the breach being that the administratrix did not exhibit an inventory on the first Monday in that year, the declaration was held bad on general demurrer (*Metcal* v. *McKenzie*, 2 U. C. R. 103).

The costs of an application in Chancery under s. 82 of the Surrogate Courts Act, C. S. U. C., c. 16 (now R. S. O., 1897, c. 59, s. 71), for an assignment of a probate bond in order to an action thereon at common law, cannot be taxed as costs in the action (*Closson* v. *Post*, 16 L. J. 141).

ADMINISTRATION BOND.—An application for the assignment of an administration bond under the Act respecting surrogate

Where there were two bonds, the court would on
allow the last to be proceeded on, "being more equitab
"(it said) to reserve the first" (*o*), and refused leave
sue on the first bond until the action on the second bo
had been disposed of (*p*).

The practice in these cases is for the applicant to iss
a summons against the sureties, returnable before
registrar, to show cause why an order should not
made directing the bond to be assigned. This is
alteration of the old practice which was to apply
motion to the court (*q*).

The fee on the assignment is 5*s*., and the assignme
itself must be impressed with a duty stamp of 5*s*.

Delay in applying for administration.

By the 45th Rule (1862), it is ordered, that "in eve
"case where probate or administration is for the first tim
"applied for after the lapse of three years from the deat
"of the deceased, the reason of the delay is to be certifie
"to the registrars. Should the certificate be unsatisfactor
"the registrars are to require such proof of the allege
"cause of delay as they may see fit."

Inland Revenue Affidavit.[31a]

The administrator is required to make an affidavit as t
the intestate's property for the Inland Revenue in th
same manner as an executor.

(*o*) *Irving*, 88 L. J. 83; 1 P. & M. 658; *Rowden*, 3 Sw. & Tr. 25.
(*p*) *Ibid.*
(*q*) *Young*, *ante*. See also *Cartwright*, 1 P. D. 422; 24 W. R. 214
34 L. T. 72.

Canadian Cases.

courts will not be granted without notice to the sureties (*Re Hilt*
1 Ch. Ch. 386).

The rules and orders referred to in s. 18 of the Surrogate Court
Act, C. S. U. C., c. 16 (now R. S. O., 1897, s. 88), being sanc
tioned by the Legislature, a bond in accordance with the form
prescribed by them must be held sufficient, though it was allege
not to comply with the statute (*Bell* v. *Mills*, 25 U. C. R. 508).

[31a] *Ante*, p. 30.

The practice as to Inland Revenue affidavits is dealt with under "Probates" (p. 35).

Fees.

For the fees payable upon grants of administration, see Appendix II., "Fees of 1874," p. 894.[32]

Fee stamps for the grant.

No filing fee is charged in respect of the bond if it be the first administration bond, nor for the Inland Revenue affidavit.

Obtaining Letters of Administration.

All the documents before referred to, viz., the oath, affidavit for the Inland Revenue, the bond, and such other affidavits and documents as shall have been required and made, are to be taken to and deposited in the registry, in the same way as in the case of a will. (See "Obtaining Probate," p. 35.)[32a]

Canadian Cases.

[32] *Ante*, p. 30.

[32a] *RIGHTS BEFORE GRANT—ACTION BEFORE GRANT OF ADMINISTRATION.*—Since the Ontario Judicature Act the rule in equity prevails as opposed to that at law, that letters of administration when obtained relate back to the death, and it is sufficient if a plaintiff suing an administrator qualifies before the trial (*Trice* v. *Robinson*, 16 O. R. 433; and *ante*, p. 74).

The rule in equity is, that when a person is entitled to obtain letters of administration he may begin an action as administrator before he has fully clothed himself in that character, but the same doctrine does not apply when the person immediately entitled to obtain administration is not the one who begins the action (*Trice* v. *Robinson*, 16 O. R. 433; distinguished *Chard* v. *Rae*, 18 O. R. 371).

When the point is specially raised on the pleadings as to the time when the letters of administration were obtained, it devolves upon the court to ascertain whether an action was begun in time by a properly constituted plaintiff (*Ib.*).

POWER OF ATTORNEY TO COLLECT DEBTS.—A person intending to take out letters of administration executed a power of attorney to a creditor of the intestate, authorizing him to receive all

Efflux of fourteen days before the grant passes the seal.

A period of fourteen days, excluding the day of t intestate's death, must have elapsed before the letters administration are allowed to pass the seal, "unless und "some direction of the judge or by order of two of t "registrars" (Rule 44 (1862), p. 803) (*r*). An affidav of the facts is submitted to a registrar, who will, if think fit, make this order.[32b]

A like order may be made by *one* of the registrars of t principal registry, if the grant is to issue at a distri registry (Rule 51, District Registries).

CHAPTER IV.

LIMITED GRANTS.

WHILE the jurisdiction of the court extends over all th personal estate of the deceased in England, and since th commencement of the Land Transfer Act, 1897,[32c] th

(*r*) This is only a re-enactment of a very ancient rule of the Eccle siastical courts. In a MS. report of *Blackborough* v. *Davis*, preserve amongst the papers of Sir George Lee, Chief Justice HOLT says, "Th "Ecclesiastical court does not grant administration till fourteen day "after the death of the intestate."

Canadian Cases.

money due to the intestate. The power was given upon an agree ment that the attorney should pay himself out of any money h should receive. The appointer afterwards revoked the power, and then took out letters of administration:—*Held*, that the power wa not valid against the administrator, and that payments made to the attorney by a debtor after administration granted, and with notice of the revocation, were unauthorized, and did not discharge the debtor (*Sinclair* v. *Dewar*, 15 Gr. 59, 17 Gr. 621).

SALE OF GOOD WILL.—Held, that although the administra trix was not bound to sell the good will of testator's business as a surgeon and physician, yet, having done so, the proceeds were assets, for which she must account (*Christie* v. *Clark*, 27 U. C. R. 21; S. C., 16 C. P. 544).

[32b] S. C. R., 4, *post*, p. 828.

[32c] Devolution of Estates Act, *ante*, p. 11; S. C. R., 14, *post*,

real estate of a deceased person dying after the year 1897 vests in his personal representative, there are cases where the circumstances are such as not to warrant the court in making a permanent grant, or where the title of the applicant itself, though general, is not absolute or unqualified, and a necessity is consequently imposed upon the court to give the grant a corresponding modification, while, at the same time, the power of collecting and administering is conferred as extensively as in the instances first mentioned.

Grants limited as to time.

The form of limitation in these grants is of time or duration only, a certain period or condition being specified at or upon which the grant ceases and determines. In all other respects the grant is general and unfettered.

Grants limited to particular property.

There are cases also where the applicant's interest is of so limited a nature as to give no title to the administration of the deceased's estate beyond a particular portion. In any one of these cases the court, while it grants to such person the probate or administration, must limit the power of the grantee to his interest, and so exempt the general estate from his intermeddling. In such cases the property to which the grant is limited may be either the deceased's own effects, or his legal interest [illegible] estate of another person.

Limited to a particular object or purpose.

[illegible] cases also of a close affinity to the grants last described, where the interest of the applicant is confined to making or continuing the deceased as a party in a

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Canadian Cases.

p. 829. The real and personal property now devolve upon the legal personal representative under the Devolution of Estates Act. The Act in effect abolishes the distinction between real and personal property (*Re Reddan*, 12 O. R. 781; *Re Mallandine*, 10 C. L. T., O. N. 226; *Martin* v. *McGee*, 18 A. R. 384; *Re Wilson and Incandescent Electric Light Co.*, 20 O. R. 397; *Re McMillan*, 24 O. R. 181). In case of conflict between the Surrogate Court Act and the Devolution of Estates Act, the latter shall prevail (53 Vict. c. 17, s. 20, Ont.). The value of all property must be stated in the petition for the grant (S. C. R., 5, *post*, p. 828; *In re Nixon*, 13 P. R. 314; 9 C. L. T. 587).

lawsuit. In such cases the court will grant to a nomi
of the applicant an administration limited to the purpo
of the suit.

Other grants required to perfect the representation.

In grants of these descriptions, the representation of
deceased, though perfect so far as it extends, is o
fragmentary as regards the entire succession, and ot
grants will be required to complete the representation
the deceased.

The 37th Rule (1862) directs, that "in all admin
"trations of a special character, the recitals in the o
"and in the letters of administration must be framed
"accordance with the facts of the case."

Practice.

Practice in *limited and special probates.*

In the case of a limited or special probate, the pra
tioner will follow the course pointed out in the case
general probates, with these exceptions only:—

Draft oath submitted to Clerk of Seat and registrar.

The oath is submitted in draft to the Clerk of the S
for settlement. If the matter require it, the oath will
referred by the Clerk of the Seat to one of the registr
for final settlement.

Fees on perusal.

The fees payable for perusing and settling oaths
lead special or limited grants of probate will be found
Appendix II., "Fees of 1874," p. 901.

The folios are calculated upon the contents of the d
in its original state. The length of the folio in this c
is seventy-two words.

These fees are paid on submitting the draft oath to
Clerk of the Seat.

If, in settling the oath, it has been necessary for
Clerk of the Seat to peruse a deed or other document,
perusal is charged for at 3*d.* per folio of seventy-two wo

After the draft of the oath has received the regist
or the Clerk of the Seat's approval, it is returned to
practitioner, and is engrossed and sworn.[32d]

Canadian Cases.

[32d] S. C. Rules, *post*, p. 827.

The documents are then lodged with the Receiver, as in the case of an ordinary probate. The fees payable in respect of an ordinary probate only are supplied on this occasion. The extra fees hereinafter mentioned are not paid until the special or limited probate is ready for the registrar's signature. The practitioner should also lodge the draft oath with the other papers.

Limited or special probate drawn by Clerk of Seat, etc.

The Clerk of the Seat draws the limited or special probate and it is engrossed under his directions.

For the additional fees charged in respect of this form of grant, see Appendix II., "Fees of 1874," p. 896.

Additional fee stamps.

These fee stamps are supplied to the Clerk of the Seat, when the grant has been prepared.

Limited and special letters of administration.

In the case of limited or special letters of administration, with or without a will annexed, the practitioner will proceed precisely in the same manner as that last described, so far as regards the preparation and settlement of the oath.

Limited and special bonds.

In these cases, however, there is an administration bond to be executed. This is drawn and engrossed under the directions of the Clerk of the Seat (Rule 40 (1862)), and is afterwards impressed with the stamp duty (if payable) of 5*s*., and executed.

The additional fees, which are payable in respect to this bond to the Clerk of the Seat after it has been engrossed as above, will be found in Appendix II., "Fees of 1874," p. 896.

Practice in *special bonds*.

Rule 39 (1862) directs, that "in all cases of limited or "special administration two sureties are to be required to "the administration bond (unless the administrator be "the husband of the deceased or his representative, in "which case but one surety will be required), and the "bond is to be given in double the amount of the property "to be placed in the possession of or dealt with by the "administrator by means of the grant."

The latter part of the rule is not considered to affect cases where estates, being in settlement, are sworn under

a nominal amount, or where the administration is limit to proceedings in the Chancery Division.

Search. In limited grants search is made from the date of t last grant.

SECTION I.—GRANTS LIMITED AS TO TIME.

The subject of the grants which are general in the powers, but limited in their duration, will be first co sidered.

Lost Wills.[32e]

Probate of copy. When an original will or codicil has been lost or mi laid since the testator's death, but a true copy has bee made, the executor may take probate of such copy limite until the original or a more authentic copy be brough into the registry.

But he must produce proof by affidavit, that the origina was duly executed; that it was in existence after th testator's death, and has been since lost; and that th copy is a true one.

The registrars of the principal registry now entertai applications of this kind in chambers.

In some circumstances, he must also advertise for th recovery of the lost will or codicil. The form of advertise ment is not settled by the registrar.

If the original will or codicil be not recovered by thi means, the practitioner inserting the advertisement will make an affidavit to that effect, annexing copies of the newspapers containing the advertisements.

The registrars usually require the consent or citation o the persons interested in the event of intestacy (*a*).

(*a*) But where the facts are clearly established the consent of the persons interested under intestacy may, where the estate is small, be dispensed with: *Apted*, [1899] P. 272. The consent of next-of-kin, even though they were minors and prejudicially affected by the will, has in like circumstances been held sufficient: *Brassington*, [1902], P. 1.

Canadian Cases.

[32e] *Ante*, p. 38.

For the form of affidavit, see p. 950.

For the form of oath, see p. 1003.

Probate of draft.

Where no copy of the will has been made, but the draft of it can be produced, the court (or registrars) will, with the consent of the next-of-kin (*b*) or persons prejudiced deal with the case.

For the form of oath, see Appendix, p. 1002.

Probate of substance or contents.

When an original will has been lost or destroyed after a testator's death, or has been destroyed in his lifetime, by another person without his consent, or by himself without intention, and no draft has been preserved, and no copy has been made, with the consent of the persons interested in the event of intestacy, probate may be obtained of its contents, or of its substance and effect, if they can be established by parol evidence (*c*).

For the form of oath, see p. 1003, and vary to suit the case.

As to declaration of testator.

Evidence of a declaration of a testator as to the contents of a will, which will is not forthcoming, is admissible (*d*).

When the contents of a lost will are not completely proved, probate will be granted to the extent to which they are proved (*e*).[33]

(*b*) *Barber*, 1 P. & M. 267; 36 L. J. 19; *Butts*, 2 Spinks, 59; *Enticknap*, 35 L. T. 427; *Thrippleton*, 35 L. T. 909.

(*c*) As to proving the contents of a lost document generally, see *Brown* v. *Brown*, 8 El. & Bl. 876. See also *Sugden and Others* v. *Lord St. Leonards and Others* (1 P. D. pp. 154, 250), which established that the contents of a lost will may be proved by the evidence of a single witness, though interested.

(*d*) Declarations, written or oral, made by a testator, as well after as before the execution of his will, are, in the event of its loss, admissible as secondary evidence of its contents: *Sugden and Others* v. *Lord St. Leonards*, *supra*.

(*e*) *Sugden and Others* v. *Lord St. Leonards*, *supra*.

Canadian Cases.

[33] *ESTABLISHING LOST WILL.*—A will was prepared and sent to testator, and was subsequently seen, signed by him, in the hands of his wife, by the father of the residuary legatee and devisee, who read it over, and immediately on his return home made a pencil jotting of the names of the executors as well as of the

Evidence of substance or contents.

In all these cases the validity of the execution must b shown as well as the substance or contents of the will (f

Contents of lost codicil.

If a codicil has been similarly lost or destroyed, i contents may be proved in the same manner.

The consent of the persons interested in the residuar estate may also be required.

If the executor be the residuary legatee, his applicatio for probate will be an implied consent.

Affidavit of scripts proved.

Deposition of a witness, or extract from it proved.

Sometimes the court has granted probate of an affidavi of scripts (filed in the action), and at other times of deposition, or an extract from a deposition of a witness, i these documents contain the contents or substance or effec of the lost will or codicil (g). In *Lord St. Leonard's Cas* the court granted probate of the declaration which pleade the contents.

Probate of a will limited until a lost codicil be found.

If a codicil has been lost since the testator's death without a copy having been made, or the draft kept, and its contents or substance cannot be shown, the court wil grant probate of the will, limited until the original codicil or an authentic copy thereof, shall be brought in.

Probate of a codicil limited until a lost will be found.

So if the will has been lost since the death of the testator, and it is impracticable to prove its contents or substance, the court will grant probate of a codicil to that will containing dispositions independent of and referring

(f) *H. C. Gardner*, 1 Sw. & Tr. 110.

(g) *Edward Trevelyan* (deposition), September, 1810; *Thomas Hend* (affidavit of scripts), February, 1815; *Edmund Thorp* (affidavit o scripts), July, 1825; *Baron Wood*, June, 1831.

Canadian Cases.

several bequests other than the provision for the wife, and five days before his death the testator told him that his will was still in existence, and that he had given it to a person, whom he refused to name, to have a codicil prepared, and a second memorandum was made by him from the words of the testator of the contents of the will, which agreed substantially with the first. After the testator's death no trace of the will could be discovered. The Court made a decree establishing the will, and directing probate to be granted to the executors named therein (*Bessey* v. *Bostwick*, 13 Gr. 279).

to it, limited until the lost will be found and brought into the registry (*h*).[31]

Probate of a copy where the original is in existence.

Where the original will or codicil, or both, are in the possession of a person residing abroad, who has refused or neglected to deliver them up, but a copy has been transmitted to the executor, probate of such copy will be granted to him on his showing, by affidavit, the manner in which it was transmitted, that a better or more authentic copy does not exist in this country, and that it is essential or necessary for the interests of the estate that probate be forthwith granted, without waiting the arrival of the original, or a better or more authentic copy.

If the copy has been transmitted to a person other than the executor, he will be required to join the executor in the affidavit.

Nature of the evidence.

The affidavit does not speak as to the execution of the will or codicil, as in the case of lost or destroyed instruments of that nature.

For the form of oath, see Appendix V., p. 1002.

Scotch official copy.

Under the same conditions as those before stated, a copy of a copy of a will or codicil may be proved. A

(*h*) *Greig*, 1 P. & M. 72; 35 L. J. 113; 14 W. R. 349.

Canadian Cases.

[31] In an action to establish the lost will of a testator who was illegitimate and had died without issue, statements of the testator to his solicitor in reference to the making of the provisions in the will were held, against the objection of those who claimed under the lost will, to be admissible in evidence.

Statements of a testator as to the provisions of his will are admissible in evidence in an action to establish it, and statements of the kind were in this case held to be sufficient corroboration of the evidence of the plaintiff, who had drawn and was claiming large benefits under the will in question, and which it was alleged had been lost or stolen (*Stewart* v. *Walker*, 6 O. L. R. 495).

The substance of a lost will contained in recitals in a deed was admitted to probate in the Surrogate Court of York, *In the goods of the Hon. H. J. Boulton, deceased*, Nov. 2, 1877; and, in the same court, *In the goods of Parsons*, May, 1889.

copy of a will when the original has been registered in the General Register of Sasines in Scotland can also be proved under similar limitations.

Administration (will) limited.

When the grants before described are made to a residuary legatee, or any person other than the executor, they take the form of letters of administration (with the will annexed) limited in a similar manner.

Administration (will) during widowhood.

If a residuary legatee be appointed during widowhood, the grant under the present practice is not limited in terms, consequently it does not cease on her re-marriage (*i*).

Administration to the next-of-kin until the original will be found.

We have seen that the person who applies for letters of administration is required to swear that the deceased died intestate. It sometimes happens, though no will is forthcoming on the death of the deceased, that the party cannot in conscience take the oath, for he may know, or have reason to believe from the deceased's observations, or the information of others, that there was a will in existence subsequently to the deceased's death.

If no copy of the will can be produced, and its contents or tenor cannot be substantiated, he may take administration limited until the original will or a copy be brought in.

SECTION II.—GRANTS FOR THE USE AND BENEFIT "JUS HABENTIUM."[34a]

Grants for the use and benefit *jus habentium*, under what conditions made.

The cases which we have last considered refer to grantees who have themselves an interest in the estate, or who take in their own right.

But where one or more persons who have a right to administration, or a beneficial interest in the estate of the testator or intestate, are precluded from acting personally, by residence out of the jurisdiction of the court, by their

(*i*) *Thomas Teed*, 7 N. C. 386.

Canadian Cases.

[34a] Surrogate Act, *post*, p. 677, ss. 42 and 43 (*Corrigal* v. *Henry*, Gr. 310).

own minority, by their lunacy, imbecility, or illness, the court will make a grant to another person for the use and benefit *habentium jus seu interesse*, but will limit it in duration to such a period and to such an extent as the circumstances of the case demand.

These grants, though outside the statutes of Edw. III. and Hen. VIII., have been held to be within their equity, being for the ease and convenience of the subject (*k*).

For Use of Persons Abroad.

To begin with the first category, viz., that of foreign residence.

To attorney.

By Rule 32 (1862) it is provided, that "in the case of "a person residing out of England, administration or "administration with the will annexed may be granted to "his attorney acting under a power of attorney" (*l*). [34b]

To the attorney of all the executors.

If, therefore, the executor or executors reside out of the jurisdiction of the court, *e.g.*, in Scotland, Ireland, or abroad, he or they may appoint an attorney to prove their testator's will, in his or their name and on his or their behalf (*m*).

The grant, which takes the form of letters of administration with will annexed, is made to the attorney for the use and benefit of the executor or executors, and limited until he or they (as the case may be) shall apply for and obtain probate (*n*).

(*k*) P. Williams' Rep., vol. ii. pp. 589, 590.

(*l*) *O'Byrne*, 1 Hag. Ec. 316.

(*m*) Where the estate was trust property only, the court allowed the attorney of a person residing in England to take administration: *Bullar*, 39 L. J. 26.

(*n*) *Jas. Cassidy*, 4 Hag. Ec. 361. These words only express that the administrator is the agent of the party constituting him. The grant is virtually for the use and benefit of all persons beneficially interested in the estate: *Chambers* v. *Bicknell*, 2 Hare, 536. As to the powers of such an administrator, see *Webb* v. *Kirby*, 25 L. J. (Equity) 873. The grant follows the terms of the power: *C. Goldsborough*, 1 Sw. & Tr. 297.

Canadian Cases.

[34b] Sec. 39, S. C. Act, *post*, p. 676 (*Grant* v. *McDonald*, 8 Gr. 68; *Re Thorpe*, 15 Gr. 80).

To the attorney of one executor.

If the attorney be appointed by one or any of two or more executors, a grant will be made to such attorney for the use and benefit of the executor who appointed the attorney, until he or one or more of the others shall apply (*o*).

If more than one executor is appointed, and they all appoint the attorney, the grant is limited until they (*i.e.*, all of them) apply.

A joint grant has been allowed to two attorneys of two executors (each executor appointing his own attorney) for the use, etc., of the executors during their joint lives, so as to cease on the death of either of the constituents or the attorneys, or upon either executor applying for probate.

Residence of constituents and attorneys.

An executor may also execute the power of attorney before his departure from this country. A general power executed before the death of the testator has been accepted as sufficient (*p*). It is only necessary that the administrator shall swear in the oath that the constituent is *now* residing abroad or out of England.

It is not necessary that the attorney reside in England. He may, though resident abroad, obtain a grant under his power, provided his sureties reside here (*q*).

But if the principal and attorney reside in the same place, out of the jurisdiction, the court will not, as a rule, make a grant to the attorney (*r*).

Power exempt from duty.

The power should be under seal. It is exempt from stamp duty under the Stamp Act, 1891, unless it be a general power required for other purposes.

For forms of powers, see Appendix V., p. 1065, *et seq.*

The court will, however, accept less formal documents (*s*); and the registrars exercise a discretion in such cases.

Power filed.

The power of attorney is filed in the registry. If it be a *general* power and required by the practitioner for

(*o*) *Black*, 13 P. D. 5.

(*p*) *Barker*, [1891] P. D. 281.

(*q*) *Joseph Leeson*, 1 Sw. & Tr. 463; but see *T. Reed*, 3 Sw. & Tr. 441, and *W. Ballingall*, *ibid.*

(*r*) By the direction of Sir John Dodson, May, 1857.

(*s*) *Elderton*, 4 Hag. Ec. 210; *Ormond*, 1 Hag. Ec. 146; see also the observations of Lord Penzance, in *Boyle*, 3 Sw. & Tr. 427.

other purposes, it is given out after the grant has issued on an examined copy being substituted.

For form of oath, see Appendix V., p. 1039.

Administration (will) is not granted to the attorney of an executor to whom power has been reserved whilst the *proving* executor is alive (*t*).

Substitute.

If the power of attorney contain a power of substitution, and the attorney exercise it, the substitute may take the grant (*u*).

Grant to the attorney of one residuary legatee, *e pluribus*.

The attorney of one of several residuary legatees may take administration with will without notice to the other residuary legatees.

Grant to the attorney of one next-of-kin, *e pluribus*.

The attorney of one of several next-of-kin may take administration in like manner, without notice to the other next-of-kin.

Limitation in grants.

The limitation in the two last-mentioned grants is, *mutatis mutandis*, until the constituents themselves shall apply for, and obtain a grant, and the grants will determine accordingly.

Attorney of four next-of-kin.

Where four next-of-kin appointed one attorney, the registrars (*x*) decided that the grant be limited for "their "use, and until they shall apply for [not '*and obtain*'] "letters of administration."

A grant will not be made to two attorneys appointed separately by two next-of-kin.

The attorney of several next-of-kin takes the grant until the constituents collectively apply for the grant.

Limited power.

When the power of attorney is limited to the administration of a specific portion of the estate, the grant may, if good reason be shown to the registrars, be limited accordingly, but the registrars consider that if the constituent is entitled to a general grant, his attorney should take a grant of the whole estate. (See p. 140, and for form of oath, Appendix V., p. 1040.)

A grant to *one* of two attorneys having ceased by his

(*t*) *Wheldon, deceased*, 1875.
(*u*) *Palliser* v. *Ord*, Bunbury's Exch. Rep. 166.
(*x*) *Smiley, deceased*, July, 1899.

death, the other attorney is allowed to take a grant unde
the original power of attorney on swearing that the con
stituent is still abroad, and that he has not revoked th
power.

Attorney of guardian.

A grant to the attorney of the guardian of minors is mad
for the use and benefit of the minors until one of the minor
attains the age of twenty-one years, or the guardian applies

For Use of Minor or Infant.[34c]

If a sole executor or a sole residuary legatee or devise
be under age, the court will grant administration with th
will annexed to some person for his use and benefit, unti
he shall attain the age of twenty-one years. (See als
note (*c*), p. 122.)

To guardian.

Where one executor is abroad, and his address is un
known, and the other executors are minors, administratio
(will) will not be granted to their guardian for their us
and benefit without application (on motion) to the cour
to exercise its power under the 73rd section of the Cour
of Probate Act, 1857.

Right of father.

The person entitled in priority to a grant on behalf of
minor is his father. The father must, however, be electe
guardian by the minor. (See rules, P. R. 33–35, Appendi
II., p. 801, as to grants made for the use of minors an
infants.)

If the father be dead, precedence is given to the guardia
appointed by will or deed of the father (under 12 Car. II
c. 24 (*y*)), either alone or jointly with the mother. (Se
Guardianship of Infants Act, 1886.)

(*y*) *Louisa Morris*, 5 L. J. 768; 2 Sw. & Tr. 362. A testator ma
authorise a surviving testamentary guardian to appoint another in lie
of the one deceased: *Parnell*, 2 P. D. 381. In *Pitt* v. *Pitt*, March 29th
1729, there being a testamentary guardian, the minor had notwith
standing elected another. Dr. BETTESWORTH (Dr. Cottrell's MS.) sai
that he could not look upon himself as at liberty to approve any othe
choice, *i.e.*, than the testamentary guardian.

Canadian Cases.

[34c] See the Act respecting infants, R. S. O., 1897, c. 168, ss. 20
et seq., and *post*, p. 170; and S. C. R., 17, *post*, p. 829.

By this Act very great powers are placed in the hands of the infant's mother, as she is thereby, on the death of the father, constituted guardian either alone when no guardian has been appointed by the father, or jointly with the guardian appointed by him. She can also, by will or deed, appoint a guardian to act after the death of herself and the father of the infant (if unmarried). Right of mother.

This Act has led to change in the practice of the registry. (*Vide* the Act itself, 49 & 50 Vict. c. 27.)

No election or assignment of the mother of the minor or infant as guardian to take or renounce a grant is necessary, but she is required to file a declaration.

Next in order is the guardian of the estate (not the person) of a minor appointed by the Chancery Division (*z*). To the guardian appointed by the Chancery Division.

For form of oath, see Appendix V., p. 1022, note.

In the first case, a reference to the father's will, as proved, or a production of the deed, is required.

In the other case, an office copy of the order or decree appointing the guardian is filed.

A testamentary guardian or a guardian appointed by the Chancery Division or other competent court is not required to file a declaration on oath of the deceased's effects (*a*).

The court will not grant to one out of several testamentary or Chancery guardians, without the renunciation or consent of the others, on account of their joint tenancy (*vide* p. 208).

Guardians of minors and infants are not entitled to a grant without clearing off all persons of age equally entitled with such minors and infants whether as interested in the real or personal estate. The fact, however, of the heir-at-law being a minor does not prevent his guardian having priority over a deceased husband's representative.

The court will grant to a guardian appointed by a Scotch, Irish, or foreign court, competent for that purpose; To guardian appointed by a Scotch, Irish, or foreign court.

(*z*) But see *Brotherton* v. *Hillier*, 2 Lee, 135.

(*a*) *Vide* Rule 96 (1862).

but such guardian must prove his appointment by a copy of the document by which he has been nominated, authenticated by the seal of that court (*b*).[35]

Guardian appointed by family council.

If he has been elected by a family council under the law of a foreign country, an affidavit as to the law is required. (See Chap. III. Sec. IV. as to proof of foreign law.)

Minors.

If the executor or residuary legatee be of the age of seven years or upwards, but under the age of twenty-one he is styled a minor, and has the privilege of electing any one of his next-of-kin to be his curator or guardian, subject, however, to his having no statutory or other lawful guardian (*c*).

This is done by means of an instrument signed by the minor in the presence of an attesting witness.

For the form of the election, see Appendix V., p. 991.

The election need not be under seal.

If the minor be a *feme coverte* she elects her husband.

If the minor's husband or next-of-kin be a minor also, the minor may elect a stranger. (When there is more

(*b*) *W. Jones*, 28 L. J. 80.

(*c*) By the 6th section of 38 Geo. III. c. 87, it is enacted, "that where "an infant is sole executor, administration (with the will annexed) "shall be granted to the guardian of such infant, or to such other "person as the spiritual court shall think fit, until such infant shall "have attained the full age of twenty-one years, at which period, and "not before, probate of the will shall be granted to him."

And the section following provides, that "the person to whom such "administration shall be granted shall have the same powers vested in "him as an administrator now hath by virtue of an administration "granted to him *durante minore ætate* of the next-of-kin."

Canadian Cases.

[35] *FOREIGN ADMINISTRATOR.*—Powers and obligations of foreign administrators dealing in Canada with foreign assets, and settling claims of Canadian creditors considered (*Grant* v. *McDonald*, 8 Gr. 468).

A foreign administrator cannot effectually release a mortgage on land in this province (*In re Thorpe*, 15 Gr. 76).

An alien stands in the same position as a natural-born Briton as to executorship (the Naturalization Act, R. S. C., 1887, c. 113, s. 3).

than one minor, and they next-of-kin to each other, the foregoing remark must be taken to apply to the next-of-kin other than themselves.)

A grant is not made to the guardian of a next-of-kin without the heir-at-law being cleared off, if there be real estate. **Heir-at-law to be cleared off.**

If the executor, residuary legatee, or devisee, or next-of-kin be under the age of seven years, he is styled an infant, and is incompetent to elect a guardian. Provided he has no testamentary or other lawful guardian, one of his next-of-kin will be appointed guardian to him by an order of the registrar, on making affidavit that he is ready to undertake the guardianship of the infant. A grant will then be made to him for the use of the infant. **Infants.**

This is done under Rule 34 (1862), which provides that, "In cases of infants (*i.e.*, under the age of seven years) "not having a testamentary guardian, or a guardian "appointed by the High Court of Chancery, a guardian "must be assigned by order of the judge or of one of the "registrars; the registrar's order is to be founded on an "affidavit, showing that the proposed guardian is either "*de facto* next-of-kin of the infants, or that their next-of-"kin *de facto* has renounced his or her right to the "guardianship, and is consenting to the assignment of the "proposed guardian, and that such proposed guardian is "ready to undertake the guardianship."

A person desirous of being appointed a guardian to an infant files an affidavit in support of his application.[1] **Guardian appointed to infant.**

A registrar's order thereon is drawn up and signed by the registrar.

A fee of 2*s.* is charged on the affidavit.

A fee of 2*s.* 6*d.* is charged for the order.

For forms of the affidavit and order, see Appendix V., pp. 961, 1051.

Where there are both minors and infants, no appointment of guardian is made; but the person elected by the minors takes administration for the use and benefit of all **Minors and infants.**

of them, provided the minors and infants are next-of-k
of each other.

For Rule 35 (1862) provides, that "Where there a
"both minors and infants, the guardian elected by t
"minors may act for the infants without being special
"assigned to them by order of the judge or a registra
"provided that the object in view is to take a grant.
"the object be to renounce a grant, the guardian must
"specially assigned to the infants by order of the jud
"or of a registrar."

If, however, the guardian elected by the minors is n
the next-of-kin of the infants, the latter's next-of-kin mu
be cleared off and a registrar's order made to give effect
the first part of this rule.

The court is not bound to take notice of the existence
any guardian appointed by another court, unless the fa
be brought especially before it.

Renunciation.

A testamentary guardian of minor residuary legatee
or devisees, who is also executor under the will, must,
he decline to take a grant, renounce not only probate, b
also, as guardian, his right to administration (with wi
for the use of the minors.

Declaration required from guardian.

The guardian elected by minors or appointed by t
court is required to exhibit a declaration of the deceased
estate and effects before the grant will be allowed
pass the seal to him; but see exceptions, Rule 36 (cit
below).

Rule 36 (1862) directs, that "In all cases whe
"grants of administration are to be made for the use a
"benefit of minors or infants, the administrators are
"exhibit a declaration on oath of the personal estate a
"effects of the deceased, except when the effects are swo
"under twenty pounds, or when the administrators are t
"guardians appointed by the High Court of Chancery,
"other competent court, or are the testamentary guardia
"of the minor or infants."

For the form of declaration, see Appendix V., p. 990.

The same observations which apply to the case of a sole residuary legatee, or devisee, or a sole next-of-kin, apply also to those cases where there are several.

All the minors must elect, or dissentient must renounce.

In the last-mentioned cases all the minors must join in the election of the guardian. If there be a dissentient, he must renounce administration by his guardian (elected by him *pro eâ vice*), or he must be cited. But this rule is occasionally relaxed.

Minor passed over.

Where one out of a numerous family is prevented by residence or absence abroad from joining, the court, on affidavit, will pass him or her over, and will give administration to the guardian appointed by the other minors, for the use and benefit of all of them.

This is done by an order of a registrar.

Minor cited.

If the minor is cited to accept or refuse the proposed grant or show cause why it should not be made to the guardian of the other minors, and does not appear to the citation, the practice is to make the grant to the guardian of the others, for the use and benefit of all (*d*).

Grant, when determined.

A grant for the use and benefit of two or more minors and infants is made until one of them shall attain twenty-one years, and should one of them die before that age, it ceases on any one of the survivors attaining it.

Minors' and infants' next-of-kin preferentially entitled to guardianship.

The minors' and infants' next-of-kin, as before stated, if there be no testamentary or other lawful guardian, have the preferential right of assuming their guardianship; and minors are under a corresponding obligation to elect their next-of-kin for such purposes in preference to all others.

The next-of-kin may renounce the guardianship.

It is, however, in the choice of the next-of-kin to assume such guardianship or not. They may renounce it in the case either of infants or minors (*e*).

For forms of renunciation, see Appendix V., p. 1070.

(*d*) *Spriggs* v. *Banks*, 4 N. C. 103.

(*e*) *Richard Widger*, 3 Curt. 56. All the next-of-kin should do so. But in *Widger's Case*, the court granted administration to the step-mother of the executor (a minor), on his two sisters (his next-of-kin)

A stranger or distant relative may then be elected.

If the next-of-kin renounce the guardianship, the min may elect a stranger in blood or a distant relative, a the party elected will be entitled to administration.

If the next-of-kin do not renounce, a registrar's or is required for a grant to a guardian who is not ne of-kin.

The court not concluded by the minors' choice.

But the court is not concluded by the choice of t minors; it has discretionary power to refuse to gra administration to the person elected by them (*f*).

Of course the court must have grounds for such a fusal; but if a minor be nearly of full age, it is probal that the court would hold itself to be concluded by election.

Minor may refuse to elect his next-of-kin on ground shown.

If a ground of objection exist against the minor's ne of-kin, the minor is not, in that case, bound to elect hi and the court will, if the objection be sound, pass o that next-of-kin, and allow a stranger or a more rem kinsman to be chosen (*g*).

Where a minor's next-of-kin had been abroad for ma years, the court granted administration to a stranger elect by the minor, without citing such next-of-kin (*h*).

Minor's elect refused by the court.

On the other hand, if the minor has elected as his ne of-kin an improper person in the opinion of the judge, t latter may refuse him the guardianship (*i*).

Minor a bastard or without relations, etc.

If the minor or infant be a bastard, or have no kno relations, notice must be given to the King's Proctor, the representatives of the Duchies of Lancaster or Co wall as the case may be, and if they take no objecti

renouncing, the one in due form, and the other without the sanction her husband, and it being shown that his elder brother (his other ne of-kin) had not been heard of for many years.

(*f*) *Sir Everard Fawkener and Freemantle* v. *Jordan* (*by her Gu dian*), 2 Lee, 330; *West and Smith* v. *Willby*, 3 Phill. 379.

(*g*) *Hay*, 1 P. & M. 51; 14 W. R. 147; 13 L. T. 335; 35 L. J. *Stephenson*, 1 P. & M. 287; 15 W. R. 286; *Weir*, 2 Sw. & Tr. 45 *Ewing*, 1 Hag. Ec. 381.

(*h*) *C. E. Hagger*, 3 Sw. & Tr. 65; *Burchmore*, 3 P. & M. 139.

(*i*) *Fawkener* v. *Jordan*, 2 Lee, 330; *Ewing*, 1 Hag. Ec. 381; *W and Smith* v. *Willby*, 3 Phill. 380.

the court will confirm the minor's choice of any person whom he thinks fit to choose for his guardian, and will grant administration accordingly.

The letter of the King's Proctor, or the representatives of the duchies above mentioned, consenting to the grant being made to the guardian so elected (or assigned) should be filed in the registry.

Grant to not more than three guardians.

A grant will be made to any number of guardians not exceeding three.

Distant relative or stranger joined with next-of-kin.

These are usually persons equal in nearness of kindred, but occasionally a more distant relative or a stranger in blood is joined with a next-of-kin.

In this case, besides the election by the minor, there must be an affidavit by the guardians showing a satisfactory reason for the grant, *e.g.*, that the next-of-kin is of feeble health or infirm.

No order for the grant is made in the case of a minor.

Similar grants are made upon like grounds in the case of infants.

For forms of the affidavit and order, see Appendix V., pp. 953, 1052.

Distant relative and stranger joined.

A more distant relative and a stranger will be joined on the consent and renunciation of the next-of-kin.

Guardian administrator taking grant as a representative.

If a guardian administrator, in his representative character, take a grant of administration to the effects of another deceased person, such grant is made in like manner for the use and benefit of the minor on whose behalf he took the original administration, and will cease on the minor coming of age. A declaration of the estate must be filed by him in this, as in the other administration.

The exemption of the testamentary guardian from giving a declaration applies not only to the administration (will) which he takes of the estate of the testator by whom he was appointed, but if, by virtue of such grant, he become the representative of any other deceased, he is also exempted from giving an inventory of that estate.

For Use of Lunatic.

Where the *jus habens* is incapacitated from the tran
action of business by reason of his lunacy, imbecility, or u
soundness of mind, administration, as already stated, w
be granted for his use and benefit during his incapacity.

To committee of executor.

In the first place, if a sole executor be a lunatic, a
ministration (with the will annexed) will be granted
the committee of his estate, for his use and benefit, unt
he shall become of sound mind.

If there be two committees, both must take or one mu
renounce.

No declaration is required from the committee, and h
sureties do not justify.

The production of the commission proves the com
mittee's title, and also the lunacy of his ward.

For the form of oath, see Appendix V., p. 1039.

Lunacy Act, 1890.

A grant of the same nature was formerly made to th
person entrusted by the Lord Chancellor with the appl
cation of the estate of the lunatic, under the Lunac
Regulation Act, 1862; but this Act having been repeale
by the Lunacy Act, 1890 (53 Vict. c. 5), a grant of thi
character is now made in conformity with the provision
of the existing Lunacy Acts.[35a]

For the form of oath, see Appendix V., p. 1023.

To Scotch curator or foreign committee.

Administration will be granted similarly to a Scotc
curator, or to a committee appointed by a foreign cour
These latter do not exhibit an inventory, and their sureti
do not justify.

To residuary legatee or devisee for use of the executor.

If the executor have no committee, a grant will be mad
to the residuary legatee or devisee named in the same wil
for the use and benefit of the lunatic and during his lunacy
If there be no residuary legatee or devisee, a similar gran
will be made to the lunatic's husband, wife, or next-of-kin o
heir-at-law (where there is real estate), as the case may be

Canadian Cases.

[35a] See the Act respecting lunatics, R. S. O., 1897, c. 65.

The grantee files a declaration and gives justifying security.

When no commission has been taken out, or no order has been made in Lunacy, the court will satisfy itself as to the lunacy by calling for a joint affidavit of the surgeon or physician of the asylum where the patient is confined, and of his attendant or nurse. Affidavit as to the lunacy.

For the form of affidavit, see Appendix V., p. 951.

A grant will not be made to a person for the use of a lunatic without clearing off all other persons equally entitled with the lunatic whether as having an interest in real or personal estate. Persons having prior right.

Where one of two executors is a lunatic and the other is abroad administration (with will) is granted to the attorney of the latter until he personally applies for probate, or the lunatic recovers and obtains probate.

If the person entitled to the residuary estate be a lunatic (there being no executor), administration (with the will annexed) will be granted to the committee (if any) of the estate, or to the husband or wife or next-of-kin or heir-at-law (where there is real estate) of the lunatic, as the case may be. To the committee or the next-of-kin of a residuary legatee or devisee.

Under Rule 42 (1862), when any person takes letters of administration for the use and benefit of a lunatic or person of unsound mind, unless he be a committee appointed in lunacy, a declaration of the estate of the deceased must be filed in the registry, and the sureties to the administration bond must justify. Declaration. Sureties justifying.

In the case of an intestacy, administration will be granted to the committee, if there be one, or if there be none to the husband or wife or next-of-kin or heir-at-law (as the case may be) of the lunatic entitled but for his insanity, under precisely the same regulations and conditions as apply to the other cases. In case of intestacy.

In *Spencer, deceased*, in October, 1897, where a grant was applied for on behalf of a lunatic next-of-kin, the

registrar required all the other next-of-kin and perso entitled in distribution to be first cleared off (*k*).

For forms of oath, see p. 1023.

Grants under 73rd section.

Where a necessity can be shown, the court will mak grant under 20 & 21 Vict. c. 77, s. 73, to an unintereste person for the use and benefit of the next-of-kin until t latter shall apply (*l*).

Under the same section a grant has been made, for t use of a lunatic, to a person of no kindred to the latter (*m e.g.*, to an officer appointed by the guardians of the uni to which the lunatic (a pauper) was chargeable (*n*).

Husband a lunatic.

If the intestate's husband be a lunatic, administration granted to (1) his committee, (2) his wife (in case of having married again), (3) his next-of-kin, or the intestat heir-at-law (if she left real estate).[36]

In the case of *M. G. Bland*, November, 1899, t registrars decided that a person authorised by an Order Lunacy to apply for a grant during the lunacy of t husband, might take a grant without reference to the he at-law of deceased.

To committee or next-of-kin either of widow or intestate.

Where the intestate's widow is a lunatic, administrati is granted to the committee of her estate (*o*); failing who the grant is made without preference either to the widow

(*k*) Where a person entitled in distribution applies for a grant on t lunacy of the next-of-kin the heir-at-law should be cleared off and registrar's order obtained: *Thomas Judd, deceased*, November, 1904.

(*l*) *Cholwill*, 1 P. & M. 192.

(*m*) *Mary Burrell*, 1 Sw. & Tr. 65.

(*n*) *Eccles*, 15 P. D. 1.

(*o*) *Alford* v. *Alford*, 1 Deane, 324.

Canadian Cases.

[36] *LUNATIC'S ESTATE.*—The control of the Court ceases wi the death of the lunatic, and an order for the distribution of lunatic's estate will not be made under proceedings in lunac Under such circumstances the committee of a lunatic took, und the authority of the Court, proceedings for the administration the estate of a deceased lunatic by applying for an administrati order, which was granted, the proceedings being directed to be inexpensive as possible (*Re Brillinger*, 3 Ch. Ch. 290).

next-of-kin for her use, etc., or to the intestate's next-of-kin absolutely (*p*), or, where the Land Transfer Act, 1897, applies, to the intestate's heir-at-law. No justification of sureties is required when a grant is taken absolutely by the intestate's next-of-kin or heir-at-law.

If the committee, next-of-kin and heir-at-law in such cases renounce and consent, the court will grant to a creditor for the use and benefit of the lunatic, etc. (*q*), or to a stranger for the like use (*r*). To a creditor for the use of widow.

For the manner in which the court treats cases where lunacy has supervened after probate or administration granted, see "Revocations," p. 199.

For Use of Convict.

When the person having the *jus* (such, for instance, as father and next-of-kin of bachelor intestate) is a felon convict, administration is granted to "the person entrusted "under the provisions of the Act 33 & 34 Vict. c. 23, with "the custody and management of the property of A. B., "now a convict, for his use and benefit so long as he shall "continue to have such custody."

Administration pending Suit.[37]

The court has the power of granting administration to last during the continuanco only of any suit which is depending before it.

(*p*) *J. Williams*, 3 Hag. Ec. 217.
(*q*) *T. N. Penny*, 1 Rob. 426.
(*r*) *S. Hastings*, 4 P. D. 73.

Canadian Cases.

[37] An action under the Fatal Accident Act, R. S. O., 1897, ch. 166, by the personal representative of the deceased for the benefit of a beneficiary, survives on the death of the latter, and may be continued on representation being obtained to the estate of the beneficiary (*McHugh* v. *Grand Trunk R. W. Co.*, 32 O. R. 234; and see *post*, p. 172).

This was an old practice of the Prerogative Court but has been extended and developed by statute since abolition of that court.

By the 70th section of the Court of Probate Act, 18 it is enacted, that, "pending any suit touching the valid "of the will of any deceased person, or for obtaini "recalling, or revoking any probate or any grant "administration, the Court of Probate may appoint "administrator of the personal estate of such deceas "person; and the administrator so appointed shall ha "all the rights and powers of a general administrat "other than the right of distributing the residue of su "personal estate; and every such administrator shall "subject to the immediate control of the court, and a "under its direction." [37a]

The court expects a necessity to be shown for the grants, viz., that there is something required to be don and that there is no person empowered to do it (*t*).

Administration *pendente lite* is granted wherever th Chancery Division would appoint a receiver (*u*).

Application for the appointment of an administrato pending suit is made to the court on motion. (See p. 32 *et seq.*, where the subject is dealt with at length.)

Having obtained an order on motion appointing a administrator pending suit, the practitioner will proceed to extract a grant by lodging in the principal registry th administrator's "oath" (Form of oath, p. 1024), a bond fo the amount fixed by the registrar (Form of bond, p. 975) affidavit of justification of sureties (Form of affidavit p. 946), a declaration of the estate (Form of declaration p. 990), and an Inland Revenue affidavit.

(*s*) *Sutton* v. *Smith and Others*, 1 Lee, 209; *Maskelyne and Brohie* v. *Harrison*, 2 Lee, 249.

(*t*) *Harrell* v. *Witts and Plumley*, 14 W. R. 516.

(*u*) *Bellew* v. *Bellew*, 4 Sw. & Tr. 58.

Canadian Cases.

[37a] Surrogate Act, *post*, p. 680, s. 56.

SECTION III.—PROBATES LIMITED AS TO PLACE OR PURPOSE.[38]

To administer a particular estate.

If a testator appoint an executor for the purpose of administering the estate of another testator, whose sole or surviving executor he himself was, probate is granted to him limited for such purpose (*x*).

This probate continues the chain of executorship in that particular estate.

Limited probate of a codicil.

If a testator has appointed a separate executor for the purpose of carrying into effect the trusts and dispositions of a codicil, probate limited to such trusts and dispositions is granted to him.

General and limited probate.

If a testator appoint an executor of his will generally, and another executor for particular purposes, and the general and limited executors both apply for probate at the same time, the grant is made in the same instrument, but the powers of each are distinguished; that is to say, probate is therein granted of all the estate, save and except the property which vests in the limited executor to the general executor; while as regards the latter, his administration is restricted according to the will. If the executors apply singly the grant is special in each case.

(*x*) Where the will itself is to take effect only under certain conditions, the court will grant a general probate: see *P. A. Cooper*, 1 Deane, 9.

Canadian Cases.

[38] *EXECUTOR OF EXECUTOR—SPECIAL DIRECTION.*—L. appointed M. and K. executors and trustees of his will for the management of his property thereby bequeathed (which was personalty) and the payment of the legacies, and he afterwards added and signed a memorandum as follows: "If anything should happen to the trustees, I appoint R. to be one of the trustees." M. proved the will; after his death K. renounced:—*Held*, that M.'s executor did not represent the testator L., and that R. was entitled to ...te (*In re De Laronde*, 19 Gr. 119; see also *Bloomfield* v. ...P. R. 266, 16 C... L. J. 145).

For form of oath for limited probate, see Appendi V., p. 1005, *et seq.*

If the general executor apply before the limited executo the former takes probate; but in respect to the estate, th grant is "save and except" as to the property devolvin to the limited executor. Power is reserved of grantin probate, under limitations, to the limited executor (*y*).

Wills of *femes covertes.*

Although since April, 1887, the practice of grantin limited probates of the wills of married women (*feme covertes*) is as a rule abolished, exceptional cases may stil arise in which certain limitations in the forms of th grants may be necessary. The subject is therefore treate under this chapter, as was the case in the forme edition.

Formerly when probate of the will of a *feme covert* made in exercise of a power was applied for, the cour only inquired (in the words of Lord BROUGHAM in *Tatnal* v. *Hankey*) "whether it is in fact a will, *if she had th power to make a will*," but no further. The court did no look at the power, and the mere allegation that she ha such power was sufficient.

The case of *Price, deceased*, referred to earlier in thi part, is of such importance, and has led to so great a change in the practice of the registry, that the judge' (BUTT, J.) decision is here given *in extenso*. "This is a "application for granting probate of the will of a marrie "woman disposing of her separate property The will wa "dated in 1885. The executors applied in the registry fo "a general grant. This was refused as contrary to practice "Thereupon application was made to me by motion t "direct probate to issue without the usual words limiting "it, not only to such property as the testatrix had a "right to dispose of, but also 'to such property as she had "'disposed of by her will.' It was contended that, since the "Married Women's Property Act (1882), no reason existed "for limiting the grant. Although I understand the

(*y*) But see *Wallich*, 3 Sw. & Tr. 423, where power was not reserved.

"grounds on which the practice was based, I have not "been able to satisfy myself of its necessity, even before "the Act of 1882. Now, at all events, since that Act, a "married woman having power to dispose of her separate "estate, I think the limitation ought no longer to be in- "sisted upon. The policy of recent legislation having "been to place a married woman, so far as her separate "estate is concerned, in the position of a *feme sole*, I direct "probate to issue as prayed. As this will alter a long- "established practice, I thought it right to speak to the "president before deciding this case, and he approves of "the course which I am now taking" (*z*).

In May, 1887, in the goods of a married woman who died before the passing of the Married Women's Property Act of 1882 (to wit, in 1880), leaving a will executed under a power, but disposing of property not included in the power, a grant limited in the old form to personal estate which she had a right to dispose of was moved for, but the court held that under the *new* rules (15 and 18), which took effect on April 19th, 1887, the grant could no longer be limited, but must be in general form (*a*).

See Amended Rules and Orders, 1887, p. 818.

Will invalid save as to exercise of a power.

Cases may, however, arise in which a general probate will not be granted—as, for instance, where a woman of English origin marries a foreigner and loses her British status and makes a will in English form (valid according to English law), in exercise of a power derived from an English settlement (or will). This will of hers may be invalid according to the law of her acquired foreign domicil, but is a good exercise of the power (*b*). *Limited* probate was, in the case referred to in the note, granted to the executor; but in *de Camisani* (1892) the registrars held that in such cases the executorship also fails, and administration (with will) was granted to the appointee,

(*z*) *Price, deceased* (March, 1887), 12 P. D. 137; 57 L. T. (N.S.) 497.
(*a*) *E. A. Homfray, deceased*, mentioned in 12 P. D. 138.
(*b*) *Hallyburton*, 1 P. & M. 90.

limited to the estate over which the power operated. (S
also *post*, Will not revoked by marriage, p. 139.)

In a similar case the court held that if the husba
consented a general grant of administration with w
might be made to the appointee under the 73rd sectio
Court of Probate Act, 1857; otherwise the grant to t
appointee must be limited to the property which she h
power to dispose of and had disposed of by her will (*c*).

It may be convenient to insert here some extracts fro
the statute so often referred to (45 & 46 Vict. c.
(Married Women's Property Act, 1882)).[38a]

By s. 1, sub-s. 1, of the Act, it is provided, th
"a married woman shall, in accordance with the pr
"visions of this Act, be capable of acquiring, holding, a
"disposing by will or otherwise, of any real or person
"property as her separate property, in the same mann
"as if she were a feme sole, without the intervention
"any trustee."

By s. 2 it is further provided, that "every woma
"who marries after the commencement of this Act sha
"be entitled to have and to hold as her separate propert
"and to dispose of in manner aforesaid all real an
"personal property which shall belong to her at the tim
"of marriage, or shall be acquired by or devolve upon h
"after marriage, including any wages, earnings, mone
"and property gained or acquired by her in any employ
"ment, trade or occupation in which she is engaged,
"which she carries on separately from her husband, or b
"the exercise of any literary, artistic, or scientific skill."

By s. 5 it is further provided, that "every woma
"married before the commencement of this Act shall b

(*c*) *Tréfond*, [1899] P. 247; *Vannini*, [1901] P. 330: where a gener
grant of administration (will) was made to the executor with th
husband's consent (*Tréfond*, commented on and explained).

Canadian Cases.

[38a] The Married Women's Property Act, R. S. O., [1897] c. 163
and *post*, p. 139.

"entitled to have and to hold, and to dispose of in manner "aforesaid as her separate property all real and personal "property, her title to which, whether vested or contingent, "and whether in possession, reversion, or remainder, shall "accrue after the commencement of this Act, including "any wages, earnings, money, and property so gained or "acquired by her as aforesaid."

By s. 6 it is further provided, that "all deposits in "any post office or other savings bank, or in any other "bank, all annuities granted by the Commissioners for "the Reduction of the National Debt or by any other "person, and all sums forming part of the public stocks "or funds, or of any other stocks or funds transferable in "the books of the governor and company of the Bank of "England, or of any other bank, which at the commence- "ment of this Act are standing in the sole name of "a married woman, and all shares, stocks, debentures, "debenture stock, or other interest of or in any corpora- "tion, company, or public body, municipal, commercial, "or otherwise, or of or in any industrial provident, friendly, "benefit, building, or loan society, which at the commence- "ment of this Act are standing in her name, shall be "deemed, unless and until the contrary be shown, to be "the separate property of such married woman. . . ."

By s. 7 it is further provided, that "all sums forming "part of the public stocks or funds, or of any other "stocks or funds transferable in the books of the Bank "of England or of any other bank, and all such deposits "and annuities respectively as are mentioned in the "last preceding section, and all shares, stock, debentures, "debenture stock, and other interests of or in any such "corporation, company, public body, or society as afore- "said, which, after the commencement of this Act, shall "be allotted to or placed, registered, or transferred in or "into or made to stand in the sole name of any married "woman, shall bo deemed, unless and until the contrary "be shown, to be her separate property. . . ."

By s. 11 it is further provided, that "a married wom
"may, by virtue of the power of making contracts herei
"before contained, effect a policy upon her own life or t
"life of her husband for her separate use; and the san
"and all benefit thereof shall enure accordingly."

Married Women's Property Act, 1893.

Attention may be drawn here to s. 3 of the Marri
Women's Property Act, 1893, which enacts "that sect. 2
"of the Wills Act, 1837, shall apply to the will of
"married woman made during coverture, whether she
"or is not possessed of or entitled to any separate pr
"perty at the time of making it, and such will shall n
"require to be re-executed or republished after the deat
"of her husband." The section of the Wills Act quote
has reference to a will being construed to speak wit
reference to the real and personal estate comprised in
from the death of the testator.

In *Wylie* v. *Moffatt*, [1895] 2 Ch. 116, it was held tha
this section applies to every will of a married woma
who dies after the date of the Act, *i.e.*, 5th Decembe
1893.

Probate limited to appointing an executor of goods *en autre droit*.

Under the old practice where a *feme coverte* had exer
cised her right at common law of appointing, by her wi
an executor of the goods held by herself *en autre droi*
as executrix, probate of such will was granted limite
accordingly.

In "*Sarah Logan*" the probate was, *inter alia*, "limite
"to the power which the deceased had of appointing a
"executor of and concerning the personal estate and effect
"of *David Birkett* the younger, as the surviving executo
"named in his will, and which power she hath dul
"exercised," etc. (*d*).

This was a separate probate where there was no settle
property. Otherwise the two grants were united.

(*d*) *Birkett* v. *Vandercomm*, 3 Hag. Ec. 750; *Scammell* v. *Wilkins*
2 East, 353. A *supplemental* probate was granted by Sir C. Cresswell
limited to the property which a testatrix, a *femé coverte*, held a
executrix: *Rachael Bayne*, 1 Sw. & Tr. 132. But see *Richard*
1 P. & M. 157, 158; 35 L. J. 44; and *Martin*, 3 Sw. & Tr. 8.

For the form of oath in the first case, see Appendix V., p. 1004.

Probate for estate not covered by former grant.

By the 88th section of the Court of Probate Act, 1857, it is provided, that "where any probate or administration "has been granted before the commencement of this Act, "and the deceased had personal estate in England not "within the limits of the jurisdiction of the court by "which the probate or administration was granted, or "otherwise not within the operation of the grant, it shall "be lawful for the Court of Probate to grant probate or "administration only in respect of such personal estate "not covered by any former probate or administration; "and such grant may be limited accordingly."

By virtue of this clause the court will grant a supplemental probate, or, where the representative is an executor by right of transmission, administration (with will) limited to the personal estate of the deceased not covered by the former probate or administration.

For the form of oath, see Appendix V., p. 1005.

Will not revoked by subsequent marriage.

By the 18th section of the Wills Act, a will made in exercise of a power of appointment, when the estate thereby appointed would not in default pass to the heir, etc., or the next-of-kin under the statute, is not revoked by subsequent marriage. It has been decided by the court, however, that the only portion of the will that remains is that which refers to the power. And in *Russell, deceased* (*e*), administration (with the will) was granted to the appointee (who was also the sole executrix under the will), limited to the property appointed. (See also p. 135—a will invalid save as to the exercise of a power of appointment.) [38b]

For form of oath in such case, see Appendix V., p. 1041.

(*e*) 15 P. D. 111.

Canadian Cases.

[38b] See s. 20 of the Wills Act, R. S. O., 1897.

By the Married Women's Property Act, 1884 (O.), the former restrictions and limitations in dealing with the wills of married women have been removed, and a general grant is now made, as in the case of wills of other persons.

SECTION IV.—LIMITED ADMINISTRATIONS WITH THE WI ANNEXED.

In the cases of wills of married women the practice granting limited administrations (will) has ceased. Shoul exceptional circumstances, however, necessitate a limite grant, the form of oath given in the Appendix for limite probate (p. 1004) will be sufficient guide to the practitione

To residuary legatee or devisee named in the will of a *feme coverte*.

A general grant of administration (will) of a marrie woman's will is now made to a residuary legatee o dev see as in the case of any other testator.

To sole legatee.

A grant of administration (will) has been made unde the 73rd section of the Court of Probate Act, 1857, to sole legatee limited to the amount of his legacy when the will disposes of no other property and contains n appointment of executor (*f*).

To an attorney.

Where the power given by an executor to his attorney to prove a will for him is special, and limited to specifi property, and a general grant cannot be made, the gran of administration (with the will annexed) made to the attorney is limited accordingly.

Under 73rd section of Court of Probate Act, 1857.

The court is empowered to exercise its discretion, and make a grant of administration of part of a deceased's personal estate, if it shall think fit, under the circumstances provided for by the 73rd section of the Court of Probate Act, 1857.

Of a trustee's effects.

Where a testator has bequeathed personal estate vested in him as trustee, the court will grant administration (will) to the legatee in trust, on the renunciation of the executor and the beneficiary entitled to the residuary estate (*g*).

(*f*) *Watson*, 1 Sw. & Tr. 110; *Baldwin*, [1903] P. 61.
(*g*) *Prothero*, 3 P. & M. 209; 23 W. R. 212.

SECTION V.—LIMITED ADMINISTRATIONS.[386]

Limited administration.

If no general representation has been or can be obtained of a deceased, the court, *in subsidium juris*, will grant limited administration to a party or parties having a special interest in the estate of the deceased.

By Rule 30 (1862) it is directed, that "No person "entitled to a general grant of administration of the per- "sonal estate and effects of the deceased will be permitted "to take a limited grant, except under the direction of "the judge" (Appendix II., p. 800).

Exception in attorney grants.

But the practice of the registry, although against such grants, admits on good grounds being shown of a grant of administration limited to specific property being made to an attorney of an absent *jus habens*, if the power of attorney be so limited. (See, for form of oath, p. 1040.)

Limited to naval assets.

It has been shown earlier in this part that where the will of a seaman or marine in Her Majesty's service has not been made or executed in accordance with the provisions of the 28 & 29 Vict. c. 72, it is invalid, so far as regards the disposition therein made of his wages, pay, prize-money, etc., and the deceased is in law intestate so far as regards that estate.

So far as relates to this partial intestacy, the rights of the widow and next-of-kin enure. The one or the other therefore are entitled to administration, limited so far as concerns the deceased's wages, pay, etc.

On production of a certificate from the Inspector of Seamen's Wills a general grant is made.

For the form of oath, see p. 1026.

Limited to trust property.

If a person has died leaving personal property of which he was sole or surviving trustee, administration may be granted limited to that property, provided that the persons entitled to a general grant to the deceased trustee are first cleared off.

Canadian Cases.

[386] The Surrogate Act, *post*, p. 680, ss. 56 and 61.

Money in the funds.

If it be a sum of money in the funds, the limitati will include dividends due and to grow due thereon.

Leasehold estate.

If it be a leasehold estate, the grant will be limited assigning the deceased's interest in the term of yea remaining unexpired.

For the form of oath, see p. 1027, *et seq.*

The court follows the deed which created the trust, all points.

The original deed must be produced and lodged in th registry for the perusal of the Clerk of the Seat (*h*).

The persons to whom these grants will be made ma be thus enumerated.

To whom granted.

If a trust is still subsisting on the death of the surviv ing trustee, and new trustees have been duly appointed administration will be granted of the effects of the forme to the new trustees or to their nominee. Where new trustees have not been appointed, grants have been mad to the nominee of the persons entitled to appoint new trustees; but the proper course would seem to be to take the necessary steps to have new trustees appointed with the view of their subsequently applying for the limited grant.[38d]

If the trusts were legally at an end at or before the death of the surviving trustee, but the trust estate was not transferred by the latter in his lifetime, the court will on his death grant administration of his effects to the *cestuis que trust*, or if there be more than one such to one of the *cestuis que trust* with the consent of the others, or to a nominee of the sole or all the *cestuis que trust* (*i*).

Representative of original testator, where trust created by will.

But in cases where the trust is created by will, it has been the practice to consider that the representative of the original testator must take the grant. Thus when application was made for administration limited to certain trust property held by the deceased as surviving trustee

(*h*) *F. Keene*, 1 Sw. & Tr. 267.

(*i*) *Pegg* v. *Chamberlain and Others*, 1 Sw. & Tr. 528.

Canadian Cases.

[38d] The Trustee Act, R. S. O., [1897] c. 129, s. 4, sub-s. 1.

(and executor) of the will of another deceased, by the *cestui que trust*, it was refused to him in that character, and held that the limited grant must be made to the administrator (will) *de bonis non* of the original testator, and that if there were no such representative the applicant must first take such a grant (of administration (will) *de bonis non*) as a legatee under the will, prior interests being cleared off, and then apply for the limited administration. The grounds for this decision were that the trust fund was in fact unappropriated residue of the original testator's estate.

Representative of *cestui que trust.*

In *Banks* (Motion, March, 1894), however, where trust funds were vested in the survivor of two substituted trustees appointed by the Chancery Division, the president made an order under the 73rd section, Court of Probate Act, 1857, for administration limited to the funds, to be granted to the *cestui que trust* for life, without clearing off the representative of the testatrix who created the trust.

Again, in a more recent case, administration was ordered to be granted to a *cestui que trust* under a will of a trust fund, limited to the fund, on the consent of the representative of the trustee of the fund who was dead (*k*).

It is open to question whether after these two judicially decided cases, the old practice need be followed any longer.

For the forms of oaths and limitations in these cases, see Appendix V., p. 1027, *et seq.*

Nomination.

The form of the instrument by which a person is nominated may be gathered from the form of the oath.

Nature of limitation.

This grant is limited to the right, title, and interest of the deceased in the property in question.

Grant limited to the shares of the *cestuis que trust* in the fund.

If only some of the parties elect, the grant will be made to their nominee to the extent of their shares (*l*), and the dissentient party or parties are at liberty afterwards to apply for a grant limited to the remaining shares of the fund.

To the life interest of the *cestui que trust.*

If the party applying be only entitled to a life interest in the fund, the grant will be limited to the receipt of the

(*k*) *Ratcliffe*, [1899] P. 110.

(*l*) *Pegg* v. *Chamberlain and Others*, 1 Sw. & Tr. 528.

dividends, or other produce of the fund, during th annuitant's life.

Grant to owner of beneficial interest limited to legal interest.

Where the legal estate in shares of a foreign compan was vested in an intestate who died domiciled in Englan but had before his death sold the beneficial interest, adminis tration limited to such shares was granted (on motion) t a person claiming through the purchaser, to enable hi to complete his title (*m*).

Persons entitled to a general grant to be cleared off.

Those persons who are entitled to the general represen tation, though they have no interest in the property i question, must always either renounce, or consent, or b cited (*n*). Rule 29 (1862) directs, that "limited adminis "trations are not to be granted unless every perso "entitled to the general grant has consented or renounced "or has been cited and failed to appear, except under the "direction of the judge" (Appendix II., p. 800).

For the form of consent, see Appendix V., p. 989.

The will not annexed to these administrations.

Whether the deceased has died testate, or intestate, administration is generally granted without the will being annexed, as the object of the representation in no way interferes with the administration of the deceased's own estate (*o*).

Penalty of bond.

The estate is sworn thus, "that the whole of the per- "sonal estate of the deceased is of the value of *l.* "and no more, and that the deceased was possessed of the "same as a trustee only, and had no beneficial interest "therein." The penalty of the bond is in double the actual amount to be administered.

Rule 39 (1882) directs, that "in all cases of limited or

(*m*) *Agnese*, [1900] P. 60.

(*n*) *Thomas William Barker*, 1 Curt. 592; *F. Keene*, 1 Sw. & Tr. 267; 28 L. J. 35; *Pegg v. Chamberlain and Others*, 1 Sw. & Tr. 528.

(*o*) But see *Butler*, [1898] P. 9, where a testator died insolvent having executed a deed of assignment for the benefit of his creditors. His executors renounced, and no one interested under the will would apply for administration with the will annexed. The court thought "that "the will had better be annexed," and made a grant of administration with the will to the trustee of the deed of assignment or his nominee, limited to the property to be conveyed to him.

"special administration two sureties are to be required "to the administration bond (unless the administrator "be the husband of the deceased, or his representative, "in which case but one surety will be required), and "the bond is to be given louble the amount of the "property to be placed in the possession of, or dealt with "by, the administrator by means of the grant. The "alleged value of such property is to be verified by "affidavit if required" (Appendix II., p. 802).

Limited to Chancery action.

When it is necessary that the representative of a deceased person be made a party to an action pending in the Chancery Division, but the executors or next-of-kin of such person will not qualify themselves as his representatives, administration will be granted to the nominee of a party in such suit, limited "to attend, supply, substantiate, "and confirm the proceedings already had, or that shall "or may be had in the said suit in the High Court of "Chancery, or in any other cause or suit which may be "commenced in the same or in any other court between "the parties, or any other parties, touching or concerning "the matters at issue in the said cause or suit, and until a "final decree shall be had and made therein, and the said "decree carried into execution, and the execution thereof "fully completed."

Those who have prior interests must all have renounced.

Administration is also granted to the nominee of a plaintiff who is about to commence proceedings.

Under no circumstances can the grant be general (*p*).

For form of oath, see Appendix V., p. 1030, *et seq.*

The form of nomination may be gathered from the oath.

Under this form of administration the grantee "has "only authority to carry on the Chancery action, and has "no right to receive the fruits of it" (*q*). But if it be required, the court will allow a further limitation, viz., to

(*p*) *A. Chanter*, 1 Rob. 274; *Davis* v. *Chanter*, 2 Phill. 550; *Maclean and Maclean* v. *Dawson and Others*, 1 Sw. & Tr. 425.

(*q*) *C. Dodgson*, 1 Sw. & Tr. 425.

receive any sum which shall be pronounced by the fina order or decree to be due and payable, with interest (*r*).

Under no circumstances can a declaration and justifyin security be required on these grants.

The 15 & 16 Vict. c. 86, s. 44, gives power to the Cour of Chancery to proceed in any suit (in Chancery) withou a representative of a person interested in the matter wh may have died, and even to appoint some one to represen such deceased person, but the Act does not authorise th Chancery Division to dispense with a representative of th deceased whose estate is the subject of an administratio action.

Limited to actions at law.

Where an official assignee's bond for the fulfilment o his duties had been directed by a commissioner in bank ruptcy to be put in suit against the obligors, and action had been brought accordingly in a court of law, but ha abated by the death of one of them, the court grante administration of the effects of such obligor limited for th purpose of supplying, substantiating, and confirming th proceedings already had, or commencing and prosecutin such other proceedings, either at law, or in equity, a might be necessary, in putting the bond in suit, and finall giving a legal discharge for the amount recovered, but n further or otherwise, to the nominee of the commissione in bankruptcy (*s*).

Special administration on account of absence of acting executor.

By the 38 Geo. III. c. 87, s. 1 ("An Act for the Adminis- "tration of Assets in cases where the Executor to whom "Probate had been granted is out of the realm"), it i provided, that "at the expiration of twelve calendar month "from the death of any testator (*t*), if the executors o "executor to whom probate of the will shall have bee "granted are or is then residing out of the jurisdiction o "his Majesty's courts of law and equity, it shall be lawfu

(*r*) *C. Dodgson*, 28 L. J. 117.

(*s*) *Edward Hobson Vitruvius Lawes*, 15th January, 1855.

(*t*) *I.e.*, at or after the expiration of that period: *Ruddy*, 2 P. & M. 390.

"for the Ecclesiastical Court which hath granted probate of "such will, upon the application of any creditor (*u*), next-"of-kin, or legatee, grounded on the affidavit hereinafter "mentioned, to grant such special administration as here-"inafter is also mentioned, which administration shall be "written or printed upon paper or parchment stamped "only with one five shilling stamp (*x*), and shall pay "no further or other duty to his Majesty, his heirs or "successors."

And it is provided by the 2nd section, that "the party "applying to a spiritual court to grant such adminis-"tration as aforesaid shall make an affidavit in the follow-"ing words, or to the purport and effect following:—

"I, A. B., of , do swear that there is due and "owing to me upon bond, [*or* simple contract, *or* upon "account unsettled, *as the case may happen to be, (in "which latter case he shall swear to the best of his belief "only),*] from the estate and effects of , deceased, the "sum of , and that C. D., the only executor capable "of acting, and to whom probate has been granted, hath "departed this kingdom and is now out of the jurisdic-"tion of his Majesty's courts of law and equity, and "that this deponent is desirous of exhibiting a bill in "equity in his Majesty's court of , for the purpose "of being paid his demand out of the assets of the said "testator."

And by the 3rd section it is provided, that there shall be granted under such circumstances administration "limited for the purpose to become and be made a party "to a bill or bills to be exhibited against the administrator "in any of his Majesty's courts of equity, and to carry

(*u*) To a creditor in equity also: *Hammond*, 6 P. D. 104.

(*x*) This part of the enactment is considered to have been repealed by 44 Geo. III. c. 98. It is also considered that the ordinary probate or estate duty is payable. Of course if the full and proper duty has previously been paid upon the property to which the administration is meant to apply, a denoting stamp or certificate that the duty has been paid will be allowed for the new grant.

"the decree or decrees of any of the said court or court
"into effect, but no further or otherwise. . . ."

On account of absence of acting administrator.

The statute has been extended by the following enact
ments:—

By the 74th section of the Court of Probate Act, 185
the provisions of the 38 Geo. III. c. 87, are made applicabl
(in like manner) "to all cases where letters of administra
"tion have been granted, and the person to whom suc
"administration shall have been granted shall be out o
"the jurisdiction of her Majesty's courts of law an
"equity."

And by the 18th section of the Court of Probate Act
1858, it is further provided, that "the provisions of an Ac
"passed in the thirty-eighth year of George the Third
"chapter eighty-seven, and of the Court of Probate Act
"shall be extended to all executors and administrator
"residing out of the jurisdiction of her Majesty's cour
"of law and equity, whether it be or be not intended t
"institute proceedings in the Court of Chancery, and t
"all grants made before and subsequently to the passing
"of the last-mentioned Act; and it shall be lawful t
"alter the language of the grant prescribed by the first-
"named statute, so as to make it apply to grants made in
"the Court of Probate under the said last-mentioned Act."

The 38 Geo. III. c. 87, has been construed to apply to
executors residing in Scotland (*y*).

It applies to cases where the executor of an executor
is absent (*z*).

The affidavit, required by the statute, is disused, its
place being supplied by the administrator's oath.

In the case of a will, this form of grant is usually
simple letters of administration. But, in certain cases,
the grant assumes the form of administration with the
will annexed. This was done in *Thomas Collier*, where
the legal personal representative of a legatee obtained a

(*y*) *Hannay* v. *Taynton*, 2 Add. 505; *C. Jouet*, *ibid.*, 504.
(*z*) *Grant*, 1 P. D. 435; 45 L. J. 88; 24 W. R. 929.

grant of administration (will) limited to deal with a sum which had been set apart to meet two legacies (*a*).

The grant is made either to the party designated in the statute or to his nominee.

In practice the words of the statute have received an extension, as far as regards legatees, and the grant will be made also to their guardians (*b*), and legal personal representatives (*c*).

For forms of oaths, see Appendix V., p. 1031.

Administration ad colligenda bona.

The court is not bound to wait for the application of persons entitled to an estate (*ex testamento* or *ab intestato*), but, when it may be endangered by delay in administering, the court grants letters of administration *ad colligenda bona* for the purpose of preserving the property.

These letters of administration will be granted not only to any one whom the court considers for the occasion eligible, but will also be made to the persons who are entitled to a full grant, but in the interests of the estate cannot wait (*d*); or to entire strangers, who have been brought into connection with the affair (*e*).

Besides the authority to collect and preserve property the court occasionally adds any other power or powers which shall seem necessary under the circumstances.

In *Mary Radnall* (*f*), the court granted administration, "limited to the collection of all the personal property of "the deceased; and giving discharges for all the debts "which might be due to her estate on payment of the "same; and doing what further might be necessary for "the preservation of the property aforesaid; and to the "safe keeping of the same, to abide the directions of the "court."

The grant was made after citing the brother. The

(*a*) 2 Sw. & Tr. 446.
(*b*) *Hampson*, 1 P. & M. 1.
(*c*) *Collier*, 2 Sw. & Tr. 446.
(*d*) *Chas. Clarkington*, 2 Sw. & Tr. 382; 10 W. R. 124.
(*e*) See *Gudolle*, *post*, and *Wykoff*, 3 Sw. & Tr. 22; 15 Law Mag. 71.
(*f*) 2 Add. 233.

grantee had no right or interest in the estate, but ha been the deceased's agent, and the brother had preclude himself from administration, by entertaining conscientiou scruples respecting the taking of an oath.

Upon the same principle, administration has bee granted limited to the sale of a ship, and to the pro tection of the cargo and other matters relating thereto (*g*).

In *Joseph Wood*, the court granted administratio limited to collect and get in the outstanding debts of th deceased and prosecute actions for the recovery thereof and to invest the proceeds in the purchase of exchequer bills, etc. (*h*).

In *Charles Clarkington* (*i*) the court granted administration "limited to the collection of the personal estate of "the deceased, with a power to the administrator to give "discharges for his debts on payment of the same, and to "renew the lease." The court, however, refused to give the administrator power to dispose of the premises and of the goodwill of the business, though in another case such power was granted (*k*).

Where a foreigner died in London away from his relatives, possessed of certain bills of exchange upon English merchants, the court granted administration to an English friend or acquaintance of the deceased (who had procured the bills to be accepted, and had paid certain necessary expenses of the deceased), "limited to the sums due and "to become due on the bills of exchange; and, after the "administrator should have reimbursed himself the money "which he had expended on behalf of the deceased, and "also the expenses of the application to the court, to "invest the balance in his own name in government "securities, and to keep it so invested until a general "representation should be effected to the deceased" (*l*).

(*g*) *George White*, November, 1832.
(*h*) August, 1834.
(*i*) 2 Sw. & Tr. 382; 10 W. R. 124.
(*k*) *Schwerdtfeger*, 1 P. D. 424; 34 L. T. 72; 45 L. J. 46.
(*l*) *Don Miguel Gudolle*, 3 Sw. & Tr. 22.

The administrator filed a declaration, and gave justifying security.

In *Sir Theophilus John Metcalfe*, administration was granted to a nominee of the guardian of the deceased's only child, "limited for the purpose only of collecting and "getting in all outstanding moneys, debts or accounts, "receiving all dividends due or to accrue due upon any "sum in the public funds of Great Britain, and all interest "or dividends that might be declared due upon any other "security or securities in Great Britain, and also to "present, when due, any bill or bills of exchange, and to "receive the amount thereof; and the money, when so "collected and got in as aforesaid, to invest in the public "funds of Great Britain, or other good and sufficient "security or securities in England bearing interest, until "the original will, or an authentic copy, should be brought "into and left in the registry of the court, in case it "should appear that the deceased made any will, or "until it should be ascertained that the deceased died "intestate" (*m*).

In *Stewart*, where the estate was timber and certain debts, the court directed that after payment of the charges upon the timber, and servants' wages, the balance should be paid into the registry, to remain until a general grant should issue (*n*).

In *Schwerdtfeger*, the court granted administration with power to dispose of the goodwill of a school, for the purchase of which an offer had been made, the administrator to pay into the registry the purchase-money, less the expenses of sale and the costs of the letters of administration (*o*).

A specimen form of oath *ad colligenda* is given in Appendix V., p. 1032. But grants under the 73rd section of the Court of Probate Act, 1857, have to a great extent superseded *ad colligenda* grants.

(*m*) *Howell* v. *Metcalfe and Saunders*, 2 Add. 350.
(*n*) 1 P. & M. 727; 38 L. J. 39; 20 L. T. (N.S.) 279.
(*o*) *Schwerdtfeger*, *supra*.

Limited administration under 73rd section of the Act, 1857.

In dispensing with the 21 Hen. VIII. c. 5, the court empowered to make a grant of administration of a part the deceased's personal estate, if it shall think fit, und the circumstances provided by s. 73 of the Act referred above (*p*).

For form of limited oath, see p. 859.

Limited to estate not covered by former grant.

By the 88th section of the Court of Probate Act, 185 it is provided, that "where any probate or administrati "has been granted before the commencement of this Ac "and the deceased had personal estate in England n "within the limits of the jurisdiction of the court b "which the probate or administration was granted, o "otherwise not within the operation of the grant, it sha "be lawful for the Court of Probate to grant probate o "administration only in respect of such personal estat "not covered by any form of probate or administration "And such grant may be limited accordingly."

By virtue of this clause, the Division is competent t gran[illegible]dministration limited to the personal estate of th decea[illegible]d not covered by the former administration (*q*).

For the form of oath, see Appendix V., p. 1034.

Married woman protected under 20 & 21 Vict. c. 85.

When a married woman, protected under the 20 & 21 Vict. c. 85, s. 21, or 21 & 22 Vict. c. 108, s. 8, dies intestate, in the lifetime of the husband, by whom she was deserted, and has left property acquired by her since her desertion, her next-of-kin or heir-at-law (if there be real estate) is entitled to administration, limited to the property so acquired by her since the commencement of the desertion (*r*).

For the form of oath, see Appendix V., p. 1033.

If the next-of-kin of the deceased be minor children of the marriage, they may elect a guardian to take the grant, passing over their father, and a registrar's order, founded

(*p*) See *Young*, 15 L. T. 446; 36 L. J. 80.
(*q*) Cf. "*John Elwell, jun.*," 1 Sw. & Tr. 28, 29.
(*r*) *Maria Worman*, 1 Sw. & Tr. 515; *Stephenson*, 1 P. & M. 287; 36 L. J. 20.

on the affidavit of the guardian, will be made for the grant to issue to him, on his giving justifying security and filing a declaration.

In like manner the next-of-ki or heir-at-law (if there be real estate) of a married woman judicially separated by a decree of the court are entitled to administration, limited to the property acquired by her since her judicial separation. **Married woman judicially separated.**

For the form of oath, see Appendix V., p. 1034.

Where a testator left a legacy to his daughter, who died in his lifetime, but left issue who survived the testator, the judge granted administration, *quoad* the legacy, to *her* children, and not to the representative of her husband, who had survived her, but had died in the lifetime of the testator (*s*). **Limited administration under 1 Vict. c. 26, s. 33.**

SECTION VI.—GRANTS, SAVE AND EXCEPT.

Probate of a will, or letters of administration with a will annexed, will be granted, save and except any particular fund, whenever the nature of the case and the law require such exception to be made. **Grants, save and except.**

If a testator appoint one executor for a special purpose, or in respect to a specific fund only, and another executor for all other purposes, the latter may take probate, save and except that purpose or fund. **Probate, save and except.**

Or, on the renunciation or failure of the executor, or if there be no such other executor, the residuary legatee or devisee may take administration (with the will annexed) of the effects of the deceased, under the same exception. **Administration (will), save and except.**

If the will of a seaman or marine in the King's service be invalid to pass his pay and prize-money, but be otherwise valid, the executor of that will may take probate, save and except the deceased's wages, pay, and prize-money. **Probate, save and except. Seaman's will.**

(*s*) *Sarah Brown*, June 18th, 1860, on motion. See also *Councell*, 2 P. & M. 314.

For forms of oaths, see pp. 1006, 1007.

Administration, save and except

So, where the nature of the case and the law require the court will grant mere administration, "save a "except."

To next-of-kin of testator.

When a testator has made his will for a particular limited purpose only—*e.g.*, the administration of a fu vested in himself as trustee, the administration of estate vested in himself as executor, or the administrat of his own property in some particular district or coun —and has died intestate as regards all other property his own or vested in him, his next-of-kin, or heir-at-l (if there is real estate), without waiting for the execu to take the limited probate which he is entitled to un such circumstances, may take administration of deceased's estate, save and except what the testator himself excepted.

So, where a deceased had made a French will— executor—merely disposing of some furniture in her ho in France, administration was granted (at the princi registry) as of an intestate "save and except" as abo The will had not been proved in France.

Section VII.—Grants "Cæterorum."

Grants *cæterorum.*

The probate and administration following upon a limi grant is *cæterorum;* and, except that it follows, instead precedes, such a grant, it is, as already intimated, m for the same purposes, and under the same conditions the grant "save and except."

Probate *cæterorum.*

If a testator has appointed one executor for a spe purpose or in respect to a specific fund, together w another executor for all other purposes and effects, the first-mentioned executor has taken his limited p bate, the other may take probate of the rest of testator's estate.

If a limited grant has been previously made (viz., on the renunciation of the executor), the residuary legatee or devisee (if there be real estate) may at any time come in and take administration (with the will annexed) of the rest of the deceased's estate. Administration (will) *cæterorum.*

If the executor of a married woman's will has taken a limited probate, the husband or his representative (subject to the rights of the persons interested in the real estate (if any)) may take administration of the rest of her estate (*t*). Administration *cæterorum* to husband.

If the deceased has made a will and appointed an executor for a special purpose, or for a specific fund or property only, and has died intestate in all other respects, his or her widow or husband, next-of-kin or heir-at-law, as the case may be, after the executor has taken a limited probate of the will, are entitled to administration of the rest of the deceased's estate. Administration *cæterorum* to next-of-kin or heir-at-law.

If a limited administration has been granted of the effects of any intestate, his or her widow or husband, next-of-kin or heir-at-law (if there be real estate), are entitled to take administration of the rest of the deceased's estate.

For forms of oaths, see Probate, p. 1007, and Administration, p. 1048, *et seq.*

Where limited administration of the estate of a protected or separated woman has been granted to her next-of-kin, her husband is entitled to a grant of the rest of her estate. To husband.

(*t*) *Boxley and French* v. *Stubington*, 2 Lee, 542.

CHAPTER V.

GRANTS "DE BONIS NON." [38e]

Grants *de bonis non.*

IF the executor or executors to whom probate has be granted have died, leaving a part of the testator's perso estate unadministered, the court may appoint a new rep sentative, for the purpose of administering such part the estate, should the executorship not have been lega transmitted in the manner already described on p. 133.

And the court will make a like exercise of its jurisdi tion in cases where an administrator, with or without a w annexed, has died without having fully administered t deceascd's estate.

Rule in making these grants.

In making such grants the court is governed by t same rules which apply to original grants, and will gra administration, with or without a will annexed, of t deceased's unadministered effects to the same persons on who have a right or interest sufficient to have entitle them to original grants, if they had applied for them, t executor of course being excepted.

And should any mistake have been made in the origin grant, the court will make the necessary correctio Accordingly, when an original grant of administratio (will) was made by the court to a next-of-kin of a testato on its own construction that he had not disposed of hi residuary estate, it afterwards granted administration (wil *de bonis non* to the person whom the Court of Chancer had in the mean time decided to be a residuary legatee (*a*)

Administration (will) *de bonis non.*

It has been already shown that a probate of an executor'

(*a*) *Warren* v. *Kolson*, 1 Sw. & Tr. 290.

Canadian Cases.

[38e] *Re John Wesley, deceased*, Court of Probate, U. C., Nov., 1848 *Re Sproule, deceased*, S. C. York and Peel, 1850; *Re Wilkin*, S. C. York, Dec., 1877; *Thornbeek*, S. C. York, Sept., 1873; and *Frederic Widder*, S. C. York, 1879; *Re Biggar*, S. C. York and Peel, 1862.

will, granted by the same court as that in which he proved his own testator's will, *ipso facto* keeps up, as if by a chain, the personal representation of the latter; and that this rule applies to an indefinite succession of executors, however far they may be removed from the original testator.

Chain of executorship, how broken.

The conditions under which this chain of executorship is broken in law may be thus enumerated:

1. When the immediate sole acting executor dies intestate or testate, but without appointing an executor.

2. When the survivor of the immediate acting executors dies intestate so far as can be ascertained. This qualification has been allowed in an exceptional case.

3. When the remote sole acting executor, to whom an executorship has been transmitted downwards *per catenam*, dies intestate.

4. When the survivor of the remote acting executors dies intestate.

5. When the remote executor or executors renounce the probate of their own testator's will, or have been cited and have not appeared.

6. When the remote executor or executors die without having proved their own testator's will.

7. When, of two or more executors who have died after probate taken by them, it is impossible to show which survived the other or others (*b*).

8. Where one of the executors, having renounced before January 11th, 1858, has survived the acting executor or executors, or where the sole survivor of the acting executors or executor died before August 2nd, 1858, leaving another executor, who has since died without proving the will.

It was held by the registrars in *Brierly*, 1881, and *Dimery*, 1896, where probate had been granted to two executors, as to one *generally*, and as to the other, *for life* only, that the chain of executorship was not kept up on the death of the executrix for life (the survivor) by the executor of the general executor.

(*b*) *Richards* v. *All persons in general*, 4 N. C., App. viii.

The chain of executorship is not kept up through special general administration (will) of a married woman estate, although made to an executor under the c practice (*c*).

Administration (will) *de bonis non* to residuary legatee or devisee.

In all these cases the court will grant administratio with the will annexed, of the estate remaining unadmini tered to the residuary legatee or devisee (where there real estate) in trust or to the beneficial residuary legat or devisee (*d*) or to others, in subjection to the rules whic govern original grants.

To a legatee or creditor, or their representatives, etc.

Administration (will) is granted to a legatee or next-o kin, or a creditor, or to the representative of a decease legatee or creditor, on the renunciation of the residuar legatee or his representative, and subject to rights of th person entitled to the residuary real estate (if any). Th legatee or the representative of the deceased legatee wil swear that the legacy of the latter has not been paid; an the creditor or the representative of the deceased credito that the latter's debt still remains unpaid.

The representative of a married woman, although acting under a limited grant, was held to be entitled to administration (will) *de bonis non* of a testator under whose will the married woman took benefit (*e*).

If the original grant was made to a creditor or a legatee, his representative, if the debt or legacy be still unpaid, or

(*c*) *Bridger*, 4 P. D. 77.

(*d*) Formerly, when the testator had failed to dispose of the residue of his personal estate, and had appointed an executor who took no benefit under his will, such executor was held to be entitled to the residue not disposed of by the former, and consequently on his dying leaving goods unadministered, his representative was entitled to a grant of administration (will) *de bonis non*. But by 11 Geo. IV. & 1 Will. IV. c. 40, executors are to be deemed, by Courts of Equity, trustees of the undisposed-of residue of a testator's estate for the benefit of such persons who would be entitled under the Statutes of Distribution in case of an intestacy, unless it should appear that it was *intended* that such executor was to take the residue beneficially. If there should be no person who would be entitled under the Statutes of Distribution, then the Act was not to take effect.

Grants therefore to the representative of a deceased *nude* executor are now practically unknown.

(*e*) *Ditchfield*, 2 P. & M. 152.

any other creditor or legatee, may take administration (will) *de bonis non*, without any further renunciation on the part of the residuary legatees or devisees; but if they were only cited and did not appear, they would have to be cited again.

Where the first grant of administration to A. is to a representative of the residuary legatee (deceased), and such administrator dies, the representative of the deceased representative of the residuary legatee would not be entitled to a *de bonis non* grant to the original deceased (A.) without first obtaining a *de bonis non* grant to the deceased residuary legatee.

A grant *de bonis non* is made to the representative of a next-of-kin (deceased) who renounced when the original grant was made.

So also, a grant *de bonis non* is made where the original grant was a Scotch confirmation or an Irish grant resealed in England.

To creditor in equity.

A creditor in equity may also take. So may the assignee of an unsatisfied debt due from the deceased (*f*).

Codicil proved for the first time

In ordinary cases the grant of administration (with the will annexed) *de bonis non* includes the testamentary papers of which probate was originally granted. But if a codicil be discovered at or about the time of administration *de bonis non* being applied for, the grant will pass the will already proved, and of the codicil lately (*g*).

Original will, etc., marked by the intended administrator (will) *de bonis non* on being sworn.

In all cases of administration, with the will annexed, *de bonis non*, the applicant for such a grant must be sworn to and mark the original will when he makes his oath, or, if he cannot attend in the registry where the same is deposited, the original probate or letters of administration with the will annexed, or a certified office copy under seal of the will, must be annexed to his oath and marked by him in lieu of the original will. In such cases he will swear that the document so marked "contains an official

(*f*) *Burdett*, 1 P. D. 427.
(*g*) *William Adamson*, July, 1827.

copy of the last will and testament" of the testator. (S
"Practice," p. 164, *et seq.*)

For forms of oaths, see Appendix V., p. 1046, *et seq.*

Administration *de bonis non.*

When an administrator dies, leaving part of
deceased's goods unadministered, the grant *de bonis n*
will go to the persons who would have been equa
entitled to the original administration.[39]

To next-of-kin, etc.

This observation applies to next-of-kin, to perso
entitled in distribution, and to all others having
interest in an intestate's personal or real estate.

For forms of oaths, see Appendix V., p. 1042, *et seq.*

Canadian Cases.

[39] *ADMINISTRATOR OF ADMINISTRATOR.*—An admin
trator of an administratrix cannot represent the estate, but
administrator *de bonis non* must be appointed to the original estat
and a sale by the sheriff of lands belonging to the intestate und
a *fi. fa.* issued on a judgment against such administrator is nugato
(*Ingalls* v. *Reid*, 15 C. P. 490).

ADMINISTRATION DE BONIS NON.—*Quære*, whether
administrator *de bonis non* can call in question the administrati
of his predecessor in office (*Tiffany* v. *Thompson*, 9 Gr. 244 ; a
ante, pp. 24, 25).

"As I understand the law applicable to the subject of succeedi
executors, it is this: The original testator, having appointed
executor who proves his will, is represented by the executor of t
executor in the event of the death of the first executor ; but if t
first executor dies intestate, then the administrator is not such
representative, but an administrator *de bonis non* of the origin
testator must be appointed by the ordinary : for the power of
executor is founded upon the special confidence and actual appoin
ment of the deceased, and such executor is, therefore, allowed
transmit that power to another in whom he has equal confidenc
and, so long as the chain of representation is unbroken by any i
testacy, the ultimate executor is the representative of every precedi
testator" (RICHARDS, C.J., *Ingall* v. *Reid*, *supra*, at pp. 498 and 499

An executor having taken probate of his own testator's wi
becomes executor *ipso facto*, not only of that will, but also, a
without further grant, of the will of any testator of whom the oth
was sole or surviving executor (*Re Stephenson*, *Kumee* v. *Malloy*,
O. R. 395).

To persons having a derivative interest.

A person having a derivative interest may be admitted to take administration (with will annexed) *de bonis non*, or administration *de bonis non*, under the same conditions as he would be allowed to take an original grant.

Administration *de bonis non* of seamen in Royal Navy.

In applying for letters of administration *de bonis non* of persons dying in her Majesty's navy, a further certificate must be produced from the inspector of seamen's wills, in case any wages, pay, or prize-money should be still due (see p. 54).

Administration *de bonis non* not required.

Letters of administration *de bonis non*, as has already been shown, are not required in the case of grants made to the solicitor of the treasury for the time being as his Majesty's nominee, the original grants being made to that functionary and his successors in office in perpetuity.[30a]

Administration, with substance or copy of will annexed, *de bonis non*.

If an executor who has taken probate of a draft, copy, or the substance of a will, or if the grantee of letters of administration, with such copy or substance annexed, die leaving part of the testator's estate unadministered, letters of administration, with the copy or substance of the will annexed, *de bonis non* will be granted upon the general principles regulating all grants, it being again shown by affidavit that the original will has not been found or recovered, or transmitted, according as the case may be. But if the original will be forthcoming, the grant will assume another form (*vide* Cessate Grants, next chapter).

For the use and benefit of lunatic.

If the person, who would otherwise have taken an administration (with or without a will) *de bonis non*, be a person of unsound mind, administration *de bonis non* will be granted for his use and benefit to the same persons to whom an original grant would have been made under the same circumstances. And the lunacy or unsoundness of mind of the party for whose use the grant is made is evidenced in the same manner as in the case of an original grant.

In "*Southmead's Case*," the court granted administration

Canadian Cases.

[30a] R. S. O., 1897, c. 70, s. 2.

de bonis non to the executors of one of the next-of-kin, the use of the other next-of-kin, who was imbecile, passi over the next-of-kin of the latter, but required proof th the grant so made would be for the advantage of t imbecile next-of-kin (*h*).

Administration of the rest of effects unadministered.

If an administrator or administrator (will) *cæteroru* die without fully administering an estate committed him, a grant of the rest of the deceased's effects so le unadministered will be made to the same order of perso who would have been competent to have taken an origin grant.

Save and except.

And the same observation applies to the case of admini tration *save and except* left unadministered by the origin grantee.

Limited administration (with or without will) *de bonis non.*

If, on the death of an executor who has taken probate, of an administrator who has taken administration, limite to a particular estate or fund, that estate or fund be le unadministered or untransferred, limited letters of admini tration (with or without will) of the unadministered estat of the deceased will be granted to parties having the sam kind of interest which the court recognised in the origina grant.

Limited administration will *de bonis non* to legatee.

When an executor has proved his testator's will, an has administered the estate, with the exception of a legac which has been set apart and remains invested in th original testator's name, the court, on the death of th executor and the interruption of the chain, with the con sent or upon the citation of the residuary legatees, ha granted administration (with the will annexed) *de boni non* to the legatee, limited to his legacy (*i*).

But these cases are exceptional, and very unusual in practice, the court, as a general rule, declining to grant limited administration to any person entitled to a genera grant.

Judge's direction for limited grant. Rule 29.

Rule 29 (1862) requires that no limited grant shall be

(*h*) *Rev. W. Southmead*, 3 Curt. 29.

(*i*) *M. Steadman*, 2 Hag. Ec. 59; *Sus Diou*, 3 Curt. 741. But see also *W. Watts*, determined by Sir C. CRESSWELL, 1 Sw. & Tr. 540; also *Lady Catherine Somerset*, 1 P. & M. 350.

made until all persons entitled to a general grant have been cleared off, *except under the direction of the Judge*. This direction of the President (or Judge) is obtained by one of the principal registrars if the latter is satisfied that sufficient grounds exist for waiving the consent of all parties; and if the interest of the applicant in the unadministered estate is paramount. The registrar draws up an order for the issue of the limited grant on obtaining the direction.

Limited administration *de bonis non* of a trustee's effects.

When the executors of a trustee of a settlement, who had invested a trust fund in his own name, have died, breaking the chain, and the fund still remains to be administered, the *cestui que trust* of that fund, or his nominee, may obtain administration of the unadministered goods of the deceased trustee, limited to the trust fund, upon the consent of the deceased trustee's residuary legatee. (See p. 142 as to trusts created by will.)

Where under corresponding circumstances the trustee has died intestate, the renunciation and consent of his next-of-kin or heir-at-law (if there be real estate), and the persons entitled in the distribution of his personal estate, will be required before the limited administration *de bonis non* will be granted.

Limited administration *de bonis non* to attend proceedings in Chancery.

When the grantee of administration limited to attend and substantiate proceedings in the Chancery or any other Division, dies before the termination of the proceedings, he is considered to have left goods unadministered, and a new grant may be made to another nominee.

Administration *de bonis non*, as distinguished from *cessate*.

If the donor of a power of attorney for whose use administration has been granted die in the lifetime of the attorney administrator, administration *de bonis non* (not cessate) is the form in which the subsequent grant is made.

If, however, the attorney die in the lifetime of the donor of the power, the form of grant is *cessate*.

If a lunatic for whose use administration has been granted die in the lifetime of the administrator, the form of the new grant will be *de bonis non*.

If the cases are reversed the form will be *cessate*.

Practice in Grants "de bonis non."

In the case of an administration (will) *de bonis non*, th practice is as follows:—

The administrator makes an oath and affidavit for th Inland Revenue, as in other cases, and the usual adminis tration *de bonis non* bond is executed. (Forms of bond Appendix V., pp. 1046, 1047.)

He will swear to administer generally the estate, an not merely to what remains unadministered; but th amount of estate as sworn in the oath will be the value o what remains unadministered at the time.

Will or probate to be marked.

In regard to being sworn to the will and marking it, h may be either sworn to and mark the original will, or th probate which was granted of it, provided, in the latte case, that all the proving executors be dead; or he ma be sworn to a certified office copy under seal of the will.

If the original grant issued at one of the now extinc courts, the executor cannot be sworn to the old gran unless the registrar, in whose custody the original will is certifies that the engrossment attached to the grant ha been examined with, and is a true copy of, the original will

Administrator sworn to the original will;

If the administrator swear to the original will, he mus attend in the registry, and be sworn to his oath before one of the "commissioners for oaths" in the registry.

In this case the original will must be looked up. A fee stamp of 1*s.* is paid for the *search*.

A stamp of the value of 1*s.* 6*d.* is charged for adminis tering the oath, and 1*s.* for marking the will.

to the probate.

In the other cases the administrator may be swor before any person duly qualified to administer oaths i the High Court. (See Chapter XVI., p. 276.)

If the administrator be sworn in the registry, he mus execute the bond before the clerk of the seat, or some other officer in the registry.

For this a fee of 1*s.* 6*d.* is charged, and a fee of 1*s.* fo any subsequent attestation of the bond.

If the executor is sworn to the original grant or

certified office copy of the will under seal, the grant or copy will is filed, and a fee stamp of 2*s.* 6*d.* is charged for the filing, unless the former issued in a district registry, when no filing fee is charged, because the will is registered for the first time in the principal registry.

Engrossment of will.

If the original will has been proved, and is registered in the principal registry or in the Prerogative Court, the engrossment of the will for a *de bonis* grant may be made in the principal registry, or if the practitioner prefer it, he may engross the will himself from any copy he may have, and pay the fee for collating only.

If the will has been proved, and registered at a *district* registry, or in the registry of a *diocesan* or other ecclesiastical court now extinct, the practitioner is also allowed to engross the will and to pay the fee stamps for registering and collating the will, as in the case of an ordinary first grant.

Denoting stamp.

The practitioner's next step (*k*), after the executor has been sworn, will be to avail himself of the privileges granted to the subject by 41 Geo. III. c. 86, s. 3.

By that section it is provided that "in every case "where any probate or probates, or letters of administra- "tion, shall have been taken out, duly stamped according "to the full value of the estate in respect whereof the "same shall have been granted, then and in such case "any further or other probate or letters of administration "as aforesaid, which shall be at any time thereafter "applied for or in respect of such estate, shall and may "be issued and granted upon any piece of vellum, parch- "ment, or paper, stamped or marked with the stamp or "mark provided by the said commissioners by virtue of "this Act, for such other probates or letters of adminis- "tration as aforesaid; and every such other probate or "letters of administration which shall be duly stamped "or marked with such stamp or mark as last aforesaid, "shall be as available in the law, and of the like force

(*k*) For practice where deceased died after the commencement of the Finance Act, 1894, see *post*, p. 167, *et seq.*

"and effect in all respects whatever, as if the vellum
"parchment, or paper whereon the same shall be engrossed
"printed, or written, had been duly stamped with the
"stamp or mark denoting the full amount of the duties
"payable in respect of the probate or letters of adminis-
"tration taken out on the full value of such estate; any-
"thing in any Act or Acts or this Act before contained
"to the contrary thereof in anywise notwithstanding."

Obtained by memorial to Commissioners of Inland Revenue.

For this purpose he must submit a memorial to the Commissioners of Inland Revenue, together with the Inland Revenue affidavit, in accordance with a rule established by them.

This memorial must set forth the fact of the first or original grant, the amount of stamp duty thereon, and a particular description and enumeration of the testator's estate in respect of which the first grant was taken, and of what, at the date of the memorial, remains to be administered.

For instructions as to, and the form of, the memorial, see Appendix V., pp. 994–995.

In all cases of grants passed before the enactment of the 44 Vict. c. 12 came into operation, the first grant must be produced to the clerk of the commissioners on filing the memorial, in order that the stamp upon it may be inspected. But if this cannot be done, owing to the grant having been lost or mislaid, or to its being in the hands of another person who will not consent to produce it, the commissioners must be satisfied in some other way that the grant was originally stamped as asserted.

In such cases, a certificate from the registrar or other officer of the registry having sources of knowledge as to the duty paid, has been received.

If the memorialist can give no information from which the board can form a judgment whether or not the original grant was duly stamped, they will not grant the denoting or duty paid stamp, because the latter is, in their opinion, a certificate that the proper duty was paid upon the original grant.

In these circumstances, the memorialist or his client has no alternative left but to pay duty upon the amount of the unadministered estate.

If the whole unadministered personal estate does not exceed £100, no memorial or duty paid stamp is required. Finance Act, 1894.

In cases of grants passed since the 44 Vict. c. 12 came into operation, the first grant is not required to be exhibited, the Commissioners of Inland Revenue having the original affidavit of property in their own possession for all necessary purposes of scrutation.

Certificate as to estate duty in lieu of denoting stamp.

Where the deceased died on or since August 2nd, 1894 (*i.e.*, the commencement of the Finance Act, 1894), the practitioner, before lodging the papers at the registry, delivers to the Commissioners of Inland Revenue a memorial containing the same particulars as the memorial previously referred to, but applying for a certificate (instead of a denoting stamp) either that estate duty has previously been paid or that none is payable in respect to the new grant.

The certificate, if granted, is endorsed on the Inland Revenue affidavit (Form A—5), which may be presented at the same time as the memorial.

Should there be any additional estate duty payable on the occasion, it is received by the Commissioners of Inland Revenue previously to granting the certificate alluded to, on a corrective affidavit (Form D—1).

The certificate is in lieu of the denoting stamp, which is not used in estate duty cases.

These instructions apply to all applications for second or subsequent grants, and whether the estate does or does not exceed £100, where the representation is in respect to the same estate as that in respect to which the previous grant operated.

The denoting stamp or a certificate having been granted on the Inland Revenue affidavit, the practitioner deposits it with the oath, the engrossment of the will, and a plain office copy of the record or act of the previous grant at the

receiver's department. This office copy record will sub quently be returned with the grant.

If the engrossment has been made in the registry will be forwarded to the clerk of the seat in due cou after being examined. The original will must also locked up and sent to the seat.

Fee on grant. For the fees for making the engrossment and for grant see Appendix II., "Fees of 1874," pp. 893-8 Whether the fee on the grant is payable under the sc to be found at p. 893 will depend on whether stamp du is paid on the application for the new grant. If none paid, the scale at p. 894 applies: if duty is paid, the f is *ad valorem*, for which see Appendix II., p. 893, *et seq.*

Search fees. No search fees are paid except where the original gra issued from a diocesan, archidiaconal, or any court no extinct other than the Prerogative Court of Canterbur In such cases the fees are charged as from the date death of the deceased.

No certificate of delay is required.

After the clerk of the seat has examined the document submitted to him, and has approved of them, the necessar form of grant will issue.

The same course is then pursued as in the case of a original grant.

Will proved originally in diocesan court, etc. If the original grant was extracted from a distric registry or a diocesan court, notice of the issuing of the second grant is transmitted to the district registrar. A fee of 1*s.* is charged for the notice, in addition to the fe of 2*s.* 6*d.* payable for noting the record of the original grant.

In the case of letters of administration *de bonis non*, the preceding observations apply *mutatis mutandis*.

The fees on the grant are also slightly different (For scale, see pp. 895, 896.)

No search fees are charged except where the original grant issued from a court (other than the Prerogative Court of Canterbury) now extinct.

CHAPTER VI.

SECOND, OR CESSATE GRANTS—DOUBLE PROBATES.[40]

Second or, supplemental grants.

WHEN the original grant has been limited for any specified time, or until any specified event or contingency shall happen, a new grant must be made upon the efflux of the time and the accomplishment of the event or contingency referred to in the original probate or letters of administration.

Their nature.

But although this form of grant may be required where the deceased's estate has not been fully administered, it is distinguished whether rightly or wrongly it is not easy to say) from grants *de bonis non*, as being a re-grant of the whole of the deceased's estate.

The estate, however, is sworn in the oath in respect only of what at the time of making the application for the second grant remains unadministered. This practice has been in force since April, 1897.

The bond will cover in respect of the unadministered estate.

Probate to substituted executor.

If an executor being appointed for his life take probate, it ceases with his death, and the executor substituted in the will at the decease of the former takes a further grant (*a*).

(*a*) In a will—"I appoint my wife sole executrix *and in default of* her I appoint I. K. and R. F. to be executors." The wife proved and died. Held that I K. and R. F. were substituted executors: *Foster*, 2 P. & M. 30[illegible]

Canadian Cases.

[40] *PROBATE—ANCILLARY PROBATE.*—A will executed by a person when domiciled in the province of Quebec before two notaries there, in accordance with the law of that province, not acted upon or proved in any way before any court there, is not

If an executor be appointed for a shorter time th his life, or under any other limitation of time, and ta probate, the grant ceases upon the expiration of the te or the fulfilment of the limitation, and the substitut executor, if there be such, takes probate.

For form of oath, see Appendix V., p. 1008.

Probate granted to an executrix during widowho ceases on her remarriage, and a grant is made to t executor substituted, reciting that: "The probate, et "granted in, etc., to A., having ceased and expired "reason of her having intermarried with B——."

Probate to executor on becoming sane.

When administration (with the will annexed) has be granted for the use and benefit of a lunatic executor, t grant ceases on the latter becoming sane, and he ma take probate of the will.

But if the administrator die before the recovery of t executor, further administration (with the will annexe called a *cessate* grant is granted to some other person f the use and benefit of the executor, whose lunacy is agai evidenced in the same manner as it was before.

But if the lunatic die, the grant made for his use an benefit ceases, and administration (with the will annexed *de bonis non* is granted to some person having the prope qualification.

Probate to executor on attaining majority.

Administration (with the will annexed) which has bee granted to a guardian for the use of an executor durin his minority ceases when the executor attains his majority and a probate is granted to the executor.[41]

Canadian Cases.

within the Act respecting ancillary probates and letters of adminis tration, s. 1, Vict. c. 9 (O) (*In re Maclaren*, 22 O. A. R. 18; an *ante*, p. 15).

[41] *INFANT EXECUTOR.*—A grant of probate to an infan excutor along with an adult is not a nullity (*Cumming* v. *Lande Banking and Loan Co.*, 20 O. R. 382).

The 6th section of 38 Geo. III. c. 87 (Imp.) prohibiting the gran of probate to infants under the age of twenty-one is in force i Ontario, either as a rule of decision in matters relating to executor

For form of oath, see Appendix V., p. 1008.

Such an administration (will) also ceases by reason of the guardian's death during the executor's minority, and in that case *cessate* letters of administration (with the will annexed) will be granted to a new guardian.

To executor after grant made to attorney.

When administration (will) has been granted to the attorney of the executor, it ceases on the latter duly applying for and obtaining probate of the will.

For form of oath, see Appendix V., p. 1009.

Death of attorney or executor, etc.

The grant also ceases by the death of the attorney.

On the death of an administrator, who took the grant as the attorney of one of the next-of-kin, administration (*de bonis non*) will be granted to the attorney of another next-of-kin on notice to the next-of-kin for whom the original grant issued (*b*).

If the executor, or any other constituent, die in the lifetime of the attorney-administrator, and before the estate has been fully administered by the latter, the grant, of course, determines, but the letters of administration which succeed it are in the form *de bonis non*.

Probate of substance of will,

When probate has been granted of the substance of a will, limited until the original will or an authentic copy thereof shall be brought into the registry, the grant ceases on the original or an authentic copy thereof being discovered and brought into the registry, and the executor will take probate of the original will, or the authentic copy, as the case may be.

(*b*) *Barton*, [1898] P. 11.

Canadian Cases.

and administrators (R. S. O., 1877, c. 40, ss. 34 and 35, now R. S. O., [1897] c. 51, ss. 26 and 27), or as a rule of practice in the Probate Court of England (R. S. O., 1877, c. 46, s. 32, now Surrogate Act, R. S. O., 1897, c. 59, s. 37) (*Merchants' Bank* v. *Monteith*, 10 P. R. 334).

An infant cannot lawfully be appointed administrator of an estate, and therefore a grant of probate or a letter of administration to an infant is void, and confers no office on, and vests no estate in, such infant (*Ib.*; and *ante*, p. 120).

or more authentic copy.

When probate has been granted of a copy of a w limited until the original or a more authentic copy sh be brought in, the grant ceases on the original, or a m authentic copy, being found or transmitted and brou in, and the executor takes probate of the original will, the more authentic copy, as the case may be.

Probate of will or administration after administration *pendente lite*.

Administration granted *pendente lite* ceases on determination of the suit, and probate of the will, letters of administration, as the case may be, will granted.

Chancery proceedings.

Administration granted to attend and substanti proceedings in the Chancery or any other Divisi ceases by the termination of the suit in the lifetime of nominee.

For form of oath, see Appendix V., p. 1025.

Administration (will) to residuary legatee or devisee on attaining majority.

Administration (will) which has been granted to guardian for the use of a residuary legatee or devis ceases on his attaining his majority, and administrati (will) is granted to the residuary legatee or devisee.

For form of oath, see Appendix V., p. 1042.

Administration to next-of-kin on attaining majority.

Administration, which has been granted to a guardi for the use of an only or several next-of-kin (minor ceases on such only next-of-kin, or of any one of the where there are more than one, attaining 21 years, a administration will be granted to such next-of-kin.

For form of oath, see Appendix V., p. 1024.

Death of guardian.

If the guardian dies before majority is attained by a one of the minors, the administration which was grante to him ceases, and *cessate* letters of administration a taken by a new guardian.

Death of minors.

If the sole minor, or all the minors (where there a several), die before attaining his or their majority, th grant made to the guardian ceases, but the form of th subsequent grant is *de bonis non*.

Grant taken by guardian in his representative

When a guardian takes administration for the use an benefit of minors, and afterwards in his representativ character takes administration of the estate of anothe

person, both these administrations cease as soon as one of the minors attains his majority. **character ceases.**

When administration has been granted to the committee or next-of-kin of a lunatic, the grant ceases by the recovery of the lunatic, or the death of the administrator, and a fresh grant is made in the one case to the party himself, and in the other to a new committee, or some other next-of-kin (*c*). **Administration to person on recovering from lunacy.**

In the latter case, evidence is again adduced as to the lunacy of the party for whose use the administration is to be taken.

In the former case, the recovery of the lunatic must be proved by the affidavit of a medical man, and the consent of the administrator whose grant is to cease will be required.

If the lunatic die, the administration granted for his use ceases, and administration *de bonis non* will be granted to whosoever is by law entitled to the grant. **Death of lunatic.**

For form of oath, see Appendix V., p. 1045.

Administration granted to the attorney of a husband or a next-of-kin ceases on the latter applying for and obtaining administration. **Administration to constituent in the lifetime or after the death of the attorney.**

The same administration ceases by reason of the death of the attorney-administrator in the lifetime of the constituent.

For form of oath, see p. 1025.

Double Probates.

It has been already stated (p. 27) that an executor to whom power is reserved may at any time, either during the lifetime or after the death of the proving executor, prove the testator's will.

The grant is called a double probate.

For the form of oath, see Appendix V., p. 1001.

A double probate is made general in its terms, but the

(*c*) *Thos. Newton Penny*, 4 N. C. 660.

amount of the estate included in the oath to lead t
grant and in the Inland Revenue affidavit is that on
which remains unadministered.

Where a will is proved in Ireland by one executor, a
re-sealed in England, double probate may be granted
the English court on the death of the proving execut
to another executor appointed in the will (as in *Gosford*
1877).

Practice in Double Probates and Cessate Grants.

Double and cessate probates.

In the case of a double probate or cessate probate, th
practice is as follows :—

The executor will in either case make an oath, as
other cases of probate. He will swear to administe
generally the estate, and not merely to what remain
unadministered, but the amount of estate as sworn in th
oath will be the value of what remains unadministered a
the time.

The executor also makes an affidavit for the Inlan
Revenue (Form A—5). See Appendix IV., p. 930.

Will or probate to be marked.

In regard to being sworn to the will and marking it
he may be either sworn to and mark the original will, o
the probate which was granted of it, provided, in th
latter case that all the proving executors be dead ; or h
may be sworn to a certified office copy under seal of the
will.

If the original grant issued at one of the now extinct
courts, the executor cannot be sworn to the old grant
unless the registrar, in whose custody the original will is,
certifies that the engrossment attached to the probate has
been examined with, and is a true copy of, the original will.

Executor sworn to the original will ;

If the executor swear to the original will, he must
attend in the registry, and be sworn to his oath before one
of the "commissioners for oaths" in the registry.

In this case the original will must be looked up. A fee
stamp of 1*s.* is paid for the *search*.

A stamp of the value of 1*s.* 6*d.* is charged for administering the oath, and 1*s.* for marking the will.

In the other cases, the executor may be sworn before any person duly qualified to administer oaths in the High Court. (See Chapter XVI.) to the probate.

If the executor is sworn to the probate or a certified office copy under seal, they are filed, and a fee stamp of 2*s.* 6*d.* is charged for the filing, unless it be a district registry grant, when no filing fee is charged, because the will is registered for the first time in the principal registry.

For practice as to engrossment of will, memorial to Commissioners of Inland Revenue, fees, search, etc., see "Practice in Grants *de bonis non*," which *mutatis mutandis* applies to double and cessate probates.

Cessate administrations.

The practice in *cessate* administration follows the practice in administrations *de bonis non* (*q.v.*).

Cessate administrations with will.

The practice in *cessate* administrations with the will annexed follows the practice in double or cessate probates (*q.v.*) but with the addition of the usual bond.[41a]

Canadian Cases.

[41a] The probate of a will, whether granted in common or solemn form, is a judicial act, and, as a judgment *in rem*, is, while unrepealed, conclusive against all the world; provided that the Court has jurisdiction over the subject-matter, and that the probate is not obtained by fraud (*Book* v. *Book*, *ante*, p. 77).

But the High Court of Justice of Ontario has power to entertain suits as to the validity of wills, whether probate has been granted or not, and, if granted, whether revoked or not (s. 38).

In Ontario, the distinction between real and personal property, for the purposes of administration, has been abolished (*Re Reddan*, 12 O. R. 781; and *ante*, p. 61).

A testamentary paper which either disposes of property situate in Ontario, or contains an appointment of an executor, whether he has renounced or not, is entitled to probate in Ontario (S. C. Act, s. 17; and 53 Vict. c. 17 (O.); and Coode 36 L. J. (N. S.) P. & M. 129; *Dickson* v. *Monteith*, 14 O. R. 719; and *post*, pp. 341 and 603).

CHAPTER VII.

ALTERATIONS IN GRANTS, ESTATES RESWORN, ETC.[41b]

In regard to the deceased, in general grants,

It will occasionally happen that after a grant has been made an error of some kind is discovered. The surname or christian name of the deceased may have been misspelled, the *status* of the deceased, if a female, have been misstated, and the time of the deceased's death may have been misrepresented.

in limited grants.

In limited grants, also, there may have been a misdescription of the property which is to be administered, or there may have been a misrecital of the power under which a will has been made, or of a deed by which the trust has been created.

In grants made before Jan. 11th, 1858.

By the 17th section of the Court of Probate Act, 1858, it is provided, that "the judge of the Court of Probate "shall have and exercise the same power of altering and "amending grants of probate and letters of administration "made before the 11th day of January, 1858, as any "Ecclesiastical Court had and exercised in respect of such "grants."

Alterations made by registrar's order.

In all these cases one of the registrars of the principal registry will direct that the required amendments be made in the grants, on the necessary proof and identification being adduced. (See also principal registry rule No. 72 (amended), and district registry rule No. 63.)

For the forms of affidavit and order, see pp. 954 and Orders, 1050.

Further description of deceased added.

The court has extended its indulgence into allowing a further description of a deceased to be added to the grant (*a*).

(*a*) *Towgood*, 2 P. & M. 408.

Canadian Cases. ;

[41b] Succession Duty Act, R. S. O., 1897, c. 24 ; and amending Acts, see *post*, p. 934.

In grants of administration, if the administrator find it necessary to increase the amount of the estate of the deceased, the provisions of the 55 Geo. III. c. 184, s. 42, must be followed. The effect of that section is that in cases of letters of administration on which too little stamp duty has been paid at first, the commissioners of stamps shall not cause the same to be duly stamped in the manner provided by the preceding section until the administrator shall have given such security to the Ecclesiastical Court or Ordinary by whom the letters of administration shall have been granted, as ought by law to have been given on the granting thereof in case the full value of the estate and effects of the deceased had been then ascertained.

Amount of estate increased.

In such a case the administrator makes an affidavit as to the increased amount of the estate of the deceased, and if the bond already given is not sufficient to cover the whole estate, including the increased amount, gives a further bond in a sum sufficient to meet the deficiency.

Affidavit of administrator.

For form of this affidavit, see p. 962. See also *post*, "Practice"—"Further Security," p. 181.

Where, in grants of probate, the estate is sworn at a nominal amount in the first instance, an undertaking is required that if further estate be discovered the additional fees will be paid in the probate registry.

As to cases in which the grant of administration was originally taken out under the 33rd section, and 15*s.* only paid for court fees, or where the estate was sworn to be under £100, see *post*, "Practice," as to full *ad valorem* seal fees being required, p. 181.

33rd section.

As to additional security, Irish property, see *post*, "Resealing," pp. 183, 188.

In certain circumstances, another person will be permitted to make the affidavit and execute the bond (*b*).

(*b*) *Ross*, 2 P. D. 274; and also see the case of *S. Sutherland*, 4 Sw. & Tr. 189, referred to in that case.

Administrator absent.

A person acting under a power of attorney from th absent administrator is allowed to execute the necessar documents.

Notation by registrar on the grant.

After this has been done, the clerk of notations *note* upon the letters of administration that the estate has bee resworn, and that further security has been given, whic notation is signed by a registrar. The registrar also give a certificate to the same effect, which is subsequentl handed by the administrator to the Inland Revenu Department upon paying the additional duty.

For form of certificate, see p. 976.

This is done in compliance with a regulation prescribed by the Commissioners of Inland Revenue, under the provisions of the 40th and 41st sections of the 55 Geo. III. c. 184, to the effect that in cases of letters of administration on which too little duty shall have been paid at first, there must be delivered with the affidavit a certificate from the proper officer of the Ecclesiastical Court where the letters of administration were granted, that the administrator hath given further security for the due administration of the personal estate and effects of the deceased, in consequence of the same having been since discovered to be of greater value than was first sworn to.

This is the course adopted where the administrator finds out his own mistake, and takes measures in his lifetime to correct it. But if the administrator be dead and a grant *de bonis non* for, or including, additional property is required, the modern practice is for the intended administrator to apply in the first instance on a corrective affidavit to the Commissioners of Inland Revenue and pay the duty on the increased estate, and thereupon to memorialise the commissioners to grant a denoting stamp or certificate on the Inland Revenue affidavit for the *de bonis non* grant, indicating that the proper duty has been paid.

Administrator limited to proceedings

An administrator, limited to attend and substantiate proceedings in Chancery, etc., who for this purpose will have sworn the deceased's estate under £50, may be

afterwards resworn and give security in any increased amount (*c*). In Chancery may increase.

A further declaration is given by the grantee on his reswearing the estate in a higher amount in cases where a declaration was required when the grant issued. When further declaration required, etc.

The same remark applies to all grants, where a declaration or an inventory of the deceased's estate has been required to be filed *ex officio* by the standing rules of the court.

The court will order a memorandum to be endorsed on a probate after it has been issued, showing the true date of the will (*d*). Date of will rectified after probate.

The testator's domicil will be noted upon a grant after it has been issued. (See "Notation of Domicil," p. 192.) Domicil noted after grant.

If a codicil be found after probate of a will has been granted, a separate probate is granted of that codicil, and the first probate undergoes no alteration or amendment whatever. If, however, the appointment of the executors under the will is annulled or varied by the codicil, the probate must be brought in and revoked, and probate will be granted anew of the will and codicil. Should an unattested or unexecuted paper, incorporated by the testator in his will, have been omitted from the probate, the probate may be amended by the addition of the incorporated documents (*e*). Probate of codicil subsequent to that of will. Further engrossment in probate.

These remarks refer more especially to the deceased; but the court is equally open to receive an explanation plainly given of an error *bonâ fide* committed in cases where an alteration is asked which more particularly applies to the executor or administrator himself. Alterations in regard to executor or administrator.

(*c*) *Elizabeth Grant*, March and May, 1840. But see *Jones* v. *Howells*, 12 L. J. (N.S.) Ch. 369, and *C. Dodgson*, 1 Sw. & Tr. 260. In this latter case a grant *ad litem* had issued in the then (1859) usual form under £50. The Court of Chancery refused to pay over a sum standing in the deceased's name, in Chancery, under so limited a grant. The Judge (CRESSWELL) directed that the original grant be revoked, and a grant issued to the same administrator limited to the suit *and* to receive the said sum.

(*d*) *Allchin*, 1 P. & M. 664.

(*e*) Dr. LUSHINGTON, in *Sheldon* v. *Sheldon*, 3 N. C. 255, 256.

An executor may omit a Christian name of his ow which has been omitted in his nomination in the wil or he may use a surname therein imposed upon hin without the right to do so. If he can give sufficient an reasonable explanations, the necessary alteration will b made. And this will be done either in the case of a executor who has taken probate, or of an executor t whom power has been reserved.

All the facts stated in explanation of the omission, o mistake, are proved by affidavit.

Where an executrix, being a married woman, too probate as a spinster, the court would not allow he name and description to be altered without her husband' consent (*g*).

Practice.

Alterations in grant; When an alteration in a grant is necessary, an affidavi of the facts is made by the grantee, and taken to the Notation Department. Subsequently, that department submits the evidence to the registrar, who makes an order for the required alteration.

Fees: affidavit, 2*s.*; order, 2*s.* 6*d.*; making the altera- tion, 2*s.* 6*d.*; noting original record, 2*s.* 6*d.* For form of order, see Appendix V., p. 1050.

in bond; Where the deceased's name or the date of his death are altered, a new bond must be given, unless the administrator and his sureties attend at the registry and re-execute the bond already given.

in engrossment. Where a mistake or omission has been made in the engrossment of a will or codicil annexed to a grant, application should be made to the superintendent of the scrivenery department, who will cause the engrossment to be re-examined, and the necessary alteration made.[42]

(*g*) *Rev. W. Hale*, 5 N. C. 514, 515.

Canadian Cases.

[42] If probate is wrongfully obtained, then the executors become

If an executor to whom power has been reserved desires to renounce probate, he produces his renunciation and obtains an order to file it from the registrar. The record of the grant is thereupon noted with the fact of the renunciation having been filed. The grant itself is not noted.

Fees: filing renunciation, 2*s.* 6*d.*; order, 2*s.* 6*d.*; noting record, 2*s.* 6*d.* Form of order, see Appendix V., p. 1050.

Notation of further security.

In the case of the estate being resworn and a notation of further security being required, the practitioner will proceed as follows:—

He will take the affidavit and bond and the letters of administration (with or without a will), which are to be noted, to the Notation Department.

A fee stamp of 5*s.* is paid in respect of the notation, and another 2*s.* for filing the affidavit.

A fee of 2*s.* 6*d.* is paid for filing the bond.

A fee of 1*s.* is charged for the certificate required for the Inland Revenue Office as to the estate having been resworn, and the additional security given. For form of certificate, see Appendix V., p. 976.

The practitioner will also pay a search fee of 1*s.* for looking up the original bond.

No receipt is given for the papers.

A further copy account of the estate, declaration of the estate, and affidavit of justification, will be necessary in cases where these documents were required on the issue of the grant. A certificate of delay is not required, whether one was originally filed or not.

Where the grant issued either under Customs and Inland Revenue Act, 1881, s. 33; Finance Act, 1894, s. 16 (1); or the Intestates' Widows and Children Acts, 1873 and 1875, or where the estate was sworn at a sum not amounting to £100, and the ordinary fees were paid, the full fees

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Canadian Cases.

trustees for the persons entitled upon an intestacy (*Henning* v. *McLean*, 2 O. L. R. 169).

that would have been payable had the estate been correctl sworn in the first instance are demanded on the additiona security being tendered. If objection is taken to suc payment the party must apply to the registrar for hi directions, furnishing him with the reason why th additional property was omitted; should the explanatio prove satisfactory, the registrar will direct that the pay ment be not enforced.

If the fixed fee of 15*s.* has been paid under s. 33 o s. 16 (1) (see previous paragraph), and the estate i resworn at a sum which takes the case outside the section in question, the fee is forfeited, and no credit can be given for it under any circumstances.

Where the grant issued under the Intestates' Widows and Children Acts (36 & 37 Vict. c. 52, and 38 & 39 Vict. c. 27), allowance is made for the fee actually received at the Probate Registry from the registrar of the county court.

If the grant was made on personal application at the principal or a district registry, and the small fees authorised by the Amended Table of Fees, 1875, were paid, credit is given for the whole amount of such fees.

In other cases, where the estate was sworn at a sum not amounting to £100, the fees originally paid are credited.

No rectification of fees takes place where the estate was originally sworn at or exceeding the sum of £100, and the ordinary *ad valorem* fee on the grant was paid.

On limited and special grants.

When further security is given in respect of a limited or special grant, the bond is special, and should in form follow the original bond, and be submitted in draft, before execution, to the Notation Department.

The same additional fees are charged in respect of a limited or special administration bond as are referred to at p. 111.

CHAPTER VIII.

RESEALING IRISH, SCOTCH AND COLONIAL GRANTS.[42a]

Irish.

Irish grants resealed in England.

By the 95th section of the 20 & 21 Vict. c. 79, it is provided, that "when any probate or letters of administration "to be granted by the Court of Probate in Ireland shall be "produced to and a copy thereof deposited with the Regis- "trars of the Court of Probate in England, such probate "or letters of administration shall be sealed with the seal "of the last-mentioned court, and being duly stamped "shall be of the like force and effect and have the same "operation in England as if it had been originally granted "by the Court of Probate in England."

Certificate from registrar in Ireland of sufficient security having been given, etc.

By the 29th section of the Court of Probate Act, 1858, it is enacted that "letters of administration granted by "the Court of Probate in Ireland shall not be resealed "under section 95 of the 20 & 21 Vict. c. 79, until a cer- "tificate has been filed, under the hand of a registrar of "the Court of Probate in Ireland, that bond has been "given to the judge of the Court of Probate in Ireland in "a sum sufficient in amount to cover the property in "England as well as in Ireland in respect of which such "administration is required to be resealed."

Grant to be duly stamped before resealing.

It is directed by Rule 73 (1862), that "the seal is not "to be affixed to any probate or letters of administration "granted in Ireland, so as to give operation thereto as if "the grant had been made by the Court of Probate in "England, unless it appear from a certificate of the com- "missioners of Inland Revenue, or their proper officer,

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Canadian Cases.

[42a] Resealing is now the practice in the surrogate courts with regard to grants of English or Colonial courts (Surrogate Court Act, R. S. O., 1897, c. 59, s. 78; and see Colonial Probates Act, 1892, which applies to Canada).

"that such probate or letters of administration is duly "stamped in respect of the personal estate and effects of "which the deceased died possessed in England. In "respect of letters of administration, the provisions of "statute 21 & 22 Vict. c. 95, s. 29, must also be complied "with."

With reference to the practice in resealing an Irish grant, where the grant issued on or after April 1st, 1880, the first step is to apply to the Inland Revenue Office, Custom House, Dublin, for the certificate, referred to in the preceding paragraph, that the proper stamp duty in respect to the grant has been paid. This is given on the application of the representative or his solicitor. When the grant issued before June 1st, 1881, the grant itself must be presented at the Estate Duty Department, Somerset House, London, with an affidavit as to the facts of the case made by the executor or administrator, and the certificate will thereupon be granted by that department instead of by the Irish Revenue Office.

Where the deceased has died since January 1st, 1898, and there is only real estate in England, it has been held by the registrars, with the approval of Sir FRANCIS JEUNE, that the grant may be resealed in England.

In the case of an administration or administration (will), a certificate must also be obtained from the probate registrar in Ireland that bond has been given to the Irish court in a sum sufficient to cover the property in England (whether trust property or not) as well as in Ireland. (See preceding page.)

A colonial grant which has been resealed in Ireland is treated as an Irish grant, and may be resealed accordingly in England.

Practice. For the ordinary fees for resealing, see p. 911, *et seq.*, "Fees." A grant which issued in Ireland under 44 Vict. c. 12, s. 33, may be resealed for 15*s.*

An Irish grant issued under s. 16, Finance Act, 1894, may be sent (by post or otherwise) to the Principal Probate Registry, and the English seal may be affixed for a

fee of 2*s.* 6*d.* The certificates mentioned on p. 183, and a copy of the grant, must also be transmitted as in ordinary cases.

The probate and administration duties of Ireland were assimilated perpetually to those of England by the 16 & 17 Vict. c. 59.

The practitioner will prepare a copy of the grant, whether it be probate or letters of administration, to be deposited in the English probate registry. A fee of 1*s.* is payable on the receipt of these documents. In respect of collating the copy, the following fees are chargeable:—

If 10 folios (of 90 words each) or under, 2*s.* 6*d.*

If above 10 folios (of 90 words each), per folio, 3*d.*

A fee of 2*s.* 6*d.* is charged for filing the copy.

It has been seen (p. 183), that the proper officer in Dublin of the Commissioners of Inland Revenue will grant the certificate as to the payment of duty in respect to the grant, required by Rule 73 (1862).

In respect of this certificate, the practitioner will provide a fee of 2*s.* 6*d.*

In the case of an administration (with or without a will) the certificate that bond has been given in Ireland sufficient to cover the English estate must be filed. This certificate is obtained from the Irish probate registry where the grant issued.

On filing the certificate, the practitioner pays a fee of 2*s.* 6*d.*

Search fees are charged when necessary, as in the case of a grant.

The grant, copy of the grant, the Inland Revenue certificate, and the Irish probate registrar's certificate (where there is one), are left with the receiver. After the copy has been collated with the grant, the papers are transmitted to the clerk of the seat.

A fiat, allowing or directing the grant to be resealed, is then prepared by the clerk of the seat and signed by one of the registrars.

Upon this fiat a fee of 5*s.* is charged.

After these things have been done the Irish grant wi
be resealed.

In respect of the resealing, fee stamps are charged a
follows:—

"For affixing the seal of the court to any grant
"probate or letters of administration, with or withou
"will annexed, or to an exemplification of probate o
"letters of administration with or without will annexe
"under seal of the Court of Probate in Ireland, in orde
"to its becoming in force for property in England, suc
"fee as would be payable in respect of a grant originall
"made in England for property equal in amount t
"the property in England which is to be affected by th
"probate or other instrument to which the seal of th
"court is to be affixed."

By an order as to Supreme Court fees, dated Decembe
12th, 1892, an amendment to the following effect has bee
made in the above fee, viz., that when the property in
England amounts to or exceeds £300, and is covered by
the *ad valorem* grant fee paid in Ireland, the resealing fe
shall be 12*s.* 6*d.* (See also p. 911, *et seq.*)

Resealing English grants in Ireland.

By rules reciprocally made by the High Courts of
Justice in England and Ireland in December, 1896, in-
creased facilities have been given to persons desirous of
avoiding the necessity of taking out separate grants in
each country.

English rules.

Under the English rules made in this matter an executor
or administrator may (in person or by his solicitor) deposit
at the Principal Probate Registry in London, or at the
District Probate Registry where the grant was made, the
original probate or letters of administration together with
a copy thereof and any certificate required, and also the
amount of the fees payable in Ireland; and the English
probate registrar is thereupon required to transmit such
documents and fees by post to the Irish Principal Probate
Registry in Dublin for the purpose of the grant being
resealed there.

The grant, when resealed, is returned to the English Probate Registry from which it was received, for delivery to the applicant.

Irish rules.

Under the corresponding rules made in Ireland, an Irish grant with the necessary certificates and fees, may be deposited at the Principal Probate Registry in Dublin or at the proper District Registry in Ireland, to be transmitted to London for resealing.

For the additional Rules (Nos. 107, 108) of December, 1896, see Appendix II., p. 826.

Under the 94th section of the Probate Act (Ireland), 1857 (20 & 21 Vict. c. 79), the function of the Irish court in resealing probate or letters of administration granted in England is ministerial, and the applicant is entitled to the order as a matter of right, upon complying with the provisions of the section, but under special circumstances the court will, before making the order, allow a caveator an opportunity of taking proceedings to revoke the English probate (*a*).

Exemplification.

An exemplification of a resealed Irish grant cannot issue in England.

If the intestate, at his death, held no property in Ireland except as trustee, there must, to satisfy the provisions of 20 & 21 Vict. c. 79, s. 94, be a certificate from the registrar in England explicitly stating that bond has been given to cover the whole of the amount of assets in Ireland (*b*).

The English registrar will grant such certificates upon an affidavit by the applicant or solicitor proving the facts.

For form of affidavit, see p. 953.

For form of certificate, see p. 954.

Practice.

When it is desired to seal an English grant in Ireland, application is made to the Secretary, Estate Duty Office, Somerset House, for a certificate that the proper stamp duty in respect to the grant has been paid.

(*a*) *Bannon* v. *Macaral*, 7 L. R. Ir. 221.
(*b*) *Walshe*, [1897] 1 Ir. Ch. 167.

In cases of administration with or without will, a cer tificate will also be required by the Irish probate registrar that sufficient bond has been given in England (under the Court of Probate (Ireland) Act, 1859, s. 25). This is obtained on an affidavit (see p. 953) at the Notation Department, Principal Probate Registry.

The ordinary fees are: Looking up bond, 1*s.*; filing affidavit, 2*s.*; certificate, 2*s.* 6*d.*

If the grant issues under the Finance Act, 1894, s. 16 (1), and the certificate as to bond is applied for *at the same time* as the grant, it is furnished without any fee beyond the 15*s.*, otherwise the ordinary fees are charged.

Application to registrar to transmit grant to Ireland for resealing.

Applications made under Rule 107, dated December 11th, 1896 (see p. 826), to transmit an English grant to Ireland to be resealed may be made either by the executor or administrator, or by his solicitor.

The applicant (if applying at the principal registry) must personally deposit at the Personal Application Department (Room 37), (1) The original grant; (2) A copy of the grant fairly written with the number of folios (a folio contains ninety words) clearly marked outside the copy; (3) A *certificate* from the Inland Revenue Office that *estate duty* has been paid according to the value of the property in England and *Ireland* (this certificate is obtained either on a personal request or by letter addressed to the Secretary, Estate Duty Department, Somerset House, London, W.C.); (4) A *certificate* (in cases of grants of administration with or without a will) that sufficient *bond* has been given to cover the personal estate in England. Application for this certificate must be made at the Notation Department (Room 70), principal registry, accompanied by an affidavit made by the administrator. The form of the affidavit can be obtained of the Messenger, Contentious Department (Room 43). The applicant must also look up the bond in the public hall.

The fees in respect to this certificate are: Filing affidavit, 2*s.*; certificate, 2*s.* 6*d.*; looking up bond, 1*s.*

Upon presenting the documents at the Personal Application Department, the applicant must deposit postal orders for the amount of the fees payable in Ireland. Particulars of these fees will be furnished to the applicant by this department on the documents being left. (See also "Fees," p. 913.)

Scotch.[42b]

Resealing Scotch grants.

By the 9th section of the 21 & 22 Vict. c. 56 (The Confirmation and Probate Act, 1858), it is provided, that from and after the date aforesaid (*i.e.*, the 12th day of November, 1858) "it shall be competent to include in "the inventory of the personal estate and effects of any "person who shall have died domiciled in Scotland any "personal estate or effects of the deceased situated in "England or in Ireland, or both: [*provided that the "person applying for confirmation shall satisfy the commissary, and that the commissary shall, by his interlocutor, find that the deceased died domiciled in Scotland, "which interlocutor shall be conclusive evidence of the fact of "domicile*] provided [*also*] that the value of such personal "estate and effects situated in England or Ireland respectively "shall be separately stated in such inventory; and such "inventory shall be impressed with a stamp corresponding to the entire value of the estate and effects included "therein, wheresoever situated in the United Kingdom."

By the 12th section of the same Act it is provided, that "from and after the date aforesaid, when any confirmation "of the executor of a person who shall [*in manner aforesaid be found to*] have died domiciled in Scotland, which "includes, besides the personal estate situated in Scotland, "also personal estates situated in England, shall be produced in the principal Court of Probate in England, and "a copy thereof deposited with the registrar, [*together*

Canadian Cases.

[42b] The resealing of Scotch grants is now the practice, and the expressions "probate" and "letters of administration" include confirmation in Scotland (Colonial Probates Act, s. 6, *post*, p. 244; and *ante*, p. 183).

"*with a certified copy of the interlocutor of the commiss*
"*finding that such deceased person died domiciled*
"*Scotland,*] such confirmation shall be sealed with the
"of the said court, and returned to the person produc
"the same, and shall thereafter have the like force
"effect in England as if a probate or letters of admi
"tration, as the case may be, had been granted by
"said Court of Probate."

NOTE.—For the repeal of the words within brackets in the ab quotations, see 55 & 56 Vict. c. 19 (S. L. R.), and 39 & 40 Vict. c. (The Sheriff Courts (Scotland) Act).

Sheriff Courts (Scotland) Act.

The Sheriff Courts (Scotland) Act, 39 & 40 Vict. c. has simplified the whole question as to "resealing" Scot confirmations. By that Act (see Appendix I., p. 729) t Commissary Courts were abolished and their powers tran ferred to the sheriffs. It is enacted that a note or stat ment to be made in the confirmation by the sheriff cler or commissary clerk, as to the Scotch domicil of th deceased, be accepted as a certified copy interlocutor.

Eiks.

It is also enacted that an eik, or additional confirma tion, granted in a Sheriff Court in Scotland of estate i England of a person dying domiciled in Scotland, may b "resealed," even if such additional confirmation shall no contain any estate in Scotland.

Trust estate.

It is also enacted that any confirmation or additiona confirmation, which contains or has appended thereto and signed by the sheriff clerk a note of funds in England held by the deceased in trust, may be resealed.

Intestates' widow, etc.

The Intestates' Widows and Children (Scotland) Act 1875 (38 & 39 Vict. c. 41), increases the facilities for "expeding" confirmation in respect to personal estates of deceased intestates not exceeding £150 in value. (See *post*, Appendix I., p. 725.)

Small testate estate.

The Small Testate Estate (Scotland) Act, 1876 (39 & 40 Vict. c. 24), extended this last Act to testates, as regards personal estate not exceeding £150 (*c*).

(*c*) The fee for resealing a confirmation forwarded under s. 3 of this Act is 2*s*. 6*d*.

By the 34th section of the Customs and Inland Revenue Act, 1881 (44 Vict. c. 12), these last-mentioned Acts are extended so as to apply to any case where the whole personal estate of a person dying on or after June 1st, 1881, without any deduction for debts or funeral expenses, shall not exceed the value of £300, whoever may be the applicant for administration and wherever the deceased's domicil, and the fees paid under Schedule C. of each of those Acts are not to exceed 15*s.*, inclusive of the 2*s.* 6*d.* to be paid to the commissary or sheriff's clerk: and in any such case, where the estate exceeds £100, the stamp duty is to be 30*s.*

34th section of Customs and Inland Revenue Act, 1881.

In March, 1882, the registrars directed that confirmations under these Acts may be "resealed" at the principal registry on the application of any person (*i.e.*, whether or not a solicitor); also, that under the 34th section just quoted no fees are payable on such an application; and that no copy of the confirmation need be filed.

The Finance Act, 1894, s. 23 (7), enacts that the Acts mentioned in the 34th section (see above) shall extend to an estate of a gross value not exceeding £500.

The registrars hold that where an *original* confirmation, under whatever Act issued, does not include any Scotch property, it cannot be resealed.

In the case of resealing a Scotch confirmation, the practitioner will proceed as follows:— Practice.

A copy of the grant must be made and collated as in the case of an Irish grant before mentioned, and the same fees are chargeable in respect of collating such copy.

A fee of 2*s.* 6*d.* is charged for filing the copy of the grant.

Search fees are charged when necessary, as in the case of a grant, and the usual fee is charged for the receipt of the document.

The grant and copy are left with the receiver for transmission to the clerk of the seat, as in the case of an Irish grant, and eventually the confirmation is resealed.

The fee for affixing the English seal is £1 1*s.*
p. 913.)

English grants made operative in Scotland.

By the 14th section of the Confirmation and Prob
Act, 1858 (21 & 22 Vict. c. 56), it is provided, "that w
"any probate or letters of administration to be gra
"by the Court of Probate in England to the executo
"administrator of a person who shall be therein or by
"note or memorandum written thereon signed by
"proper officer stated to have died domiciled in Engla
"or by the Court of Probate in Ireland to the executo
"administrator of a person who shall in like manner
"stated to have died domiciled in Ireland, shall
"produced in the Commissary Court of the county
"Edinburgh, and a copy thereof deposited with the co
"missary clerk of the said court, the commissary cle
"shall write or indorse on the back or face of such gra
"a certificate in the form as near as may be of t
"schedule (F) hereunto annexed; and such probate
"letters of administration, being duly stamped, shall
"of the like force and effect and have the same ope
"tion in Scotland as if a confirmation had been grant
"by the said court."

The date of resealing is shown by the date of t
registrar's fiat.

Notation of domicil on English grant.

If a notation of English domicil is required on a gra
in order that, under the Confirmation and Probate Ac
1858, recognition may be given to the grant in Scotlan
the oath must be prepared in accordance with Form N
145, p. 1018.

The domicil of the deceased is noted upon the grant.

A fee of 5*s.* is charged in respect of the notation on th
grant.

If the notation be made after the grant has been issued
one of the executors or administrators makes an affidavi
in the form given at p. 962, and upon that the registra
makes an order for the notation. The duplicate Inland
Revenue affidavit is no longer required.

The following are the fees:—Affidavit, 2*s.*; order, 2*s.* 6*d.*; notation on grant, 5*s.*; notation on record, 2*s.* 6*d.*

For the form of order, see p. 1055.

Trust property only in Scotland.

Where the only estate in Scotland is trust property, the usual notation of domicil is made either simultaneously with the grant or after it has been issued, upon evidence of the fiduciary character of the property and that the deceased had no beneficial interest in it.

Reference in the certificate on the grant is made to the existence of the Scotch property, and that in respect to it the deceased was a trustee only. The value is not stated.

Colonial and Consular.

Resealing colonial grants in England.

For the procedure in reference to sealing grants of probate and administration under Colonial Probates Act, 1892, the reader is referred to the additional Rules and Orders of December 7th, 1892, which will be found in Appendix II., p. 821: see also the Act itself in Appendix I., p. 744.

Where a colonial grant has been made to more than one person, it cannot be resealed here on the application of one of the grantees without the authority and consent of the others (*S. C. Smith, deceased*, June, 1898).

If a colonial grant be made to two or more executors, one of whom is dead at the time of the application being made to reseal the probate, the attorney of the surviving executors must in his oath swear to the death of the deceased executor.

The registrar's *fiat* to seal the grant and the record of the sealing will show that the applicants are the "now surviving executors" of the will (*Pemberton, deceased*, September, 1898).

Where an application was made by an attorney to reseal a colonial grant, acting under a power expressed to be given for the purpose of obtaining a grant of administration (with will) in this country, it was refused by the registrar.

Exemplifications are held to be "copies" under (sub-s. 4) of the Colonial Probates Act, 1892, and be resealed.

Resealing consular court grants in England.

The Colonial Probates Act, 1892 (55 Vict. c. 6), vides for the sealing in the United Kingdom of prob and letters of administration granted in British possess to which the Act by orders in council has been appl which, when sealed, shall have the like force, effect, operation as if granted in the United Kingdom.

Orders in Council have been made applying the Act the following places :—

Cape of Good Hope, New South Wales, Victoria, N Zealand, Gibraltar, British Honduras, Hong Kong, West Australia, the Province of Ontario in the Dominion Canada, British Guiana, Gold Coast Colony, South Au tralia, Straits Settlements, the Bahama Islands, Barbado Lagos, Tasmania, Fiji, Trinidad and Tobago, Jamai Natal, the Colony of the Falkland Islands, the Colony the Leeward Islands, British Columbia, Nova Scoti Manitoba, North-West Territories (Canada), Island Grenada, Island of St. Vincent, Queensland, Island of S Helena, Orange River Colony, Southern Rhodesia, Trans vaal, and Newfoundland.

The application of the Act also extends to authorising the sealing of a grant made by a British court in a foreig country. No Order in Council in this case is necessary.

The Act, when applied, extends to sealing grants whether made before or after the passing of the Act.

For Rules of Court regulating the procedure and practice, including fees made pursuant to the Act, see pp. 821, 913.

Resealing English grants in consular courts.

Notation of domicil.

If an application be made for a notation of domicil, in order to obtain the recognition of an English grant by a British Consular court having jurisdiction out of His Majesty's dominions and authorised by an Order in Council or otherwise to give effect to such a representation, provided that it bears upon it a statement that the

deceased was domiciled in England, the registrars will make an order for such a notation upon evidence of the domicil and the production of a copy of the Order in Council or other authority.

Fees: Filing affidavit, 2*s.*; order, 2*s.* 6*d.*; notation, 5*s.*; noting record, 2*s.* 6*d.*; filing copy Order in Council, 2*s.* 6*d.*[43]

Canadian Cases.

[43] *SALE OF MORTGAGE—NOTES FOR PURCHASE MONEY.*—An executor sold a mortgage given to the testator, taking the purchaser's note payable to himself or order:—*Held*, upon an issue of *plene administravit*, that this in law amounted to a receipt of the original debt, making the executor chargeable with the mortgage as an asset in possession (*MacBeth* v. *MacBeth*, 26 U. C. R. 549).

TIME FOR REALIZING COLLECTION OF DEBTS.—Executors should proceed with promptitude to realize the assets; and the law presumes that, as a general rule, a year should be sufficient for this purpose. They should exercise a reasonable discretion as to suing debtors, and preserve evidence of having done so in case of uncollected debts, the onus of proof being on them and not on the legatees. But when the result proves unfortunate, they are not charged with the loss, though the Court should not concur in the propriety of the course which in the *bonâ fide* exercise of their discretion they took. A delay of ten months resulting in loss requires explanation (*McCarson* v. *McKinnon*, 15 Gr. 361).

EXECUTOR'S POWERS BEFORE PROBATE.—An executor, without proving the will, has power to do almost all acts incident to his office (*Robinson* v. *Caque*, 14 Gr. 561; see *Bryce* v. *Beattie*, 12 C. P. 409).

JUDGMENT BEFORE PROBATE.—The title of an executor being derived from the will and not from the probate, the Court refused to restrain execution against the lands of a deceased debtor on a judgment recovered against the executor before probate (*Stump* v. *Bradley*, 15 Gr. 30; and see *Mandville* v. *Nicholl*, 16 U. C. R. 609).

Payment of legacy: see *Ross* v. *Ross*, 4 Ch. Ch. 27.

PROMISE TO PAY MADE BEFORE ADMINISTRATION.—An express promise to pay made to a third party may ensure to the benefit of an administrator *de bonis non* with the will annexed, though at the time of such promise he had not obtained letters of administration (*Beard* v. *Kitchener*, 6 U. C. R. 470).

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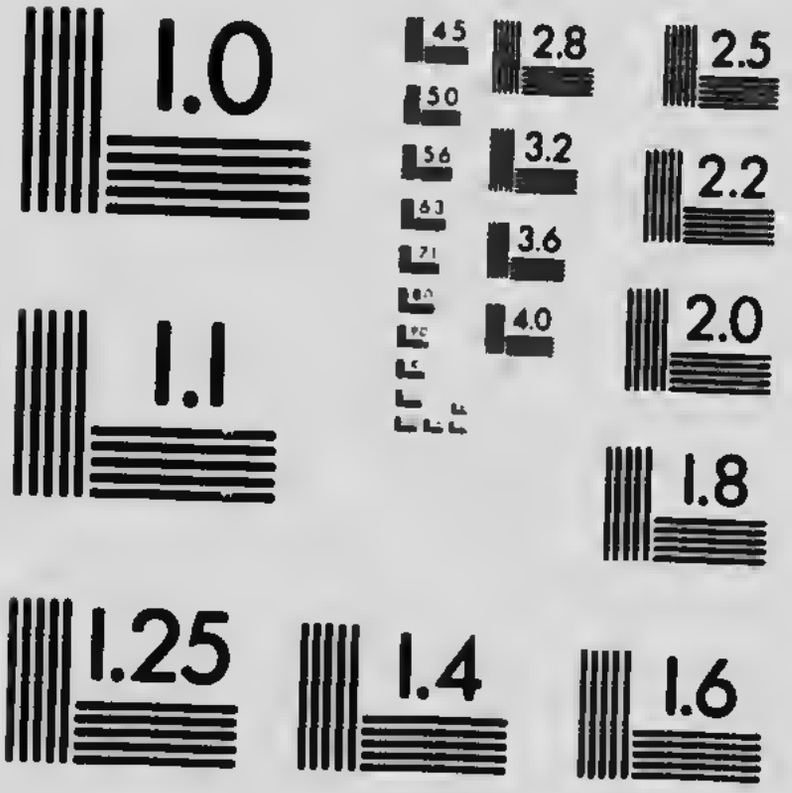
(ANSI and ISO TEST CHART No. 2)



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Canadian Cases.

RELATION BACK OF ADMINISTRATOR'S TITLE.—T
title of an administrator relates back to the death of the intestat
so as to enable him to replevy goods taken before the grant
administration (*Deal* v. *Potter*, 26 U. C. R. 578).

Held, that the grant of letters of administration had relati
back to the death of the intestate, so as to enable the administrat
to sue upon a contract made by her before such grant for the s
of the good will of the intestate's business as a surgeon and ph
sician (*Christie* v. *Clarke*, 16 C. P. 544; 27 U. C. R. 21).

RIGHTS BEFORE GRANT.—The father of the plaint
obtained judgment against L. and R. in an action upon a pr
missory note on October 26, 1868, and the plaintiff began th
action against L. and R. upon the judgment on October 22, 188
At the time the plaintiff's father was dead, and no personal repr
sentative of his estate had been appointed. On November 4, 188
letters of administration to his father's estate were granted to t
plaintiff, the widow renouncing probate on the same day. Su
sequently to that the statement of claim was delivered, and t
action continued against R. alone. R., by his statement of defen
put the plaintiff to the proof of his position and title to sue on t
judgment, and set up amongst other defences the Statute of Lim
tations (R. S. O., 1887, c. 60, s. 1, now R. S. O., 1897, c. 7
Held, that the widow was the person primarily entitled to a
minister, and as she had not renounced when the action was begu
she had at that time no status; and as against the Statute
Limitations that no action was rightly begun within the period
twenty years fixed by the statute as that within which an acti
upon a bond or other specialty shall be commenced, and the
fore the action failed. *Semble*, that an objection raised at the tr
that L. was not before the Court was a valid one; for an acti
on a joint judgment is not different in principle from an acti
of contract against joint contractors (*Ib.*).

EXECUTORS DEFENDING BEFORE PROBATE.—Exe
tors having defended an action on a note as executors, and judgm
having been recovered against them as such, they were held to ha
accepted office; want of probate was immaterial, and the sheriffs' s
on such judgment was valid (*McDonald* v. *McDonald*, 17 A. R. 19

If the testator dies abroad, it is generally assumed that he w
domiciled in the country in which he died, and evidence must
given to show that the will was executed in conformity with
law of such country before the will is admitted to probate in Onta
The law is proved by the evidence (usually by affidavit) of a law
practising in the courts of such country (*Re C. J. Campbell*, S.
York, 1879).

CHAPTER IX.

REVOCATIONS OF GRANTS.[43a]

Power of court to revoke.

THE court, as having the fullest authority on the subject, is not necessarily or absolutely *functa officio*, after a grant has been made. For the court possesses and exercises, when it becomes necessary, the power of revoking or annulling, for a just cause, any grants which it has made. And in so doing it only resumes into its own hands the powers which it parted with on false or inaccurate suggestions (*a*).

For revocation of grants on motion, see *post*, Part II., p. 313, and by an action, Part III., p. 364, *et seq.*

Grounds of revocation.

Directly false suggestions.

The court revokes a grant made to a persor who has no interest. Such a person may have obtained the grant fraudulently, and *malâ fide*, in either of two ways, viz., by making a directly false suggestion, or by surreptitious and clandestine conduct, in concealing from the court something material to the case, which it should have known.

False suggestions made *per incuriam*.

It revokes a grant for the same want of interest, where it has been obtained on a false suggestion made by the party in ignorance only, or *per incuriam*.

Supervening defect of operation in grants.

It revokes a grant which has been lawfully made, but has subsequently become inoperative and useless through circumstances, or which, if allowed to subsist, would prevent the administration of the estate.

It revokes any of these three classes of grants at the petition of the grantee himself, and with his consent and

(*a*) See the observations of Mr. Justice LUSH in *Re Ivory, Hankin* v. *Turner*, 10 Ch. D. 374.

Canadian Cases.

[43a] S. C. Act, *post*, p. 664; and *Book* v. *Book*, 15 O. R. 119; and *Irwin* v. *Bank of Montreal*, 38 U. C. R. 375. The revocation may be in either contentious or non-contentious business (*In the goods of Webster, deceased*, Court of Probate U. C., 1845).

co-operation, or without his consent, and in pain of his contumacy.

Cases for revocation under first head.

Among the cases which come under these general heads may be stated the following:—

An executor of a forged or revoked will obtains probate of it.

An executor obtains probate of a will, whilst a suit is depending touching its validity in another court, viz., that of the deceased's domicil (*b*).

An executor, being a minor, obtains probate of the will, by which he is appointed, on the tacit suggestion or understanding that he is of full age (*c*).[43b]

An executor obtains probate of the will of a living person (*d*).

A woman claiming to be the relict of an intestate, but who has not been legally married, has obtained administration of the estate of the deceased as of her husband (*e*).

Persons claiming to be an intestate's next-of-kin, who are in reality illegitimate relatives only, or are impostors, or are not nearest of kin, there being others nearer, have obtained administration (*f*).

For form of affidavit in latter case, see Appendix V., p. 957, and Oath, p. 1020.

Cases for revocation under second head.

In the second division, which will necessarily include many of the cases described in the first, will also be comprised cases such as the following:—

A will has been discovered after administration taken.

A later will has been discovered after probate taken of an earlier will.

Probate has been taken of a will without a codicil or codicils afterwards discovered, which revoke or add to the appointment of executors under the will.

(*b*) *Trimlestown* v. *Trimlestown*, 3 Hag. Ec. 248.

(*c*) Oughton, in note to Clerke's Praxis, tit. 222, says, "Quia administrator non fuit plenæ ætatis."

(*d*) *Chas. Jas. Napier*, 1 Phill. 89.

(*e*) *W. Moore*, 3 N. C. 601.

(*f*) *H. C. Bergman*, 2 N. C. 22.

Canadian Cases.

[43b] *Merchants' Bank* v. *Monteith*, 10 Practice R. 467.

Where the Court of Chancery, after grant made, differed from the Prerogative Court in its construction of the will, the Court of Probate revoked the grant and gave a fresh one to the person who was entitled to the residuary estate by the decision of the Court of Chancery (*g*).

Where administration was granted to the elected guardian of the intestate's children, there being a testamentary guardian who had not renounced (*h*).

Under this head, also, will rank the case where letters of administration (with a will annexed) have been issued upon the renunciation of an executor who had previously intermeddled in the estate of the testator, and who has been afterwards compelled by the court to take probate (*i*).

Cases for revocation under third head.

The cases under the third head may be specified as follows:—

A grant has passed the seal after the party applying has died.

Executor a lunatic.

Two executors prove a will, one becomes a lunatic, probate is revoked and a new grant made to the sane executor: power being reserved to the lunatic of taking probate again on recovering his reason (*k*).

Executor physically incapacitated.

In *Powell* (on Summons, April, 1895) the President, on the application of one of three executors, who, owing to an accident and consequent nervous shock, was incapable of acting, revoked the probate granted to the three and ordered a new grant to be made to the other two, reserving power, etc. as in the previous case, to the one incapacitated.

Where administration (with will annexed) has been granted to two or more residuary legatees, of whom one subsequently becomes a lunatic (*l*), the grant is revoked and a fresh grant made to the sane administrator.

Where one of two administrators becomes of unsound

(*g*) *Warren by his Guardians* v. *Kelson*, 1 Sw. & Tr. 290; 28 L. J. 124.
(*h*) *Louisa Morris*, 2 Sw. & Tr. 360; 5 L. T. (N.S.) 768.
(*i*) Comyn's Digest, *sub voce* "Administration."
(*k*) *Sowerby*, 65 L. T. 764; *Shaw*, [1905] P. 92.
(*l*) *Rev. W. Phillips*, 2 Add. 335; 3 Curt. 428.

mind, the grant is revoked and a new one made to t
capable administrator (*m*). (See also p. 204.)

A tenant for life of a certain fund, after taking a limit
administration thereto, assigned his interest to the
mainderman (*n*). The court revoked the grant and ma
a limited grant to the remainderman.

A creditor, after a grant of administration, with or witho
will, has paid himself his debt, and left the country (*o*).

A creditrix having been paid her debt, is desirous *bo*
fide of retiring from the administration of the estate (*p*).

Cases for revocation under third head.

In this case the court, upon proof of these facts, a
"that there were no actions or suits at law or in equi
"touching or concerning the estate and effects of t
"deceased, and the grantee's administration thereof, d
"pending between her and any other person," revoked t
grant and decreed administration *de bonis non* to one of t
intestate children.

A grant of administration to one of several residuar
legatees, who had absconded, leaving part of the estat
unadministered, and of whom there had been no trace fo
five years, was revoked, and a grant *de bonis non* decree
to another residuary legatee (*q*).

A grant of administration to one of the next-of-kin, wh

(*m*) *M. Newton*, 3 Curt. 428; *Rev. W. Phillips*, 2 Add. 335. In th
latter case, the committees of the person and estate of the lunati
administrator consented.

(*n*) *A. Ferrier*, 1 Hag. Ec. 243.

(*o*) *Jenkins*, 3 Phill. 33. The 74th section of the Court of Probat
Act, 1857, has since rendered revocation unnecessary in this state o
things by allowing a grant to be made, in the absence of the administrato
abroad, limited to any particular estate he has left unadministered.

(*p*) *Edward Hoare*, 2 Sw. & Tr. 361, in note, and 2 L. T. (N.S.) 708
in note. A Mrs. French lent the intestate certain moneys upon th
security of an estate, which the intestate afterwards sold or contracted
to sell to another person. Mrs. French filed a bill against the pur
chaser, who eventually paid her the whole of the mortgage debt, with
interest. Between filing the bill and the receipt of the money she took
administration to the intestate, on the renunciation of his widow and
children (through their guardian).

(*q*) *Covell*, 15 P. D. 8. See also *Bradshaw*, 13 P. D. 18.

Canadian Cases.

[43a] S. C. Act, s. 56, *post*, p. 680.

had left the country, leaving the estate unadministered, and whose whereabouts were unknown, was revoked, and a grant *de bonis non* made to the other next-of-kin (*r*).

It is said that the court can deal, at discretion, with grants made to creditors, for they are appointees of the court (*s*).[43d]

There are some other cases which do not come under the three general heads before mentioned. Other cases for revocation.

If administration (with a will only annexed) has been granted, and a codicil be afterwards found, a separate grant cannot be made of the latter, as in the case of a probate, but the administration (with the will annexed) must be revoked, and a new administration taken, with both the will and the codicil annexed.

It is stated in Sir S. Toller's "Law of Executors and Administrators" (book 1, chap. 3), "that an administra-"tion may be repealed *quia improvidè*, that is, where, on "a false suggestion in respect to the time of the intestate's "death, it is issued before the expiration of a fortnight "from that event." But, he adds, that it shall be granted to the same person (*t*).

The same rule might seem to apply where the grant has been made through the *incuria* of the registry, and

(*r*) *Colclough*, [1902] 2 Ir. R. 499.

(*s*) *Menzies* v. *Pulbrook and Ker*, 2 Curt. 850.

(*t*) He quotes Comyns' Digest, Administrator (B. 8), and 1 Sid. 293. In *Webb* v. *Field* (in the Prerogative Court, 1849) the question was raised. The defendant had obtained administration one day before the fourteen days had fully expired. The plaintiff called in the grant with a view to revocation, and prayed administration to himself. The defendant admitted the right of the court to revoke under the circumstances, and prayed administration to himself. The suit was finally compromised, and the administration being revoked, a new grant issued to both parties. In *Faringdon* v. *Blackman*, Hill. Term, 1729, before Dr. BETTESWORTH (Dr. Cottrell's MS.), "a next-of-kin took adminis-"tration within the fourteen days, upon the allegation that the intestate "had been dead three months. Grant called in and revoked, having "been unduly obtained contrary to an injunction of Archbishop Whit-"gift, that no administration should pass the seal till fourteen days "after deceased's death." It is not stated to whom the grant was afterwards made.

Canadian Cases.

[43d] *Re O'Brien*, 3 O. R. 326.

without any false suggestion on the part of the applican viz., where the day of the deceased's death had been tru stated.

The court will revoke a grant in which the surname the deceased is wrong.

Manner of revocation.

The court will revoke a grant on the application of th grantee, on an affidavit showing that it has been wrongl or improperly obtained, but will not revoke a grant upo the application of any other person without the consent citation of the grantee.

Upon the revocation of the first grant, the new grant made. The court cannot revoke at the application of creditor, whatever may be the merits of the case, becaus such creditor cannot demand a grant to be made to him self of immediate right (*u*).

Cancellation of revoked grant.

The court requires the revoked grant to be produce and delivered to the registrar at the time of its revocatio so that it may be afterwards cancelled in the registry.

If the proceeding be compulsory, *i.e.*, by citation of th party, he will bring it into the registry, or suffer th penalty of his contempt.

Exception.

If it be impracticable to compel the production of th grant, owing to the party having left the country, th court will revoke it, though it cannot cancel it (*x*).

If the grant has been lost or mislaid, so that it ca be found, the court will revoke it, notwithstanding not forthcoming. But the court has required an unde taking from the grantee to bring it in if it should b found (*y*).

A revoked grant of administration has been allowed t remain in the hands of the solicitors of the administrato who had a lien upon it (*z*).

(*u*) *Henry Christ. Bergman*, 2 N. C. 22.

(*x*) *Baker* v. *Russell*, 1 Lee, 167, 168; *Scotter* v. *Field*, 6 N. C. 182 *Richard Langley*, 2 Rob. 408.

(*y*) *J. Carr*, 1 Sw. & Tr. 111.

(*z*) *Barnes* v. *Durham*, 1 P. & M. 729; 38 L. J. 46.

Cases where the court will not revoke.

The court will not revoke a grant made to a person on the suggestion of his being sole next-of-kin, though other next-of-kin are afterwards discovered, and though all parties interested consent that the grant shall be revoked and a new grant made to another party, one of such other next-of-kin (*a*). The grant in such a case should be amended by registrar's order.

It will not revoke a grant limited to proceedings in the Chancery Division before the action is ended, in order to enable the next-of-kin to take a general grant (*b*).

Nor will the court revoke such a grant on the application of the executor of a will, if he cannot show that an inconvenience will result from the continuance of the limited administration, the more so as he may take a probate *cæterorum* (*c*).

The court will not revoke a grant, even such an one as above referred to, made on the refusal of a party cited, and not appearing, but long afterwards coming in, unless there was misrepresentation in the first instance in obtaining it (*d*).

There are other cases also, where the court does not revoke; but though it does not revoke the old grant, it makes a new grant of a subsidiary nature (*e*) dependent upon the circumstances which have called for it (*f*).

(*a*) *Mary Heslop*, 1 Rob. 457.

(*b*) *Brown*, 2 P. & M. 455.

(*c*) *Harris and Wiggins* v. *Milburn*, 2 Hag. Ec. 62. But in the *Rev. James Curry*, 5 N. C. 54, under nearly similar circumstances, the court refused to grant a probate *cæterorum*.

(*d*) *Lopez* v. *Hartley*, 7 N. C. 32, Supp.

(*e*) *L. Crump*, 3 Phill. 499. See also the leading case, *Anon.*, 1 Lee, 625.

(*f*) Administration (will) was granted to R., who intermeddled and afterwards re-married. Her husband subsequently deserted her. His consent being deemed necessary for making a title, R. applied for revocation of the letters of administration, in order that some other person might be appointed administrator. The application was refused by the court (BUTT, J.), and the decision confirmed by the Court of Appeal, "because R. had intermeddled": *Reid*, 11 P. D. 70; 54 L. T. (N.S.) 590 (May, 1886).

Where the ultimate object of an application to revo
administration *de bonis non* was to escape the statute
1860, which bars the right to sue after twenty years, t
application was refused as frivolous and vexatious (g

Revocation after death of grantee.

From the judgment in the case referred to in the not
however, there is nothing to preclude the revocation
an administration after the death of the administrator
sufficient ground being shown.

Sole executor becoming lunatic.

If a sole executor become a lunatic, or of unsound min
the court will make a new grant to the committee of h
estate (if there be one) for his use and benefit, until h
shall become of sound mind (See also *ante*, p. 199.)

Subsidiary grant made.

If there be no committee, the court will make a ne
grant to the residuary legatee or devisee (if there be re
estate) named in the will, of which the executor has take
probate, for the use and benefit of the executor until h
shall become of sound mind.

If a sole administrator become of unsound mind, th
court will make a similar grant to his committee.

In cases where the new grant is made to a committe
the old grant remains at large.

Where administration was granted to the intestate'
widow, who subsequently became of unsound mind, th
court made a new grant to the intestate's son for the us
and benefit of the administratrix, until she should becom
of sound mind (*h*).

Where a next-of-kin after taking a grant become
insane, the practice is to make a fresh grant for the us
and benefit of the lunatic, and during his lunacy to—

1. The committee of his estate.
2. The person appointed under s. 116 of the Lunacy
Act, 1890, with powers over the property of th
lunatic, or authorised by order made in lunacy (a
in *Plimsaul*, June, 1895) to apply for a grant o
administration on his behalf, subject, in this latte

(*g*) *Willis* v. *Earl Beauchamp* (*Jennens, deceased*), 11 P. D. 59.
(*h*) *Henry Binckes*, 1 Curt. 286.

instance, to there being no legal objection to the grant being made.

3. Another next-of-kin of the deceased.

In cases (1) and (2) the original grant is not impounded; in (3) an order to impound the first grant is made.

See p. 1055 for form of registrar's order to impound grant.

To obtain this order application is made at the Notation Department upon the affidavits of the intended administrator and the doctor and nurse having the care of the lunatic.

On the lunatic's recovery the registrar, upon satisfactory medical evidence, and with the consent of or upon notice to the temporary administrator, will order that the impounded grant be re-delivered to the convalescent grantee.

The practice in these cases has been stated by Sir FRANCIS JEUNE to be as follows (*i*):—

"First, where such a lunatic has been so found by "inquisition, and there is a committee of the property, "the grant is made to such committee for the use of the "lunatic, so long as he shall remain a lunatic. The first "grant is not, in such case, impounded.

"Secondly, where the lunatic is not so found by in- "quisition, but, under section 116 of the [Lunacy] Act "of 1890, a person has been appointed with general "authority over the lunatic's property, such person has "been, and it seems to me reasonably so, treated in the "same way as if he were a committee of the lunatic's "estate.

"Thirdly, if a person appointed under section 116 has "conferred upon him only specified powers falling short "of general powers, such person is not to be considered to "be in the same position as a committee of the lunatic, "and not entitled to a grant.

"Fourthly, where there is no committee, and no person "in the position of a committee, the practice has been to

(*i*) *Cooke*, [1895] P. 68.

"make a grant to another of the next-of-kin of the
"ceased for the use of the lunatic next-of-kin, so long
"he shall remain a lunatic, and the precaution in t
"case is taken of having the first grant impounded."

These grants are usually made in the general for
But in a case judicially decided, the court, on a survivi
executor becoming imbecile, granted to the residua
legatee for life administration (with the will annexe
limited to the receipt of the dividends and interest d
and to grow due upon certain government securiti
which constituted the deceased's residuary estate, for t
use and benefit of the executor until he should become
sound mind (*k*).

Practice.

Voluntary revocations of grants.

Voluntary applications to revoke a grant of probate
administration are made at the Notation Departmen
supported by affidavit.

If the affidavit be satisfactory, an order for the revoc
tion of the grant is prepared by the Notation Departmen
and signed by the registrar.

For the form of the affidavit, see Appendix V., p. 957.

The grant is not delivered out, but remains filed in th
registry.

A fee of 2*s.* is charged upon the affidavit, and 2*s.* 6*d.* i
charged for filing the grant.

A fee of 5*s.* is charged for the order.

A fee of 2*s.* 6*d.* is charged for noting the original act o
record of the grant.

The grant is cancelled in the registry.

For forms of the order, see Appendix V., p. 1054.

The executor or administrator who is to take the new
grant following upon the revocation cannot be sworn to
his papers leading to the grant until after the revocation
of the former grant has been made.

For forms of the oath, see Appendix V., pp. 1002, 1020.

(*k*) *L. Crump*, 3 Phill. 497.

CHAPTER X.

SECTION I.—JOINT GRANTS—RIGHT OF THE COURT TO SELECT AN ADMINISTRATOR.

Joint Grants.[44]

Joint grants.

IN the case of executors, the reader will have observed that all who have been nominated by the testator may take

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Canadian Cases.

[44] *TWO EXECUTORS NAMED—NO PROOF OF DISCLAIMER.*—A testator devised his real estate to two persons as his executors, but only one of them proved the will. An application by a person claiming to be a legatee and creditor for an administration order was dismissed, the executor who had proved the will having alone been served with notice, and it not being shown that the other executor had renounced or disclaimed. It was also not shown that the legacy to the applicant had vested, or that he was a creditor of the testator (*Re Pett McKinley* v. *Beadle*, 6 P. R. 157).

TWO EXECUTORS—ONE NOT SERVED.—On an application for an administration order it appeared that two executors had proved the will, but only one had been served with notice of the application, the other being out of the jurisdiction. An order was refused until the absent executor should be served (*Re Freeborn*, *Freeborn* v. *Carroll*, 6 P. R. 188).

SEVERAL EXECUTORS—PROBATE TO ONE.—An action can be maintained by two or more executors for the goods of a testator where probate is only issued to one, or goods taken out of the possession of one of them, possession of one being possession of all (*Bryce* v. *Beattie*, 19 C. P. 409).

CREDITOR—FOREIGN ADMINISTRATION.—One D., dying domiciled abroad, R., a creditor of her estate, obtained letters of administration there. Subsequently S., an appointee of R., and with his consent, applied here for letters of administration

probate without restriction, the court having no power t limit the number of those who shall act.

To residuary legatees in trust.

In the case of residuary legatees in trust it was th practice of the Prerogative Court to pay regard to th joint tenancy. It would, therefore, grant to all, and no to one, or some of them, unless the other or other renounced, but the rule now is to grant to one if h applies alone.

To testamentary guardians.

In the case of testamentary guardians (*vide* p. 121), th court grants to all and not to one, unless the other o others renounce or consent, on the same principle of join tenancy.

Joint grants limited to three persons.

In all other cases of administration (with or without will annexed), the court is free to follow its own rules and, as it has seen the inconvenience of many representatives, it has limited the number to three, beyond which i will not, in ordinary cases, go.

The court will not, however, force a joint administration

Canadian Cases.

to be granted to him by the surrogate court. E., however, residing at Toronto, and as next-of-kin to B., also applied here for administration to B.'s estate. S. now applied to have the matter transferred into the High Court, or for a writ of prohibition to the surrogate preventing him granting letters to E., and a mandamus ordering him to grant them to S.:—*Held*, failing any proof as to the law in Maine, it must be assumed to agree with the law here, according to which the Court will not grant administration to a creditor, so long as one having a better claim, as is the case with the next-of-kin, is willing to act; and inasmuch as the next-of-kin did not appear to have been cited before the court in Maine, the status of the creditor who obtained administration thus, or of his appointee, was not such as to compel the surrogate judge here to pass over the next-of-kin.

The appointment of a creditor as administrator is not as of right, but rests in the discretion of the judge who appoints, and that cannot be interfered with by any peremptory writ; and (*vide* Surrogate Act, R. S. O., [1897] c. 59, ss. 37–41, *post*, pp. 675-677) do not better the claim of a creditor (*Brown* v. *Phillip*, Amble, 416; followed *Re Hill*, L. R. 2 P. and D. 89; distinguished *Re O'Brien*, 3 O. R. 326; and *ante*, p. 90).

upon an unwilling party, and will be influenced by other reasons to make a single administration (*a*), for the disagreement of persons whom the law contemplates as acting together would render their joint action inconvenient, and might, perhaps, defeat the just administration of the estate (*b*).

Priori petenti.

The court grants administration *priori petenti, i.e.*, to that next-of-kin or to that residuary legatee or devisee (where there are several) who first applies (*c*). And inasmuch as the court grants to such applicant the *universum jus successionis*, it cannot reserve power to others equally interested in the estate, nor can it make a further grant until the death of the administrator leaves the representation again vacant.

The consent or renunciation of the other next-of-kin or other persons interested is not required, but the court may require notice to be given to them if it see fit.

Primogeniture and full blood are not regarded or inquired into.

To residuary legatees.

The court will grant to the residuary legatee for life and the substituted residuary legatee jointly.

If more than one residuary legatee be substituted, the others should consent to such joint grant. If some of them be minors such grant would not be made.

To widow and next-of-kin.

The court will join a widow with a next-of-kin, being empowered to do so by 21 Hen. VIII. c. 5, s. 3.

But an affidavit must be made by her, showing her knowledge of her right to take administration solely. All the other next-of-kin, and the heir-at-law (if there be real estate) must consent that the grant shall be so made. The consent of minors (next-of-kin) is held to be insufficient (*d*). But the consent of a minor within six

(*a*) *Bell* v. *Tinniswood*, 2 Phill. 23. (See also p. 216.)

(*b*) *Warwick* v. *Greville*, 1 Phill. 126; in *Prentice* v. *Prentice*, 3 Phill. 312, Sir J. NICHOLL observed, "This court never forces a joint administration, unless the parties agree to it."

(*c*) *Cordeux* v. *Trasler*, 4 Sw. & Tr. 51.

(*d*) *Newbold*, 1 P. & M. 286; 15 W. R. 262 15 L. T. 248; 36 L. J. 14.

months of being of age has under special circumstanc been accepted (*e*).

To widow and heir-at-law.

A grant will also be made to a widow and heir-at-la (where there is real estate) on the same conditions.

In all cases where a widow is joined with a next-of-k or heir-at-law a registrar's order is required.

Fee for order, 2*s.* 6*d.* No charge for filing it.

For forms of the affidavit, consent, and order, s Appendix V., pp. 951, 1051.

Next-of-kin of different denominations joined.

The court will join two next-of-kin in equal degre though of different denominations, *e.g.*, a great-niece an a cousin-german.

Next-of-kin and co-heiress-at-law.

A grant of administration was directed to issue to tw next-of-kin jointly with two co-heiresses-at-law, in *W Baldwyn*, February, 1899.

On an affidavit showing a reason for it, a grant will b made to a next-of-kin of a minor and a stranger jointly.

For form of affidavit, see Appendix V., p. 952.

A registrar will, in exceptional circumstances, upo cause shown by affidavit, assign the next-of-kin of a infant and a st: .nger as joint guardians for the purpos of taking a grant for his use.

For forms of affidavit and registrar's order, see Ap pendix V., pp. 953, 1052.

The court will do what has been stated under the ordinary powers which belong to it.

Other cases of joinder.

But there are other instances where the court, being convinced of the existence of a necessity for so doing, will join parties otherwise not joinable, on motion under the 73rd section of the 20 & 21 Vict. c. 77.

But to warrant joint grants of this category t.. re must be, as already intimated, special circumstances, because one of the grantees is entitled to it by law, while the other is not; such a conjunction being only possible under the provisions of the 73rd section before alluded to (*f*).

So where no special ground existed, or could exist, the

(*e*) *Dickinson*, [1891] P. 292.
(*f*) *Grundy*, 1 P. & M. 459; 37 L. J. 21.

court has refused a joint grant to a widow and the guardian of the intestate's children (*g*), to a widow and a person entitled in distribution (*h*), to a nephew entitled in distribution, and to another nephew not so entitled (*i*), etc., etc.

At the same time, where a case has been made out, all these and other grants can be made,—*e.g.*, the court has joined a next-of-kin and a person entitled in distribution (*k*).

A joint grant has been made by the court on motion to the widow as guardian of two of the deceased's (and her) children jointly with the guardian of the other children of the deceased (not hers), the widow being allowed to renounce her right to administration as widow (*l*).

Co-executors and co-administrators swearing the estate differently.

When co-executors or co-administrators in swearing the value of the estate differ as to the amount, probate or administration is granted at the higher sum (*m*).

Joint grants applied for by different solicitors.

When application for a grant is made by two persons of equal degree, represented by different practitioners, the grant is extracted by and delivered to the senior admitted solicitor.

Survivorship of joint grantee.

The right of administration accrues to the survivor, and until his death no further grant can be made (*n*).[44a]

(*g*) *Richards*, 2 P. & M. 216.
(*h*) *Browning*, 2 Sw. & Tr. 634.
(*i*) *Richardson*, 2 P. & M. 244.
(*k*) *Grundy*, 1 P. & M. 459; 16 W. R. 406; 37 L. J. 21; *Walsh*, [1892] P. 230.
(*l*) *Dalton, deceased*, November, 1881.
(*m*) *Bell*, 2 P. & M. 247.
(*n*) The grant to a married woman being made to her only does not survive to her husband if she predeceases him. For some time the Ecclesiastical Courts maintained the contrary to what is said in the text. In Dr. Cottrell's MS. I find the following interesting note: "*Hudson* "*and Others* v. *Hudson and Others*, July 30th, 1735. Point urged by "civilians before my Lord Chancellor was, whether, where administra- "tion was granted jointly to two persons, it expired upon the death "of one of them. The Lord Chancellor took a distinction between a "power and an interest, and said, though the first expired by the "death of one, yet the interest survived, and, as the statutes about

Canadian Cases.

[44a] Surrogate Court Act (*post*, p. 664).

Right of the Court to select an Administrator.

One applicant selected by the court *e pluribus.*

When there are several claimants for administratio the court is called upon to exercise its discretion, an make a selection from among the applicants.

In regard to executors, one executor cannot dispute th title of the other to be joined in the probate, either on th ground of his insolvency, or even upon a conviction fo felony. The testator's choice is considered to overrule al such objections. But he may object or refuse to be joined with his co-executor, if the latter be a lunatic, an idiot or imbecile; and the court will exclude such lunatic or imbecile executor from the probate, if the objection be proved (*o*).

Lunatic or imbecile executor not joined in probate.

Widow excluded.

The next-of-kin may contest administration with a widow; they do so under the power of election given to the court by the 21 Hen. VIII. c. 5 (*p*); but the ordinary practice being to grant administration to the widow, her unfitness must be shown before a grant will be made to the next-of-kin (*q*).

The President decreed administration (will) in a case of undisposed-of residue to a sister (next-of-kin) in preference to a widow, on the ground that the sister had the larger interest in the property to be administered (*r*).

In other cases, in order to be able to contest a grant, the parties contending must be *in eodem gradu*, and they must be in a position to take the grant which they seek

"administrations had vested an interest in them, and put them in "some measure upon the foot of executors, he was of opinion that the "administration did not expire. Agreed to be the constant rule of our "practice that it does. Agreed that there are no words of conjunction "and division in the forms of administration."

(*o*) *Evans* v. *Tyler*, 2 Rob. 131.

(*p*) *Atkinson* v. *Lady Ann Barnard*, 2 Phill. 317.

(*q*) *Stretch* v. *Pynn*, 1 Lee, 35; *Walker* v. *Carless*, 2 Lee, 560; *Dew* v. *Clark and Clark*, 1 Hag. Ec. 311; *Williams*, 3 Hag. Ec. 217; *Fleming late Worser* v. *Pelham*, *ibid.*; *Anderson*, 3 Sw. & Tr. 490; *Ihler*, 3 P. & M. 50.

(*r*) *Homan*, 9 P. D. 61.

to have disallowed to the other. They must be next-of-kin contending against next-of-kin, or residuary legatees contending against residuary legatees, or as the case may be.

Where objections exist against one of the parties applying for a grant of administration, the court will not compel an unobjectionable person to become a joint administrator with the former (*s*).[45]

Among the grounds of objection are, badness of character (*t*), bankruptcy, or insolvency (*u*) or extreme want of health; and if these grounds be satisfactorily established, the court will exclude the objectionable applicant, and give administration to the other party. Grounds of objection

Or should one of the applicants have an interest incompatible with the due administration of the estate, the court will pass him over, *e.g.*:—

(*s*) *Bell* v. *Tinniswood*, 2 Phill. 28.
(*t*) *Frost*, [1905] P. 140; 74 L. J. P. 53; 92 L. T. 667.
(*u*) *Bell* v. *Tinniswood*, *supra*.

Canadian Cases.

[45] *BANKRUPTCY — INTEMPERANCE.* — When a person named as an executor was at the time of the making of the will in excellent credit and circumstance, but before the death of the testator became insolvent and made an assignment and also apparently became intemperate, an injunction was granted restraining him from interfering with the estate, and the appointment of a receiver was directed (*Johnson* v. *McKenzie*, 20 O. R. 131).

As a general rule, an assignment for the benefit of creditors will be taken as a declaration of insolvency, and equivalent to bankruptcy in England. When, therefore, some of the legatees of a testator filed a bill against his executor and two of the legatees, charging maladministration, and alleging that the executor had made an assignment and was insolvent, the Court, upon a motion for an injunction, granted an interim injunction, notwithstanding the executor denied that his insolvency was the reason for making the assignment of his estate (*Harold* v. *Wallis*, 9 Gr. 443).

Executors may be removed for improper conduct (*Meachem* v. *Draper*, 2 Gr. 316).

Where a question was likely to arise between th
and a son of one of the applicants respecting the
of a gift, the court excluded that next-of-kin on the
that the claims of the estate might not be strongly
by the father against his son (*x*).

The court will not join a married woman, whe
doing, it may defeat a trust created for her by the
by giving her the property in question, which she
husband may dissipate (*y*).

The court will select.

Where legal objections do not apply, the court w
to the benefit of the estate (*z*), and to that of the
interested in the property, and will be governed
selection by either consideration.[46]

The personal representative of a next-of-kin w
grant *de bonis non*, preferred to a party entitled in
bution, because there were no assets of the deceased
what might be recovered in a pending suit institu
such next-of-kin, the original administrator (*a*).

Preference of next-of-kin, *inter se*.

A next-of-kin, being also a legatee, has been pr
to another next-of-kin who was not such (*b*).

Cæteris paribus, the male is preferred to the fema

(*x*) *Budd* v. *Silver*, 2 Phill. 116.
(*y*) *Dampier and Dampier* v. *Colson*, 2 Phill. 55.
(*z*) *Warwick* v. *Greville*, 1 Phill. 125.
(*a*) *Carr*, 1 P. & M. 291.
(*b*) *Dobson* v. *Creacherode*, 2 Lee, 327.
(*c*) *Iredale* v. *Ford and Bramworth*, 1 Sw. & Tr. 306; *Le*
Leggatt, 1 Lee, 349; *Chittenden* v. *Knight*, 2 Lee, 559.

Canadian Cases.

[46] *FORUM.*—When a bill was filed by devisees again
executors of their testator's will, alleging the inability of th
cutors to attend to the trusts of the will on account of
infirmities, and praying for the appointment of a trustee or t
in their stead, the Court dismissed the bill on the ground th
jurisdiction to interfere in such a case belongs to the proba
surrogate courts and not to the Court of Chancery, and ina
as the executors had been brought before the courts withou
fault on their part, the bill was dismissed with costs (*Corr*
Henry, 2 Gr. 310).

But, above all, the court prefers one who has the largest interest, or on whom the majority of the other next-of-kin fixes (*d*).

This is not, however, obligatory upon the court. Sir George Lee says, "Though it is a good general rule to "grant administration to the largest interest, yet that is "only introduced by practice, and not by any positive law, "and the court is not obliged to grant it to the largest "interest" (*e*).

Half blood.

Where the first to apply for administration was a next-of-kin by the half blood and a next-of-kin by the whole blood objected, the registrar declined to entertain the objection. On appeal to the vacation judge, the appeal was dismissed (*f*).

The wishes of creditors will have the consideration of the court when their demands are heavy, and the insolvency of the estate is apprehended (*g*). And although primogeniture gives no rights, yet if things are precisely equal, being the elder brother would incline the balance (*h*).

A creditor will be preferred to a residuary legatee under 20 & 21 Vict. c. 77, s. 73, where the deceased's insolvency is clear, but otherwise not (*i*).

Preference of creditors *inter se*.

Where creditors have contended *inter se* for administration (will), or administration, the court has preferred one having a judgment debt (*k*), or a specialty debt (*l*), or a

(*d*) *Mercer* v. *Morland*, 2 Lee, 503; *Williams* v. *Wilkins*, 2 Phill. 100, 101; *Dampier and Dampier* v. *Colson*, 2 Phill. 55; *Jones* v. *Rushall and Others*, 13th March, 1856; *Iredale* v. *Ford and Bramsworth*, 1 Sw. & Tr. 306; *Elwes* v. *Elwes*, 2 Lee, 575; *Stainton*, 2 P. & M. 212.

(*e*) *Cardale* v. *Harvey and Others*, 1 Lee, 179, 180.

(*f*) *W. J. Marsden* v. *Simmons*, September 16th, 1896.

(*g*) *Warwick* v. *Greville*, 1 Phill. 127.

(*h*) *Ibid.*, 125.

(*i*) *Hawke* v. *Wedderbourne*, 1 P. & M. 594. See also *Hawke*, 16 W. R. 712.

(*k*) *Lord Carpenter* v. *Shelford and Others*, 2 Lee, 503. So Dr. Betteswortн ruled in *Standwick* v. *Coussemaker*, November 4, 1730 (Dr. Cottrell's MS.).

(*l*) But see 32 & 33 Vict. c. 46, which provides, that "in the administration of the estate of every person who shall die on or after the

debt of a larger amount (*m*) than the other creditors ca show.

The court has preferred a simple contract creditor havin a large debt against the deceased to a judgment creditc under 1 & 2 Vict. c. 110, s. 18 (*n*).

The court has preferred the nominee of the bulk of th deceased's creditors or of the principal creditor to a singl creditor (*o*).[46a]

Preference of guardians *inter se*.

Similar or analogous contention may arise betwee guardians of minor children, and the court will be calle upon in these cases also to exclude and select.

From the above it follows, that the court (though i will make a joint grant to willing parties) will not, unde any circumstances, make such a grant to parties who ar unwilling to be joined; but the court will either grant administration alone to the party who, being himself unobjectionable, has established an objection against the other, or should both parties be unobjectionable *per se*, the court will grant a sole administration either to that one who has the majority of interests, or should the interests be equally divided, to that one who has a point of peculiar aptitude on his side, however slight or uninfluential it may be in itself.

Exception.

There is an exception, however, to this rule. If one of two or more administrators apply for administration to a

"1st day of January, 1870, no debt or liability of such person shall be "entitled to any priority or preference by reason merely that the same "is secured by or arises under a bond, deed, or other instrument under "seal, or is otherwise made or constituted a specialty debt; but all "the creditors of such person, as well specialty as simple contract, "shall be treated as standing in equal degree, and be paid accordingly "out of the assets of such deceased person, whether such assets are "legal or equitable, any statute or other law to the contrary notwith- "standing."

(*m*) *Kearney* v. *Whittaker*, 2 Lee, 325.

(*n*) *Ernest* v. *Eustace*, 1 Deane, 273.

(*o*) *Smithson*, 15 L. T. 296; 36 L. J. 77.

Canadian Cases.

[46a] *Re Cameron*, Surrogate Court, York, 1877.

deceased, whom *his* deceased was entitled to represent, the court will not grant administration to him singly, but to all. On this Sir H. JENNER-FUST observed (*p*), "The "court never forces a joint administration, that parties "may not have reason to complain of the inconveniences "which may result from there being more than one "administrator; but where the parties have chosen to "be joined in the administration, the court will not relax "a practice which has prevailed and been found useful." But if one administrator applies on the renunciation of the others a grant is made to him; or, if one administrator is abroad or unable to act, an exception to the rule would be allowed.

Where none of these rules applies a *prior petens* will be preferred, simply as such (*q*). *Prior petens* preferred.

SECTION II.—PRESUMPTIVE PROOF OF DEATH—COMMORIENTES.

Presumptive Proof of Death.

We have seen that executors and administrators are required to swear as well to the day on which their deceased died, as also to the month and year of that event. But there are cases where no direct evidence enabling the applicant to depose with this particularity can be obtained, inasmuch as he only presumes the person to be dead from the fact of, and circumstances attending, his disappearance, at or after a given period. In such a case the applicant must lay his evidence before the court, and (by motion) take its direction upon the fact. For practice, see "Motions," p. 301, *et seq.*

If the court be satisfied that the evidence leads up to a reasonable presumption of the death of the person who has

(*p*) *F. Nayler*, 15 Jur. 686.
(*q*) *Cordeux* v. *Trasler*, 4 Sw. & Tr. 51.

disappeared, it will grant probate or administration (as th case may be), and will give permission to the applicant t swear that the person died at or after the last date give of his existence.

Application to a registrar.

Where the whole personal estate does not exceed £100 or where, in the case of the wreck or loss of a ship, a order on motion has already been made by the court i the estate of some other person who has died in the same casualty, an *ex parte* application may be made to one o the registrars of the principal registry for the requisite order.

Where an order on motion has already been made a plain copy of the court order with two affidavits by members of the deceased's family must accompany the application.

The application must be made by or on behalf of the person entitled to the grant.

For the form of oath, see p. 1020.

Commorientes.[47]

Commorientes.

We will next consider the case of administration granted of the effects of any one of two persons in immediate

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Canadian Cases.

' The testator bequeathed to his wife all his estate, and appointed her his executrix. His will then proceeded, "In case both my wife and myself should by accident or otherwise be deprived of life at the same time, I request the following disposition to be made of my property," disposing of his estate and appointing executors. A few months after the making of the will the testator and his wife went to Europe, and both of them died there, the wife on December 11, 1888, and the testator on the 27th of the same month :—*Held*, that the testator and his wife were not deprived of life at the same time, the deaths not being the result of a common accident or other catastrophe, and as the actual event was not provided for there was an intestacy ; *held* also that there was no power in the Court to interpolate any such words as "or in case I shall survive her" (*Henniny* v. *McLean*, 4 O. L. R. 660).

succession to each other (whether *ex testamento* or *ab intestato*) who have perished by the same calamity.

It is obvious that if a claim of succession be advanced on behalf of either of the persons in the before-mentioned category to the estate of the other, a survivorship must be shown of the successor over the predecessor. And no distinction can be drawn in such cases between a claim to property, and a claim to the administration of that property.

This survivorship will be matter of evidence, or of presumption from facts indirectly bearing upon the question.

In *Sillick* v. *Booth* (*r*) the question was, which of two brothers, James and Charles, who were lost at sea, died first.

Sir J. KNIGHT BRUCE, V.-C., said:—"The court need "not presume that they died at the same time, but "evidence may be admitted to show which of them died "first. From the evidence before the master it appears "that James was an older, more robust, and experienced "mariner than Charles; and having regard to that evidence, "I am of opinion that the master was right in coming to "the conclusion that James survived his brother."

In this case there was presumptive evidence which satisfied the mind of the judge that there was a legal survivorship.

But these cases more often take another form, there being nothing in the facts adduced (whatever they be) which can satisfy the mind of the court that there was a survivorship.

Here the rule is stated by Mr. Justice WILLIAMS as follows (*s*):—

"The next-of-kin has, subject to the rights of the heir-"at-law, a *primâ facie* right, and therefore where a party

(*r*) 6 Jur. 142-144.

(*s*) A Treatise on the Law of Executors and Administrators, 10th ed., p. 373.

"claims as, or derivatively from, a residuary legatee, the "burthen of proof lies on such party. Hence, where the "husband appointed his wife executrix, and residuary "legatee, and he and his wife were drowned in the same "ship, the court granted administration to the next-of-kin "of the husband, on the ground that the next-of-kin of "the wife had not proved her survivorship."

Mr. Justice WILLIAMS, in stating this rule, founds it upon the decisions of Sir JOHN NICHOLL in *Taylor* v. *Diplock* (*t*), and of Sir WILLIAM WYNNE in *Wright* v. *Sarmuda* (*t*).

In days later than these authorities, Sir H. JENNER-FUST stated the rule thus (*u*):—

"It appeared to me that this point was settled. The "principle has been frequently acted upon, that where a "party dies possessed of property, the right to that "property passes to his next-of-kin, unless it be shown "to have passed to another by survivorship. Here the "next-of-kin of the husband claim the property which "was vested in his wife. If that claim was to be made "out, it must be shown that the husband survived. The "property remains where it is found to be vested, unless "there be evidence to show that it has been divested. "The parties in this case must be presumed to have died "at the same time, and there being nothing to show that "the husband survived his wife, the administration must "pass to her next-of-kin."

In the case of *Robert Murray* (*v*), where a man, his wife and child, were drowned at sea, and nothing was stated beyond these circumstances, the court granted administration (with the will annexed) to the next-of-kin of the husband, "there being nothing to show that the "wife survived."

This doctrine is now settled by the decision in

(*t*) 2 Phill. 267.
(*u*) *Scatterthwaite* v. *Powell*, 1 Curt. 706.
(*v*) 1 Curt. 596.

Underwood v. *Wing* (*x*). There a husband, a wife and three children, having been lost in *The Dalhousie* on their passage to Sydney, and the proof adduced not satisfying the court that there was a survivorship of any or either of them, it was held that *the property* (*i.e.*, of the husband) would go to the next-of-kin of the husband as under an intestacy, there being none who could establish a claim under his will.

In this case Lord CRANWORTH observed, "The real "ground to proceed on is, that it cannot be proved which "died first. They both probably died within a few seconds "of each other, but which died first it is impossible to "say. That being so, what is the result? Why here is "a will made in which, in one state of circumstances, "namely, that if the wife died in the husband's lifetime, "the property is given away. It is not proved that that "state of circumstances existed, and in no other state of "circumstances is it given away. *Then it is not given "away at all. Therefore it must be taken as upon an "intestacy, and must be distributed amongst the next-"of-kin.*"

Sir CRESSWELL CRESSWELL followed this authority where the circumstances of the case were similar.

In "*Ewart*" he decreed administration to the next-of-kin of a man whose wife had perished by the same calamity, on the ground that *there was no reason to believe that the wife survived the husband* (*y*).

In "*Wainwright*" (*z*) administration was decreed to the next-of-kin of a man who had perished with his wife and child in the Cawnpore massacre.

In *Williams* v. *Wood*, the court decreed administration of the separate estate of a *feme coverte* to her next-of-kin,

(*x*) 24 L. J. 293, *et seq.* See, also, *Alston*, [1892] P. 142.
(*y*) 1 Sw. & Tr. 258.
(*z*) *Ibid.*, 257; *Beynon*, [1901] P. 141. In the latter case administration was granted to the next-of-kin of the husband and to the next-of-kin of the wife, the wording of the "oath" following the case of *Ewart*.

she and her husband having been killed by a wall fallin upon them while they were in bed together (*a*).

The old *dictum* that parties might die at the sam moment of time (*b*) is altogether laid aside. Lord CRAN WORTH, in *Underwood* v. *Wing* (*c*), says, "That tw "human beings should cease to breathe at the sam "moment of time is hardly within the range of imagina "tion. I suppose that time, like space, is infinitel "divisible, and if we are to speculate on such a subject "one can hardly suppose that the one did not breathe "a millionth part of a second longer than the other. "Therefore to adjudicate on a principle that they did "actually cease to breathe at the same moment would, "I think, be proceeding on false *data*."

To a creditor. Where a father and son were drowned together, the son being his father's sole executor and residuary legatee, and leaving issue, the court granted administration (will) to the personal representative of the son (*d*).

If a husband and wife have perished by the same calamity, and a creditor of the former is desirous of taking administration of his estate, he must obtain not only the renunciation of the husband's next-of-kin, but the consent also of the wife's next-of-kin.

If he cannot obtain the consent of the latter, he must cite them to show cause why the grant should not be made to him.

He cites them under the description of persons who would have been entitled to the personal estate of the wife, in case she had survived her husband.

On no appearance being entered to the citation, administration is decreed to the creditor.

In *Colvin* v. *His Majesty's Procurator General* (*e*), the

(*a*) November 4th, 1859.
(*b*) *Henry Selwyn*, 3 Hag. Ec. 749.
(*c*) *Supra*.
(*d*) *James Shilling*, 1 Deane, 183.
(*e*) 1 Hag. Ec. 93.

court dispensed with a citation of the wife's next-of-kin, on the ground that "the property was small, and the debt "large."

If the commorient to whom a representation is sought has left a will, it must be proved, though entirely inoperative under the circumstances, as giving the whole of the estate to the other commorient, or as being dispositive only in case of the latter surviving. Will must be proved.

SECTION III.—RENUNCIATION, CONSENT, AND RETRACTATION.[48]

Renunciation is the act whereby a person having a superior interest or right to probate or administration waives and abandons it:

Canadian Cases.

[48] *RENUNCIATION—EXECUTOR SUED AFTER RENUNCIATION.*—When an executor who has renounced probate of the will is made defendant to a suit, the bill will be dismissed as against him with costs (*Stinson* v. *Stinson*, 2 Gr. 508).

FORFEITURE OF BEQUEST.—Renunciation by an executor has been held to forfeit a bequest in his favour (*Paton* v. *Hickson*, 25 Gr. 102).

RENUNCIATION—DISCLAIMER.—A disclaimer as executor by one of two executors and devisees in trust does not prevent the trust estate from vesting (*Doe d. Boyer* v. *Claus*, 3 O. S. 146).

FORM OF RENUNCIATION.—A written renunciation, though not sealed, made before the surrogate, and produced from his office, is sufficient to entitle the remaining executors to act under 21 Henry VIII. c. 4. (*Doe d. Ellis* v. *McGill*, 8 U. C. R. 224).

LIABILITY NOTWITHSTANDING RENUNCIATION.—When executors named in a will have renounced probate, the acts or dealings which will, notwithstanding, render them liable as having assumed the duty of executors was considered in *Vannatto* v. *Mitchell*, 13 Gr. 665. Three persons were named as executors. They declined to prove the will, and renounced probate, but expressed their willingness to assist the family with their advice, and accordingly assisted in preparing a list of debts due by the estate and of the assets and value thereof. On being spoken to by a creditor, one of them stated that they had been named as

Renunciation must be made absolutely and witho reserve; it takes effect from the day of its date (*f*). It permanent, and can be acted upon and referred to in a succeeding grants (*g*).

Renunciation.

No second renunciation is required (*g*), nor is it necessa to cite the renunciant party.

Except in the case of executorship, it does not bind th representatives of the renouncing party.

By an executor.

The executor may renounce probate as soon as h testator is dead, and his renunciation can be filed, provide it be accompanied by the original will (*h*).

Renunciations, accompanied by the original wills, ma be filed either in the principal registry (Record Keeper Department) or in a district registry.

The fees are:—filing, 10*s.*; renunciation, 2*s.* 6*d.*

(*f*) *Munday and Berry* v. *Slaughter*, 2 Curt. 72.
(*g*) *Harrison* v. *Harrison*, 1 Rob. 406; 4 N. C. 434.
(*h*) *M. Fenton*, 3 Add. 35.

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executors, assured the creditor that he was all right, and that ther was enough to pay the debts. Another of them subsequentl wrote to the widow stating that he and the other parties name "were in Port Hope yesterday, and, after legal advice on th subject, have relinquished all further action on the will:"—*Held* that these facts did not show such a dealing with the estate a would render the parties liable as executors in opposition to thei renunciation (*Ib.*).

RELEASE BY EXECUTORS.—A release by an executor wh is also a trustee does not amount to a relinquishment of the trus (*Doe d. Boyer* v. *Claus*, 3 O. S.; approved *Doe d. Beringer* v *Hiscott*, 6 O. S. 23).

WITHDRAWING RENUNCIATION. — Under C. S. U. C c. 16, s. 1 (now R. S. O., 1897, c. 59, s. 65), the renunciation o probate by one of two or more executors is final, and cannot be recalled on the death of the acting executor or executors (*Allen* v *Parke*, 17 C. P. 105).

REVOCATION OF LETTERS OF ADMINISTRATION— SURROGATE COURT.—The High Court of Justice for Ontario has no jurisdiction to revoke the grant by a surrogate court of letters of administration (*McPherson* v. *Irwine*, 26 O. R. 438).

registrar's order, 2*s.* 6*d.* If filed in a district registry, copies of these documents are transmitted to the principal registry.

A residuary legatee or devisee, or, if there be none, a person entitled to the residue, may, if no executor be appointed, renounce and file the will.

An executor must renounce or be cited (see *post*) before any party having an inferior interest can take. His consent alone is not sufficient for that purpose (*i*).

Though an executor have an interest in the residuary estate as trustee or beneficially, his renunciation of probate is held to operate as a waiver of all his rights of representation (Rule 50 (1862)).

An executor, in renouncing probate of his own testator's will, renounces thereby the execution of any will of which the former may have been executor, and of all other wills comprehended in the chain. He cannot renounce probate of the first will, and take probate of the second one (*j*).

The renunciation of executorship, which is an office, binds the representatives of the executor (*k*).

By a legal personal representative.

An executor, or an administrator with the will annexed, or an administrator, may renounce the administration with the will annexed, or administration, which he would be entitled to take in his representative capacity. And such renunciation will be a sufficient waiver to admit other interests to administration, if the renunciant be the sole representative of his own deceased. If there be another qualified representative, the latter must renounce also.

Where the acting (or proving) executor was cited, but could not be served personally with the process, the court directed the renunciation of his co-executor of the probate and execution of his own testator's will to be procured before it would make a grant in default of the other. Power had been reserved to such co-executor, but he had not proved.

(*i*) *Garrard* v. *Garrard*, 2 P. & M. 238.
(*j*) *J. Perry*, 2 Curt. 655.
(*k*) *Ibid.*

It would seem that the renunciation of the proving acting executor would have been sufficient if he had n absconded, and could have been personally served, as that case his refusal would have been perfect (*l*).

Renunciation by executor to whom power reserved.

An executor to whom power of proving has bee reserved may renounce subsequently to the grant passi to his co-executor, but in this case a registrar's order file the renunciation must be obtained.

By all the persons interested in the estate.

If there is not a legal personal representative of th deceased person on whose behalf, or in whose name, renunciation is desired, all persons having an interest i his estate must renounce. Under such circumstance in the case of a will, the persons interested in the residua estate must renounce as well as the executor; and in th case of an intestacy, all the next-of-kin, heir-at-law (there be real estate), and all persons entitled in distributio must equally renounce.

For the forms of renunciation, see Appendix V., p. 106 *et seq.*

A renunciation need not be under seal (*m*); but if it b so, it is liable to stamp duty of 10*s.*

By attorney.

It may be made by an attorney authorised by a powe given to that effect (*n*).

By guardian.

Minors and infants may renounce by their guardians.

The minor will elect his next-of-kin for that purpos (Rule 35 (1862)) (p. 801).

If the minor wishes to elect a relative who is not his next-of-kin, a summons before the registrar must be taken out and served on his father.

Where the mother is the next-of-kin, however, no election is required, as under the Guardianship of Infants Act, 1886, she is the lawful guardian either alone, or with the paternal testamentary guardian of her minor and infant children.

(*l*) *Sarah Leach*, May 14th, 1847. By Sir JOHN DODSON.
(*m*) By order of the judge, May 4th, 1870.
(*n*) *Rosser*, 3 Sw. & Tr. 492.

For the forms of election and renunciation, see Appendix V., pp. 991 and 1070.

In the case of an infant, the next-of-kin must be specially assigned guardian to that infant (Rule 35 (1862)), except when the mother answers this description, when her statutory right obviates the necessity.

For forms of affidavit, registrar's order and renunciation, see Appendix V., pp. 962 and 1052 and 1071.

A testamentary guardian, or one appointed by deed by the mother, of an infant or minor may renounce on behalf of his ward.

The guardian appointed by the Chancery Division of the estate of an infant may renounce on his behalf.

A mother has been appointed guardian by the court to renounce on behalf of the child or children with which she is *enceinte* at the moment (*o*).

By committee.

A committee of a lunatic or person of unsound mind may, on his behalf, renounce probate or administration.

Although in default of there being any committee, the next-of-kin of a lunatic may renounce administration, it is held that he cannot renounce probate, and that the only way of clearing off a lunatic executor is by citation.[49]

Renunciation of guardianship by next-of-kin.

The next-of-kin of a minor or infant may renounce their right to his guardianship, in order that a stranger or more distant relative may be appointed guardian.

For forms of renunciation, see Appendix V., p. 1070.

Renunciation dispensed with.

One of an intestate's next-of-kin, being a convicted felon, and transported during his natural life, was not required to renounce (*p*).

(*o*) *John Wilmshurst*, August, 1830.
(*p*) *Joseph Lawrence*, June, 1825.

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[49] *LUNACY.*—The Court has jurisdiction after the death of a lunatic to deal with applications relating to the lunacy proceedings, and for the handing over of any fund under the control of the Court to the person entitled on the death of the lunatic (*Re Gardner*, 1 O. L. R. 405).

Where renunciation invalid.

If an executor has intermeddled in his deceased's es the court will not accept his renunciation. It will declared invalid (*q*).[50]

On no other ground, however, can he be precluded f renouncing (*r*).

Not an intermeddling.

The mere act by an executor of being sworn as s and afterwards changing his mind before probate issued, would not of itself be an "intermeddling" (*s*).

The rule that an executor who has intermeddled can renounce, does not apply to a residuary legatee or a ne of-kin (*t*).

Renunciant cannot take in another character.

By Rule 50 (1862), "No person who renounces prob "of a will or letters of administration of the perso "estate and effects of a deceased person in one charac "is to be allowed to take a representation to the sa "deceased in another character;" but Sir J. P. Wi held that this rule was for the general guidance of registrars, and capable of modification by the court wh sufficient reason could be shown (*u*).

Where a man has two different characters under t same will, he shall not select, but shall take administ tion on the largest ground (*x*).

(*q*) *Long* v. *Symes*, 3 Hag. Ec. 774; *M'Donnell* v. *Prendergast*, ib 214; *Jackson and Wallington* v. *Whitehead*, 3 Phill. 579; *Rayner* *Green*, 2 Curt. 249; *Munday and Berry* v. *Slaughter*, *ibid.*, 76; *Pytt* *Fendall and Jones*, 1 Lee, 557; *Badenach*, 3 Sw. & Tr. 465; *Mordau* v. *Clarke and Clarke*, 1 P. & M. 592; 38 L. J. 45; 19 L. T. 610.

(*r*) *Jackson and Wallington* v. *Whitehead*, *supra*.

(*s*) 3 Hag. Ec. 216.

(*t*) *Davis*, 29 L. J. P. & M. 72.

(*u*) *Loftus*, 3 Sw. & Tr. 311.

(*x*) *Russell*, 1 P. & M. 634; 38 L. J. 31; 20 L. T. (N.S.) 231; 17 W. 471.

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[50] *RETIRING FROM OFFICE.*—Parties named executor whose duties in respect to the management of the estate did n commence until after the death of B. and M., proved the will, an shortly afterwards, and before the death of either of these partie filed a bill to be relieved from the executorship. The Court, unde

So a next-of-kin cannot renounce as such and take administration as a creditor.

Neither can a residuary legatee renounce as such and take administration as a creditor.

But where a man had previously joined his wife in renouncing *quâ* residuary legatee, he was allowed to take administration as a creditor (*y*). Exceptions.

And an executor having renounced, for himself as such, was allowed to take administration (will) as the attorney of his co-executors (*z*).

In a case (*Muzio, deceased*, October, 1886), the executors named in the will of M., who was the executor of S., had been cited to prove their testator's will, and in their default administration (will) of S., deceased, had been granted to the residuary legatee of S. The executors of M. were also his residuary legatees in trust. The registrar held that they might take administration (will) to M., as they had not *renounced* (*a*), and had only forfeited their rights as executors.

A mother having renounced in her own right is allowed to take administration for the use of minors, of whom she is guardian.

If a leading grant has been made to two *administrators*, one of whom is disinclined to take the further grant, his renunciation and consent will enable his co-partner to take it alone. In the case of two *executors* no renunciation or consent is required. Consent.

If the next-of-kin seeking to administer be one of a remote denomination, so as to require notice to be given to the others under Rule 28 (1862), a consent of the latter will suffice.

(*y*) *Biggs*, 1 P. & M. 595; 37 L. J. 79.
(*z*) *Russell, supra.*
(*a*) See Rule 50 (1862).

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the circumstances, refused to make an order to relieve them, they having deliberately accepted the office (*Hellem* v. *Severs*, 24 Gr. 230).

For forms of consent, see Appendix V., p. 990, "Renu ciation and Consent."

Non-appearance to citation equivalent to renunciation.

The non-appearance to a citation of a party having superior interest, if he has been served with such proces has the same effect as a renunciation. (See "Citations p. 289.)

In the case of an executor.

The 16th section of the Court of Probate Act, 185 enacts, that "whenever an executor named in a will "cited to take probate, and does not appear to suc "citation, the right of such person in respect of th "executorship shall wholly cease; and the representatio "to the testator and the administration of his effect "shall and may, without any further renunciation, g "devolve, and be committed in like manner as if such "person had not been appointed executor."

But see previous page, *Muzio, deceased.*

The renunciation of an executor may, as a general rule be taken to be final, he not being permitted to retract i except by permission of the court, and this permission will not be given without regard to the 20 & 21 Vict. c. 77, s. 79. This section enacts, that, "where any person" (after the commencement of the Act, *i.e.*, January 11th, 1858) "renounces probate of the will of which he is "appointed executor or one of the executors, the rights "of such person in respect of the executorship shall "wholly cease."

Retractation where allowed.

The enactment not applying to the case of an executor who has renounced before the commencement of the Act, he is, in that event, at liberty to retract in all cases where he might have done so before the commencement of the Act (*b*).

Under this previous practice, thus so far permitted to remain, a renunciant executor might, without leave of the court, retract at any time before administration (will) had been actually granted to any other person, but not afterwards.

(*b*) *Whitham*, 1 P. & M. 303.

Executor allowed to retract.

Under the present law, however, the court is not itself concluded, but may permit a retractation of an executor's renunciation "in a case fit for it" (*c*), and of this the court is the sole judge.

A retracting executor must therefore be prepared to show that his retractation is for the benefit of the estate, or of those who are interested under the deceased's will (*d*).

In a case where the acting executor had absconded, and no further grant had been made, and the letting in of the co-executor who had renounced would not alter the devolution of the representation, the renunciant was allowed to retract, the court holding that the old practice, which allowed in a proper case an executor to retract his renunciation, was not abrogated by s. 79 of the Court of Probate Act, 1857 (*e*).

There is a case, however, where the court will have less hesitation in allowing a retractation.

In a case coming within the Act of Parliament, where an executor had renounced, and his renunciation, with the other papers necessary for a grant of administration (will) to some person, had been lodged in the registry, but were withdrawn before the grant could be made, the court allowed the executor to retract and take probate (*f*).

Under Rule 50 (1862), an executor, who is residuary legatee also, and has either expressly or constructively renounced in both characters, cannot retract his renunciation *quâ* residuary legatee (*g*).

But this may be done under some circumstances with the permission of the court (*h*).

A sole executrix and residuary legatee having renounced, and administration (will) having been granted to a

(*c*) *Badenach*, 3 Sw. & Tr. 466.
(*d*) *Gill*, 3 P. & M. 113.
(*e*) *M. Stiles*, [1898] P. 12.
(*f*) *Morant*, 3 P. & M. 152.
(*g*) See also *Richardson*, 1 Sw. & Tr. 515; *Morrison*, 2 Sw. & Tr. 129. The case of *Bullock* (4 N. C. 647) is overruled.
(*h*) *Wheelwright*, 3 P. D. 71.

next-of-kin of the testator, the court, on the administrat dying, permitted the residuary legatee to retract, and th granted to her administration (will) *de bonis non*.

Retractation in intestacies.

In intestacy the discretion of the court in allowi retractation is uncontrolled by any statute.

In *York* v. *Manlove*, Dr. BETTESWORTH permitted widow who had renounced, but had retracted within th fourteen days, to take administration, on the ground tha the case was *res integra*, as the renunciation was mad within the fourteen days (*i*).

In *Cradock* v. *Weston*, Dr. BETTESWORTH refused t allow a retractation under the following circumstances, a stated by Dr. Cottrell:—"John Cradock died intesta "leaving four children. Upon the renunciation of thre "of them, administration was granted to a creditor. The "other child appeared and the grant was revoked. Then "his brothers retracted, and asked for administration to "one of themselves. The court said: 'The persons "'renouncing had not been deceived or imposed upon in "'their renunciation, and if any inconvenience followed "'they must thank themselves for it'" (*k*).

So, in a later case, where the next-of-kin had renounced in order that a creditor might take, and one of them retracted before the grant was made, the court held him to his renunciation (*l*).

But where all the next-of-kin had renounced in order that a stranger might take a grant, which was afterwards refused, the court permitted one of them to retract (*m*).

In the case of administration granted to a person entitled in distribution, or to a creditor, on the renunciation of the next-of-kin, the latter may, on the administrator's death, retract and take administration *de bonis non* (*n*).

(*i*) *York* v. *Manlove* (Dr. Cottrell's MS.).
(*k*) November 13th, 1733 (Dr. Cottrell's MS.).
(*l*) *Noel*, 4 Hag. Ec. 208.
(*m*) *Blake*, 14 W. R. 1021; 14 L. T. 760; 35 L. J. 91.
(*n*) *Skeffington* v. *White*, 1 Hag. Ec. 702; *Thacker*, [1900] P. 15.

But the retracting party may only take administration in the form in which it was originally granted, particularly .. a consent on his part has accompanied the renunciation. So, where on the next-of-kin renouncing and consenting, administration was granted to a creditor for the use of the widow during her lunacy, the court would not, on the death of the administrator, allow one of the next-of-kin who retracted to take an absolute grant of administration *de bonis non*, but gave him one limited as before (*o*).

So, also, where a mother has renounced her right to administration and also to the guardianship of her minor children, and a grant has been made for the use of the minors to some one else, on the death of the latter the mother may retract her renunciation of the guardianship and take another grant on behalf of the minors; but she cannot take a grant on her own behalf, as the right of administration continues in the minors.

Retractation not required.

A person who has previously renounced by his guardian has been required to retract, although in principle this may seem u- ecessary, as the representative of a deceased renunciant is not required to retract should he apply for a grant (*p*).

For form of retractation, see Appendix V., p. 1072.

Refusal, shown by non-appearance to a citation, requires no retractation.

The party so refusing may, on the death of the administrator, come in and take a grant *de bonis non*. He is, however, subject to precisely the same rules which regulate a retractation, and has no more privileges than the person who has renounced in form.

the latter case the widow of a bankrupt renounced in favour of the official receiver who, after paying off all debts, had a balance in hand for distribution among the widow and children. The widow was allowed to retract, and administration *de bonis* granted to her and the children jointly.

(*o*) *Thos. Newton Penny*, 1 Rob. 426.

(*p*) *Ibid.*

CHAPTER XI.

INVENTORY AND ACCOUNT.[51]

Inventory and account.

ANY person interested in an estate, *e.g.*, a next-of-kin as being entitled in distribution, or a legatee or a creditor

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[51] The surrogate courts of Ontario are invested with the authority and jurisdiction over executors and administrators, and the rendering by them of inventories and accounts, conferred in England on the Ordinary under 21 Henry VIII. c. 5. The effect of Rule 19 of the Surrogate Court Rules of 1892, as limited by s. 73 of the Surrogate Courts Act, R. S. O., 1897, c. 59, seems to bring the practice back to that in force under the ancient statute.

The effect of s. 73 is to limit S. C. Rule 19 to cases in which a party interested in an estate takes proceedings to obtain such account, or in which infants are interested in such account. In cases where an account is taken, the Con. Rules 667, 668, and 669 regulate the practice (*vide* S. C. Rule 19, *post*, p. 830 ; see Succession Duty Act, *post*, p. 934, s. 5).

It is not only the duty of an executor or administrator to file an inventory and render an account when duly called upon to do so, but it is his privilege to do so voluntarily in any case in which he is liable to be called upon, and this privilege, in case of his death, extends to his personal representative, though not at the same time the representative of the original testator, and even though there is a surviving representative of the original testator. Where, therefore, the executors of an executor brought into the proper surrogate court an account of the dealings of their testator with the assets of the estate of the original testator, treating in the account as cash received by the accounting executor the amount of a certain promissory note, and the account was audited and approved after due notice to the surviving executor of the original testator, it was held in an issue in the High Court between the surviving executor of the original testator and the executors of the deceased executors, upon pleadings so framed as to raise not only the question of the property in this note, but also the question of the right to the proceeds thereof, that the audit and approval of the account were a binding adjudication as against the surviving executor, and that

may call upon the administrator or executor who has become the legal personal representative of the deceased

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the proceeds of the note were payable to the estate of his deceased executor (*Cunnington* v. *Cunnington*, 2 O. L. R. 511).

LIABILITIES OF EXECUTORS.—Account stated—Debt of testator (*Watkins* v. *Washburn*, 2 U. C. R. 291).

Building—Want of repair—Damages—Law of Quebec (*Ferrier* v. *Trepannier*, 24 S. C. R. 86).

COLLECTOR OF TAXES.—The testator, having been appointed by the finance committee of the district council to collect the wild land tax:—*Held*, that his representatives were liable to the council for money received by their authority and not paid over (*Municipal Council of Lincoln, Welland and Haldmiand* v. *Thompson*, 8 U. C. R. 615).

CONTRACT OF TESTATOR.—Upon an action brought against executors for the board and education of testator's daughter, an oral contract, at the most for three years, was proved with the testator, and plaintiff's knowledge of his death was shown by charges made in the plaintiff's account:—*Held*, that the contract not being a binding one upon the testator if alive, his executors were not liable on it (*Institute of Ladies of the Sacred Heart* v. *Matthews*, 10 C. P. 437).

LIABILITIES OF EXECUTORS—COVENANT.—When executors conveyed land under a power of sale in the will of testator, but covenanted for themselves, their heirs, etc., in the deed for good title:—*Held*, that they were personally liable, and that the grant by them as executors could not control their express covenant (*McDonald* v. *McDonald*, 6 O. S. 109).

Covenant of testator (see *Lee* v. *Lorsch*, 37 U. C. R. 262).

DEATH OF SURETY.—The executors of sureties are liable for the defalcation of the principal committed after the death of their testator, and even after notice that they would not be liable (*Regina* v. *Leeming*, 7 U. C. R. 306).

DEVASTAVIT—CA. SA.—The Court allowed a judgment on a *sci fa.* against an administrator to be amended in the name of the intestate by making it correspond with the original judgment against him. On a return of *devastavit* a *ca. sa.* does not issue as a matter of course without inquiry (*Wellard* v. *Woolcot*, Dra. 201).

DEVASTAVIT—EVIDENCE.—In an action of debt against an administrator to make him personally liable upon a judgment recovered by default against the goods of an intestate alleging waste:—*Held*, that the record of the judgment in the first action

to exhibit an inventory of the estate and render a account of his administration thereof (*a*).

(*a*) This jurisdiction was preserved to the Court of Probate by th 23rd section of the Court of Probate Act, 1857. But the Court o Probate had no jurisdiction to compel administrators, by grant ou of an Ecclesiastical Court, to file inventories and accounts. See Cour of Probate Act, 1857, s. 87; *Bouverie and Lefevre* v. *Maxwell*, 1 P. & M 272; 36 L. J. 3; 15 W. R. 89; 15 L. T. 295.

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and a writ of *fi. fa.* thereon, and the sheriff's return of *nulla bona* were sufficient *primâ facie* evidence to show a *devastavit*, and that the production by defendant of writs of *fi. fa.* against the intestate's goods with the sheriff's return of *ficil* thereon, without proving the judgments on which they were founded, was not sufficient evidence to show that the intestate's estate had been exhausted (*Wilson* v. *Andrew*, 6 C. P. 428).

GIFT OF ADMINISTRATOR.—S. assigned to defendant certain promissory notes for his sole and only use, except such as might be used in liquidation of all necessary expenses in connection with his board and funeral expenses, and by his will appointed defendant his executor. In taking the accounts in an administration suit, one of the local masters refused to allow defendant the expenses of taking out probate of the will, of advertising for creditors, of medicine and medical attendance for the testator, and of a gravestone, as having been sufficiently compensated by the notes:—*Held*, that he was entitled to be allowed the amounts in passing his accounts, except the sum paid for the gravestone, which was a charge properly attending the funeral (*Smith* v. *Rose*, 24 Gr. 438; see also *Anderson* v. *Dougall*, 15 Gr. 405; *Denison* v. *Denison*, 17 Gr. 306; *Williams* v. *Roy*, 9 O. R. 534).

WILFUL NEGLECT OR DEFAULT.—But when an executor or administrator applies for such order, the account will be directed to be taken, and what he has received, or what but for his wilful default he might have received (*Ledgerwood* v. *Ledgerwood*, 7 Gr. 584).

DOUBTFUL CLAIM.—In an administration order under G. O. Chy. 648, 649, the plaintiff claimed to be creditor of the estate by reason of the support and maintenance by him of the testator's wife in England during the testator's lifetime:—*Held*, that the plaintiff's claim should be supported by *viva voce* evidence, and an action was directed to be entered (*Groom* v. *Darlington*, 9 P. R. 298).

A legatee filed a bill against executors and another person, between whom and the executors it was charged improper dealings had taken place with the estate. The charges so made were not

A cessate administrator may call upon the original administrator to exhibit an inventory and account (*b*).

(*b*) *Taylor* v. *Newton*, 1 Lee, 15.

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sustained in evidence, and the plaintiff was therefore ordered to pay the costs of the defendants to the hearing, and allowed only costs of and subsequent to decree; and cross charges of improper conduct having been brought against the plaintiff by other legatees made parties to the suit, and not substantiated, the costs incurred in resisting such charges were directed to be paid by the parties making them (*Miller* v. *McNaughton*, 11 Gr. 308).

When an executor by his misconduct in the management of the estate causes a suit, and but for the fact of the suit having been brought the assets would have been dissipated, the Court will not, as a general rule, allow such executor his costs out of the estate, although no loss has been sustained; and when in such a case the party interested filed a bill without calling upon the executor for an account, or affording him any opportunity of showing that his dealings were correct, the Court refused the costs of the suit to either party up to the taking of the accounts, but directed the executor to pay the subsequent costs (*Simpson* v. *Horne*, 28 Gr. 1; and see *Erskine* v. *Campbell*, 1 Gr. 570).

ACTION FOR MORTGAGE ACCOUNT.—In an action for an account by a mortgagor against the executors of a mortgagee who had sold the mortgaged premises under the power of sale in the mortgage, and who had also taken proceedings at law, a small balance of $10 was found in his favour. Plaintiff having made certain charges which he failed to substantiate, and not having proved that an account was demanded and withheld from him, and certain special matter pleaded by the defendants being found against him—*held*, neither party entitled to costs (*Beatty* v. *O'Connor*, 5 O. R. 747).

REFUSAL TO ACCOUNT.—More than a year after the grant of the probate to the sole executrix named in the will of the testator, three legatees applied summarily for an administration order upon the ground that the executrix, who for several years before the death of the testator had managed his business affairs, had refused to account for her services before the death and as executrix, denying that any sum was due by her to the estate:—*Held*, that the legatees were entitled to the usual administration order, under which the master could make all the necessary

An inventory may be called for at any short perio after administration, *i.e.*, before the expiration of si months.

In regard to the account, also, there does not appear t be any defined limit as to time.

An order to file inventory and account may be obtained by summons, and this latter course is more generally adopted.

The practice to be followed in the case of citation is that which has been detailed in the preceding chapter.

For forms of affidavit and summons, see Appendix V., p. 955.

No caveat is entered.

Disobedience to the citation or order is punishable by contempt and attachment.

Canadian Cases.

inquiries, and were not driven to an action for administration (*Re Bagwell, Anderson* v. *Henderson*, 17 P. R. 100).

ACCOUNTS.—Torrance v. *Crooks*, 1 E. and A. 230; *Dorion* v. *Dorion*, 20 S. C. R. 430.

ACTION FOR ACCOUNT AGAINST DECEASED TRUSTEE.—Simpson v. *Corbett*, 5 O. R. 377, 10 A. R. 32.

STATUTE OF LIMITATIONS—ACKNOWLEDGMENT.—An acknowledgment and indebtedness by letter written after the creditor's decease by the defendant to the person who is entitled to take out letters of administration to the creditor's estate, and who does, after the receipt of the letter, take out such letters, is a sufficient acknowledgment within the Statute of Limitations (*Robertson* v. *Burrill*, 22 A. R. 356).

When, after probate, an action was instituted against the executors in the High Court, and such proceedings had, and such a judgment ensued as rendered the taking of the executors' accounts by the Surrogate Court unnecessary, the judge made an order dispensing with the passing of the accounts in the Surrogate Court (*In the estate of James French, deceased*, S. C. York, March, 1894).

CHAPTER XII.

SUBPŒNAS.[51a]

Production of testamentary papers.

By order of the judge.

THE 26th section of the Court of Probate Act, 1857, provides means for compelling the production of testamentary papers. By that clause it is enacted, that "the Court of "Probate may, on motion or petition, or otherwise, in "summary way, whether any suit or other proceeding "shall or shall not be pending in the court with respect "to any probate or administration, order any person to "produce and bring into the principal or any district "registry, or otherwise as the court may direct, any "paper or writing being or purporting to be testamentary, "which may be shown to be in the possession or under "the control of such person; and if it be not shown that "any such paper or writing is in the possession or under "the control of such person, but it shall appear that "there are reasonable grounds for believing that he has "the knowledge of any such paper or writing, the court "may direct such person to attend for the purpose of "being examined in open court, or upon interrogatories "respecting the same; and such person shall be bound "to answer such questions or interrogatories, and, if so "ordered, to produce and bring in such paper or writing, "and shall be subject to the like process of contempt in "case of default in not attending or in not answering such "questions or interrogatories, or not bringing in such "paper or writing, as he would have been subject to in "case he had been a party to a suit in the court and had "made such default and the costs of any such motion, "petition, or other proceeding shall be in the discretion of "the court."

Subpœna issued by

The 23rd section of the Court of Probate Act, 1858,

Canadian Cases.

[51a] S. C. Act (*post*, p. 664), s. 19; Con. Rules, 478, *et seq.*

Order of registrar.

provides, that "it shall be lawful for a registrar of the "principal registry of the Court of Probate, and whether "any suit or other proceeding shall or shall not be pend- 'ing in the said court, to issue a subpœna ... ring any "person to produce and bring into the p... pal or any "district registry, or otherwise, as in the said subpœna "may be directed, any paper or writing being or purport- "ing to be testamentary, which may be shown to be in "the possession, within the power, or under the control of such person; and such person, upon being duly served "with the said subpœna, shall be bound to produce and "bring in such paper or writing, and shall be subject to "the like process of contempt in case of default as if he "had been a party to a suit in the said court, and had "been ordered by the judge of the Court of Probate to "produce and bring in such paper or writing."

An affidavit (Form, p. 957) to lead registrar's order (Form, p. 956) is filed in the Contentious Department, whence it is transmitted to the registrar, who makes an order for the subpœna to issue. (Form of Subpœna, p. 1073, *et seq.*)

The subpœna will command that the testamentary paper be brought into the principal registry, or into a district registry, according as it may be preferred.

Service out of jurisdiction.

Whether a subpœna under this section can issue for service out of the jurisdiction is very doubtful. In *Hamborough* (Motion, November, 1894), the President adjourned, until an action had been brought, an application for leave to issue a subpœna *duces tecum* for service in Scotland against a person retaining a will. The Irish Court of Appeal in January, 1894, in *Ambrose*, decided that where there was no action or suit the court had no power to issue a subpœna for service in England. The decision had reference to a similar section in the Irish Probate Court Act.

If the subpœna be duly obeyed by the party cited, and the testamentary paper be brought in by him, the practice

is enjoined by Rules 84, 85, and 86. (See Appendix II., p. 809, Rules and Orders of 1862.)

According to the present practice in the registry, the record keeper is the officer to whom the person bringing in the will applies and not the clerk of the papers as mentioned in Rules 84 and 85.

If the subpœna be disobeyed, it may be enforced by contempt and attachment.

But the court will not necessarily issue an attachment against a person disobeying a subpœna of this nature. It may make an order that such person shall attend in court to be examined in refcrence to his possession of the paper in question (*a*).

Examination of party.

In the second case provided for by the Act, viz., where there are reasonable grounds for believing that a person has knowledge of a testamentary paper or writing, and the person so designated attends for the purpose of being examined in open court, counsel has been permitted to put questions to that person, and also to other persons who have been required to attend on the same inquiry (*b*).

This examination, if not by interrogatories, must be in open court (*c*).

This statutory examination cannot be applied to attesting witnesses to a will who have declined to give information as to the circumstances attending the execution of it (*d*).

(*a*) *Parkinson* v. *Thornton*, 37 L. J. 3.
(*b*) *Cope*, 36 L. J. 83.
(*c*) *Laws*, 2 P. & M. 458.
(*d*) *Evans* v. *Jones and Others*, 36 L. J. 70.

CHAPTER XIII.

DEPOSIT OF WILLS OF LIVING PERSONS.[51b]

Deposit of wills of living persons.

IN pursuance of the provisions of the Court of Probat Act, 1857 (20 & 21 Vict. c. 77), s. 91, the Principa Probate Registry of the High Court of Justice, Somerse House, Strand, London, is the depository now provide for the wills of living persons, and testators are at libert to deposit their wills or codicils therein, under the follow ing regulations :—

With Record Keeper.

1. The will or codicil to be deposited must be brough into the Record Keeper's department, and acknowledge as that of the testator before one of the registrars, eithe by the testator himself, or by some person speciall authorised by him to deposit the same on his behalf.

Will not given out again.

2. The will or codicil so deposited will not *under an circumstances* be delivered out of the registry, but can b revoked by the testator in manner hereinafter mentioned (See par. 8.)

Deposit in person.

3. In case the testator himself deposits his will or codici he will be required to sign his name, or acknowledge hi signature, in the presence of the registrar, to an endorse ment on the envelope in which the will or codicil i enclosed, to the following effect :—

"This sealed packet contains the last will and testamen "or codicil to the last will and testament, or last will an "testament and codicil thereto, bearing date respectivel "[*here state the dates of all the papers enclosed*] of A. B "of, etc., whereof C. D., of, etc., and E. F., of, etc., ar "appointed executors, and the same are brought into th "Principal Probate Registry of the High Court of Justic "by me for safe custody, there to remain deposited unti

Canadian Cases.

[51b] S. C. Act (*post*, p. 664), s. 13 ; and S. C. Rule 20, *post*, p. 83

"after my decease, unless previously revoked by destruc-"tion in my presence, and by my direction." [*The residences of the testator and of the executors should be set forth in this endorsement, and also the date of the testator's signature thereto.*]

Deposit by an agent.

4. In case the testator authorises some other person to deposit his will or codicil for him, he will be required to subscribe his name, in presence of a witness, to an endorsement on the envelope in which the will or codicil is enclosed, to the following effect:—

"This sealed packet contains the last will and testament, "or codicil to the last will and testament, or last will and "testament, and codicil thereto, of me, A. B., of, etc., "whereof C. D., of, etc., and E. F., of, etc., are appointed "executors, and I authorise G. H. to deposit the same for "safe custody in the Principal Probate Registry of the "High Court of Justice, there to remain deposited until "after my decease, unless previously revoked by destruc-"tion in my presence, and by my direction." (Signed) A. B. Witness, K. L. [*The residences of the testator and of the executors should be set forth in this endorsement, and also the date of the testator's signature thereto.*]

The packet containing the will or codicil must be accompanied by an affidavit of the witness, to the effect that the signature of the testator to the above endorsement, deposed by the witness, is in the proper handwriting of such testator, and was by him signed in the witness's presence on the day mentioned in the endorsement, and that the signature K. L. is in the handwriting of the deponent. An affidavit will also be required from the person authorised to deposit the packet, to the effect that the packet which is produced for the purpose of being deposited for safe custody in the Principal Probate Registry of the High Court of Justice, and on the back of which the deponent has signed his name, is at the time of making the affidavit precisely in the same state, plight, and condition, as when received by the deponent from the hands

of A. B. [the testator] on a day to be mentioned as th
on which he received it.

The last-mentioned affidavit is to be sworn before t
registrar to whom the packet containing the will or codi
is delivered.

5. A minute setting forth the production of the pack
containing the will or codicil, and the affidavits (if an
and when and by whom the same were produced, and t
declaration of the testator, or his agent, that he deposit
the same in the registry for safe custody, and also ackno
ledging the receipt of the packet, will be drawn up
duplicate, and will be signed by the registrar. One co
of this minute will be delivered to the testator, or
agent, and the other will be retained in the registry.

6. The following fees will be payable in judicature
stamps :—

	£	s.	d.
For depositing the will and receipt for same	0	10	0
For drawing and entering minute of the registrar	0	2	6
For filing each affidavit . . .	0	2	0

Deposit through a district registrar.

7. Testators are at liberty to transmit their wills a
codicils to the Principal Probate Registry, to be deposi
there for safe custody, through the registrar of a distr
probate registry, who will send the same by the gene
post in a registered letter.

The affidavit of the person authorised by the testator
deposit his will or codicil will, in that case, be sw
before the district registrar, to whom the packet contain
it is delivered.

On production to the district registrar of the sea
packet containing the will or codicils to be deposited,
the affidavits (if any), he will draw up a certificate
duplicate under his hand, setting forth when and by wh
the same were produced to, and left with him. He

deliver one of these certificates to the testator or his agent and retain the other in his district registry, and he will transmit an office copy of the certificate, with the sealed packet and affidavits, and a form of receipt, to the principal registry. The receipt will be returned to him under the hand of one of the registrars of the principal registry.

The following fees will be payable to the district registrar in addition to the fees before mentioned:—

	£	s.	d.
For his certificate	0	2	6
For filing same	0	2	6
For office copy of the same to transmit to the principal registry . .	0	2	6
For receipt	0	1	0

All fees are to be retained in the district registry.

Revocation of deposited will.

8. In the event of a testator desiring to revoke by destruction a will deposited in the registry, he will be at liberty to do so upon his producing the original minute of the registrar handed to him on depositing the same, and such other proof of identity as one of the registrars may deem necessary. The will to be thus revoked will be destroyed in the registry in the presence and by direction of the testator.

The following fees will be payable:—

	£	s.	d.
For filing minute on destruction .	0	2	6
For filing each affidavit . . .	0	2	0

Opening of will after death.

9. On the death of a testator who has deposited a will or codicil during his lifetime, the certificate of death and, when possible, the registrar's minute or certificate on the deposit must be produced. The executors will be required to attend and acknowledge before one of the registrars that they are the executors named in the will. They will be sworn to the will (which is not delivered up) before a commissioner in the registry.

The following fees will be payable:—

	£	s.	d.
For filing minute on opening will .	0	2	6
For search, if registrar's minute be not produced	0	1	0

Forms, etc., required.

10. All forms and envelopes required for deposit wills are to be had on application at Room 25 in t Record Keeper's Department of the Principal Proba Registry.

CHAPTER XIV.

PROVED WILLS.

SEARCHES AND COPIES.[51c]

Wills proved since 1858.

COPIES of all wills proved in the principal registry or district registries (see p. 4) since the year 1858 may be obtained by application to the Record Keeper, Principal Probate Registry, Somerset House, London.

Wills proved before 1858.

In searching for a will proved before the Probate Act, 1857, came into operation (11th January, 1858), it is advisable in the first instance to search at the Principal Probate Registry, Somerset House, in the Calendars of the Prerogative Court of Canterbury. If the will cannot be traced from these calendars, application should be made to the registry of the county or district in which the deceased lived. The counties, with the corresponding probate registries to which the records of the extinct ecclesiastical, royal peculiar, peculiar, manorial, and other courts (*a*) were transferred in 1858, are given in the subjoined list. As a rule each district probate registry contains the records of its district. The most notable exceptions to this rule will be found in the third column; but considerations of space prevent a complete list being compiled.

(*a*) Three hundred and seventy-two of these courts existed at the time of the passing of the Probate Act, 1857.

Canadian Cases.

[51c] Sec. 55, S. C. Act, *post*, p. 680.

County.	District Probate Registry.	Exceptions.
Bedfordshire . .	Northampton.	
Berkshire . .	Oxford . .	Some records at Principa Registry.
Buckinghamshire .	Oxford . .	Some records at Principa Registry and Lincoln di trict registry.
Cambridgeshire (*including the University of Cambridge*)	Peterborough .	Some records at Norwich an Bury St. Edmunds distric registries.
Cheshire . . .	Chester . .	Some records at York distric registry.
Cornwall. . .	Bodmin . .	Bishop of Exeter's court a Exeter district registry.
Cumberland . .	Carlisle . .	Some records at Principa Registry, Lancaster an York district registries.
Derbyshire . .	Derby. . .	Only the Peculiar Court o Dale Abbey at Derby; th rest at Lichfield.
Devonshire . .	Exeter.	
Dorsetshire . .	Blandford . .	Peculiar Courts in the Pecu liar Courts of Dorset, Sarum and Yatminster Calendars at the Principal Registry.
Durham . . .	Durham . .	Some records at York district registry.
Essex—		
Northern Division	Ipswich . .	One Peculiar Court at Ipswich.
Southern Division	Principal Registry	Other Peculiar Courts at Principal Registry.
Gloucestershire .	Bristol . .	Some records at Gloucester district registry.
Hampshire . .	Winchester.	
Herefordshire . .	Hereford.	
Hertfordshire . .	Principal Registry.	
Huntingdonshire .	Peterborough .	Some records at Principal Registry.
Kent—		
Eastern Division	Canterbury . .	The Archdeaconry of Roches-
Western Division	Principal Registry.	ter and the Consistory Court of Rochester are in the Principal Registry.
Lancashire . .	Manchester (no records)	Some records at York district registry. Some records at
	Liverpool (no records)	Lancaster district registry and at Principal Registry.
	Lancaster	Majority at Chester district registry.

County.	District Probate Registry.	Exceptions.
Lancashire—*contd.*		The Archdeaconry of Richmond Wills, up to certain dates, are transferred to the Principal Registry. They compriso the wills of tho Eastern and Western Deaneries. The Eastern Deaneries from the earliest date till 1857 are in the Principal Registry. Tho Western Deaneries up to 1748 are in the Principal Registry, and from 1748 to 1858 at the Lancaster district registry.
Leicestershire . .	Leicester.	
Lincolnshire . .	Lincoln.	
Middlesex . .	Principal Registry.	
Monmouthshire .	Llandaff. Hereford.	
Norfolk . . .	Norwich.	
Northamptonshire(*a*)		
Northern Division	Peterborough.	
Southern Division	Northampton.	
Northumberland .	Newcastle-on-Tyne (no records)	Consistory Court of Durham at Durham district registry. Records of the Peculiar Jurisdiction of the Archbishop of York in the Peculiar of Hexhamshire at York district registry. Peculiar of the Prebendary of Tockerington at York district registry.
Nottinghamshire .	Nottingham .	The following records are at Nottingham :—Manorial Court of Gringley-on-the-Hill, Peculiar Court of the Vicar of Kinolton, Peculiar Court of the Manor of Mansfield, Peculiar Court of Southwell. The remaining records are at York district registry.

(*a*) In order to ascertain to which division of the County of Northampton a particular place belonged, refer to the map of Northamptonshire included in the map of the old Diocese of Lincoln in *Valor Ecclesiasticus*, vol. iv. (Record Keeper's Department, Principal Registry).

County.	District Probate Registry.	Exceptions.
Oxfordshire . .	Oxford . .	Some records at Principal Registry. Records of the Court of the Chancellor of the University of Oxford are at the University.
Rutland . . .	Leicester . .	Prebendal Courts of Kelton and Liddington at Leicester. Remaining records at Peterborough district registry.
Shropshire . .	Shrewsbury .	Peculiar Court only at Shrewsbury. Remaining records at Hereford and Lichfield district registries.
Somersetshire . .	Bristol . .	Records of Abbots Leigh, of the City of Bristol, and of some outlying parishes only at Bristol district registry.
Eastern Division	Wells	If the place is in the Archdeaconry of Taunton, refer to the *Liber Regis*. If not, refer to Wells district registry.
Western Division	Taunton	
Staffordshire . .	Lichfield.	
Suffolk—		
Eastern Division	Ipswich	The Peculiar Courts of Hadleigh, Moulton, and Monks Eleigh are comprised in the Peculiar of Bocking in the Principal Registry.
Western Division	Bury St. Edmunds.	
Surrey . . .	Principal Registry.	Some records at Lambeth Palace and Winchester district registry.
Sussex—		
Eastern Division	Lewes.	
Western Division	Chichester.	
Warwickshire . .	Birmingham .	Four small Peculiar Courts only at Birmingham. The rest at Lichfield and Worcester district registries.
Westmoreland .	Carlisle . .	Some at Lancaster and York district registries and at the Principal Registry.
Wiltshire . .	Salisbury . .	Some at Principal Registry.
Worcestershire .	Worcester.	

County.	District Probate Registry.	Exceptions.
Yorkshire— *West Riding* *North and East Ridings*	Wakefield . . York	Only Peculiar Courts at Wakefield. Most of the records are at York; some are at the Principal Registry. Lonsdale Deanery, after 1748, contains part of York, and may be searched at Lancaster district registry.

The records of the Archdeaconry of London and of the Commissary Court of London are at the Principal Registry.

Exemplifications—Duplicate Grants.

Obtaining exemplifications.

A person who requires an exemplification of a probate or letters of administration searches for the record of the grant, for which search he pays a fee of 1*s.*

He next orders the exemplification of the clerk of the calendars in the registry, and obtains from him the requisite parchment for the exemplification.

This parchment he takes to the stamping department of the Inland Revenue, and has it impressed with a duty stamp of the value of £3.

After this he returns the stamped parchment to the clerk of the calendars, with a fee of £1 1*s.* for the exemplification.

In addition to this, if the exemplification includes a will, he takes in fees to the extent of 1*s.* 6*d.* per folio for engrossing and collating it.

If letters of administration have to be exemplified, he takes in fees to the like extent.

In due course he receives the sealed exemplification from the clerk of the calendars.

Duplicate grants.

Duplicate grants of probate or administration are only issued to the acting executors or administrators (or their solicitors), and upon their written application. If the application is made after the lapse of six months from the issue of the original grant, the sanction of the registrar is required.

CHAPTER XV.

THE LAWS AS TO EXECUTION OF WILLS IN BRITISH POSSESSIONS ABROAD.

[THE despatches, minutes, reports, etc., state the law prevailing at the time they were dated, and not of necessity at the time of publishing this edition.]

In the following places the law as to execution of wills is in accordance with the provisions of section 9 of 1 Vict. c. 26 (see p. 36):—

Antigua.
Bahamas, Bermuda, British Columbia, British Guiana, British Honduras, and British New Guinea.
Caicos, Cayman.
Dominica.
Ellice.
Falkland, Fiji, and Friendly Islands.
Gambia, Gibraltar, Gilbert Islands, Gold Coast, Grenada.
Hong Kong.
India, Ireland. Jamaica.
Lagos, Leeward Islands.
Man (*a*), Isle of, Manitoba, Montserrat.
Natal, Negri Sembilan, Nevis, New Brunswi[illegible] Newfoundland, New South Wales, New Ze[illegible] Nigeria (North and South), North West Territ[illegible] Nova Scotia.
Ontario.
Pehang, Perak, Phœnix Island, Prince Edward Island.
Quebec, Queensland.

(*a*) But the witnesses must sign in the presence of each other.

NOTE.—The extracts from the despatches, minutes, reports, etc., quoted in this chapter were compiled by Mr. G. L. Simpson.

St. Christopher, St. Helena, St. Vincent, Selangor, Sierra Leone, Solomon Isles, South Australia, Straits Settlements.
Tasmania, Tobago (*b*), Tonga, Trinidad (*b*), Turks Island.
Union Island. Victoria, Virgin Island.
West Australia, West Pacific High Commission.

[*The Imperial Wills Amendment Acts referred to in the following extracts are:*—1 *Vict. c.* 26 *and* 15 *Vict. c.* 24.]

Alderney.—The Law of Succession and Inheritance (ss. 13–17), 1841, regulates the manner in which Wills shall be executed and registered.

Antigua. *See* Leeward Islands.

Australia. *See* New South Wales.
Queensland.
South Australia.
Tasmania.
Victoria.
Western Australia.

Bahamas.—Extract from the Governor's Despatch:—"Nassau, 13th January, 1903:—The Imperial Wills "Amendment Acts have been enacted by the Local "Acts 4 Vict. c. 23 and 17 Vict. c. 21 and are now "in force in their entirety." The Statute does not apply to wills made before or on the 31st May, 1841.

Barbados.—Extract from the Minute of the Attorney-General with the Despatch of 23rd January, 1903:—"The law relating to the Execution of Wills of both "realty and personalty is the same as the law of "England *prior* to the passing of 1 Vict. c. 26, "with the exception in the case of realty that (1) "holograph Wills are valid and (2) in the case of "Wills not holograph two or more witnesses are "required."

The law is stated in Barbados Wills Act, 1891 (c. 6), and Married Women's Act, 1896 (c. 32).

Basutoland.—Extract from the Despatch of the Resident

(*b*) But the witnesses must sign in the presence of each other.

Commissioner:—"Maseru, 11th August, 1903:—"There are no special enactments on the subject of "the Execution of Wills in Basutoland. By the "12th section of the Basutoland Regulations the law "and practice with regard to Wills is that of Cape "Colony in the year 1884."

The law as contained in the Cape Acts (Ordinance No. 15 of 1845, Act No. 22 of 1876, and Act No. 3 of 1878) is briefly stated under "Cape Colony."

Bechuanaland.—Extract from the Despatch of the Resident Commissioner:—"Mafeking, 13th August, 1903:—"No special legislation on the subject has ever been "enacted in the Protectorate. By virtue of section "19 of the Proclamation of the 10th June, 1891, the "Execution of Wills is governed by Ordinance No. "15 of 1845, Act No. 22 of 1876, and Act No. 3 of "1878 of the Colony of the Cape of Good Hope."

The above enactments are filed at the Colonial Office and are summarised under "Cape Colony."

Bermuda.—Extract from the Despatch of the Governor:—"Bermuda, 21st January, 1903:—The Bermuda "Wills Act, 1840, follows in the main the Imperial "Statute 1 Vict. c. 26 with the important difference "that holograph Wills without witnesses are admitted "to probate. The Wills Act of 1878 was adapted "with no important changes from the Statute 15 "Vict. c. 24. The law of Bermuda relating to the "Execution of Wills is, therefore, with the exception "pointed out above, in accordance with that of "England."

Section 32 of the 1840 Act enacts that the Act shall not extend to any Will made before the 1st January, 1841.

British Columbia.—The Colonial Acts, entitled The Wills Act, 1897, c. 193, and The Wills Amendment Act, 1902, c. 73, follow the provisions of the Imperial Act, 1 Vict. c. 26, with the exception of the following

sections which are omitted, viz., sections 2, 4, 5, 12, 35, and 36.

Section 1 of 15 Vict. c. 24 is also enacted.

The provisions of the Acts do not extend to Wills made before the 1st day of January, 1838.

British Guiana.—Extract from the Despatch of the Governor:—"Demerara, 12th January, 1903:—The "Imperial Wills Amendment Acts have *not* been "enacted in this Colony with the exception of "section 9 of the Wills Act, 1837, which has been "enacted as the Wills Ordinance of 1839. With this "exception the Execution of Wills is governed by "the Roman Dutch Law which is the common law of "the Colony."

The effect of the above Ordinance is that a Will executed in accordance with section 9 of the Wills Act, 1837, is valid.

British Honduras.—Extract from the Despatch of the Administrator:—"Belize, 15th March, 1877:—The "Wills Amendment Acts are both brought into "operation in British Honduras by the local laws "now in force, viz., Acts 18 Vict. c. 22 and 29 Vict. "c. 1."

Extract from the Report of the Acting Attorney-General, 5th February, 1903:—"The law as to "Wills (as contained in the above local Acts) was "incorporated in the Code known as the Consolidated "Laws of British Honduras. The provisions in it as "to Execution of Wills will be found embodied in "sections 38 to 51 of chapter 44" [for which the Imperial Wills Acts were taken as a model].

British New Guinea.—Extract from the Minute of the Chief Judicial Officer, 19th August, 1903:—"The "Courts and Laws Adopting Ordinance (Amended) "of 1888 adopted *inter alia* the Act of Parliament "of Queensland entitled the Succession Act of "1867."

See under Queensland.

[The Married Women's Property Acts have no been adopted, but it is lawful for a married woma seized in her own right of land or any estate o interest thei in to dispose of the same by Will.]

Caicos. *See* Turks and Caicos Islands.

Canada. *See under* British Columbia.
Manitoba.
New Brunswick.
North-West Territories.
Nova Scotia.
Ontario.
Prince Edward's Island.
Quebec.

Cape Colony.—Extracts from the Report of the Advocat General, Cape Town, May, 1903:—"All Wills ex "cuted in the Colony must be executed according "the laws of the Colony.

"Wills are either (*a*) Notarial or (*b*) Unde "hand.

"(*a*) *Notarial Wills* are executed before a Nota "and two witnesses. A special form of the Notari "Will is the 'sealed or closed Will,' which, wh "closed, is exhibited to the Notary in the presence "two witnesses, and is declared by the Testator "contain his Will.

"(*b*) *Underhand Wills* are either 1. Ordinary "2. Extraordinary; or 3. Privileged.

"1. *Ordinary Underhand Wills* (since Januar "1844).—Ordinance No. 15 requires Wills to "signed at the foot or end, and such signatu "to be made or acknowledged by the Testat "in the presence of two or more compete "witnesses, and such witnesses to attest a "subscribe the Will in the presence of t "person executing the same. And where t "instrument is written on more leaves than o

"the party executing the same and the witnesses "must sign their names upon at least one side "of every leaf. [The appointment, as guardian "or executor, of a witness or the wife or husband "of such witness is void.]

"2. *Extraordinary Underhand Wills* were "those executed with more than usual formali- "ties, *e.g.*, those of lunatics, blind persons, etc. "It is doubtful if these are still in use.

"3. *Privileged Wills* are those which may be "executed with less than the usual formalities, "such as a Will made under a reservatory clause "in a former Will, a holograph Will or the Will "of a soldier or sailor on active service.

"*Mutual Wills.*—Two or more persons may make "their Wills in one document, the Wills being "regarded as distinct documents."

The Report deals fully with each of the above classes of Wills.

The law is contained in Ordinance No. 15 of 1845, Act No. 22 of 1876, and Act No. 3 of 1878.

Cayman Islands.—Extract from Colonial Office letter, 9th August, 1904:—"The two Jamaican laws (3 Vict. "c. 51 and 25 Vict. c. 26) are in force in the "dependency." *See* Jamaica.

Ceylon.—Extract from Memorandum enclosed in Despatch of 4th February, 1903:—"The law now in force with "regard to Execution of Wills is contained in Ordi- "nances 7 of 1840 and 21 of 1844. . . . Section 3 of "Ordinance 7 of 1840 enacts that the signature of "the Testator must be made or acknowledged in the "presence of a Notary and two or more witnesses "present at the same time or in the presence of five "or more witnesses."

Cyprus.—Extract from enclosure to Despatch, 16th March, 1903:—"The law in force in this Colony with regard "to the Execution of Wills is laid down in sections

"22 (with Schedule A) and 23 of Law XX. of 1895. (
"These sections follow mainly the provisions of th
"Imperial Acts. . . . The local law, however, r
"quires the attestation of *three* or more witnesse
"and by section 22 the witnesses must sign in th
"presence of the testator and each of the oth
"witnesses. The law differs from the Imperial Ac
"in many other respects. The law does not app
"to the property of Mahometans (section 63), th
"disposition of which is governed by the Sheri law
[Where the will contains more than one sheet ea
is to be signed or initialled by the testator a
witnesses.]

Dominica. *See* Leeward Islands.

Ellice Islands. *See* West Pacific High Commission.

Falkland Islands.—Extract from the Governor's Despatc
—"Stanley, 23rd January, 1903:—The Imper
"Acts are in force in this Colony under section 31
"Ordinance 3 of 1900."

It appears from the Despatch of 26th March, 18
that 1 Vict. c. 26 has been in force since 1853
least).

[It would appear doubtful if a Will partly prin
and partly written (unless on a form issued by
Governor) would be valid.]

Fiji.—Extract from the Memorandum of the Act
Attorney-General, 2nd February, 1903:—"O
"nance 14 of 1875 enacts that the Statutes of gen
"application which were in force in England on
"2nd January, 1875, shall be in force in this Colo
"subject to any Ordinance of the Colony. Th
"have been no Colonial enactments with regard
"Execution of Wills, therefore the law is
"embodied in the Imperial Wills Amendment Ac

Friendly Islands. *See* West Pacific High Commission.

Gambia.—Extract from the Governor's Despatch

(c) The Wills and Succession Law, 1895.

"Bathurst, 22nd January, 1903:—The Imperial "Wills Amendment Acts are, by virtue of section 17 "of the Supreme Court Ordinance [1888], in force in "this Colony without any modification or variation."

Section 17 of the above Ordinance enacts that the Statutes of general application in force in England on the 1st November, 1888, shall thenceforth be in force in this settlement.

The Ordinance referred to is No. 5 of 1888.

Gibraltar.—Extract from the Governor's Despatch:—"Gibraltar, 24th December, 1902:—The Execution "of Wills is governed by the Imperial Wills Amend-"ment Acts which are in force in Gibraltar by virtue "of the Order in Council of 2nd February, 1884, "declaring the law of England as it existed on the "31st December, 1883, to be in force in Gibraltar."

Gilbert Islands. *See* West Pacific High Commission.

Gold Coast Colony.—Extract from the Despatch of the Attorney-General:—"Accra, 9th January, 1903:—"The Imperial Wills Amendment Acts are in force "by virtue of section 14 of the Supreme Court "Ordinance, which provides that the Statutes of "general application which were in force in England "on 24th July, 1874, shall be in force within the "jurisdiction of the Court."

But the "West African Frontier Force (Gold Coast "Regiment) Ordinance, 1901" (s. 63) gives validity to a will of a non-commissioned officer or private of this regiment witnessed only by an officer of the regiment or by a surgeon.

Grenada.—Extract from the Despatch of the Acting Attorney-General, 10th January, 1903:—"The law "at present in force as to Execution of Wills is Act "145, p. 62, of the revised edition of the laws of "Grenada, which is the same as the Imperial Acts "with the following exceptions:—Sections 2, 4, 5, 8, "11, 12, 35, and 38 of 1 Vict. c. 26 and section 2 of

"15 Vict. c. 24 are not enacted. The provisions
"the Act do not apply to any Will made before 1
"January, 1842."

Guernsey.—Extracts from the Letters of the Attorne
General and Solicitor-General, 14th July, 1903:-
"The Imperial Wills Acts are not in force in th
"island. The following are the local Acts:—(i.) Th
"Law of Succession and Inheritance, 13th Jul
"1840; (ii.) The Law on Wills of Personal Propert
"22nd July, 1847; (iii.) The Law on Wills of Re
"Property, 15th June, 1852.

"Extract from the law of 1847 (personal pr
"perty):—

"*Article I.*—No Will of personal property (exce
"those of soldiers on active service and mariners
"sea) shall be valid unless in writing.

"*Article II.*—An holograph Will shall not
"valid unless it be entirely written, dated, a
"signed at the end by the testator.

"*Article III.*—A written Will which is not ho
"graph shall be signed by the testator at the fo
"or end thereof and his signature shall either
"subscribed or recognised in the presence of t
"witnesses who, in the presence of the testator a
"in the presence of each other, must attest
"testator's signature by signing their own nam
"near his at the foot or end thereof."

Honduras (British). *See* British Honduras.

Hong Kong.—Extract from the Report of the Attorn
General, 7th March, 1877:—"In Ordinance 3
"1852 the Imperial Act 1 Vict. c. 26 is referred
"as being in force."

By Ordinance 4 of 1856 Wills made by Chin
in Chinese manner are valid.

By Ordinance 28 of 1886 sections 1 and 2 of
Vict. c. 24 are enacted.

India.—Extracts from the Letter of the Secretary of S

for India, 6th April, 1903:—"The Indian law relating to Execution of Wills is contained in Act XXV. "of 1838, Act X. of 1865, Act XXI. of 1870, and "Act V. of 1881, with this exception, that Act XXV. "of 1838 is virtually repealed so far as regards Wills "made after 1st January, 1866."

Act XXV. of 1838 enacted 1 Vict. c. 26 for the whole of India. It is, however, repealed by the following Act, save as to Wills made before 1st January, 1866.

Act X. of 1865 enacts sections 7, 9, 11, 14, 18, 20, 21, and 22 of 1 Vict. c. 26.

Act XXI. of 1870 applies section 9 of 1 Vict. c. 26 to Wills of Hindus, Jainas, Sikhs, and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay on and after 1st September, 1870.

Isle of Man. *See* Man, Isle of.

Jamaica.—Extract from the Despatch of the Governor, 19th February, 1877:—"The Imperial Wills Act "(1 Vict. c. 26) is substantially enacted by Act 3 "Vict. c. 51, and the Island Act 25 Vict. c. 26 is "substantially a transcript of the Imperial Act 15 "Vict. c. 24."

Extract from Memorandum by the Attorney-General, 13th January, 1903:—"No alteration has "been made in the law of Jamaica with regard to the "Execution of Wills since the report which was made "in 1877."

Jersey.—Extracts from the Despatch of the Lieutenant-Governor, 23rd April, 1903:—"The Imperial Wills "Amendment Acts are not in force in this island.

"*Wills of Realty* must be executed as follows:—"The devisor's signature must be attested by two "witnesses present at the same time, of whom one—"if the Will be made in the island—must be either "a member of the States, one of the Crown Officers, a

"member of the local Bar, or an *écrivain* of the Roy
"Court, or—if the Will be made out of the island-
"the attesting witness must be a notary public.
"the Will be not holograph it must at the time
"execution be read over in the presence of t
"testator and both witnesses.

"*A Will of Personalty not holograph* must be signe
"by the testator in the presence of two witnesse
"These witnesses are disqualified if they benef
"under the Will or are related to any one so benefitin
"or to the testator within the degree of first cousin.

"*A Will of Personalty if holograph* must be signe
"by the testator but need not be attested.

Labuan.—Extract from Letter from Colonial Office, Dow
ing Street, 30th April, 1903:—"In the case
"Labuan the only law in force is Ordinance 5
"1851."

Lagos.—Extract from the Despatch of the Governor, 19
January, 1903:—"The law at present in force in th
"Colony is that contained in the Imperial Wi
"Amendment Acts (1 Viet. c. 26 and 15 Vi
c. 24) and in the decisions of the English Supr
"Court under them."

The law is contained in Order 50, 2nd Schedu
and Ordinance No. 4 of 1876 (the Supreme Cou
Ordinance of 1876).

Leeward Islands.—Extract from the Report of the Gov
—"Antigua, 23rd February, 187 —The Imper
"Wills Amendment Acts were e l in the Co
"of the Leeward Islands by the Act 187

Extract from the Despatch of the Gover , 2
February, 1903:—"The Wills Act, 187 s the o
"enactment affecting Wills in force in this Colon
[This Act came into operation on the 1st Janua
1873.]

Lower Canada. *See* Quebec.

Malay States.—Extract from Colonial Offic etter, Down

Street, 9th August, 1904:—"There are no laws in "force in the Federated Malay States on the subject "[of the Execution of Wills], neither have the "Imperial Wills Amendment Acts been enacted in "these States."

Malta.—Extract from the Despatch of the Governor:—

"Valletta, 23rd July, 1903:—The Imperial Wills "Amendment Acts do not form part of the laws of "this Colony. . . . The laws in force in regard to the "Execution of Wills are contained in Part II., "Title II., chap. I. of Ordinance VII. of 1868, and "in Book IV. Book II., Part II., of the Laws of "Criminal and Civil Procedure.

"[illegible] are entirely different from the [illegible]

The [illegible] referred to above show that Testaments [illegible] "Public" or "Secret," and should in all cases be signed.

"Public Testaments" are received and published by a notary in the presence of two witnesses.

"Secret Testaments" are delivered by the testator, sealed, to a notary, who within [illegible] days must present it to the Court; or it may be presented to the Court by the testator himself.

Man, Isle of.—Extract from Despatch of the Governor:—

"Castletown, 9th April, 1903:—I beg to refer you to "a letter dated 23rd January, 1879, in reply to a like "enquiry. . . . There has not been since any change "in the Insular law as regards the Execution of "Wills."

The following is extracted from the Letter referred to:—

"1. The sections of the Act 1 Vict. c. 26 num-"bered 7, 11, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, "and 33 are enacted almost *verbatim*.

"2. Instead of sections 3 to 6 the Insular Act con-"tains a section making all real Estate devisable.

"3. Section 9 of the Imperial Act is enacted with "the following proviso:—'Provided always that the "'signature of the testator or of some other person "'by his authority as aforesaid must be so placed "'at or after or beside or opposite to the end of "'the Will that it shall be apparent on the face of "'the Will that the testator by such signature in- "'tended to give effect thereby to the writing signed "'as his Will.'" [But the witnesses must sign in the presence of each other.]

"4. Section 18 of the Imperial Act provides for the "revocation of a Will by marriage. The Insular Act "enacts that a Will should be revoked by marriage "and the birth of a child.

"7. By an Act promulgated 5th July, 1852, the "right of a married woman to make a Will was taken "away (except under a power)."

The law is stated in the Wills Act, 1869, the Act of 5th July, 1852, and the Ecclesiastical Civil Judi- cature Act of 1884.

Manitoba.—The Manitoba Wills Act 45 Vict. c. 2 enacts the provisions of the following sections of 1 Vict c. 26:—Sections 1 (varied), 3 (varied), 7, 9, 10, 11 and 13 to 33 inclusive, also section 1 of 15 Vict c. 24.

By section 10 of the Manitoba Act a holograph Will wholly written and signed by the testator him- self shall be subject to no particular form nor shall i require an attesting witness or witnesses.

Mauritius.—Extract from the Governor's Despatches, 16t February, 1903:—"No legislation on the lines of th "Imperial Acts referred to exists in Mauritius. . . "The local law with regard to the Execution of Wil "is the following:—The Will is deposited in th "Master's Office under Article 1007 of the Civ "Code, the Master fulfilling in this respect the pa "of the 'Président du Tribunal de prémière instanc

"under paragraph 2, Article 4, of Ordinance 2 of "1850."

Montserrat. *See* Leeward Islands.

Natal.—Extract from enclosure in the Governor's Despatch, 2nd February, 1903:—"The mode of Execution of "Wills is regulated by Law No. 2, 1868. That law "embodies in substance the provisions of sections 7, 9, "11, 14, 15, and 17 to 22 of the Imperial Act of 1837" [Wills Act, 1837].

Section 12 enacts that "Nothing in this law con- "tained shall in anywise affect the validity of any "Will or Codicil executed prior to the date of this "law coming into operation or executed before a "Notary Public." Section 13 that "This law shall "commence and take effect from and after the 1st "day of January, 1869."

Negri Sembilan. *See* Straits Settlements.

Nevis. *See* Leeward Islands.

New Brunswick.—Extract from the Letter of the Clerk to the Executive Council, 27th January, 1903:— "I think it will be found that the provisions of our "Act (c. 77 New Brunswick Wills Act Consolidated "Statutes, 1877) and those of the Imperial Act are "substantially the same."

The above Act (dated 1st May, 1877) enacts sections 7 to 33 of Act 1 Vict. c. 26 and section 1 of 15 Vict. c. 24; but witnesses must sign in the presence of each other.

Newfoundland.—Extract from Letter of Deputy Colonial Secretary:—"St. John's, 1st June, 1903:—The Im- "perial Wills Amendment Acts have not been "enacted. The law will be found in the Consolidated "Statutes, 2nd Series, c. 79."

Extract from above Statute:—

"§ 1. No Will shall be valid unless it be in writing "nor unless it be either in the handwriting of the "testator and signed by him or if not so written and

"signed, be signed by him in the presence of at "least two witnesses who shall in the presence of the "testator sign the same as witnesses.

"§ 2. No Will shall be valid if made by a person "under the age of 17 years."

"§ 18. This chapter shall not extend to any Will "made prior to the 13th October, 1864."

Sections 10, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 29, and 33 of 1 Vict. c. 26 are enacted.

New South Wales.—Extract from the Report of the Attorney-General, 3rd May, 1877:—"The Imperial "Wills Amendment Acts have been enacted by the "Colonial Acts 3 Vict. No. 5 and 17 Vict. No. 5."

Extract from the Minute of the Solicitor-General, 23rd February, 1903:—"Those Acts (3 Vict. No. 5 "and 17 Vict. No. 5) are consolidated in the Wills "Probate and Administration Act, 1898, which is "the law in force relating to the Execution of "Wills."

New Zealand.—Extract from the Report of the Solicitor-General, 6th April, 1903:—"The Imperial Wills "Amendment Acts are in force in New Zealand. "1 Vict. c. 26 was passed before the establishment "of the Colony. 15 Vict. c. 24 was adopted by the "English Acts Act, 1860.

"By Act 62 of 1885 a male infant not under 19 "and a female infant not under 18 after his or her "marriage may make a valid Will.

"There are special statutory provisions with regard "to the Wills of Maoris.

"1 Vict. c. 26 came into operation on the 14th "January, 1840.

"15 Vict. c. 24 was in force on and after 31st "December, 1854."

Nigeria, North.—Extract from the Despatch of the High Commissioner:—"Zungeru, 27th February, 1903:— "The Wills Acts have been so far enacted that they

"would be included among the Statutes which are "the fundamental laws of the Protectorate and are "consequently the only law affecting Wills in the "Protectorate."

Nigeria, Southern.—Extract from the Memorandum of the Attorney-General, 5th February, 1903:—"The law "relating to Execution of Wills in force in England "on 1st January, 1900, is in force in the Protectorate "as regards Wills of persons who are not natives of "the Protectorate.

"The West African Frontier Force Proclamation, "1901, section 63, made provision for the Execution "of Wills by non-commissioned officers and privates "of the regiment.

"The disposition of property amongst natives is "regulated by native law and custom."

North-West Territories.—Extract from the Report of the Committee of the Privy Council of Canada, 25th March, 1903:—"The only Canadian legislation in "force on the subject of Wills in the North-West "Territories is contained in sections 26 to 35 of the "North-West Territories Act [c. 50]. Under section "11 of that Statute any provisions of the Imperial "Acts not inconsistent with these sections are also "in force."

The above sections enact sections 7, 9, 13, 14, 15, 17, 20, 24, and 28 of the Imperial Act 1 Vict. c. 26.

Nova Scotia.—The Wills Act, chapter 139, enacts the following sections of 1 Vict. c. 26:—Sections 7, 9, 10, 11, 13, 14, 15 (but see proviso), 16, 17, 18 (with certain exceptions), and 19 to 32. Also section 1 of 15 Vict. c. 24.

Section 15 requires special formalities when by the Will of a married woman her husband takes more than he would have been entitled to in the case of intestacy.

Section 16 deals with Wills made out of the Province, and is similar to Lord Kingsdown's Act.

Ontario.—*The Wills Act of Ontario*, 1887, c. 109, section 1,[51d] enacts the following sections of 1 Vict. c. 26:—1, 2, 3, 7, 9, 10, 11, and 13 to 33 (but section 18 with exceptions), also section 1 of 15 Vict. c. 24. The Act does not extend to Wills executed prior to 1st January, 1874.

The Wills Act of 1902 is a counterpart of Lord Kingsdown's Act with the omission of section 2.

Orange River Colony.—Extract from the Governor's Despatch, 26th January, 1903:—"Johannesburg, "26th January, 1903:—The only statutory enactment "dealing with Wills is chapter 93 of the late Orange "River Free State Law Book, which is still in "force."

Chapter 93, section 3, enacts that "No Underhand "Will or other testamentary writing for the attestation "of which 7 witnesses were heretofore required shall "be of any force or value unless it shall be signed at "the foot thereof by the testator, or by some other "person in his presence and by his direction, and "such signing shall take place in the presence of 2 "or more competent witnesses who shall attest and "subscribe the Will in the presence of the person "executing the said writing and should the document "contain more than one page the person executing "and the witnesses shall sign their names on at "least one side of every leaf."

Ordinance 11 *of* 1904 deals with the competence of attesting witnesses who forfeit legacy, executorship, etc. By section 6 a power of attorney must be executed with the same formalities as a Will.

Pehang and Perak. *See* Straits Settlements.

Phœnix Islands. *See* West Pacific High Commission.

Canadian Cases.

[51d] The Wills Act, *post*, p. 693.

Prince Edward Island.—The provincial Statute, passed 15th April, 1843, enacts the following sections of 1 Vict. c. 26 :—Sections 1, 3 (except as to customary freeholds, etc.), 6 to 11, and 13 to 33.

By section 61 the Act does not extend to any Will made before 1st January, 1844.

The Wills Act Amendment Act, 1860, embodies the whole of the Imperial Act 15 Vict. c. 24.

Quebec.—Extracts from the Civil Code of Lower Canada :—

Section 842.—Wills may be made

(i.) in notarial or authentic form ;

(ii.) in the form required for holograph will ;

(iii.) in writing and in the presence of witnesses in the form derived from the laws of England.

Section 851.—Wills made in the form derived from the laws of England should be executed in the form required in paragraph 9 of the Imperial Act, 1837 (clerks and servants of notaries cannot be witnesses).

Queensland.—Extract from the Despatch of the Governor : —"Brisbane, 10th February, 1903 :—The provisions "of the Statutes 1 Vict. c. 26 (except sections 2, 4, 5, "34, 35, and 36) and 15 Vict. c. 24, sections 1 and 2, "have been embodied in the Queensland Succession "Act of 1867 (31 Vict. No. 24)."

This Act commenced 31st December, 1867.

Rhodesia (Southern).—Extract from the Administrator's Despatch :—"Salisbury, 20th February, 1903 :—The "law regarding the Execution of Wills in Southern "Rhodesia is similar to that obtaining in the Colony "of the Cape of Good Hope, which consists of the "Roman-Dutch law as modified by the following "enactments of the Cape Colony :—Ordinance No. 15 "of 1845, Act No. 22 of 1876 and Act No. 3 of 1878."

See "Cape Colony."

Saint Christopher. *See* Leeward Islands.

Saint Helena.—Extract from the Despatch of the Acting-Governor, 9th January, 1903:—"All English Acts "(as far as local circumstances permit) are enforced "in this Colony."

See Rules of Supreme Court, 23rd March, 1891.

Saint Lucia.—Extract from the Memorandum of the Acting Attorney-General, 6th January, 1903:—"The "Imperial Acts have not been enacted. The local "law is entirely regulated by the Civil Code of St. "Lucia, sections 697 and 779 to 798.

"There are three kinds of Wills, (i.) notarial, (ii.) "holograph, and (iii.) according to English form called "an English Will.

"Section 789.—An 'English Will' must be in "writing and signed at the end with the signature of "the testator or his mark, which signature or mark "is then or subsequently acknowledged by the testator "as having been subscribed by him to his Will in "the presence of at least two competent witnesses— "*one of whom must be a Justice of the Peace*—who "attest and sign the Will immediately in the presence "and at the request of the testator and *in the presence* "*of one another.*"

Saint Vincent.—Extract from the Report of the Acting Chief Justice, 15th, January 1903:—"Ordinance 3("(1878) is the law now in force in this Colony, and "virtually embodies the enactments in the Imperial "Wills Amendment Acts. Sections 11 and 12 of "Vict. c. 26 are not enacted.

"The Ordinance does not extend to Wills mad "before 1851."

Selangor. *See* Straits Settlements.

Seychelles.—Extract from the Despatch of the Administrator, 6th February, 1903:—"The chapter in Titl "II. [Civil Code, Book III.] which specially deal "with the Execution of Wills is chapter V. entitle "'Of Testamentary Dispositions.'"

Ordinance 21 of 1883 of Mauritius (*see* Mauritius) and Regulation 2 of 1888 of Seychelles, referred to in the Despatch, do not appear to have modified the French law as to execution.

Sierra Leone.—Extract from the Memorandum of the Solicitor-General:—"Freetown, 29th January, 1903: "—By Ordinance No. 3, 1862, section 2, laws "and statutes which were in force in England on 1st "January, 1862, were deemed and taken to be in "force in this Colony. By Supreme Court Ordinance, "1881, section 19, the Statutes of General Applica- "tion in force in England on 1st January, 1880, are "in force from the date of this Ordinance.

"The Imperial Acts 1 Vict. c. 26 and 15 Vict. "c. 24 are therefore in force in this Colony."

Solomon Island. *See* West Pacific High Commission.

South African High Commission. *See under* Bechuanaland, Basutoland, and Rhodesia (Southern).

South Australia.—Extract from the Despatch of the Lieutenant-Governor:—"Adelaide, 26th February, "1903:—The Imperial Wills Amendment Acts (1 "Vict. c. 26 and 15 Vict. c. 24) were enacted in "their entirety and without modification by means "of the Acts No. 16 of 5 Vict. and No. 15 of 1862, "which have not been repealed or varied, and which "contain the whole law at present in force in this "State as to the Execution of Wills. Section 2 of "Act 16 enacts that the Act shall not commence "before the 1st August, 1842."

Southern Nigeria. *See* Nigeria (Southern).

Southern Rhodesia. *See* Rhodesia (Southern).

Straits Settlements.—Extracts from the Memorandum of the Attorney-General:—"Singapore, 12th January, "1903:—The law of Wills in this Colony is to be "found in the Indian Act No. 25 of 1838, which is "practically a re-enactment of the Wills Act 1 Vict. "c. 26. *See* Colonial Ordinance No. VIII. of 1889.

"No reproduction of 15 Vict. c. 24 appears in the
"Statute Book of the Colony, but that Statute has
"always been considered by the Courts here as
"binding upon them as explaining the terms of the
"Wills Act of 1837. As regards the mode of execu-
"tion, the law in this Colony is identical with that
"of England."

Married women may, since 1st July, 1902, dispose of their own property under Ordinance XI. of 1902.

See under India.

Tasmania.—Extract from the Memorandum of the Attorney-General:—"Hobart, 19th February, 1903:—The Im-
"perial Act 1 Vict. c. 26 was adopted in Tasmania
"by the local Act 4 Vict. No. 9, and the provisions of
"the Imperial Act 15 Vict. c. 24 were enacted by
"the local Act 16 Vict. No. 4. These local Acts do
"not differ in any material respect from the Imperial
"Statutes, and still form the Statute law at present
"in force in this State."

Tobago. *See* Trinidad.

Tonga. *See* West Pacific High Commission.

Transvaal Colony.—Extracts from the Report of the Attorney-General:—"Pretoria, 21st January, 1903:—
"The Imperial Wills Amendment Acts have not been
"enacted in this Colony. The Statutory Law as to
"Execution of Wills is contained (*a*) in a Volksraad
"Resolution of 8th August, 1890, enacting that
"*underhand* (*i.e.*, non-notarial) testaments in so far as
"the number of witnesses is concerned are declared
"to be lawful if the signatures of at least two
"witnesses appear upon them. (*b*) Law 7 of 1891
"invalidating legacies, executorships, etc., to attesting
'witnesses.

"The Roman-Dutch law, save as modified above,
"is in force, and may be summarised as follows:—
"There are two classes of Wills, '*Notarial*' and
"'*Underhand*.'

"(i.) *Notarial Wills* must be executed in the "presence of a notary and two witnesses, who "must be males, above 14 and not under any "disability.

"(ii.) *Underhand Wills* formerly had to be executed "before seven witnesses till the resolution of 8th "August, 1890. The Will should be signed by the "testator at the foot of each page and the witnesses "should sign in his presence."

Since the date of above Despatch Ordinance 14 of 1903 has been made, section 1 of which is as follows:—"No Will or other testamentary instru- "ment (not being a privileged Will) made or executed "upon or after the 1st January, 1904, shall be valid "unless it be executed in the manner hereinafter "mentioned, that is to say, it shall be signed at the "foot or end thereof by the testator or by some other "person in his presence and by his direction, and "such signature shall be made or acknowledged by "the testator in the presence of two or more com- "petent witnesses present at the same time, and such "witnesses shall attest and subscribe the Will or "other testamentary instrument in the presence of "the person executing the same; and when the "instrument shall be written upon more sheets than "one the person executing the same and also the "witnesses shall sign their names upon every sheet "upon which the instrument shall be written, provided "always that nothing herein contained shall be deemed "to prevent a mark being sufficient signature."

Trinidad and Tobago.—Extract from the Report of the "Attorney-General, 15th February, 1904:—"1 Vict. "c. 26 was enacted with some modifications as "Ordinance No. 1 of 1844. 15 Vict. c. 24 does not "appear to have been expressly enacted here, but as "far as I am aware our Courts have always acted in "accordance with its provisions. The present law

"is Ordinance 6 of 1902, which repeals 1
"1844."

Ordinance 6 of 1902, which came into operati
on the 1st July, 1901, prescribed by section 39 t
same formalities as to execution as in England, *s*
that witnesses must sign in the presence of each oth
and some special provisions as to marksmen. Secti
36 enacts that Wills of British subjects made out
the Colony are valid if executed according to the l
of domicil.

Turks and Caicos Islands.—Extract from the Report of t
Governor:—"Grand Turk, 9th January, 1903:—T
"Imperial Wills Amendment Act 1 Vict. c. 26 w
"extended in its entirety to these islands by No.
"Act, 4 Vict. c. 23 of the General Assembly of t
"Bahama Islands, and the amending Act 15 Vi
"c. 24 was also extended in its entirety by the Tur
"and Caicos Islands Ordinance No. 5 of 1856."

Union Islands. *See* West Pacific High Commission.

Van Dieman's Land. *See* Tasmania.

Victoria.—Extract from the Report of the Master in Equit
4th February, 1903:—"The provisions of the Acts
"Vict. c. 26 and 15 Vict. c. 24 have been enact
"with such modifications as were necessary to on
"provisions which were inapplicable, *e.g.*, those relati
"to copyholds, freeholds and the like, contained
"parts of section 1 and the whole of sections 4 and
"Section 6 is provided for in the Real Proper
"Statute; section 12 has been omitted, otherwise t
"two Statutes have been re-enacted here witho
"alteration."

The law is contained in Acts No. 1159 of 18
No. 1815 of 1903, and No. 1827 of 1903.

1 Vict. c. 26 has been in operation since the
January, 1840, and 15 Vict. c. 24 since 2
February, 1853.

Virgin Islands. *See* Leeward Islands.

Wei Hai Wei.—Extract from the Despatch of the Commissioner:—"Port Edward, 2nd February, 1903:—"No laws on the subject of the Execution of Wills "exist in this Dependency."

Clause 67 of Wei Hai Wei Order in Council makes the High Court a Court of Probate.

Western Australia.—Extract from the Despatch of the Governor:—"Perth, 8th June, 1903:—1 Vict. c. 26 "was adopted by the local Statute 2 Vict. No. 1 "[which came into effect 4th July, 1839] and 15 "Vict. c. 24 was substantially adopted by the local "Statute 18 Vict. No. 13."

West Pacific High Commission.—Extract from Colonial Office Letter, 9th August, 1904:—"There are no "special enactments in force on the subject [*i.e.*, "Execution of Wills] in the places within the "jurisdiction of the High Commissioner other than "the Imperial Acts (under the operation of clause 20 "of the Pacific Order in Council, 1893)."

According to "Whitaker" the High Commission includes the following groups:—British Solomon Islands, the Gilbert and Ellice Islands, the Tonga or Friendly Islands, the Phœnix Islands, the Union Islands, and a large number of scattered groups and isolated islands.

Windward Islands. *See under* Grenada, St. Vincent, and St. Lucia.

CHAPTER XVI.[51e]

OATHS, AFFIDAVITS, AFFIRMATIONS.

Commissioners in the Supreme Court.

THE Supreme Court of Judicature Act, 1873, enacted th every person who at the commencement of the Act shou be authorised to administer oaths in any of the cou whose jurisdiction was thereby transferred to the Hi Court of Justice, should be "a commissioner to administ "oaths" in all causes and matters whatsoever which mig from time to time be depending in the said High Court in the Court of Appeal.

The Commissioners for Oaths Act (52 Vict. c. 1 1889, as extended and explained by 54 & 55 Vict. c. 1891, amended and consolidated the previous enactmer relating to the administration of oaths.

Commissioners for Oaths Acts, 1889 and 1891.

By these Acts it is provided that "commissioners "oaths" may be appointed by the Lord Chancellor: th an officer of any court authorised by a judge, or by a rules or orders regulating the procedure of the court, m administer an oath for any purpose connected with duties: that in any place out of England an oath may taken before any person having authority to adminis oaths in that place: that every British ambassad envoy, minister, chargé d'affaires, secretary of embassy legation, consul-general, consul, acting consul, vice-cons acting vice-consul, pro-consul, consular agent, or act

Canadian Cases.

[51e] See the Act respecting commissioners for taking affida R. S. O., [1897] c. 74; and Registration of Deeds Act, R. S. 1897, c. 136, s. 46.

consular agent, exercising his functions in any foreign place or country may administer an oath in that place or country. Recognition of commissioners authorised to administer oaths in the Supreme Court before the commencement (January 1st, 1890) of the first of these Acts is also provided.

The sections of the Court of Probate Acts, 1857 and 1858, relating to the administration of oaths by the persons designated therein are repealed by this Act.

Oaths in Germany.

It may be mentioned here that in Germany an affidavit cannot, by the law of that country, be made before any one but a German authority (*a*).

In the case of *L. Seyberth, deceased* (1899), an affirmation made by a German before the British consul was taken by the judge, the consul having certified that he had been compelled to receive the affirmation instead of administering an oath as the deponent was a German subject, and, according to German law, could not be *sworn* before a foreign consul.

Affirmations under Oaths Act, 1888.

With regard to making affirmations in lieu of oaths, it is provided by the Oaths Act, 1888 (51 & 52 Vict. c. 46), that "every person upon objecting to being sworn, and "stating, as the ground of such objection, either that he "has no religious belief, or that the taking of an oath is "contrary to his religious belief, shall be permitted "to make his solemn affirmation instead of taking an "oath."

Scotch oath.

This Act also entitles any person who wishes to do so to swear according to Scotch form. The deponent in such a case, standing with his right hand uplifted, repeats the following words after the commissioner:—

"I swear by Almighty God, as I shall answer to
"God at the Great Day of Judgment, that the
"contents of this my affidavit are true."

Quakers, etc.

This Act not having repealed the previous enactments relating to affirmations by Quakers and Moravians (3 & 4 Will. IV. c. 49), Separatists (3 & 4 Will. IV. c. 82), and former Quakers and Moravians (1 & 2 Vict. c. 77), a member of either of these religious bodies may still affirm under these Acts.

For forms of Jurat, etc., see Appendix II., pp. 811 and 819.

(a) *Fawcus*, 9 P. D. 241.

PART THE SECOND.

THE PRACTICE

OF

THE PROBATE DIVISION OF THE HIGH COURT OF JUSTICE

WITH REGARD TO

Caveats, Citations, Motions, and Summonses.

CHAPTER I.

JURISDICTION—CAVEATS—OBJECTS OF ENTERING CAVEATS—WARNING TO CAVEATS—SERVICE OF WARNING—SUBDUCTION OF CAVEATS—EFFECT OF NON-APPEARANCE AND OF APPEARANCE TO WARNING.[52]

THE business of the Court of Probate related solely to the granting or revoking probate of wills and letters of

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Canadian Cases.

[52] Under the rules for contentious business in the surrogate courts, the practice is closely assimilated to the practice and procedure of the High Court of Justice under the Judicature Act of Ontario. The Ontario Judicature Act and the rules thereunder are taken from the corresponding English Act. It would seem that the Act and the rules only apply to contentious business, the common-form business remaining unaffected by the Judicature Act or Rules (S. C. R., C. P., *post*, p. 839).

ENGLISH PROBATE.—Probate of a will granted by the Court of Canterbury gives no title to an executor to sue for a course of action accruing in this country, the testator having died here. He must produce letters testamentary from the proper authority in this province (*White* v. *Hunter*, 1 U. C. R. 452).

administration (see Court of Probate Act, 1857, s. 4), and was of two kinds:—non-contentious or common form, and contentious, in both of which that court had exclusive jurisdiction (*a*).

This jurisdiction was transferred by the Judicature Acts (1873 and 1875), 36 & 37 Vict. c. 66, and 38 & 39 Vict. c. 77, to the High Court of Justice, and under the provisions of sections 33 and 34 of the Judicature Act, 1873, it is to be administered, until further order, exclusively in

(*a*) The exclusive jurisdiction to prove wills of personal estate and to grant letters of administration of the personal estate of intestates belonged to the Ecclesiastical courts (except in certain districts, in which it was vested in manorial or other lay courts), from some time anterior to the reign of Edward I. up to January 11th, 1858. It was then, by 20 & 21 Vict. c. 77, transferred to the Probate Court. This statute conferred on that court a further jurisdiction (which did not belong to the Ecclesiastical courts) in respect of devises of real estate (*i.e.*, of freehold, copyhold, and customary estate) contained in a will,—disposing of personal as well as of real estate,—by making its decrees in a suit relating to such will enure for the benefit of all persons interested in realty affected by the will as against those who had become or been made parties to the suit as directed by the Act; and now, by the Land Transfer Act (60 & 61 Vict. c. 65), s. 1 (3), in the case of persons dying after 1897, the court is empowered to grant probate and letters of administration in respect of real estate only, although there is no personalty (except where the real estate is land of copyhold tenure or customary freehold), and it is further provided that the real estate shall vest in the personal representative of the deceased as trustee for those entitled to the same, where probate or administration is granted in respect of personal estate.

Canadian Cases.

VESTING OF ESTATE—REGISTRATION OF CAUTION—The provisions of 56 Vict. c. 20 (O.) (now R. S. O., 1897, c. 127, ss. 13, 14, 15) as to registration of caution apply to a case in which probate has not been taken out or letters of administration obtained till more than a year after the death of the owner. By virtue of s. 2 the appeal and such subsequent registration would only be to withdraw to or vest in the executor or administrator so much of the land as is properly available for the purposes of administration. The provisions of 56 Vict. c. 20 (O.) (now R. S. O., 1897, c. 127, *ante*, p. 279) are so engrafted on 54 Vict. c. 18 as to make both Acts apply to all persons dying after July 1, 1886 (*In re Baird*, 13 C. L. T. Occ., n. 277; reconsidered *In re Martin*, 26 O. R. 465)

the Probate, Divorce, and Admiralty Division of the High Court.

Non-contentious or common form business is transacted either in the principal probate registry in London or in one of the district probate registries; and by section 2 of the Court of Probate Act, 1857, is defined as the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the Court of Probate in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the court in matters of testacy and intestacy, not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration. Non-contentious business defined.

A case in which a caveat has been entered, warned, and appearance entered thereto, becomes contentious on the entry of the appearance (Rule 12, C. B.[53]), and no grant can issue therein until the matter is finally determined by order. Contentious business defined.

The province of this part of this work is to treat of so much of the business of the Probate Division as relates to caveats, to citations, to motions in court, and to applications in chambers on summons.[53a]

On Caveats.[53b]

A caveat is a notice in writing lodged in the principal probate registry, or in the probate registry of the district, where the deceased resided or had a fixed place of abode at the time of his death, that nothing is to be done in reference to the estate of the deceased named therein Caveat defined.

Canadian Cases.

[53] S. C. R., 1 C. B., *post*, p. 839.

[53a] *REAL ESTATE.*—An administration of the real estate may only be had in a very special case, but should be sought by action and not summary application (*Re Armour, Moore* v. *Armour*, 10 P. R. 448).

[53b] S. C. Act (*post*, p. 679), ss. 52 and 53; and S. C. Rules (*post*, p. 827), ss. 23, *et seq.*, and Form 32; and *post*, p. 380.

unknown to the party, or to the solicitor of the party, wh has lodged the caveat. The object of this is to prevei the issue of any grant prior to the removal of the caveat.

The person by whom, or on whose behalf, the cave is entered, is called *the caveator*.

Purposes for which a caveat may be entered.

The following are some of the purposes for which caveat may be entered:—

(1) To give time to the caveator to make inquiries an to obtain such information as may enable him to determin whether or not there are grounds for his opposing the gran

(2) To give him an opportunity of raising any questio arising in respect of the grant either on summons or o motion;

(3) To enable the caveator to apply for an order tha the sureties to the administration bond shall justify;

(4) As a step preliminary to an action.

The proceedings subsequent to the entry of caveat (*i.e.* th *warning* or form [53c] of summons issued against the caveato by the party whose application for a grant has been stopped and the *appearance* to such warning by the caveator) wil disclose the name and address of the parties and thei respective interests in the estate of the deceased, and with this information it is open to either of them, if the interests conflict, to commence an action against the other for the purpose of establishing a claim to the grant.

No grant to issue after caveat lodged without notice to caveator.

After the entry of a caveat no grant can issue unknown to the caveator. But a caveat entered, or a notice of entry thereof received, at either the principal or any of the district registries on the day when the grant is made, is not to affect the issue of such grant (Rule 62, N.-C.; Rule 75, D. R.).

A caveat may be entered in the principal or in the district registry where the deceased resided or had a fixed place of abode at the time of his death, by any person having an interest, or asserting an interest, in the deceased's estate.

Canadian Cases.

[53c] Form 33, S. C. Rules, *post*, p. 856.

Caveats should be entered either by the party himself or by his solicitor (*b*); and if the caveat is entered in the principal registry, the name of the deceased should be placed in the index of the caveat book (Rule 59, N.-C.).

The fees payable on the entry of a caveat are 1*s.* on entry at the principal registry, and a further fee of 1*s.* 6*d.* in respect of each district registry to which notice has to be sent.

Procedure where application for a grant is made in district registries after entry of caveat.

In furtherance of section 48 Court of Probate Act, 1857— When an application for a grant is made in a district registry after entry of a caveat, the district registrar must not proceed in the matter till after the subduction or expiration of the caveat, or until the receipt from the principal registry of notice of warning and non-appearance thereto, or of the termination of contentious proceedings consequent on the entry thereof (Rule 77, D. R.).

Caveats practice.

Caveats are to bear date on the day of entry, and remain in force for six months only, but they may be renewed (*c*) (Rule 60, N.-C.).

For form, see p. 976.

Entry at the principal registry.

On the entry of a caveat at the principal registry (*d*), notice thereof is sent to the probate registry of the district where it is alleged that the deceased resided or had a fixed place of abode at the time of his death (Rule 61, N.-C.).

Entry at the district registry.

If the entry is made in a district registry, a copy of the caveat is at once sent to the principal, and also to any other of the district registries where it is alleged that deceased resided or had a fixed place of abode at the time of his death (Rule 74, D. R.).

Warning of caveats.

A person whose application for a grant is stopped by

(*b*) The actual entry of a caveat is merely a ministerial act, and a person who performs this act on behalf of another is not liable to attachment under section 26 of the Solicitors Act, 1860: *Panton*, [1901] P. 239.

(*c*) Prior to the issue of any citation (Rule 66, N.-C.) or writ of summons the practitioner should take care that a caveat is entered, and should at the expiration of six months renew the same, if proceedings are still pending.

(*d*) The caveat is entered at the Seat.

a caveat should apply at the principal registry for a for of summons against the caveator called "a warning."

Caveats can only be warned from the principal registr (Rule 63, N.-C.).

Forms of warning must be filled up at the Seat.[531] Th warning gives notice to the caveator to enter an appearanc at the principal registry (*e*) within six days (exclusive of Sun days, Christmas Day, and Good Friday (Rule 87, N.-C.), bu inclusive of the day of service), and to set out his interest

The person warning the caveat sets out in the warnin the date of the will or codicil under which he claims, an his interest thereunder (*e.g.*, executor or residuary legatee etc.), or in the case of intestacy his interest in the estat of the deceased, and also gives an address within thre miles of the General Post Office, where notices requiring service may be left (Rule 65, N.-C.).

After filling up the warning at the Seat, the practitioner takes it to the clerk of the registrar sitting for the day by whom it is signed.

Service of warning.

A warning is served by leaving a copy thereof at the place mentioned in the caveat as the address of the person who entered it (Rule 63, N.-C.). After service, an indorsement thereof should be made on the warning.

If any difficulty arises in effecting service, it may be sent by post from the principal probate registry, directed to the caveator at the address mentioned in the caveat (Rule 64, N.-C.); and the practitioner, after getting the warning signed by the registrar, should arrange with the messengers (Room 71) for its postage by registered letter to the address given in the caveat, and the official who registers the letter will have to join in any affidavit of service required.

(*e*) Appearances to warnings to caveats are entered in the Contentions Department.

Canadian Cases.

[531] Form 33, S. C. Rules, *post*, p. 856.

Fees: 2*s.* 6*d.* on issue of warning; if served by post, a further sum of 2*s.* 6*d.*

Subduction of caveat.

The caveator may, however, determine to subduct or withdraw his caveat at any time before it is warned, or even after the issue of a warning, provided—

(1) that six days have not expired from the date of the issue of the warning; or

(2) that the warning has not been served.

This latter fact must be proved by affidavit.

The caveat must be subducted *at the registry where it was entered*, and on the subduction of the caveat, the original receipt given when the caveat was entered must be produced and left.

Fee for subduction of caveat entered at the principal registry, 1*s.* If any notice of subduction is sent to a district registry, 1*s.* 6*d.* for each such notice.

If a caveat is entered and subducted at a district registry, the fee for subduction is 1*s.*, and a further fee of 1*s.* 6*d.* for each necessary notice of subduction.

Where no appearance to warning grant issues subject to affidavits being filed.

If no appearance is entered by or on behalf of the caveator, the grant will issue to the applicant upon filing affidavits of the service of the warning, and of search and non-appearance (Rule 67, N.-C.).

For forms, see p. 959.

Fees payable: 2*s.* on filing each affidavit; and if the grant is taken in the district registry, 1*s.* 6*d.* for each necessary notice of filing.

Where caveator appears no grant without an order.

If the caveator appears, no grant can issue without an order. If he desires to enter an appearance after the expiration of the time named in the warning for so doing, he may take out a summons for leave to appear, provided the grant has not passed the seal.

Appearances how entered.

To enter his appearance he attends either in person or by his solicitor at the Contentious Department at the principal registry.

For form, see p. 969.

Fee: 2*s.* for each appearance.

All appearances should be indexed by the party entering the same.

In the entry of the appearance, the party must state his name and interest in full.

Except by order of the judge or permission in writing of one of the registrars, no appearance is to be entered by or for any person claiming an interest other than the following:—

1. Executor. 2. Legatee or devisee (specific, pecuniary, or residuary) in trust or beneficial. 3. Next-of-kin or heir-at-law. 4. One of the persons entitled in distribution in case of an intestacy. 5. Executor or administrator of a beneficial legatee or devisee, next-of-kin or heir-at-law, or person entitled in distribution who survived the testator or intestate, but is since dead. 6. Creditor. 7. Executor or administrator of a creditor. 8. The husband of any person claiming an interest in any of the above characters.

The appearance entered on behalf of an executor or legatee or devisee, or the representative of a legatee or devisee, shall state the date of the will or codicil under which he or she claims an interest.

The appearance entered for a next-of-kin or person entitled in distribution, or heir-at-law, or the representative of a next-of-kin or heir-at-law, or person so entitled, shall set forth the relationship of such next-of-kin or heir-at-law or person entitled to the deceased.

Any appearance the entry of which is not made in conformity with the above may be cancelled.

Appearance by infants, minors, and lunatics.

If it is desired to enter an appearance for an infant, minor, or lunatic, the practice is, broadly speaking, similar to that which is adopted if an infant, minor, or lunatic wishes to take a grant. (See pp. 120, etc., 128, etc.)

Subsequent proceedings.

After entry of appearance, if the parties can come to an agreement among themselves, a summons can be taken out, and an order drawn to clear off the caveat, and the grant may then be made. Failing this, a writ of summons is generally issued and an action is commenced.

CHAPTER II.

CITATIONS.[54]

OBJECT OF CITATIONS—IN NON-CONTENTIOUS—IN CONTENTIOUS BUSINESS — PRACTICE — SERVICE — SUBSEQUENT PROCEEDINGS—CITATIONS BY OR AGAINST PERSONS UNDER DISABILITY.

Citations.

A CITATION is an instrument issuing from the principal probate registry under the seal of the court, and signed by one of the registrars, containing a recital of the cause of issue and the interest of the party extracting it, with a notice to the party cited to enter an appearance and take the steps therein specified, with an intimation of the nature of the order the court is asked to and may make unless good cause is shown to the contrary (*a*).

In the ecclesiastical courts a citation was also used as a

(*a*) An executor who has intermeddled in the estate of his testator can be cited to take probate of the will in question, and refusal renders him liable to attachment: *Mordaunt* v. *Clarke and Clarke*, 1 L. R. P. & D. 592; 38 L. J. 45; 19 L. T. (N.S.) 610.[54a]

Canadian Cases.

[54] Compulsory proceedings to obtain the filing of an inventory account where the account is not produced voluntarily were formerly commenced by citation or summons. Under Rule 21, S. C. Rules, such proceedings should now be commenced by a judge's order.

S. C. R., C. B. 1, *post*, p. 839; and S. C. R. 21, *post*, p. 830.

The commencement of an action by a citation or judge's order is usually adopted by an executor who desires to prove the will in solemn form where a caveat has not been entered (see *post*, p. 380).

[54a] *SUMMARY APPLICATION.*—The Court will not, upon a summary petition, or otherwise than in an action, remove a trustee or executor *in invitum* (*Re Davis' Trusts*, 17 P. R. 187).

NECESSITY OF PROVING WILL.—In ejectment claiming through a sheriff's sale under an execution against executors obtained on their confession:—*Held*, no objection that they had not proved the will, for by confessing judgment they had accepted the office (*Mandeville* v. *Nicholl*, 16 U. C. R. 609).

way of commencing a probate suit, answering in th courts to a writ of summons at common law. It subsequently so adopted by the practice of the Prob Court (altered by R. S. C., Order I. r. 1), and is s retained at the present time in non-contentious busin as a means of giving notice to any interested party of intended application in respect of a grant of which h entitled to have notice, and also in contentious busin under R. S. C., Order XVI. r. 10, where an action pending, to bring the fact to the knowledge of part interested in the issues raised therein for the purpose binding them by the judgment of the court.

Citations in probate matters are of two kinds—

(1) Non-contentious.

These are for the most part concerned with the acceptan or refusal of a grant.

(2) Contentious,

e.g., those which may lead to or are concerned with actio

The chief of these latter are—

(a) Citations to bring in a grant;

(b) Citations to propound a testamentary paper;

(c) Citations to see proceedings.

Object of non-contentious citations.

The chief object and use of citations in non-contentio matters may be thus stated. When a person, having th superior right to take a grant, delays or declines to do s the court, at the instance of another having an inferi right, will call upon the party having the prior right t take the grant, and, on his failing to do so, may decree to the citor.

The citation, therefore, answers two purposes: (1) compels a representation to be taken by those who ar primarily entitled to it; or (2), where such parties refus either to take it or to renounce, it provides an alternativ for such refusal or renunciation. (See Court of Probat Act, 1857, s. 79; and Court of Probate Act, 1858, s. 16 for the effects of renunciation and citation.)

Thus in the case of a will the residuary legatee or devisee (if there be real estate) cites the executor "to accept or refuse probate and execution of the testator's "will, or to show cause why letters of administration with "the will annexed of all the estate which by law devolves "to and vests in the personal representative of the testator "should not be granted to the citor." Where the deceased left a will.

And if there be no executor, the residuary legatee or devisee in trust is cited "to accept or refuse letters of "administration with the will annexed of all the estate," etc.

Legatees or creditors similarly cite both the executor and the residuary legatees and devisees in trust or beneficially entitled, or (*if the residue has not been disposed of*) the testator's next-of-kin and heir-at-law.

Again, since the decision of Kekewich, J., in *re Pawley and London and Provincial Banks Contract*, [1900] 1 Ch. 58, it has been found necessary, prior to an effective conveyance of real estate by executors, that those who prove should clear off by citation the others to whom power has been reserved, unless they are willing to renounce or take a grant.

Before any citation can issue in respect of a will, *the will should be filed*.

The party citing, therefore, if the will is in his possession, must first lodge it at the Contentious Department.

If the will is at a district registry, he should communicate with the district registrar, and ask him to forward it to the principal registry.

If it is in the hands of some person who is unwilling to part with it, he should issue a subpœna against that person to bring it into the registry. (See p. 239, etc.)

In the case of intestacy, a person entitled in distribution cites the next-of-kin of the intestate (and the widow of the deceased, if there be one), also the heir-at-law, if there is any real estate. And a creditor cites the same persons and also all others entitled in distribution, or if the deceased left a husband, the latter alone is cited provided there is no real estate. Where deceased died intestate.

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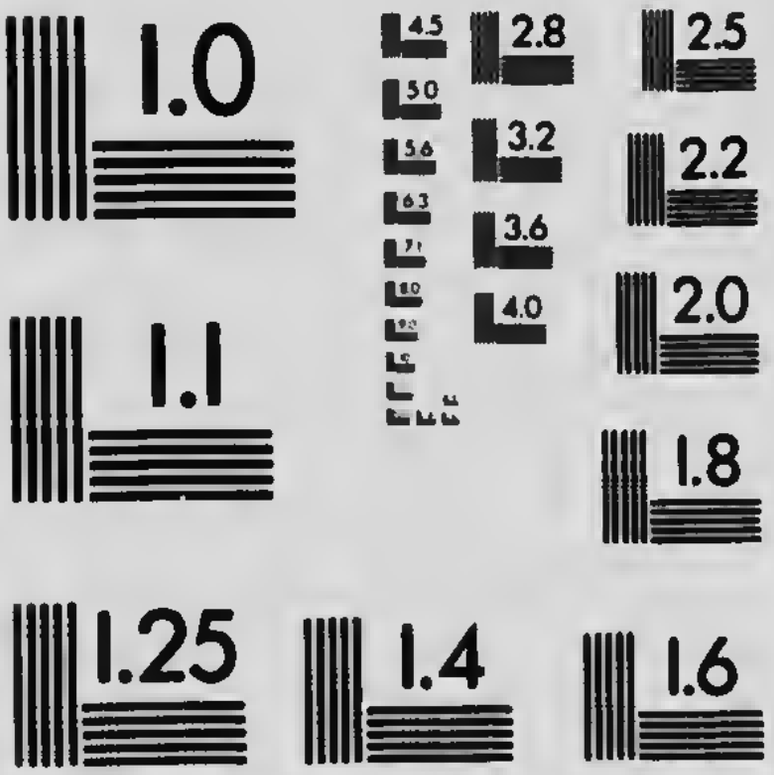
(ANSI and ISO TEST CHART No. 2)



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When a person dies without known relations, a credi
must cite the next-of-kin (if any) and "all persons
"general," having an interest in the estate of the deceas
with the intimation that in default of appearance a gr
of the *personal* estate will be made to him; for in s
cases it is necessary to serve the King's Proctor, and
grant, if made, is limited to the personal estate.

Object of contentious citations

Citations in contentious matters may lead to or
concerned with actions; *e.g.*, a person cited to bring i
grant may issue a writ in support of his claim, or al
himself to be made defendant in an action brought
revoke his grant.

And a person cited to propound a testamentary do
ment may issue a writ of summons against the citor.

While a party cited to see proceedings may apply
obtain leave to join in the proceedings and adopt
pleadings of the party whom he considers to represent
interest, or even to deliver separate pleadings, if he d
not think his interest is sufficiently protected.

Practice in Settling Citations.

Practice in citations.

In all cases of citations the practitioner will proce
follows: He will leave the draft citation to be set
together with the will (if any) and any other neces
papers, *e.g.*, renunciations, etc., with the clerk in the C
tentious Department, and call for it in two days' tim
the same place. If settled, he will take it away, eng
it on parchment or paper, and *afterwards* get his affi
(verifying the facts in the citation) sworn.

He will then take the citation, draft citation, with
præcipe and affidavit, to the Contentious Department.

The præcipe is to have an address within three mil
the General Post Office (Rule 17, C. B.).

A fee stamp of 5*s.* is charged in respect of the citati

A fee stamp of 2*s.* 6*d.* is charged for filing the affi
and draft citation respectively.

The practitioner enters a caveat (Rule 66, N.-C.)

which a fee stamp of 1*s.* is charged (Rule 15, C. B.) (except in cases of citation to see proceedings where a caveat has already been entered in the action).

If the deceased resided or had a fixed place of abode, at the time of his death, within the area of a district registry, additional fee stamps of 1*s.* 6*d.* are also charged for each notice sent to a district registrar (*a*).

The caveat should be renewed at the end of every six months.

The citation is then signed by the registrar, sealed, and given out to the practitioner.

Citations by and service on a person who is not *sui juris* will be considered subsequently.

Draft citations.

Citations must be settled in and issue from the principal registry (Rule 13, C. B.). As the circumstances of each case must necessarily vary, it is somewhat difficult to give assistance to the practitioners in settling the draft.

All necessary facts (*e.g.*, dates of wills and codicils, and whether there is any real estate) should be stated as concisely as possible, and in chronological order.

Forms applicable to the ordinary cases will be found. (See p. 977, etc.)

Affidavit.

The party or one of the parties (*b*) citing makes an affidavit, verifying *all the facts in the citation* (Rule 68, N.-C.). This affidavit should *not be made prior* to the settlement of the draft citation (*c*).

In citations to see proceedings.

In citations to see proceedings, it should be shown that the citees are adversely affected by the citors' claim.

In citations to bring in a grant.

In citations to bring in a grant, the affidavit should be so drawn, setting out the respective interests of the parties, that if a writ is subsequently issued the same affidavit may be used.

(*a*) If a citation has issued, no grant is to be made thereafter in a district registry unless an office copy of the decree or order authorising such grant is produced (Rule 80, D. R.).

(*b*) The attorney (by power) of a party citant has been allowed to make this: *Hutley*, 1 L. R. P. & D. 596; 38 L. J. 27. So also is the nominee of the guardians of the poor applying as creditors of deceased: the nomination should be left with the draft citation. For form, see p. 970.

(*c*) For a form in a non-contentious matter, see pp. 955, 956.

Citee out of jurisdiction.

If the citee reside out of the jurisdiction of the co the affidavit should state his place of residence or the that it cannot be given, and whether or no such party an agent resident in England (Rule 19, C. B.).

Citations by creditors.

If the citation is by a creditor, the affidavit should s the value of the estate, the amount and nature of the d and that the applicant holds no security for the sam such be the fact (*d*). For form, see p. 949.

Where no known next-of-kin.

In cases where it is alleged that there are no nex kin, the affidavit should state what efforts have been m to trace them.

Service.[54b]

Personal service.

Personal service is required (Rule 69, N.-C., and C. B.), and is effected by serving a copy on the party c and showing him the original if requested.

A certificate of service should be indorsed (Rule C. B.) on the citation (*Goodburn and Bainbridge*, 2 S Tr. 4; 29 L. J. 163).

For form, see p. 977.

Substituted service.

If either on the issue of the citation or subsequently found that personal service cannot be effected, the regi may direct substituted service by advertisement in n papers (Rule 18, C. B.); but it should be first show affidavit to the satisfaction of the registrar why pers service is not possible, and what (if any) efforts have made to effect the same.

A form of abstract of citation is obtained in the tentious Department, and is filled up and left tog with the original citation duly sealed that it ma settled. The registrar decides upon the newspapers advertising, and the number of insertions, and the tim appearance (generally one month after the date of the

(*d*) For claims of different creditors to a grant, see *Andr Murphy*, 4 Sw. & Tr. 199; 30 L. J. 27.

Canadian Cases.

[54b] S C. Rules, 30, *post*, p. 832.

insertion). The abstract after settlement will be sent down to the Contentious Department.

Fee for settling, 10*s.*

Appearance.[54c]

Appearances to citations are entered at the Contentious Department of the principal Probate Registry (*other than citations to see proceedings*, to which appearances are entered at the Central Office, Royal Courts of Justice, Strand). Appearance. Where entered.

Fee: 2*s.* for each appearance.

Unless the citee is aboard, or the citation is directed to be advertised, the time for appearance is generally eight days, exclusive of Sundays, Christmas Day, and Good Friday (Rule 87, N.-C.). If the citee is abroad, or the citation is advertised, the registrar will fix the time for appearance. The appearance should state the interest of the party cited (Rule 26, C. B.), and give an address within three miles of the General Post Office (Rule 27, C. B.) (*e*).

Non-contentious Citations.

When no appearance is entered (if the citation has been served personally), the party effecting service makes an affidavit thereof. No appearance entered.

For form, see p. 958.

The citation is annexed thereto as an exhibit duly indorsed with certificate of service (*Harene* v. *Dawson and Clucas*, 3 Sw. & Tr. 50; 32 L. J. 94).

After this has been done the practitioner files the affidavit with the citation (*f*).

Upon the affidavit is charged a filing fee of 2*s.* 6*d.*, and no fee is payable upon the citation.

(*e*) In citations to see proceedings the address given should be within three miles of the Royal Courts of Justice.

(*f*) If the party served is abroad it should be stated in the affidavit that the party cited has no agent in this country: *Kenworthy* v. *Kenworthy and Watson*, 3 Sw. & Tr. 64; 32 L. J. 107.

Canadian Cases.

[54c] S. C. Rules, 28, *post*, p. 831.

If the service has been by advertisement, the newspa original citation, and abstract are filed (Rule 20, C. B. which a fee of 2*s.* 6*d.* is charged. In all cases of appearance an affidavit of search and no appearanc required (filing fee, 2*s.* 6*d.*).

For form, see p. 961.

The citor will then file a case on motion (fee, 10*s.*, inc ing order), and by counsel move the court for the grant

Renunciation by party cited.

If the party cited renounce after service, the citor sh apply for an order on summons for the grant, notw standing the caveat and citation.

For forms of renunciation, see p. 1069.

When appearance entered.

If, however, the party cited, or one of them, is wil to take the grant, an appearance is entered for or by and he may obtain an order on an affidavit that he been cited, and has appeared, and is willing to take grant, that the citor has had due notice of the appeara and since the receipt of such notice has taken out no s mons or other proceeding for the grant to go to himself

Fees: affidavit, 2*s.* 6*d.*; order, 2*s.* 6*d.*

If the party cited appear, but take no further s the citor should apply for an order on summons direc him to take a grant within a certain time—in defa the grant to be made to himself, notwithstanding caveat citation and appearance.

Contentious Citations.[54d]

Citation to bring in grant.

If the party is cited to bring in a grant, he may willing to consent to its revocation. (See p. 206.) the more usual course is for the citor to issue a writ currently with the citation, and to commence an action

(*g*) If the citation is extracted by the executors who have proved will of a testator against those to whom power is reserved, and citation has been personally served, the registrar will make the on bringing in affidavits of service and no appearance; but if citation has been advertised, an order of court should be obtaine motion: in either case the record act is noted.

Canadian Cases.

[54d] S. C. Rules, 5, C. B., p. 840.

In the event of the citor taking no further steps, the citee would take out a summons for discontinuance of proceedings arising out of the caveat and citation, and for the re-delivery out of the grant to himself.

Grants brought in under these citations should be lodged in the Contentious Department.

Citation to propound a testamentary paper.

If the citation is to propound a testamentary paper and the citee appears to the citation and wishes to support his claim, his best course is to issue a writ against the citor. If, however, he does not appear, the citor will, on filing the usual affidavits of service and search, move the court for a grant as asked in the citation (*Morton* v. *Thorpe*, 3 Sw. & Tr. 179; *Quick* v. *Quick and Another*, [1899] P. 187; *Dennis*, [1899] P. 191; *Bootle*, 84 L. T. 570).

Citation to see proceedings.

If the citation is to see proceedings, it generally happens that the parties cited do not wish to appear. In that case the citor files the usual affidavit of service and a certificate of no appearance. If they wish to appear and to take part in the action, application can be made by notice under the summons for directions either to adopt the pleadings of the side whose interest coincides with theirs, or, if necessary, to deliver separate pleadings.

Citations by a party *non sui juris*—

Citations by a party *non sui juris*. Minors.

If the person extracting the citation is a minor, the practice applicable to minors on taking a grant (see p. 120, etc.) applies also here. If, however, the interest of the next-of-kin and the minor conflict, or the next-of-kin is not a desirable person, the minor may elect some one else on filing an affidavit of the facts and of fitness and consent. So, too, if the next-of-kin renounce. The fact of minority only need be stated in the citation (not the exact age), and who is the person proposed as guardian. These facts should be verified by the affidavit to lead citation, and then the age of the minor should be given. A similar practice is adopted where there is a minor *and* infants.

Infants.

If the citor is an infant, the practice is the same as if the infant were applying for a grant (see p. 123, etc.); and

when the further formalities necessary in the case of
infant have been complied with, the preceding paragra
will apply.

Lunatic. If the citor is a lunatic, application should be made
the committee of his estate, or the person appointed
section 116 of the Lunacy Act, 1890, or in default
these, the next-of-kin (except where there is a confl
of interest, when the practice is similar to that set o
above—Minors).

Citations against a party *non sui juris*—

Minors and infants. If the citee is a minor or an infant, it should be so stat
in the citation, and also the person who is next-of-kin
entitled to represent the minor or infant according to t
practice of the Probate Court. This should be verifi
by affidavit, and the ages of the minors and infants state
If there are minors *and* infants, the next-of-kin of t
minors can act for both. If the minor or infant has
known next-of-kin, notice should be given to the King
Proctor. (See p. 126.)

Lunatic. If the citee is a lunatic, the citation should show th
fact, and whether there is a committee of his estate
person appointed under the Lunacy Act, 1890, or failin
these, who is his next-of-kin.

If the lunatic have no known next-of-kin,
should be directed to the lunatic and his ne
any). In this case it is advisable to serve the King
Proctor, as also if the lunatic were a bastard.

Service on a party *non sui juris*.

Minors or infants. Service on a party *non sui juris*—

Service upon a minor or infant should be effected upo
the minor or infant in the presence of his or her natural o
legal guardian, or of the person or persons upon whom th
actual care and custody of the minor or infant for th
time being has properly devolved (*Cooper* v. *Green*, 2 Add
454; *Brown* v. *Wildman*, 28 L. J. 54; for exception, se
Lainson v. *Naylor*, 2 Sw. & Tr. 7; 29 L. J. 126), and then
the next-of-kin of the minor or infant should also be served.

Service evaded. Where the citation was served upon two minors at the

house where they resided, and both their custodian and next-of-kin evaded service, the service on the minors was held to be sufficient (*Lean* v. *Viner and Another*, 5 Sw. & Tr. 469; 33 L. J. 88).

Lunatics.

Where the person to be served is a lunatic, and a committee of his estate has been appointed, service upon the committee as well as upon the lunatic is required. When there is no committee, the service, according to the practice of the Prerogative Court, should be effected upon the lunatic in the presence of a medical man (*Anna Hepburn Surtees*, 28 L. J. 89), and the next-of-kin of the lunatic should also be served.

Where the deceased's widow was a lunatic confined in an asylum in Australia, the heir-at-law having appeared, and having an interest adverse to the documents propounded to the amount of £600 a year, the court refused to order the widow to be cited (*Ward* v. *Huckle*, 12 P. D. 110).

A citation was ordered to be served on a lunatic in the presence of the proprietress of the asylum, and copies of the citation on the three next-of-kin of the lunatic, and it was further ordered that this service should be deemed good, unless good cause was shown to the contrary within ten days of the service (*McCormick* v. *Heyden*, 17 L. R. Ir. Ch. D. 338).

Indorsement of service.

Where the party served is a minor, infant, or a lunatic, the certificate of service on the citation should show that there has been special service thereof, for which, see *supra*.

Appearance by a party *non sui juris*—

Appearance by a party *non sui juris*.

If such persons desire to enter appearance, they can do so by the guardians named in the citation, but if they wish to appear by some one else, see *supra*, p. 296, citations by a party *non sui juris*.

In the case of citations to see proceedings, the procedure in reference to appearances in probate actions would probably have to be adopted.

CHAPTER III.

MOTIONS.[54e]

ACCORDING to the rules and practice of the Probate Di sion, applications in certain matters should or may made to the court on motion in non-contentious as w as in contentious business.

The chief of these are—

A. Orders having reference to grants.

B. Orders in respect of an administration bond.

C. Orders to bring a testamentary paper into the registr

D. Orders for attachment.

E. Orders for the appointment of an administrator an receiver *pendente lite*.

A. ORDERS HAVING REFERENCE TO GRANTS.

A. 1. Decree of administration to solicitors to Treasury, Duchy of Lancaster, or Duchy of Cornwall, in cases of intestate bastards.

For a grant of administration to the Solicitor to H Majesty's Treasury as nominee of the sovereign *ju Coronæ* (*a*), or t the solicitor to the Duchy of Lancaster a nominee of the sovereign *jure Ducatûs*, or to the solicit to the Duchy of Cornwall as nominee of H.R.H. the Princ of Wales *jure Ducatûs*, on the ground that the decease died a bastard and intestate, and that either the sovereig or the Duchy of Lancaster or the Duchy of Cornwal (where the deceased has died domiciled within thei respective duchies) is entitled to his personal estate, and

(*a*) It may be observed that the Land Transfer Act (60 & 61 Vic c. 65) does not apply to Treasury cases (see *Hartley*, [1899] P. 40), no to Duchy of Lancaster cases (see *Best*, [1901] P. 333, note).

Canadian Cases.

[54e] In matters not provided for in the Surrogate Court Rules the practice is to be regulated by analogy to such rules. In an matter which cannot be regulated by such analogy, the practic shall be regulated by analogy to the consolidated rules of practic of the Supreme Court of Judicature for Ontario (see introductor rule, S. C. R., *post*, p. 827; and see s. 37, S. C. Act, *post*, p. 675).

therefore, to have a grant of letters of administration of the same issued to their nominee.

2. Decree for a grant to persons having an inferior title thereto after citation.

For a general grant (after citation) to a person having an inferior title, in the absence of the renunciation of persons having the prior title to the grant.

This is the case—

(a) where the residuary legatee, and, since the Land Transfer Act, 1897, the residuary devisee, or other person interested in the residuary estate, applies for letters of administration with the will annexed, passing over an executor, or

(b) where a legatee or, since the same Act, a devisee applies for a like grant, passing over the executor, residuary legatee, devisee, or other parties interested in the residue, or

(c) where a creditor of the deceased (*b*) applies for a grant of administration with or without will annexed, passing over all parties interested in the estate under a will, or entitled by the Statute of Distributions, or

(d) where a person has died without known relations and a grant of the personal estate after citation is made to a creditor, or to the Crown, or to the Duchy of Lancaster, or to the Duchy of Cornwall (*Solicitor of Duchy v. Next-of-Kin of T. Canning*, 5 P. D. 114).

In such cases, when all persons having a superior title to the grant have been duly cited to accept and have failed to appear, the grant may be decreed on motion to a person having an inferior title to it, after filing the usual affidavits of service and search.

For the rule is, that a person having an inferior right to a grant can only obtain such grant after all persons who have a superior right to it have abandoned or waived such right, either by renunciation or by failing to appear and take the grant after having been cited to appear and accept or refuse it.

Citation

By Court of Probate Act, 1858, s. 16, an executor who

(*b*) Formerly the practice was as in *Baynes* v. *Harrison*, 1 Deane, 15—i.e., the claim must not be based on a debt bought up after the death. But see 36 & 37 Vict. c. 66, s. 25, sub-s. 6.

of executor. Effect of.

is cited and does not appear, ceases to have any right respect of the estate of his testator. Representatio the testator devolves as if he had never been appoi executor (*c*).

Renunciation of executor. Effect of.

The case of renunciation by an executor had previously provided for by s. 79 of the Court of Pro Act, 1857, in the same manner, though in this cas is always open to the executor subsequently to appl the court for leave to retract his renunciation, and application is sometimes granted. (See *Stiles, dec.*, [18 P. 12; see also p. 230, etc.)

3. Decree of administration *de bonis non* to a party having a derivative, in preference to a party having a direct, title, after citation.

For a grant of administration *de bonis non* to a p having a derivative title, after citation of a party hav a direct title.

Where the sole next-of-kin who has taken a grant administration dies, leaving an executor, it is in discretion of the court to pass over parties entitled distribution, provided they have been cited and appeared, and to make the grant *de bonis non* to executor (*Carr*, 1 L. R. P. & D. 291; *Johnson*, 7 L. R. Ch. D. 1; *Shaw*, 73 L. T. 192), on the usual affidavits service and search. Since the Land Transfer Act, 18 the heir-at-law would also have to be cleared off, if th is real estate.

4. Decree of probate or administration where proof of the death of the deceased is presumptive.

For a grant of probate or administration where the f of death is presumptive (*d*) (*e*). This arises where the plicant for a grant is unable to comply with the ordina rule, which requires him to depose in his affidavit to le the grant, to the precise day, month, and year on whi the deceased died, owing to there being no direct eviden of his being dead, but only evidence from which his dea may be presumed to have taken place, *i.e.*, from his disappe

(*c*) By the same section, the like effect is produced if the execut survives the testator and dies without proving.

(*d*) It must be always remembered in these cases that the court d not presume the death of the deceased; it merely gives the applica leave to swear the death, and the facts must be deposed to: *Jackson*, L. T. p. 747.

(*e*) These orders are only made by the court, or by one of t registrars of the principal probate registry: see footnotes, pp. 302, 30

ance at or after a given period, and from the circumstances attending such disappearance, or from his not having been heard of for a period of seven years or longer by those with whom he might reasonably have been expected to communicate (*f*), or from his having been on board a ship, which, from its non-arrival in port within a reasonable time, from the absence of tidings of any of those on board, and from other circumstances, is supposed to have foundered at sea (*g*).

Practice in cases where the fact of death is presumptive:— Practice in cases of persons having disappeared, or not having been heard of.

Where the proof of the death of the deceased is presumptive in consequence of his sudden disappearance, or of his not having been heard of for several years, the applicant's affidavit should be corroborated in some material points by a member of the family, and, if possible, by a friend of the deceased or of his family, who is not interested in the estate.

The affidavit of the applicant should state:—

(1) When the deceased was last heard of.

(2) The belief of the applicant that the deceased is now dead (*Hurlston*, [1898] P. 27).

(*f*) The circumstance of the family or friends of a man whose habit was to communicate with them receiving no communication from or of him for seven years, leads to the presumption of his death at some time during the seven years, but not at the beginning or at the end of the seven years (*How*, 1 Sw. & Tr. 53; 31 L. T. (o.s.) 26), provided there is no assignable cause for the cessation of his communications. The mere fact, however, that he has not been heard of for seven years, where it was not his practice to communicate, does not lead to such an inference, but it may, coupled with other circumstances, induce the court to act on the presumption of his death.

Where application was made for an order on the ground that a man had not been heard of for nearly seven years, there being also a Chancery suit, it was ordered that the letters of administration were not to be given out (except for the purposes of the suit) till the end of the seven years: *Winstone*, [1898] P. 143.

(*g*) Under this heading it may be convenient to refer to cases of commorientes (see p. 218, etc.), *i.e.*, persons perishing by the same calamity, who are in immediate succession to one another, where there is no evidence to show which of them was the survivor and which, where necessary, are dealt with in the same way, by application to the court or to one of the registrars of the principal registry. Commorientes.

(3) Whether any advertisements for the deceased h been inserted—if so, with what success—and if inser the newspapers should be filed.

(4) Whether any letters have been received from deceased (if any exist, they should also be produ (*Clarke*, [1896] P. 287).

(5) If the deceased was insured in any office—if giving the name of, and stating that notice of the mo has been given to the insurance office, and either produ the reply of the office, or filing an affidavit of servic notice of motion (*Saul*, [1896] P. 151).

(6) If the deceased died testate or intestate—in former case filing the will; in the latter case stating are his next-of-kin and heir-at-law, if there is real esta

(7) The value and particulars of the estate of deceased (*h*).

Practice in cases of persons supposed to have been lost at sea.

Where the proof of the death of the deceased is p sumptive in consequence of the disappearance at sca the vessel on which he was sailing, and of the abse of tidings of those who were on board her, evidence of following facts is also required :—

(1) That the deceased was on board when the ve sailed from her last port. In proof of this, it is usua possible, to annex to an affidavit the last letter writ on board by the deceased.

(2) The date and place when and where the vessel last seen.

(3) Her non-arrival in the port to which she was bo within reasonable time.

(4) Absence of tidings of the vessel from the date wh she was last seen.

(5) That the ship and cargo were either insured uninsured, and if insured, that the underwriters have p

(*h*) If the whole estate of the deceased does not exceed £100, order can be made by one of the registrars of the principal pro registry on leaving the affidavits for his inspection. If made, papers and order are sent to the Seat.

on the policies as for a total loss. If there is a certificate granted under the provisions of the Merchant Shipping Act, 57 & 58 Vict. c. 60, ss. 255, 256, 257, 695, it should be produced (*Dodd*, 77 L. T. 137).

The application should be supported by an affidavit of the owner, managing owner, or agent, of the ship, deposing to all the material facts bearing on the case within his knowledge, as well as by that of the applicant, and by other affidavits, when the circumstances of the case require it (*i*).

5. Decree of a probate of lost will.

For a grant of probate or administration (with will annexed) of a lost will (as contained in a draft or copy of it, or of its contents or substance as embodied in an affidavit), *e.g.*, where the original will has been lost through no default on the part of any one interested in the deceased's estate, and it is desired, with the consent of all the parties who may be prejudiced, including the heir-at-law if there is real estate (none of them being minors), to obtain probate of the contents of the will as contained in the draft or a copy, or of its substance as set forth in the affidavit.

In cases of lost wills, when such consent cannot be obtained, the general practice of the court is to require the will, as contained in the draft or copy, or its substance, to be propounded, unless the estate is small. But see *Apted*, [1899] P. 272, as qualifying *Pearson*, [1896] P. 289; *Crandon*, 84 L. T. 330; also *O'Brien*, [1900] P. 208; *Brassington*, [1902] P. 1, in which cases all concerned were not of age (*j*).

(*i*) Where, in the case of the wreck or loss of a ship, an order on motion has already been made by the court in the estate of some other person who has died in the same casualty, an *ex parte* application can be made to one of the registrars of the principal registry on production of a plain copy of the order made in the same matter, and of affidavits by the persons suggested in the text stating the facts indicated above. The papers and order (when made) are sent to the Seat.

(*j*) These applications are also entertained by the registrars, without a motion to court (provided all parties prejudiced consent and are *sui juris*), on leaving the necessary affidavits. If granted, the order and papers are sent to the Seat.

In the case of proof of a copy or draft will the affida should show :—

Practice in cases of lost will.

(1) That the original will was in existence at the de of the testator, that it was afterwards lost, and un what circumstances (if known), and what efforts have b made to find it.

(2) Due execution of the original will—this can generally done by one of the attesting witnesses.

(3) That the copy will was examined with the origi and found to be correct—this can be done by the solicit

If it is a draft—that the original will was prepa therefrom, and if, after execution, the draft was compa with and completed from the original, the fact should stated.

It is important that in all cases where proof is soug either of an original or of a draft will, the same shou be left on filing the papers for motion (*Riley*, [189 P. 9).

If the draft was not completed, or probate of the w as contained in an affidavit is asked for, it is as well file a completed copy of the document of which the Cou will be asked to grant probate.

6. Decree of probate or administration where doubt exists as to the capacity in which a party entitled to grant should take, or as to whether a document is entitled to, or if any portion should be excluded from, probate.

For a grant where there is a doubt as to the capacit in which the applicant ought to take the grant (*McAuliff* [1895] P. 290), or as to whether a paper is entitled t probate (among cases of this kind, mention may b made of "Wills of Soldiers on Active Service and Sailors a Sea" (see p. 53, etc.), if an application to court is deeme necessary), or as to whether any portion of a testamentar paper ought to be excluded from the probate, *and th different or contending parties consent to the question i doubt or in dispute being determined, at any rate in th first instance, on motion.*

7. Decree for a grant in cases referred to court by registrar.

For a grant where the registrar, to whom applicatio has been made in the principal registry, or to whom district registrar has applied for directions as to whethe a grant should issue, considers that there are difficultie

in the matter which ought to be referred to the court for directions thereon; or where the registrar has refused the application.

In cases coming from the district registry, the district registrar will, on request, send all original papers and documents to the principal registry (Rule 90, D. R.), though after the hearing they will be sent back to him, and the grant made in the district registry, if so desired (Rule 77, N.-C.).

For grants under the 73rd (*k*) section of the Court of Probate Act, 1857, see p. 633.

8. Decree under 73rd section of the Court of Probate Act, 1857.

Grants have been made under this section in the following classes of cases:—

Grants to parties taking no interest.

(a) To mere nominees and other parties taking no interest in the estate under very special circumstances, *e.g.*,

To a nominee of parties solely interested in the estate who were very old (*Hannah Roberts*, 1 Sw. & Tr. 64).

To a stranger (*Hopkins*, 3 L. R. P. & D. 235; *Potter*, [1899] P. 265; *Lalor*, 85 L. T. 643).

For applications refused, see footnote (*l*).

To the clerk of the guardians of the poor as their nominee (*m*) for the use and benefit of a pauper lunatic during his lunacy, after the usual citations (*The Guardians of Mile End* v. *Findlay*, 3 Sw. & Tr. 265; 33 L. J. 21). (A similar grant was made after notice only, *Eccles*, 15 P. D. 1. See also *Everley*, [1892] P. 50; *Teece*, [1896] P. 6; *Hockin*, 73 L. T. 316.)

To a party alleging a claim as creditor against the

(*k*) These grants are not made by the registrars in vacation.

(*l*) Cases of refusal under the section.—See *Richardson*, 2 L. R. P. & D. 244; 40 L. J. 36; *Teague* v. *Wharton*, 2 L. R. P. & D. 360; 41 L. J. 13; *Hale*, 3 L. R. P. & D. 207; *Prosser*, 11 Ir. Eq. R. 37; *Brotherton*, [1901] P. 139.

(*m*) The nomination should be left on settling the citation. For form, see p. 970.

estate of the deceased, where the person en
to represent the estate refused to take the
afte citation (*Wensley*, 7 P. D. 13).

Grants without notice to, or citation of parties having a claim to the grant.

(b) Without notice to, or citation of parties h
a claim to the grant, and who by the pr
should be cited; *e.g.*:—

To the guardian elected by three minors, wher
eldest child (who was of age) was abroad, an
no notice (*Burgess*, 4 Sw. & Tr. 188; 32 L. J.

To the guardian elected by minors for thei
and benefit, without requiring the renunci
or citation of their next-of-kin, who we
Australia, where the property was small (*H*
3 Sw. & Tr. 65; 32 L. J. 96).

To paternal aunt of minor (universal legatee
guardian, elected for the purpose of taki
grant; the executor being in Brazil, one o
next-of-kin having renounced, and the
being in Australia, and there being urgent
of an immediate grant to prevent foreclosur
mortgagee of a reversionary interest in co
(*Batterbee*, 14 P. D. 39).

To a stranger elected as guardian by three m
without citing their next-of-kin (the tes
having directed that no relative of his shoul
appointed a trustee of his will), and one of
next-of-kin on their maternal side being resi
in Paris and the address of the other b
unknown (*Webb*, 13 P. D. 71).

To the guardian of persons entitled in distribu
where the next-of-kin, who had a prior c
to the grant, was in America, and could no
found (*John See*, 4 P. D. 86; 48 L. J. 70.
also *Lilley*, 76 L. T. 164).

To the guardian of the heir-at-law passing over
husband of the deceased (*Ardern*, [1898] P. 1

To the widow as sole beneficiary, where an executor before the death of testator left the country under an assumed name, having previously sold his effects and there was reason to believe he would not return (*Crawshay*, [1893] P. 108).

To a creditor when the sole executrix and universal legatee was a lunatic (*Atherton*, [1892] P. 104).

To a stranger without citing the next-of-kin on the consent of some of the beneficiaries (*Moffatt*, [1900] P. 152).

To the nominee of assignees of residuary legatees (*Campion*, [1900] P. 12).

To a person having an inferior right where the person primarily entitled was shown to have been of bad character and had not been heard of for some time (*Stevens*, [1898] P. 126; *Frost*, [1905] P. 140; see also *Nares*, 13 P. D. 35, and *Wallas*, [1905] P. 326, where a divorce had been granted).

To the next-of-kin, without citing an absconding administrator, who had obtained a grant of administration as creditor, had satisfied his own debt, and could not be found. A personal representative of the estate being required in Chancery, the court revoked the creditor's grant, and made a new one *de bonis non* to the next-of-kin (*Bradshaw*, 13 P. D. 18. See also *Loveday*, [1900] P. 154 (where widow had disappeared), and *Colclough*, [1902] 2 Ir. R. 499).

To a specific legatee, where, after payment of debts and legacies, there remained no residue, without citing the residuary legatee resident in a colony, who had taken no notice of letters sent to him suggesting his renunciation under the circumstances (*Wilde*, 13 P. D. 1).

(c) Immediate grants, *quasi per saltum*, *i.e.*, to a Immediate

grants, *quasi per saltum.*

person having an interest in the estate of t deceased, by virtue of his interest in the esta of another deceased.

Where a person had not been heard of for sev years, and his sole next-of-kin died within t seven years, administration of his estate w granted direct to the person who was next-c kin at the end of the seven years (*Peck*, 2 S & Tr. 506; *Harling*, [1900] P. 59).

Where the father of the deceased had deserted h wife for twelve years, and had not been hea of for seven years, administration was grant direct to the wife as mother of the deceas (*Smith*, 2 Sw. & Tr. 508; 31 L. J. 182).

To a grandson of deceased, the son who was so next-of-kin having disappeared for over twenty five years. The applicant was allowed to say i his oath "he believed that he was sole next-o "kin" (*Callicott, otherwise Smith*, [1899] P. 189 following *Reed*, [1874] 29 L. T. 932. See als *Moore*, [1891] P. 299; *Shoosmith*, [1894] P. 24 *Pridham*, 61 L. T. 302; *Harper*, [1899] P. 59 *Chapman*, [1903] P. 192; *Byrne*, 84 L. T 570).

Grants in cases of urgency.

(d) Where the issue of the grant was urgent:—

To the person authorised by a power of attorney t manage the property of a party who was abroa and was interested in the deceased's estate, an where it was not known when she would retur (*Escot*, 4 Sw. & Tr. 186; 28 L. J. 17).

To the father-in-law of the party entitled, who wa in Australia, for the use and benefit of the part (*Jones*, 1 Sw. & Tr. 13; 27 L. J. 17. See als *Cholwill*, 1 P. & D. 192).

(e) In pursuance of an agreement between two claimants.[55]

Grants in pursuance of agreement.

Where there were two claimants to the estate as next-of-kin, and the kinship of one was doubtful, and the parties agreed to divide the estate, and that the one whose kinship was doubtful should take the grant. Administration decreed to the latter (*Minshull*, 14 P. D. 151).

9. Decree of a grant *de novo*.

For a grant *de novo*, after revocation of a previous grant, owing to the incapacity of one of several personal representatives.

Where one of several executors or administrators, who have taken a joint grant, has become lunatic, the court will call in and revoke this grant, and issue a grant *de novo* to the sane executors or administrators (*Phillips*, 2 Add. 335; *Marshall*, 1 Curt. 297; *Sowerby*, 65 L. T. 764; *Shaw*, [1905] P. 92). Power is reserved to the lunatic executor to prove when he again becomes sane.

10. Decree of administration limited during lunacy of sole executor or administrator.

For a limited grant, owing to the incapacity of a sole duly constituted personal representative.

Where a sole executor or an administrator has become lunatic after taking the grant, a temporary administration will be granted without revoking the former grant *during the incapacity of the personal representative* (*Binfield*, 1 Lee, 625; *Evans* v. *Tyler*, 2 Rob. 134; *Espinasse*, 3 L. R. Ir. Ch. D. 185).

A grant of administration was decreed to a next-of-kin of deceased during the lunacy of the administrator (*Cooke*, [1895] P. 68); and administration with will annexed to a residuary legatee for life during the incapacity of the executor (*Ponsonby*, [1895] P. 287).

A grant of administration with will annexed was

Canadian Cases.

[55] *ENFORCING AGREEMENT TO MAKE A WILL.*—An agreement to make a will in favour of an adopted child may be enforced against the personal representatives of the obligor (*Roberts* v. *Hall*, 1 O. R. 388).

decreed to an *administrateur provisoire*, appointed by foreign court, so long as he continued in the office, t widow of a domiciled foreigner who had obtained lett of administration with will of his estate, having becom lunatic, and the first grant being impounded (*n*) (*Go schmidt*, 78 L. T. 763). These temporary grants are the use and benefit of the lunatic and until he become sound mind.

11. Decree of limited administration to person entitled to the general grant.

For a limited grant of administration to a pers entitled to a general grant.

No person entitled to a general grant of administrati of the personal estate and effects of the deceased w be permitted to take a limited grant, except under t direction of the judge (R. 30, N.-C.). (See also p. 141, et

12. Decree of administration limited to a trust estate.

For a grant of administration limited to a trust esta which would pass under a general grant.

It sometimes happens that, when representation to t deceased is required in respect of an estate of which was trustee, there is a difficulty in inducing the perso entitled to the general grant to take it; and althou the party interested in the trust fund would himself entitled (upon the renunciation or citation of those havi a prior title) to a general grant, yet, as such a step wou involve him in the responsibility of administering t deceased's general estate, which he may be anxious avoid, the court can in such a case decree administrati to the *cestui que trust* or his nominee, limited to t particular trust property after citation of the parti having a prior right to a general grant in default renunciation and consent (*Pegg* v. *Chamberlain*, 1 Sw. & T 527; see also *Ratcliffe*, [1899] P. 110).

13. Decree of administration limited to a particular subject.

For grants limited to a particular subject.

It has been previously shown that grants may be of limited nature. (See p. 109, etc.)

By the practice of the Prerogative Court a grant limite to the only portion of an estate *left unadministered* issue

(*n*) As to impounding grants, see p. 205.

without a renunciation or citation. In such a case by the present practice, in conformity to Rule 29, N.-C., the application is reported by the registrar to the judge, and the grant issues under the direction of the judge without a motion. In all other cases, except where the parties entitled to the general grant have renounced or consented, the court must be moved for a limited grant.

(a) Administration *de bonis non* with will annexed was decreed to a legatee, limited to receive a legacy in the funds and the dividends due thereon, the chain of executorship having been broken, and the person entitled to the general grant *de bonis non* being in Italy, and not expected to return for some years (*Steadman*, 2 Hagg. 59. See, too, *Watson*, 1 Sw. & Tr. 100; *Baldwin*, [1903] P. 61, and *contra*, *Watts*, 1 Sw. & Tr. 538).

(b) Administration *de bonis non* of the estate of the legal owner of shares in two foreign railway companies was granted to the trustee in bankruptcy of the beneficial owner of the shares limited thereto (*Agnese*, [1900] P. 60).

(c) Administration to the agent of a foreigner limited to substantiate proceedings in Chancery for the recovery of a debt, and to the receipt of the debt (*The Elector of Hesse*, 1 Hagg. 93; *Harris* v. *Milburn*, 2 Hagg. 62; *Dodgson*, 1 Sw. & Tr. 259).

(d) Administration with will annexed, there being no known relatives of deceased, and no residuary legatee was granted to a stranger limited to certain leasehold property (*Jackson*, [1892] P. 257).

(e) Where administration was necessary for proceedings in the Irish Land Court, a grant was made limited to substantiate proceedings (*In the goods of Dame Carroll*, 31 L. R. Ir. Ch. 338).

14. Decree of temporary

For a temporary grant of administration for a special

administration under 38 Geo. III. c. 87.

purpose (*e.g.*, to bring an action, or to obtain payment a specific sum, etc.), during the absence out of the ju diction of His Majesty's High Court of Justice of executor or administrator to whom a grant has alre issued.

The jurisdiction to make such a grant was confer on the ecclesiastical courts by 38 Geo. III. c. 87, limited to the case of the absence of an executor, and the purposes of becoming party to a bill in equity, a of carrying the decree in the suit in equity into effe (For cases explanatory, see *Ruddy*, 2 L. R. P. & D. 330; L. J. 63; *Hannay* v. *Taynton*, 2 Add. 505; *Jouet*, *ib.*, 50

By the Court of Probate Act, 1857, s. 74, this jurisdicti was extended to the case of the absence of a person w had taken administration with or without a will annexe

By the Court of Probate Act, 1858, s. 18, this jur diction was further extended to the case of all executo and administrators, so as to be applicable to the case the absence of the executor of an executor (*Grant*, 1 P. 435; 45 L. J. 88; see also *Collier*, 2 Sw. & Tr. 444; L. J. 63), and also to cases where it was not intended institute proceedings in Chancery.

An administrator *de bonis non* being permanent resident in America, the court granted to the nomin of the plaintiffs in a suit in Chancery for the administrati of the testator's real and personal estate administration *bonis non*, limited to the purpose of making him defenda in the Chancery suit (*Colcleugh*, 19 L. R. Ir. 235).

Upon the death or return of the executor or admini trator, the authority of the special administrator continu until the purpose for which he was appointed has be effected, unless the general personal representative of t deceased will take the further steps necessary to effect t purpose, as by being made a party to the action (if any) question (*Taynton* v. *Hannay*, 3 Bos. & Pul. 26), wh the special administrator after accounting will be entitl to his costs and to an order for his discharge, and t

grant will be revoked (*Rainsford* v. *Taynton*, 7 Ves. 466). See the Court of Probate Act, 1857, s. 75.

15. Decree of administration limited *ad bona colligenda.*

For a grant of administration *ad bona colligenda defuncti* (see p. 149), owing to the impossibility, under the special circumstances of the case, of the court constituting a general personal representative in sufficient time to meet the necessities of the estate (*o*). Such grants have been made in the following cases:—

(a) To a creditor limited to collect the personal estate of the deceased, to give receipts for his debts on the payment of the same, and to renew the lease of his business premises which would expire before a general grant could be made (*Clarkington*, 2 Sw. & Tr. 380; *Stewart*, 1 L. R. P. & D. 727).

(b) To a creditor, where the deceased had died without any known relation, and it was impossible to ascertain whether, if ever married, her husband had survived her, upon the affidavit of the solicitor of the creditor that they were informed and believed that she died a widow and intestate (*Ashley*, 15 P. D. 120).

(c) Where it is for the benefit of the absent or unknown next-of-kin, with power to dispose of the property or any portion of it by sale, and give discharges from debts (*Schwerdtfeger*, 1 P. D. 424; *Bolton*, [1899] P. 186).

16. Decree of revocation of probate or administration.

For the revocation of probate or of letters of administration, obtained on an erroneous suggestion, or *per incuriam*, etc., unless the parties interested consent to a registrar's order for revocation.

17. Decree after citation to propound testamentary paper.

For a grant of administration to the next-of-kin of the deceased, or for probate of an earlier will, as the case may be, upon proof of the parties interested under an alleged will of the deceased having been cited, and not having

(*o*) By the present practice it is more usual to make use of the 73rd section.

appeared to propound it (*Morton* v. *Thorpe*, 3 Sw. & Tr. 1
Quick v. *Quick and Another*, [1899] P. 187; *Dennis*, [18
P. 191; *Bootle*, 84 L. T. 570).

18. Decree for grants under Land Transfer Act.

Applications under the Land Transfe: Act, 1897
& 61 Vict. c. 65).

On an application by the representative of the husb
of the deceased for a grant, it was held that the heir-
law must be cited (*Roberts*, [1898] P. 149).

In an application for a grant to the heir-at-law wh
there was only real estate, it was held that if he has
clear title he can take the grant as of course, but if
title is doubtful or the realty is largely exceeded by
personalty he must give notice to next-of-kin (*Barn*
[1898] P. 145).

B. Orders in respect of an Administration Bond

B. Orders in respect of an administration bond.

By the practice of the Probate Division an applicati
on motion has been required to obtain an order of court:

For the reduction of the penalty of the usual admin
tration bond, or to enable sureties to the bond to
dispensed with, or to limit the liability of a surety to
part of the sum at which the estate is sworn, or to allo
a substitute to execute the bond instead of the admini
trator, under the Court of Probate Act, 1857, ss. 81, 8
and 83.

1. Order for reducing penalty in an administration bond.

An intestate left £3000 and £45 of debts, and the so
party entitled was his mother, a foreigner, who was unab
to secure the required sureties. Bond in a penal sum
£100 accepted (*Gent*, 1 Sw. & Tr. 54; 27 L. J. 37).

Where an estate had been partly administered, an
the grant had expired, and another grant and bond we
required, the court accepted a bond for the reduced valu
of the estate (*Halliwell*, 10 P. D. 198. See also *Oake*
[1896] P. 7).

2. Order to dispense with sureties.

Where the deceased's estate had been transferred to th
Accountant-General of the Court of Chancery, and woul

be administered by that court (*Cleverley* v. *Gladdish*, 2 Sw. & Tr. 335; 31 L. J. 53; *Maria De la Farque*, 2 Sw. & Tr. 631; 31 L. J. 199), sureties were dispensed with (*p*).

3. Order to limit the liability of the sureties.

Where the property was large—£100,000 having been bequeathed to the widow, the administratrix, absolutely—the debts being small, the security was reduced to £150,000, to be made up of any number of bonds (*Herbert* v. *Sheill and Others*, 3 Sw. & Tr. 479; *Earle*, 10 P. D. 196).

4. Order for substitute to execute administration bond.

Where the administrator was in Japan, and a considerable sum of money had become payable to the estate under an order of the Court of Chancery, the court allowed another person interested in the estate to file an affidavit as to the increase of the property, and to execute the bond in the place of the administrator, on the understanding that he should as soon as possible execute a similar bond (*Ross*, 2 P. D. 274).

C. Order to bring a Testamentary Paper into the Registry.

C.

Order against a person to bring into registry a testamentary paper.

There are two modes of compelling a person to produce and bring into the principal or a district probate registry any testamentary instrument shown by affidavit to be in his possession or under his control:—[56]

(1) By a subpœna, issued by one of the registrars of the principal registry, under the provisions of the Court of Probate Act, 1858, s. 23, and Rule 73, C. B., which is the simplest and most usual mode adopted. (See p. 351, etc.)

(*p*) For other cases, where this practice was followed, see *Cornack*, [1891] P. 151; *Stelfox*, 70 L. T. 814; *Paton*, [1901] P. 188; *Cory*, [1903] P. 62; *Bryan*, [1905] P. 88; *Unwin*, 87 L. T. 749.

Canadian Cases.

[56] *COMMISSION TO PROVE APPLICANT'S STATUS.*—After notice of motion served for an order to administer the estate, a commission may be obtained for the examination of witnesses with a view of establishing the fact that the party applying for the order is one of the next-of-kin of the intestate (*Farrell* v. *Cruikshank*, 1 Ch. Ch. 12).

(2) By motion in court supported by affidavit in p
suance of the Court of Probate Act, 1857, s. 26, and R
73, C. B.

Any person, whether a suit or any other proceeding
pending, may be ordered on motion to bring into
principal or one of the district registries any paper
writing being or purporting to be of a testamentary nat
which is under the control or in possession of such pa
(*Shepherd*, [1891] P. 323).

If such person shows (by affidavit) that it is not un
his control or in his possession, but it appears that th
are reasonable grounds for believing that he has kno
ledge of the same, the court may make an order on mot
directing him to attend to be examined in open court
otherwise (*Laws*, 2 L. R. P. & D. 458; *Banfield* v. *Picka*
6 P. D. 33), or on interrogatories concerning such paper
writing.

A copy of the order directing him to attend should
served personally. In case of default he is guilty of co
tempt (as he is also under s. 23, Court of Probate A
1858). Costs of the motion are in discretion of the cou

Conduct money cannot be claimed in the first instan
by a person directed to attend for the purpose of bei
examined pursuant to this section. The matter of
expenses should be mentioned at the hearing (*Wyc*
[1898] P. 15).

D. Orders for Attachment.[56a]

D. Orders for attachment.

Application for attachment is made to the court
motion.

The Court of Probate had, by the Court of Probate A
1857, ss. 24 and 25, power to attach persons for no
compliance with certain orders of court in like manner
the Court of Chancery.

Canadian Cases.

[56a] Rule 855, Consolidated Rules, Ontario Judicature Acts.

A judge of the Probate Division is empowered to issue an order for attachment for non-compliance with a decree or order of the court or judge by R. S. C., Order XLII. rr. 4, 6, 7.[57]

An attachment issued to enforce the payment into court by an administratrix of money received by her in such capacity, after the letters of administration had been called in and a will of the deceased propounded (*Tinnuchi* v. *Smart*, 10 P. D. 184).

When the original judgment or order (non-compliance with which has given rise to the motion) requires any act to be done, the time within which it is to be done should be stated on the order, and the copy order should be served personally with a memorandum endorsed thereon as directed by R. S. C., Order XLI. r. 5.

Notice of motion should be served personally on the party whom it is sought to attach (R. S. C., Order XLIV. r. 2, and notes). The notice of motion should state in general terms the ground on which the application is based, and when it is founded on evidence by affidavit, copies thereof should be served with the notice of motion (R. S. C., Order LII. r. 4). It is also advisable to serve copies of any exhibits.

Except by special leave there must be at least two clear days between the service of notice of motion and the day named therein for hearing (R. S. C., Order LII. r. 5). An affidavit of service of notice of motion should be filed and an affidavit (where necessary) of non-compliance with the order. Application for attachment should include the costs thereof (*Abed* v. *Riches*, 2 Ch. D. 528). The costs,

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Canadian Cases.

[57] *PERSONAL SERVICE OF DIRECTION.*—G. O. Chy. 201 and 296 are still in force in the Chancery Division. Upon a motion to commit the defendant (an administrator) for neglecting to bring in his accounts before a day named pursuant to the direction of the master:—*Held*, that personal service upon the defendant of the master's direction and of the notice of motion to commit was not necessary (*Re Harnden, Harnden* v. *Harnden*, 11 P. R. 35).

if allowed, can be filed and taxed, and payment of t obtained in the usual way.

For appeal, see Judicature Act, 1894, s. 1 (i.).

If leave is given to issue the writ the practitioner atte at the principal registry with an office copy of the o and a præcipe and the writ (for forms, see Annual Pract Appendix G and H), and when approved, it is signed one of the registrars and sealed with the seal of the c (Rule 108, C. B.).

Execution of the writ of attachment by sheriff.

The sheriff, after delivery of the writ to him, u finding the party to be attached, must arrest him lodge him in prison, or if he is already in prison, he m lodge a detainer against him, and the person at wh instance he has been attached may leave him in pri until he has cleared his contempt and obtained his dischar

The sheriff should within a reasonable time after delivery of the writ to him return the same, and if fails to make a return, he may be compelled to do so the party at whose instance the attachment issued. T is done by applying to the court on motion.

As to duration of order for attachment, see *Kemp Abraham*, R. S. C., Order XLIV. r. 1, note; but this c is not reported.

Applications for discharge of the party attached.

The party attached may apply for his or her dischar to the tribunal which made the order for attachment (*q*).

An application for a discharge should be supported an affidavit of the facts upon which it is founded, a the party at whose instance the applicant was attach should have notice of the application; and if any was to be done, *e.g.*, a payment of money into court, the filing of an affidavit, the application for a dischar should be supported by a certificate of the proper offic of the court as to the performance of the act.[58]

(*q*) In vacation, application must be made to the vacation judge.

Canadian Cases.

[58] *UNNECESSARY AFFIDAVITS.*—A motion for an admin tration order was refused with costs, on the ground that no perso

Party attached not to be detained in custody for costs of attachment.

Since the Debtors Act, 1869, when the person attached clears his contempt, he cannot be detained in custody for non-payment of the costs of his contempt, but the court will make it part of the order for his discharge that he pay the costs of his contempt and of the application to discharge him, leaving the other party to enforce payment of such costs in the usual manner (*Jackson* v. *Mawby*, 1 Ch. D. 86; *Ayres and Ayres*, 85 L. T. 648).

For form of order of discharge, see p. 1056.

Canadian Cases.

representative of deceased was a party. Affidavits had been filed in answer to the motion on the merits:—*Held*, that the costs of only so much of their affidavits should be allowed as would be equivalent to a demurrer (*Irwin* v. *Bick*, 6 P. R. 183).

LIABILITY TO ACCOUNT.—Pending proceedings in the suit of *Wilson* v. *Wilson* to set aside the will of T. W., the defendant H. was appointed administrator *pendente lite*:—*Held*, that an administrator *pendente lite* is amenable to a suit in equity, and that H. was liable to account to the plaintiffs; *held* also that the plaintiffs were right in not having proceeded by petition in the suit of *Wilson* v. *Wilson*, in which J. W. was not a party, and C. B., though a party, did not represent the beneficiaries under the first will; *held* also that the bill could not be sustained as against D., who was H.'s solicitor in the former suit, for if H. had improperly paid him costs out of the estate, H. was liable, but there was no privity between D. and the plaintiffs (*Beatty* v. *Haldan*, 4 A. R. 239; *Sievewright* v. *Leys*, *post*, p. 368; and *post*, p. 399).

MORTGAGE ACTION.—C. joined his wife in executing a mortgage on her land to a company, covenanting for payment, and then died intestate. The company, being about to begin an action to realize their claims on the mortgage, desired to have C.'s estate represented for the purpose of claiming against it for any deficiency. No letters of administration had been taken out:—*Held*, that it was proper to appoint an administrator *ad litem* under Con. Rule 311 (*Re Chambliss and Canada Life Assurance Co.*, 12 P. R. 649).

E. Order for Appointment of Administrator a Receiver pendente lite.[59]

E. Order for appointment of administrator and receiver *pendente lite.*

An order of court, obtained on motion, is also req for the appointment of an administrator and rec *pendente lite* (or one of them) (*r*).

(*r*) By s. 70, Court of Probate Act, 1857, the court may appoi administrator of the personal estate of a deceased person pendin suit touching the validity, or for obtaining or revoking probate, will, or for obtaining or revoking a grant of administration to his And by s. 71 of the same Act, if the deceased left real estate an provided that the heir-at-law has appeared, may appoint the ad trator *pendente lite*, or any other person, to be a receiver of th estate pending suit in the court. Prior to the Land Transfer Act, a receiver was not appointed, unless it appeared that the will deceased affected his real estate, and that the heir-at-law, or devi other person pretending an interest in the real estate, had been or was a party to the suit in respect of the real estate (*Purdey* v. 3 Sw. & Tr. 576).

If the application is for a receiver, care should be taken to ha will in court, in order that the court may be satisfied that it deal the real estate of the deceased, and also that the heir-at-law has e an appearance, or is before the court.

Canadian Cases.

[59] *INSOLVENT ESTATE.*—An order had been mad administration, and accounts taken under it, and the maste made his report, but before it was filed or confirmed the ad tratrix died. No one could be found who was willing to admi to the estate, which was insolvent. The Court therefore, Order 56, appointed an administrator *ad litem* the person wh been guardian of the infant heirs of the estate, on the appli for the administration order, he having also been solicitor f administratrix in her lifetime (*Re Tobin*, *Cook* v. *Tobin*, 6 P. 9 C. L. J. 191; and *post*, p. 394).

ISSUING EXECUTION.—An administrator *pendente li* no power to issue execution when the executors have prove will (*Haldan* v. *Beatty*, 13 C. L. J. 200).

CREDITOR — RESORT TO REAL ESTATE. — Up creditor's bill a receiver of the rents and profits of the tes real estate will not be granted when the plaintiff does not all his bill and clearly prove the insufficiency of the personal es pay the debts, and does not pray by his bill for the applicat the realty or the rents and profits thereof to that object (*San Christie*, 1 Gr. 137).

The issue of a writ must precede the application (*Salter* v. *Salter*, [1896] P. 291).

Canadian Cases.

Where, in a creditor's suit to administer the estate of a deceased debtor, to whose estate administration *ad litem* had been taken, the bill alleged that there were no personal assets, and the parties interested in the real estate had suffered the bill to be taken against them *pro confesso*, and did not appear at the hearing, the Court made the usual decree, without requiring a formal administration to be first obtained (*Dey* v. *Dey*, 2 Gr. 149).

BRINGING ACTIONS.—Declaration on the common counts by plaintiff as administrator of one W. Defendant pleaded that a suit was and is pending in the Court of Chancery concerning the validity of W.'s will, and that in this suit the Court of Chancery did appoint the plaintiff, during the pendency of said suit, to be administrator of W. in pursuance of the statute in that behalf, subject to the control of said court, and ordering the plaintiff as administrator to act under the directions of said court. And defendant averred that the plaintiff never obtained the authority or direction of the court to bring this suit, and that, save as aforesaid, the plaintiff is not the administrator of W.'s estate and effects. To this the plaintiff replied that in two suits named, pending in Chancery, the plaintiff was appointed by the court administrator pending these suits with all the powers of a general administrator, under which authority he now brings this action:—*Held*, on demurrer to the replication, that, as it appeared from the pleadings that the plaintiff was not a general administrator, but only *pendente lite*, the declaration should have alleged his authority to be so limited, and that the two suits during whose pendency the plaintiff was administrator were still pending, and in this respect the declaration was bad, and that part of the plea traversing the plaintiff being a general administrator was good; *held*, also, that the plaintiff, having under C. S. U. C. c. 16, s. 54 (now R. S. O., 1897, c. 59, s. 56), all the rights of a general administrator, might sue without the prior leave of the court, and that that portion of the plea alleging the want of such leave was therefore no defence; *held*, also, that the replication, in alleging that the plaintiff was a general administrator during the pendency of the suits, was good (*Holdan* v. *Smith*, 25 C. P. 349).

FORM OF ORDER.—In framing an order under Con. Rule 311, appointing an administrator *ad litem*, it is not sufficient that the order state "it is ordered that A. be and is hereby appointed

The duties and liabilities of an administrator a receiver *pendente lite* are governed by ss. 70 and 71 the Court of Probate Act, 1857, and by s. 21 of the A of 1858 (*s*).[60]

(*s*) He is merely an officer of the court under whose direction represents the deceased: *Graves*, 1 Hagg. 313.

Canadian Cases.

administrator *ad litem* to the estate of B;" the order is reall grant of administration, and should contain the particulars m tioned in Rule 48 of the surrogate rules, and if such is the fa should also, in view of R. S. O., 1887, c. 50, s. 58 (now R. S. 1897, c. 59, s. 61), state that the administration is of the real a personal estate (*Cameron* v. *Phillips* (No. 2), 13 P. R. 141).

DEVOLUTION OF ESTATES ACT—REAL ESTATE—Rule 311, though in existence as s. 11 of 48 Vict. c. 13 (O) bef the framing of the Devolution of Estates Act, may be applied a realty falling under the operation of that Act. If it appears t there is no personalty, or personalty of such trifling amount will not suffice to answer the claims made in respect of the ccased's real estate in respect of which litigation has been brou or is impending, administration *ad litem* may be granted under rule limited to the real estate in question. An application for appointment of an administrator *ad litem* is properly made bef action (*Re Williams and McKinnon*, 14 P. R. 388).

[60] *ADMINISTRATOR PENDENTE LITE.*—The origi plaintiff having died *pendente lite*, and an order having been tained to continue the proceedings in the name of an administra *ad litem*:—*Held* that the plaintiff's costs between solicitor a client should be paid out of the interest recovered; *held*, also, t the administrator *ad litem* was not entitled to be paid the resi of the fund, but as to this liberty to apply was granted (*McCa* v. *Moore*, 2 O. R. 229).

In a mortgage action in which a foreclosure only was soug it was stated that the lands were not equal in value to the mortg debt. The mortgagor being dead, and having left no estate wh ever except the equity of redemption sought to be foreclosed, executor named in the will of the mortgagor, which had not b offered for probate, was appointed administrator *ad litem* with security under Con. Rule 311 (*Cameron* v. *Phillips*, 13 P. R. 78)

Where, in a creditor's suit, to whose estate administration *litem* had been taken, the bill alleged that there were no perso

Application can be made by either party (*t*) on motion. Notice thereof should be given to the other side, and the

(*t*) The court will even appoint on the application of a person not a party to the writ: *Tichborne* v. *Tichborne*, 1 L. R. P. & D. 730; 39 L. J. 22. See also *Evans*, 15 P. D. 215; see also *Cleaver*, [1905] P. 319.

Canadian Cases.

assets, and the parties interested in the real estate had suffered the bill to be taken against them *pro confesso* and did not appear at the hearing, the Court made the usual decree, without requiring a general administration to be first obtained (*Dey* v. *Dey*, 2 Gr. 149; and see *post*, p. 393).

AD LITEM.—R. S. O., [1897] ch. 129, s. 11, providing that a person wronged in respect to his person or property by one, since deceased, may maintain an action against the administrators or executors of the latter, does not authorize such an action against an administrator *ad litem* merely, but only against an executor or general administrator clothed with full power to collect the assets, pay the debts, and divide the estate which he represents:—*Held*, therefore, that for this, apart from other reasons, the appointment of an administrator *ad litem* should be refused in this action, which was brought against five persons for malicious prosecution, one of whom had died after issue joined, but before trial, and whose widow and children refused to administer the estate (*Hunter* v. *Boyd*, 3 O. L. R. 183).

The only living issue and heir-at-law of an intestate who had brought this action to set aside, on the ground of undue influence, a transfer of her property (heretofore made by the intestate to the defendant), applied for an order under Rules 194 or 195 appointing him administrator or administrator *ad litem* of the deceased:—*Held*, that the order could not be made either under Rule 194, for reasons given in *Hughes* v. *Hughes* (1881), 6 A. R. 373, 380, or under Rule 195, which is not applicable to a case of a plaintiff who, without right or title, has commenced an action and then seeks to legalize his illegal act by an order of the Court (*Fairfield* v. *Ross*, 4 O. L. R. 534).

REFEREE'S JURISDICTION.—A motion made under R. S. O. [1877] c. 49, s. 9, *post*, p. 393, to appoint an administrator *ad litem* of the estate of a deceased person may be made before the referee, as this section merely extends a jurisdiction already possessed by him under G. O. 56 (*Collver* v. *Swayzie*, 8 P. R. 42).

REVIVOR.—The Court will not appoint an administrator *ad litem* of a deceased party to the suit when the deceased had a

notice should state exactly what is desired, *i.e.*, if appointment is to be of administrator or receiver, or b how far the grant is to extend, etc., and whom it desired to appoint.

It should be supported by affidavit, showing full det of all the property and the reason for the order as *e.g.*, the necessity of preserving or protecting the prope of the deceased, of receiving and investing the rents paying of debts and mortgage interest, etc. (*u*).

The practice of the Probate Court is assimilated to t of the Court of Chancery in appointing a receiver (*Be* v. *Bellew*, 4 Sw. & Tr. 58; 34 L. J. 125).

(*u*) If application is made to appoint a person named in the n of motion, his consent to act should be filed, and also an affidav fitness (*i.e.*, as to character and capacity) by some disinterested par

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Canadian Cases.

substantial interest in the suit. The suit must be revived (*I of Montreal* v. *Wallace*, 1 Ch. Ch. 261).

TAX SALE—ACTION TO SET ASIDE.—The plaintiff appointed, under Rule 311, administrator *ad litem* of a dece person's estate in a summary administration matter more twelve months after the death:—*Held*, that he had no *locus st* to maintain an action to set aside a tax sale of land belongi the time of death to the estate of the deceased (*Rodger* v. *Mc* 28 O. R. 275).

DECEASED DEPOSITOR.—The plaintiff claimed from defendant a sum of money, part of which had been deposite E. P., and part by the plaintiff herself, but all in the nam E. B., who was a non-existent person. E. P. died intestate b this action was brought, and no letters of administration t estate having issued, the plaintiff applied under Con. Rule 31 the appointment of an administrator *ad litem*. The Court ref to make an appointment.

Meir v. *Wilson*, 13 P. R. 33; approved of and followed, *Fo Landed Banking and Loan Co.*, 13 P. R. 210.

The Court has no power, when the administration of an i tate's estate forms the subject of the suit to appoint a repres tive under R. S. O. 1877, c. 49, s. 9, *post*, p. 393, and *ante*, p. as the intestate is not a party interested in the matters in que in the suit within the meaning of that section (*Hughes* v. *Hug* A. R. 373).

In some cases the court refuses the application, *e.g.*, where an executor was appointed under a will, and a codicil was in dispute, and such codicil did not affect his appointment, the application was refused with costs (*Mortimer* v. *Paul*, 2 L. R. P. & D. 85; 39 L. J. 47); so, too, where there was no evidence that the surviving partner of the deceased was wasting the estate (*Horrell* v. *Witts*, 1 L. R. P. & D. 103; 35 L. J. 55).

If on the hearing of the motion the parties do not consent to the appointment of a particular person, it has to be made by the registrar.

Application must be made to the taxing registrar, who will give an appointment, and make an order supplementing the court order by fixing on some independent person.

A party unconnected with the suit is the most proper person to be appointed administrator and receiver *pendente lite* (*De Chaudlain* v. *Pontigny*, 1 Sw. & Tr. 34; 27 L. J. 18). A party to the suit is never appointed unless all other parties consent. The administrator *pendente lite* is generally required to give justifying security.

In special cases the amount of security may be fixed by the court order, or by the registrar on appointment.

When a guarantee society gave bond on behalf of the administrator *pendente lite*, he was allowed on terms to pay £50 out of the estate (*Harver* v. *Harver*, 14 P. D. 81).

When the order is completed he applies for a grant. (See p. 132) (*x*).

His duties begin from the date of the order and terminate with the decree, whether there is an executor named in the will or not (*Wieland* v. *Bird*, [1894] P. 262).

In the case of an appeal his duties continue till it is disposed of (*Taylor* v. *Taylor*, 6 P. D. 29).

(*x*) He is not allowed to distribute the residue of the estate, but otherwise he has the rights and powers of a general administrator. In matters of unusual difficulty he would, it seems, be justified in applying by summons to the court for directions. He may not pay a legacy (*Whittle* v. *Keats*, 35 L. J. 54), or an annuity given by a disputed will except by consent of all persons interested in the residue.

Remuneration to administrators *pendente lite* and receivers.

The court may direct that administrators and receiv appointed pending suits involving matters and cau testamentary, shall receive out of the personal and r estate of the deceased such reasonable remuneration as court shall think fit (Sect. 72, Probate Act [1857]).

The remuneration is usually fixed on the passing accounts before the taxing registrar. The accounts left in the Contentious Department as in the case of a l and an appointment is sent to the applicant, who will g notice thereof to the parties concerned (*y*).

After receiving his remuneration and passing accounts (Rule 96, C. B.), he is then bound (and court will compel him) to pay all that he has receive the person pronounced by the court to be enti (*Charlton* v. *Hindmarsh*, 1 Sw. & Tr. 519).

Practice as to Motions.

Time for hearing motions.

The court hears motions by counsel every Monday during the sittings at 11 a.m.

During the long vacation the registrars sitting for judge hear motions *by counsel* every fortnight on Wed days at 12.30 p.m. They do not entertain applicat under [illegible]d section.

Cases and papers for motions.

Papers for motions are required to be left in principal registry in the Contentious Department any preceding and up to 2 p.m. on the Wednesday previ if the motion is to be made during the sittings; and be 2 p.m. on the Friday previous, if the motion is to be m before the registrars in the long vacation.

If a motion is made to the judge during the vacation, full particulars of the procedure will be fo on application to the Contentious Department.

(*y*) The bond may be vacated (if so desired) upon the appointme pass the accounts.

(*z*) This is the present day for the hear..g of motions, but in of alteration, the date of hearing for each sittings is always giv the term card.

Practice.[61]

Applications for motion should be accompanied by case on motion (and where necessary a notice of

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Canadian Cases.

[61] *SPECIAL CIRCUMSTANCES.*—An administration order was refused when the grounds on which it was claimed were properly the subject for a bill (*Cameron* v. *MacDonald, In re Macdonald*, 2 Ch. Ch. 29).

SPECIAL CLAIM FOR ALLOWANCES.—The order (15) providing for the administration of the estate without bill, applies to simple cases only, and under it the Court will not grant an order containing special directions to inquire as to what should be allowed to the applicant (the widow and administratrix) for improvements made on the property and for the maintenance of infant children (*Barry* v. *Brazill*, 1 Ch. Ch. 248).

SPECIAL CLAIM FOR SUPPORT OF DECEASED'S WIFE.—Where, on a motion for an administration order, it appeared that the application was by a party claiming for the support and maintenance of the wife and children of the deceased, and the questions raised were substantially the same as would be raised had the suit been brought by the wife for alimony, the Court refused the order, and directed a bill for the purpose to be filed, and made the costs of the application costs in the cause (*In re Foster, Griffith* v. *Patterson*, 20 Gr. 345).

WILFUL DEFAULT CHARGED.—The plaintiff was an executor as well as a creditor, and was charged with wilful default: —*Held*, that inquiry as to such default could be made under the order of reference (Form No. 171, O. J. Act) (*Re Allan, Pocock* v. *Allan*, 9 P. R. 277).

CLAIM UNDER CONTRACT OF SURETYSHIP.—When a claim against a deceased person's estate is one arising out of a contract of suretyship, the Court will not, unless by consent of all parties, make an administration decree except on a bill filed (*Re Colton, Fisher* v. *Colton*, 8 P. R. 542). The principle and surety being here the plaintiff and defendant respectively, *Re Colton*, 8 P. R. 542, which decides that in a case of principal and surety a summary application to administer under G. O. Chy. 638 is improper, was held not to apply (*Re Allan, Pocock* v. *Allan*, 9 P. R. 277).

DISCRETION TO REFUSE.—There is now a discretion under Rules 946 and 954 in dealing with applications for administration

motion), and any affidavits that are to be used on hearing.

Filing fees: case, 10*s.*; notice and each affidavit, 2*s.*

The practitioner should himself see that all necess papers are duly filed before the hearing, *e.g.*, renunciati nominations, etc., and any exhibits, also any origi testamentary documents, and when the will has b proved, he should make arrangements with the rec

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Canadian Cases.

orders, and the judge or officer is not obliged to grant a summ order unless it appears that some good result will follow. order was refused when the widow of the intestate was cle entitled to a fund which was the only matter in dispute. Whe husband deposited money with a savings bank company, caused an account to be opened in the name of himself and wife jointly "to be drawn by either, or in the event of the deat either to be drawn by the survivor," and it appeared by evidence uncontradicted that moneys of hers went into the accou and that both drew from it indiscriminately:—*Held*, that she entitled as survivor to the whole fund (*Re Ryan*, 32 O. R. 224).

SUBSTANTIAL PRELIMINARY QUESTION.—Where, an application for an administration order, it appears that there a substantial and preliminary question to be decided, such quest should be decided before the reference is ordered, and the Co may limit a time within which the parties may try the issue. I if the issue is not tried, or the order is made in chambers with first directing such issue, the parties are held to have waived su preliminary question, and cannot raise it in taking the accou under such order in the master's office.

VALIDITY OF AWARD IN QUESTION.—Where a marri woman applied as devisee and legatee for an administration ord by motion without bill, and it appeared that an award had be made professing to determine all matters between the executor a the legatees, and it was said that the husband and wife had be parties to the reference, the wife acting therein through h husband as her agent, which they denied:—*Held*, that the validi of the award could not be tried on the motion, and that a bill mu be filed, more especially as other legatees not parties to the moti were interested in maintaining the award (*Nudell* v. *Elliott*, 1 C Ch. 326; and see *Fowler* v. *Marshall*, *post*, p. 352, and cases pp. 353 and 358.

keeper for its production in court. If the will is proved in the country he should write to the district registrar and ask him to forward it to the principal registry, and then arrange with the record keeper for its production.

Any cases, where the affidavits or papers lodged are found by the registrar to be clearly defective or incomplete, will not be put into the motion list except by special leave till the irregularities are rectified.

Papers should be headed—

"In the estate of A. B., dec.,"

and when there is an action should have the further indorsement underneath—

"*E.* v. *F.*"

Case. The case should be a short epitome of the facts, with the names of parties, dates, and the prayer of the applicant (Rule 124, C. B.); filing fee, 10*s.* If deficient, it is not to be received except by leave of a registrar (Rule 125, C. B.).

All necessary papers are to be left at the same time (Rule 126, C. B.). Any affidavits not so filed should be handed direct to the registrar on the hearing.[62]

Notice of motion. Where it is necessary to give notice to the other side of any application by way of motion, the practice in probate motions is governed by R. S. C., Order LII. r. 5 (*Donovan* v. *Donovan*, 91 L. T. J. 56); and, except by special leave, two clear days must elapse between the service of the notice of motion and the day named therein for hearing. Such notice shall state in general terms the ground of the application (R. S. C., Order LII. r. 4), and with the notice

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Canadian Cases.

[62] *FILING AFFIDAVIT.*—On an application under Order 15 of June 2, 1853:—*Held*, that the notice of motion must show that an affidavit has been filed (*Re Hamilton*, C. L. J. 48).

should be served copies of the affidavits proposed to used (if the motion is founded on evidence by affidavit

For leave to serve notice of motion with writ, R. S. C., Order LII. r. 9. The Chancery practic followed.

Notice of motion should be served on the solicito the party if he appears by a solicitor, or on the p himself, if he appears in person, in manner provided R. S. C., Order LXVII.

Where the party entitled to notice has not appeare has omitted to give a proper address for service, notic motion may be served as directed by R. S. C., O LXVII. r. 4.

But in cases of attachment, personal service shoul effected.

Adjourned motions.

In the event of an adjournment, it is the duty of solicitor to attend at the principal registry and re the case to the list of motions.

After hearing counsel in support of, and (if necess in opposition to, the motion, the court makes its decre order thereon, which is entered up in the court mi book.

Orders.

Copies of the order can be obtained at the prin registry about two days after they are drawn up; orig orders made on motion are not given out.

For date that the order bears, see R. S. C., Order r. 13, and notes.

As to service of orders, see R. S. C., Order LXVII.

Where any order has been obtained without due n to the opposite parties, it may be rescinded. (See R. S Order LII. r. 6.)

Appeals.

The time for appealing is regulated by R. S. C., O LVIII. r. 15.

For notice of appeal, see R. S. C., Order LVIII. rr. 3 7, and notes.

As to appeal from an order for attachment, see p. 3

CHAPTER IV.

SUMMONSES.[62a]

CONTENTIOUS—NON-CONTENTIOUS—PRACTICE—APPEALS.

Contentious matters.

SINCE the introduction of the summons for directions, applications in chambers subsequent to its issue and before judgment (except as stated in R. S. C., Order XXX. r. 1, notes), whether before the judge or registrar, are made *by notice* under the original summons. Practically, therefore, separate summonses in contentious matters are exceedingly rare except summonses for discontinuance of contentious proceedings and for a grant. After judgment, however, separate summonses must again be taken out when the parties desire to make application either before registrar or judge.

For summons for directions, see p. 406.

Non-contentious matters.

In non-contentious business any person is at liberty to take out a summons, when there is no rule or practice requiring a different method of procedure (Rule 98, C. B.), and any party who has an interest in any matter, and has been brought before the court (*e.g.*, by citation), or has done any act equivalent to an admission that the court has cognizance of the matter, is liable to a proceeding by summons.

In the following cases *inter alia* the practice is to take out a summons:—

Order for grant where dispute has arisen.

(1) Where there is a dispute between two or more persons as to which of them is entitled to the grant, see pp. 212–216.

Ordor for an inventory, and account.

(2) An executor or an administrator, by reason of the terms of his oath to lead the grant, is liable to be called on to exhibit an inventory and account of the estate of the deceased that he has dealt with, and the practitioner,

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Canadian Cases.

[62a] S. C. Rules, 4, 7, *post*, p. 828.

who desires an inventory and account, will by the pre practice take out a summons.

Order for foreign sureties.

(3) Under the direction of the President, dated M 1893, application is made to the judge in chambers summons—

(i) in the case of the estate of a deceased fore subject, when the proposed administrator, be resident abroad, desires to give bond with fore sureties (*a*), or

(ii) in cases where an administrator proposes to g sureties other than those usually required, resident in the United Kingdom, the Chan Islands, or the Isle of Man. (See *Scott*, [18 P. 342.)

Order to assign administration bond.

(4) Again, a party interested in the estate of a decea person may call on the sureties to an administration bo (such bond being given to the judge of the court to secu the due administration of the estate) by summons (*b*), s ported by affidavit to show cause why, on a *primâ fa* case being shown that the condition of such bond h been broken, an order should not be made by one of t registrars assigning the same to some person to be nam in the order, to entitle such assignee, his executors administrators, to sue in his own name on the bond, a further to entitle him to recover *as trustee* for all perso interested, the full amount recoverable in respect of a breach of the condition of the bond. (See s. 83 of t Court of Probate Act, 1857, and s. 15 of the Court Probate Act, 1858, this latter section having reference bonds given prior to January 11th, 1858.)

The costs of the summons, in the event of the ord being made, are usually allowed to follow the issue of t action in the King's Bench Division.

The applicant should by affidavit make out a *prim facie* case that there has been a breach of the conditi of the bond. (See *Young* v. *Oxley*, 1 Sw. & Tr. 25; L. J. 30, where a bond given in the Consistory Court

(*a*) It is advisable that the applicant should show that no one in t country is entitled in priority to himself.

(*b*) Formerly on motion.

Chester was ordered to be assigned. See also *Sandrey* v. *Mitchell and Another*, 3 Sw. & Tr. 25; *Re W. Jones*, 3 Sw. & Tr. 28; 32 L. J. 26; *Baker and Marshman* v. *Brooks*, 3 Sw. & Tr. 32; 32 L. J. 25; *Re Young*, 1 L. R. P. & D. 186; 35 L. J. 126.)

Grounds for resisting order to assign bond.

The surety, or his personal representative, may resist the order by showing on affidavit that there has in fact been no breach of the condition of the bond. Thus in *Re Coates*, January, 1879 (not reported), the Master of the Rolls having made an order in an administration action for an application to be made to the Probate Division for an order to assign the bond for a breach of the condition, by reason of a devastavit by the administratrix, on one of the sureties showing by affidavit that assets up to the amount of the sum, under which the estate had been sworn, and in respect of which amount the bond had been given, had been duly administered, and that the devastavit related to assets in excess of the amount for which the bond was given, the summons was by consent dismissed with costs, and the order of the Master of the Rolls rescinded.

So the surety, or his personal representative, may show that there has been a release or waiver of the breach of the condition on the part of the applicant, or on the part of those under whom he claims. Thus it was held, in *Newton* v. *Sherry and Others*, 1 C. P. D. 246, that where a notice had been advertised under s. 29 of 22 & 23 Vict. c. 35, by the executor of the principal to an administration bond, and the estate had been administered in accordance with the terms thereof that this notice was sufficient, under the statute, to protect the sureties to the bond from liability for the acts of the administratrix (*c*).

(c) If the bond is assigned, the registrar will draw up the assignment (fee, 5*s*., and in addition the assignment should bear an impressed stamp of 5*s*.) to which the bond is annexed, and the practitioner will make arrangements with the record keeper for the attendance of a clerk on the hearing of the action as the bond and assignment are not given out. If the bond is filed in a district registry, the registrar should be asked to forward it to the principal registry.

A solicitor *qua* officer of court liable to summons.

(5) A solicitor, as an officer of the court, is liable t proceeding by summons for any act done by him, solicitor, in respect of any matter within the jurisdict of the Probate Division in non-contentio[u] isiness.

Practice.

The summons is drawn in duplicate. To one copy affixed the proper fee stamps. Summons for directi 15*s.*; subsequent notices thereunder, 5*s.* (except appl tions under R. S. C., Order LII. r. 14, when the fee is Summons to discontinue, 13*s.*; other summons, 8*s.* Th fees include the order in each case.

The summons bearing the fee stamps is retained the clerk in the Contentious Department. The o (after the date, hour of return, and number have b inserted) is stamped with the President's stamp retu ned to the practitioner.

Summonses are heard by the registrars, at the Princ Probate Registry, Somerset House, usually twice a w (Tuesday and Friday), and by the judge in chambers on week (Saturday), during the sittings. Summonses atten by counsel are heard before those attended by solicitor

For the jurisdiction of registrars in chambers, R. S. C., Order LIV. r. 12.

A copy of the summons should be served on the p summoned or his solicitor before 6 p.m. (Saturdays, 2 p (R. S. C., Order LXIV. r. 11) two clear days before return thereof (R. S. C., Order LIV. r. 40), unless ot wise ordered.

For service of summons for directions, see p. 406.

If it is intended to be represented by counsel, i usual to mark the summons "Counsel."

If a consent is obtained to the order, the summ with the consent indorsed on it should be left with Clerk of the Rules at the Royal Courts, in the case judge's summons, or with the registrar's clerk at Some House, in the case of a registrar's summons.

If the party summoned do not attend, the order asked for may be made on affidavit of service of summons and non-attendance by the party applying therefor.

For form, see p. 959.

For date the orders bear, see R. S. C., Order LII. r. 13.

Orders made on summons are obtained at the Contentious Department two days after hearing.

The registrar may adjourn the hearing of a summons or he may refer the same to the judge.

Appeal from registrar.

Any party dissatisfied with the order of the registrar may appeal to the judge in chambers.

R. S. C., Order LIV. r. 21 (*Patrick*, 14 P. D. 42).

The appeal is (1) by indorsement on the summons by the registrar at the request of the party appealing, (2) by notice in writing to attend before the judge within five days or such other time as may be allowed by the judge or registrar.

The latter is the more usual way.

Appeal from judge.

If the party is not then satisfied with the order of the judge in chambers, he may ask him (1) to adjourn the matter into court, and to fix a day for the hearing, or (2) he may move to discharge the order made in chambers (within fourteen days, whether the order is interlocutory or final, *Re Johnson*, 42 C. D. 505); or, (3) if the judge does not wish to hear further argument in court, he may ask for his certificate to this effect (*Rigg* v. *Hughes*, 9 P. D. 68).

Under these circumstances appeal lies in the Court of Appeal, and the time for appealing is regulated by R. S. C., Order LVIII. r. 15.

For notice of appeal, see R. S. C., Order LVIII. rr. 3 and 7.

Appeals in *ex parte* applications.

For cases of appeal in *ex parte* applications, R. S. C., Order LVIII. r. 10 (*Clook*, 15 P. D. 132).

In Vacation before Registrar.

Application should be made to the Contentious D
ment when practitioners will be informed as t
arrangements made by the registrars for the en
vacation. They are usually heard daily, Satu
excepted.

In Vacation before Judge.

Summonses are issued at the Contentious Departme
obtaining the leave of the registrar), and the practit
after issue in the Contentious Department, must ent
same in the list kept at the Royal Courts of Justice.

PART THE THIRD.

THE PRACTICE

OF

THE PROBATE DIVISION OF THE HIGH COURT OF JUSTICE

IN

Contentious Business.

CHAPTER I.

INTRODUCTORY.

CONTENTIOUS BUSINESS DEFINED.
JURISDICTION
- of Probate Court.
- of Probate Division.
- Concurrent.
- Particular.

SOURCES OF PRACTICE—
- Court of Probate Act, 1857.
- Judicature Act, 1875.
- Rules of Supreme Court.
- Rules of Probate Court.

PROBATE IN COMMON FORM AND SOLEMN FORM DISTINGUISHED—
- Effect of Probate in Common Form.
- Effect of Probate in Solemn Form.
- Irrevocable.
- Exceptions, Later Will, Fraud, Compromise.

REQUIREMENTS IN UNCONTESTED ACTION.

CONTENTIOUS BUSINESS.[63]

WHERE there is a contest as to the title to probate or to administration, and any party claiming a grant com-

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Canadian Cases.

[63] Rule 1, S. C. R., C. B., defines what is contentious business (*post*, p. 839).

Saving the jurisdiction of the High Court of Justice, the determination of the question whether a given paper constitutes a will

mences an action for the purpose of establishing his
to it, the business becomes "contentious." And

Canadian Cases.

of personalty, and whether it be valid as a testament, belon
the surrogate courts (*Wilson* v. *Wilson*, 2[illegible] Gr. 393; *Beau
Haldan*, 4 A. R. 246; *Tucker* v. *Smith*, S. C. Ontario, 1873;
v. *McNab*, S. C. York, 1879; *Irwin* v. *Broden*, S. C. Suncoe,
As to jurisdiction of High Court, see Surrogate Act (*post*, p.
s. 34, and cases *infra*.

COLLATERAL ATTACK ON PROBATE.—The pla
sued as executors under the last will and testament of B. dec
alleging that the will was duly proved in the proper surr
court. The defendant denied the validity of the probate by r
of the mode of proof and invalidity of the will:—*Held*, on dem
that the defence was bad; that when it was desired to attac
validity of letters probate, issued by a surrogate court h
jurisdiction, and when the person on whose death the l
probate were issued is really dead, it must be done in an ind
dent proceeding with the proper parties before the Court (*Ir
Bank of Montreal*, 38 U. C. R. 375 followed. Quære whethe
application must be to the surrogate court or not, *Book* v.
15 O. R. 119; see *Eades* v. *Marshall*, 17 U. C. R. 173).

*CONTENTION AS TO GRANT—REMOVAL TO
COURT.*—The Legislature has intended that only those cau
which disputed questions of law or fact arise should be remov
the Court of Chancery, and not contentions as to whom admin
tion should be granted (*In re Beckwith*, 5 L. J. 256).

The 36th section of the Surrogate Act (now 56th) provid
an appointment of an administrator *pendente lite* when the
is reserved by the judge for argument in term (*Ib.*).

Where the validity of a will relating to both real and pe
estate was in dispute, the personal property being worth at
$2000, and it was sworn and not denied that the questions
determined were of such importance that they could be
effectually tried and disposed of in the Court of Chancery th
the surrogate court, an order for removal was made (*Re
Ch. Ch. 376).

LETTERS PROBATE AND LETTERS OF ADMINISTRATION.

ACTION TO IMPEACH WILL—HIGH COURT.—
impeaching a will of which probate had been granted to the
tiff by the surrogate court stated that after the probate had
granted, the plaintiff had discovered a subsequent will

proceedings or steps in the action from its commencement to its termination come within what is termed the "Contentious Business" of the court.

Definition of non-contentious or "common form business."

By the definition in the Court of Probate Act, 1857, s. 2, "'Common form business' shall mean the business "of obtaining probate and administration where there is "no contention as to the right thereto including the "passing of probates and administrations through the "Court of Probate in contentious cases where the contest is "terminated, and all business of a non-contentious nature "to be taken in court in matters of testacy and intestacy, "not being proceedings in any suit, and also the business "of lodging caveats against the grant of probate or "administration."

Definition of contentious business.

By Rule 3 (Contentious Business) all proceedings in the Court of Probate or in the registries thereof in respect of business not included in the Court of Probate Act, 1857, under the expression "Common Form Business," except the warning to caveats, shall be deemed to be contentious business.

JURISDICTION OF THE COURT.[64]

The exclusive jurisdiction of the court in granting probate and letters of administration has been dealt with in Part I., Chapter II.

Canadian Cases.

testator, and that this subsequent will was the deceased's last will. The wills disposed of both real and personal estate :—*Held*, that when the will had been proved in common form or in solemn form the Court of Chancery had jurisdiction to try its validity (*Perrin* v. *Perrin*, 19 Gr. 259 ; and *post*, p. 413).

[64] *LETTERS ISSUED BY WRONG COURT.*—Action on a note made by defendant, payable to B. and endorsed by B.'s administrator to plaintiff :—*Held*, no ground for impeaching the endorsement of the administrator, that the debtor at the time of the intestate's death resided out of the jurisdiction of the surrogate court by which the letters of administration had been granted (*Wright* v. *Merium*, 6 O. S. 463).

Decision of Probate Court as to title to

The decision of the court, either on the title to pro or on the title to administration, is conclusive in all co

Canadian Cases.

The personalty of a person who died since the Devoluti Estates Act was less than $2000, but her whole estate incl land was more than that sum:—*Held*, that a contest as to the of probate of her will could not be removed from a surr court to a high court, for the words "personal estate" in subs. 2 of the Surrogate Courts Act, R. S. O. (1887), c. 50 R. S. O., 1897, c. 59, s. 34), mean personal estate proper, not standing that by the Devolution of Estates Act, R. S. O. (1 c. 108 (now R. S. O., 1897, c. 127), the whole estate is now administered (*Re Nixon*, 13 P. R. 314).

Upon an application by certain of the next-of-kin of a testate under s. 31 of the Surrogate Courts Act, R. S. O. (1 c. 50 (now R. S. O., 1897, c. 59, s. 34), to remove from rogate court into the High Court a cause in which a conte arose as to the grant of administration, it appeared that widow and a trust company had petitioned for joint adm tration of the estate, which was a large one; that the ne kin opposed the petition; that neither the widow nor the of-kin could, unaided, supply the necessary security; and there were no creditors:—*Held*, that the jurisdiction to grant, being of a discretionary kind, could be better exercise the surrogate judge, and the cause should not be removed. personal disqualification of a surrogate judge to pass upo application, by reason of his interest as a shareholder in a com applicant, is not a ground for removal to the High Court, f can call in the aid of a neighbouring county judge. Whe assets are separable, administration may be granted *quoad*, the widow as to one part and the next-of-kin as to another pa there may be a joint grant to the widow and next-of-ki *McLeod*, 16 P. R. 261).

JURISDICTION.—A junior county judge who has hear evidence and tried an issue in a surrogate court while the of senior county judge is vacant, has the right to deliver judg in such case after a new senior judge has been appointed (*Sp Speers*, 28 O. R. 188).

Where to an action on a note brought by an executor the d dant pleaded that at the time of the testator's death the defe resided in the London district, and that therefore the l testamentary granted by the surrogate court of the Home Di

probate and to administration, how far and when conclusive.

in England, and where the decision turns upon any particular question, such decision is conclusive upon that question as between the same parties. Thus, if the sentence in an action for a grant of letters of administration turns upon the question, which of the parties is next-of-kin or heir-at-law to the intestate, such sentence is conclusive upon that question in an action for distribution between or succession to the same parties (*Barr* v. *Jackson*, 1 Phill. C. C. 582; *Bourchier* v. *Taylor*, 4 Bro. C. C. C. 708). So, also, where there is a question whether legacies or devises are cumulative or substantive, and it is determinable by the circumstances of the bequests or

Canadian Cases.

was void, and the plaintiff demurred, the Court gave judgment against the demurrer (*King* v. *Claris*, H. T. 2 Vict.).

LIMITED ADMINISTRATION.—The surrogate courts here can grant limited administrations, as the Probate Court in England can (*In re Thorpe*, 15 Gr 76; see *Conron* v. *Clarkson*, 3 Ch. Ch. 368).

LOWER CANADIAN WILL.—A will devising lands in Upper Canada having been made in Lower Canada, where testatrix lived, and being duly proved and enrolled among the records of the Court of King's Bench there, and copies thereof directed to be made and given to the parties legally entitled thereto:—*Held*, that an office copy of such will, duly certified, etc., was equivalent to letters probate in Upper Canada, and could be registered as such (*Patulo* v. *Boyington*, 4 C. P. 125).

MANDAMUS TO COMPEL GRANT OF ADMINISTRATION.—A mandamus was directed to issue to compel the judge of the surrogate court of the county of Wellington to grant administration with the will annexed of a certain testator to G. D., one of the next-of-kin (who had filed all necessary papers), notwithstanding that in an issue directed out of the said surrogate court a jury had found against the will. It appeared that the present applicant was no party to that issue, and that since the trial of it the High Court had held in favour of the will:—*Held*, that this was not a case for an appeal from the refusal to grant administration under s. 31 (now 34) of the Surrogate Courts Act, because an appeal under that section would appear to be granted only when some one contests the grant of administration, which no one was doing here. *Semble*, that the High Court has jurisdiction to declare a will valid (*Dickson* v. *Monteith*, 14 P. R. 719; *ante*, p. 175; and *post*, p. 603).

devises having been given by distinct instruments probate has issued of "a will and codicil," the form o probate is conclusive of the fact of their being dis instruments, though written on the same paper (*B* v. *Butterfield*, 1 Cox, 192).

Under Judicature Act, 1873.

By s. 34 of the Judicature Act, 1873, all causes matters pending in the Court of Probate at the mencement of the Act, and all causes and matters would have been in the exclusive cognizance of the of Probate if the Act had not been passed, were ass to the Probate Division.

Under Judicature Act, 1875.

By s. 11 (3) of the Judicature Act, 1875, the o of any plaintiff of choosing in which division he wil is limited as follows:—

"Subject to Rules of Court, a person commencing "cause or matter shall not assign the same to the Pr "Division unless he would have been entitled to "mence the same in the Court of Probate if this A "not passed."

The court has concurrent jurisdiction as to devises of real estate in certain events.

The Probate Division has, by implication unde Land Transfer Act, 1897, Part I. s. 1 (3) and s. concurrent jurisdiction with the other Divisions High Court in deciding on the validity of a will disp of real estate only. If the action proceeds to sentenc decree will be so far binding on the realty as to pr persons who have been made, or who have become, p to the action from afterwards impeaching its validity

The court has by the Judicature Acts further concurrent jurisdiction.

The Probate Division has further concurrent jurisd with the other Divisions under the Judicature Act, s. 24 (6), (7).

To enable the court to exercise jurisdiction under sub-sections, the question must fairly arise out of th for probate or administration,—the issue involved i decision must be fairly raised on the pleadings the parties whose interest can be affected by the de must be before the court, and the court should opinion that the question it is asked to determine is

to be and can be conveniently and properly decided between the parties to the pending action (*Tharp*, 3 P. D. pp. 82, 83, 88).[65]

Jurisdiction to declare what constitutes the separate estate of a *feme coverte*.

Where, therefore, probate was claimed of the will of a married woman on the ground that she had separate property, and that the will disposed of such property, and the claim to probate was resisted on the part of the husband, on the ground that she had no separate property, and the court was satisfied that the deceased left separate property, which passed under the will, it was held on appeal to be the duty of the court not only to grant probate of the will limited to such effects as the deceased had power to dispose of, and had disposed of accordingly, but to decide judicially, so far as the evidence and pleadings would enable it, of what such property consisted, and to add to the decree a declaration in accordance with the finding (*Tharp*, 3 P. D. 76).[c]

Canadian Cases.

[65] S. 54, S. C. Act, *post*, p. 679; and Devolution of Estates Act, *ante*, p. 11.

IMPEACHING STATUS OF ADMINISTRATOR.—The plaintiff claimed under the grandson and heir-at-law of the patentee, F. Dromillard, defendant under his second son, Dennis, to whom it was alleged he had conveyed. The patent was for 1200 acres, including the land in question. Dennis devised this with other land to his children, who by partition conveyed it to one of them, J., who afterwards devised to his brother R. R. died, and his land was sold under a judgment obtained against C., his wife, on a confession given by her as his administratrix, and was purchased by her at the sale, and conveyed to the defendant:—*Held*, that the fact of C. being administratrix could not be impeached, so long as the letters of administration granted to her remained in force, and that she could legally give the confession she did and purchase under the judgment obtained on it against herself, though it might furnish grounds for suspicion of fraud (*Eades* v. *Maxwell*, 17 U. C. R. 173).

[65a] There must be clear proof that the paper in question does contain the last will and testament of the deceased, otherwise the instrument is not entitled to probate (*Wilson* v. *Wilson*, 22 Gr. 84).

Sufficiency of execution of a power.

So, also, the Probate Court has power to decide on sufficiency of the execution of a power by will, as as on the validity of the will purporting to execute power (*Tharp*, 3 P. D. 82; *Barnes* v. *Vincent*, 5 P. C. 201) (*a*).[66]

Declaration of trust, the deceased having by force been prevented from making a will.

So, also, where a will was propounded by the plain who took half the residue under it, the defendants interveners taking the other half, and it appeared in evidence that subsequently to its execution the dece had been anxious to make another will giving the w of the residue to the defendants, but had been forc prevented by the plaintiffs from making it, the c allowed the defendants to amend their pleadings by ad a claim that the court will declare that the plain held the property given to them by the will in trust the defendants (*Betts and Another* v. *Doughty and Ot* 5 P. D. 26; 48 L. J. 71).

SOURCES OF PRACTICE.[66a]

Court of Probate Act, 1857.

By s. 29 of the Court of Probate Act, 1857, "practice of the Court of Probate shall, except w "otherwise provided by this Act, or by the rule "orders to be from time to time made under this "be, so far as the circumstances of the case will ad "according to the present practice in the Prerog "Court."

(*a*) Secs. 24 and 27 of the Wills Act, 1837, do not enable a sp power of appointment by will to be well exercised by a will exe prior to the creation of the power: *Re Hayes*; *Turnbull* v. *Hay* L. T. (Ch.) 152, [1901] 2 Ch. 529.

Canadian Cases.

[66] *RENUNCIATION.*—Where a power of sale is give executors *qua* executors, and not by name, they cannot, after have once renounced, execute such power (*Travers* v. *Gasti* Gr. 106.

[66a] S. 17, S. C. Act, *post*, p. 668.

The High Court has jurisdiction to try the validity of wills O. J. A., ss. 38, 39, 40; and *post*, p. 352).

Judicature Act, 1875.

By s. 18 of the Judicature Act, 1875, "All rules and "orders in force at the time of the commencement of this "Act in the Court of Probate shall remain in force until "they shall be altered or annulled by any rules of courts "made after the commencement of this Act."

The practice of the Probate Division in contentious business therefore is regulated by the Judicature Acts, and by the rules of procedure and practice established under those Acts; and where no other provision is made by the Acts, or by the rules made under them, the practice is regulated by what was the procedure and practice of the Court of Probate.

Rules of the Supreme Court.

In the following chapters the references will be given to the rules of the Supreme Court which govern the practice in the Probate Division. The rules will not be set out *in extenso* unless from their special relation to probate practice, or for some other reason, it seems expedient to do so.

Rules of the Court of Probate.

The rules of the Court of Probate in contentious business will be found in Appendix VIII. For the most part they have been superseded by the Supreme Court rules, and they should not be relied upon unless referred to or quoted in the text as being still in force.

PROBATE IN COMMON FORM AND IN SOLEMN FORM DISTINGUISHED.

Before treating of the various steps to be taken in an action in the Probate Division, it will be useful here to point out the distinction between grants of probate in common form and those in solemn form, and also to set out the practice in an uncontested action for probate in solemn form.

Effect of Probate in Common Form.[66b]

Effect of probate or letters of administration in other courts.

A grant of probate, obtained in common form in

Canadian Cases.

[66b] Probate in common form is revocable (see ss. 17, 18, S. C. Act, *post*, p. 668).

accordance with the practice described in Part I. of
book, upon its production, is accepted in all court
England as conclusive evidence of the executor's t
and of the validity, and of the contents of the will.

In like manner letters of administration upon t
production are accepted in all courts in England
conclusive evidence of the title of the administrato
be the personal representative of the deceased in Engl

Operation of probate in common form.

A probate or administration issued in common f
until revoked, will, by the Court of Probate Act, 1
have the following operation :—

Payments under revoked probate or administration to be valid.

"Where any probate or administration is revoked u
"this Act, all payments *bonâ fide* made to any exec
"or administrator under such probate or administrat
"before the revocation thereof, shall be a legal discha
"to the person making the same; and the executor or
"ministrator who shall have acted under any such revo
"probate or administration may retain and reimbu
"himself in respect of any payments made by him wh
"the person to whom probate or administration shall
"afterwards granted might have lawfully made" (s. 7

Persons, etc., making payments upon probates granted for estate of deceased person to be indemnified.

"All persons and corporations making or permitt
"to be made any payment or transfer *bonâ fide*, upon
"probate or letters of administration granted in respec
"the estate of any deceased person under the autho
"of this Act, shall be indemnified and protected in
"doing, notwithstanding any defect or circumsta
"whatsoever affecting the validity of such [illegible]bate
"letters of administration" (s. 78).

Probate in common form may be called in for proof in solemn form.

Any party whose interest is adversely [illegible]d by
probate granted in common form may, with[illegible]nitat
as to time (for the Statute of Limitations does not ap
to cases of probates or letters of administration), call it
(*i.e.*, by citation), and put the party who obtained it, or
representative, upon proof of the will in solemn fo
(*Hoffmann* v. *Norris*, 2 Phill. 231; *Merryweather* v. *Turn*
3 Curt. 802, 817; *Topping*, 2 Roberts, 620).

Effect of Probate in Solemn Form.[67]

Probate in solemn form irrevocable.

The difference in effect between a probate which has been granted in common form, and a probate which has been granted in solemn form, is that the former is revocable, and the latter, provided proper precautions have been taken, is subject to two exceptions, irrevocable:—

Exceptions

Later wills,

(1) If the existence of a will of later date is discovered subsequently to the date of the decree, the probate, although granted in solemn form, is liable to be revoked in favour of the later will (*Priestman* v. *Thomas*, 9 P. D. 70).

Fraud,

(2) The judgment may be set aside if it has been obtained by fraud. (See *Birch* v. *Birch*, [1902] P. 131, C. A.)[67a]

Compromise unsanctioned by persons interested.

With these exceptions probate in solemn form is irrevocable, where all the parties adversely affected by it have been parties or have been privies to the action in which it was decreed, and the judgment in that action has not been obtained by compromise, unsanctioned by

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Canadian Cases.

[67] S. C. Act, s. 54, *post*, p. 679. Cases of wills proved in solemn form, *In the estate of Elizabeth Girling, deceased*, March 26, 1886; and *In the estate of John B. Milson, deceased*, Jan. 30, 1894, S. C. York.

[67a] *INTESTATE'S FRAUD.*—In January, 1860, a debtor assigned to certain credi ors his interest in land under a contract of purchase; the assignment was made absolute in form so as to deceive and defraud other creditors; but the purpose as between the parties was merely to secure the debt due to the assignees. Shortly afterwards the assignees, with the debtor's consent, had an arbitration with the vendors in respect of the contract, obtained an award of $1600 in lieu of the land, and received the money. In 1871 a bill was filed by another creditor against the debtor's administrator and the assignees for payment out of the $1600:—*Held*, that the plaintiff was entitled to such payment, that in view of the fraud and trust, the lapse of time was no defence, and that a bill against the assignees by the creditor, instead of by the administrator, was proper (*Gillies* v. *How*, 19 Gr. 32).

parties who were not cognisant of negotiations for a co
promise and are adversely affected by it. The decree w
preclude all persons who have been parties or privies
the action from afterwards impeaching its validity.
should the probate be subsequently called in by a per
adversely affected by it, who was not a party or privy
the action or to the compromise (if any), and who, tho
privy to the action, was not cognisant of his right to in
vene (*Young* v. *Holloway*, [1895] P. 87), and be revol
such revocation will enure to the benefit of parties
privies to the first action, and who were adversely affec
by the revoked probate.

The effects of a compromise of an action on privies to suit.

What will be the effect of a compromise on a privy
a suit was fully discussed and considered in *Wytcherle*
Andrews (2 P. & M. 327; 40 L. J. 57), and the rul
be extracted from the judgment delivered in that cas
applicable to compromises of actions may thus be sta
It is not necessary in the Probate Court that a pe
should be a party to a suit in order that he should
bound by its result; it is sufficient that he be priv
the proceeding. If a person is privy to a suit,
knowing what is passing, is content to stand by and
his battle fought by somebody else in the same inte
and it appears that everything has been done *bonâ fi*
his interest, he is bound by the result and is not allo
to re-open the case. But if the suit terminates in a
promise, entered into without notice to him, and wit
his having knowledge that the suit is not proceedi
its natural end, he is not bound by the agreement w
the parties to the suit choose to enter into. A ba
only binds those by whom it is made. Persons wh
willing to stand by while a contest is going on are b
by the decision of the court, but they are not comp
to abide by a compromise, when no decision is, in
come to by the court. The court will only san
a compromise made in an action, and not one
where no writ has issued, and will not bind infan

persons other than those who are or might have been parties to the compromise (*Norman* v. *Stains*, 6 P. D. 219) (*b*).

A decree of probate in solemn form where the will disposes of real as well as of personal estate, and all parties interested in the real estate have become or been made parties to the suit, enures for the benefit of all parties interested in the real estate in the same manner as it does for parties interested in the personal estate. (See s. 62 of the Court of Probate Act, 1857, p. 630.)[68]

Decree enures for benefit of parties interested in the real estate.

(*b*) No compromise can be forced on minors or infants. The compromise must be supported by an affidavit by a solicitor, who independently represents the minors or infants, stating that he believes the terms of the compromise to be beneficial to their interests, and an affidavit from their guardian. There must also be an opinion of counsel that he considers it beneficial, and, if the opinion is that of a junior, and there is a leader, the court asks whether he agrees with the junior's opinion: see *In re Birchall*, 16 Ch. D. 41 C. A., *per* Jessel, M.R.

Canadian Cases.

[68] *RIGHTS OF OTHER CREDITORS—STATUTE OF LIMITATION.*—A decree in an administration suit, although it may enure to the benefit of all creditors of an estate, does not prevent the Statute of Limitations from running in favour of debtors to the estate (*Archer* v. *Levern*, 12 O. R. 615).

A decree for administration is for the benefit of all the creditors, so where a person had obtained an administration upon a claim of a firm of which he was a member, but which was disallowed by the master, and also upon a claim obtained in a manner savouring strongly of champerty, but another creditor had established a claim under the order:—*Held*, that the order could not be set aside (*Re Cannon, Oates* v. *Cannon*, 13 O. R. 70).

O. brought in a claim in certain administration proceedings on promissory notes assigned to him by H. & Co. under an agreement between them, which, however, was held void for champerty, and O.'s claim on the notes disallowed. O. therefore redelivered the notes to H. & Co. The six years allowed by the Statute of Limitations had expired before the notes were thus delivered to H. & Co., but not before the date of the administration order, nor before O. tried to prove them in the administration proceedings:—*Held*, that the order for administration prevented the bar of the Statute of Limitations (*Re Cannon, Oates* v. *Cannon*, 13 O. R. 705).

Probate in solemn form of law is preceded by an ac
and a sentence of the Probate Division pronouncing
the force and validity of the will (and codicils, if any).

Requirements in an Undefended Action.

Requirements for obtaining probate in solemn form in an uncontested action.

The requirements for obtaining a decree of probat
solemn form in an uncontested action are as follows:—

1. The executor of the will to be proved, or, fai
him, a residuary or other legatee, or a party intere
under the will, should serve the next-of-kin and o
parties entitled in distribution to the personal estat
the deceased in case he should have died intestate,
his heir-at-law if he has left real estate other than c
holds or customary freeholds, with a writ of summon
where a caveat has been entered and warned, and
appearance has been entered to such warning, he sh
serve the party who has appeared to such warning.

When the deceased was a bastard or has died with
any known relation, the solicitor to the Treasury sh
be made a defendant and served with a writ of summ
unless the deceased at the time of his death had a f
residence within the Duchies of Lancaster or of Cornw
in which case the solicitor for the Duchy should be m
a defendant and be served with the writ.

Canadian Cases.

(60) *CROWN—ADMINISTRATION—SETTING ASIDE P
BATE.*—When a person possessed of real and personal estate
leaving no known relatives within the province, the attor
general on behalf of Her Majesty may maintain an action t
aside letters probate of that person's will, executed without m
capacity, and in that action may obtain an order for possessi
the real estate, but a grant of administration should be obta
by a separate proceeding. Such an action under the st
R. S. O. (1887), c. 59, is not for the purpose of escheating, b
protect the property for the benefit of those who may be ent
(*Regina* v. *Bonner*, 24 A. R. 220; and *ante*, p. 97).

2. The executor, or residuary or other legatee, or party interested under the will as devisee or otherwise, should propound the will, and set the action down for and proceed to a hearing.

3. The court should be satisfied, upon the examination of one or more witnesses, of the due execution of the will, and of the testamentary capacity of the testator at the time of its execution. To prove the due execution of a will, it is necessary to examine one only of the attesting witnesses, provided he deposes to its due execution (*Belbin* v. *Skeats*, 1 Sw. & Tr. 148; 27 L. J. 56). If the witness called fails to prove its due execution, then the party propounding the will is bound to call the other attesting witness, notwithstanding his being an adverse or hostile witness (*Owen* v. *Williams*, 4 Sw. & Tr. 202; 32 L. J. 159; *Coles* v. *Coles and Brown*, 1 P. & M: 70; 35 L. J. 40). If the court is dissatisfied with the evidence of the attesting witness examined, it is competent to it to decline to grant probate of the instrument propounded in the absence of the evidence of the other attesting witness.

For practice, see under "Short Cause," p 525.

CHAPTER II.

ACTIONS.[70]

DEFINITION.
FOUNDATION OF ACTIONS.
FORMS OF ACTIONS.

(1) *Probate in Solemn Form*—
Question involved.
Will pronounced for.
Will pronounced against.
Who may propound a Will.
Risk of omitting to propound.
When compellable.
By whom compellable.

(2) *Administration Actions*—
Questions involved.
Legitimacy or
Fitness of Applicant.
Majority of Interests.
Settlement by Motio
Summons.

(3) *Action for Revocation*
Grants—
Of Probate.
Of Letters of Admin
tion.
Grant called in by Cit

SUMMARIES OF PRELIMINARY STEPS IN ACTION.

Actions.

ALL suits commenced by citation or otherwise in
Court of Probate, shall be instituted in the High C
of Justice by a proceeding to be called an action (R.
Order I. r. 1).[70a]

Canadian Cases.

[70] The High Court may try the validity of wills (R. S. O.,
c. 51, s. 38; and see s. 38, O. J. A.; and *ante*, p. 344).

[70a] *ADMINISTRATION ACTIONS.*—Notice of motion
order to administer the estate of a deceased intestate having
served on his widow as administratrix, the application was re
there being no evidence that letters of administration had
granted to her (*In re Marshall, Fowler* v. *Marshall*, 1 Ch. Ch.

On an application by a creditor for an administration
under Order 15, only a certified copy of the will, showin
defendant to be executor, was produced:—*Held*, that alt
strict proof of the claim as required in the master's office
necessary, *primâ facie* evidence of the applicant having a ri

"All other proceedings in and applications to the High "Court may, subject to these rules, be taken and made in "the same manner as they would have been taken and "made in any court in which any proceedings or applica- "tion of the like kind could have been taken or made if

Other proceedings.

Canadian Cases.

administration of the estate must be furnished; and the motion was refused with costs (*In re Clarke*, 2 Ch. Ch. 57).

In moving for an administration order the letters of administration should be produced (*Re Israel*, 2 Ch. Ch. 292).

But when the fact of the defendant being administrator is not disputed, and the plaintiff has filed an affidavit that he is administrator, it is not necessary to give further evidence of the fact, or to produce the letters of administration, or a copy thereof (*Re Bell, Bell* v. *Bell*, 3 Ch. Ch. 397).

PAYING APPLICANT'S CLAIM.—In a suit by a creditor for the administration of his deceased debtor's estate, any party beneficially interested in the estate may apply to stay proceedings on payment of the creditor's claim and costs. The right to do so is not confined to the personal representative (*Fitton* v. *Dawson*, 3 Ch. Ch. 461).

NO ASSETS.—In case a creditor brings an administration suit after being informed that there are no assets applicable to the payment of his claim, if the information appear to have been substantially correct he may have to pay the costs of the suit (*City Bank* v. *Sealcherd*, 18 Gr. 185).

In an administration suit the plaintiff, in the absence of misconduct, is not justified in filing a bill instead of issuing a summons merely, and does so at the risk of costs (*Eberts* v. *Eberts*, 25 Gr. 565; and *post*, p. 546; see also *Re Allenby and Weir*, 13 P. R. 403; 14 P. R. 227; *McAndrew* v. *Laflamme*, 19 Gr. 193; *Sullivan* v. *Harty*, 9 P. R. 500).

UNNECESSARY ACTION.—When a plaintiff files a bill for an administration decree in a case in which the decree would have been made on notice without a bill, he is not entitled to the increased costs thereby occasioned (*Sovereign* v. *Sovereign*, 15 Gr. 559).

UNNECESSARY PROCEEDINGS.—When it appeared that the administration proceedings had been instituted without any show of reason or proper foundation for the benefit of the estate, and that they had not in their results conduced to that benefit, the plaintiff was ordered to pay the costs of all parties (*Re Woodhall, Garbutt* v. *Henoson*, 2 O. R. 456).

"the Acts had not been passed" (R. S. C., Orde
r. 2).

Definition. By Order LXXI. r. 1, the words "probate actio
when used in the rules, include actions and other mat
relating to the grant or recall of probate or of letter
administration other than common form business.

Foundation of all actions in Probate Division. The foundation of every action in the Probate Divi
must be either a claim to a title to probate or to lette
administration.

Different forms of action in Probate Division. The forms of actions in the Probate Division are t
in number—(1) actions for proving wills in solemn
of law; (2) administration actions, including interest s
(3) actions for the revocation of probates or letter
administration.

(1) *Actions for Probate in Solemn Form.*[71]

Question involved. In actions for proving wills in solemn form,
question—the main and generally the sole questi
for the determination of the court is, whether a wi
other testamentary paper is or is not, in whole or in
valid as a testamentary instrument

Will pronounced for. If the instrument or part of it is found to be valid
entitled to be admitted in whole or in part to probat
the court will pronounce for its validity, and will
probate of it in whole or in part in solemn form o
Upon this decree being pronounced, probate or lett
administration with the will annexed, will issue i
registry to the executor or to a party entitl

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[71] *CONSTRUING WILL WITHOUT ADMINISTRAT*
When a party, in addition to a declaration of the true const
of a will, is entitled to ask as a consequential relief the adm
tion of the estate, the case is within G. O. 538, and the co
make a decree declaring the proper construction of the will,
directing the administration of the estate (*Murphy* v.
20 Gr. 575).

-dministration with the will annexed upon his taking the usual affidavits to lead the grant.

Will pronounced against.

If the instrument is found to be invalid, it is not entitled to be admitted to probate, and the court may pronounce against its validity, and a grant of probate of a valid testamentary paper, or of letters of administration as in an intestacy, will, according to the circumstances of the case, issue in the registry, on the party entitled thereto applying for the same and taking the usual affidavits.

Where parties whose interests are opposed to a will seek to have it pronounced against.

Generally the party propounding a will or other testamentary paper does so with the object of establishing its validity. But cases occur in practice in which the parties interested in supporting a will purposely refrain from so doing; and this, where it is essential in the interests of those who are opposed to the will that it should be set aside by a decree of the court.

Such a decree may be obtained by the party adverse to the will instituting an action for the purpose of establishing his right to represent the deceased, and claiming in such action a sentence against the will on the ground of its invalidity, and producing evidence sufficient to justify the court in making the decree claimed.

Persons who are entitled to propound a will for proof in solemn form.

The persons who are entitled to propound a will for proof in solemn form are the executors, or failing them, a residuary legatee or residuary devisee, a legatee or a devisee, or where the residue has been left wholly or partially undisposed of, any party interested under an intestacy in such undisposed residue, as all being more or less interested in obtaining probate of the will. It sometimes happens that parties interested under the last will take a larger interest under a prior will or in the event of a total intestacy. But if they are content to rely on the last will, though less favourable to them than a former one, their course is to take steps to establish its validity by sentence of the court.

An executor or other party interested under a will may proceed to prove it in solemn form, either of his own

mere motion, or in consequence of having been challenged to do so by a party whose interests are adverse to it.

Risks of omitting to prove in solemn form.

Wherever there may be doubts as to the validity of the will, or there is a possibility of future opposition to it, an executor or devisee, for his own protection, should prove in solemn form. By not doing so, he incurs the risk, should he at a later period be called upon to establish the will, of the loss of material evidence by the removal, by death or otherwise, of material witnesses. And should the probate be revoked, he is liable to account for legacies paid under it, and his sole protection is his right to be recouped by the recipients of such payments.

Executor when compellable to prove in solemn form.

An executor or administrator with the will annexed may be compelled to prove a will in solemn form after having proved it in common form. So also may an executor, who has intermeddled in the administration of the deceased's estate, *i.e.*, done any act in relation to the estate showing an intention to accept the executorship, or any act which would make him liable as executor *de son tort* (1 Williams on Executors, 10th ed. 199; *Jackson and Wallington* v. *Whitehead*, 3 Phill. 577; *Mordaunt* v. *Clarke*, 1 P. & M. 592). But not so a party entitled to administration with the will annexed, who has intermeddled with the estate (*In the goods of Fell*, 2 Sw. & Tr. 1).

Executor may refuse to propound will, and yet if it is established may claim probate of it.

If an executor is unwilling to accept the executorship he should renounce probate. If he has been served with a writ of summons, and is indisposed to be a party to a threatened action, but is not indisposed to take probate if the will is established, his course will be to take no notice of the writ, and if the will is established to apply for probate in common form. For service upon him of such writ has not the same effect as service upon him of a citation to take probate under 21 & 22 Vict. c. 95, s. 5, by which, if an executor named in a will is cited to take probate and fails to appear to such citation, his right to the executorship may wholly cease (*Bowsher* v. *Williams*, 3 Sw. & Tr. 62).

An executor upon being served with a writ of summons to prove a will has two other courses open to him. (1) To appear and pray time to consider whether he will propound the will or not (1 Williams on Executors, 10th ed., 198). (2) To appear and propound the will himself.

When an executor fails to appear to such writ of summons, or refuses to propound the will, it remains for the party entitled to the residue, or a legatee or devisee named in the will, or of either of the representatives, to propound the will *loco executoris*.

Parties who may compel proof of will in solemn form.

The following parties may put an executor or other person interested under a will on proof of that will in solemn form:—

Widow and other parties entitled in distribution

1. The widow and next-of-kin of the deceased, and other persons entitled in distribution to his personal estate in case of intestacy, and also the heir-at-law, if there is real estate. If the deceased has died domiciled in the Duchy of Lancaster, the solicitor for the Duchy of Lancaster; if in the Duchy of Cornwall, the solicitor for the Duchy of Cornwall; and if elsewhere in England, the King's Proctor.

A legatee in the will.

2. A legatee or devisee (or his representative) named in the will in question, if his legacy or devise has been omitted in the probate.

An executor or a legatee in any other testamentary instrument.

3. An executor or a legatee, or devisee named in any other testamentary instrument of the deceased whose interest is adversely affected by the will in question or their representatives.

The above parties may put an executor or other person interested under a will on proof in solemn form, after as well as before probate has been taken in common form, but the two following from their position can only do so before, and not after, probate in common form has issued, namely:—

A creditor in possession of administration.

4. A creditor in possession of administration.

An appointee of the court.

5. A person in possession of administration under the 73rd section of the Court of Probate Act, 1857, as appointee

of the court (*Menzies* v. *Pulbrook and Ker*, 2 Curt. 8 without having a beneficial interest in the estate of deceased.

(2) *Administration Actions.*[72]

Questions involved in administration actions.

In administration actions the question for decisio which of two or more claimants is entitled to a gran administration.

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[72] *REAL ESTATE — INSUFFICIENCY OF PERSO ESTATE.*—Upon a creditor's bill a receiver of the rents profits of the testator's real estate will not be appointed whe plaintiff does not allege in his bill, and clearly prove, the in ciency of the personal estate to pay debts, and does not pra the application of the realty or the rents and profits thereof to object (*Sanders* v. *Christie*, 1 Gr. 137).

REAL ESTATE—DEVISEES—EXECUTORS.—On an a cation by a creditor in an administration suit for the sale of estate of the testator, the executors, to whom part of the estate was devised, were held sufficiently to represent the p interested in the real estate, for the purposes of the motion the order asked for was granted, with the direction that an copy of the decree should be served on each of the partie terested in the real estate under the will (*Stewart* v. *Hunte* Gr. 132).

LEGATEE OUT OF JURISDICTION.—Where one o legatees was absent from the jurisdiction, and the executor been unable to discover him, this was held a sufficient grou the executor obtaining an administration of the estate (*In re* *Dee* v. *Wade*, 18 Gr. 485).

NO PERSONAL REPRESENTATIVE.—*Semble*, that a ministration of an estate will not be ordered by the court wh legal personal representative has been appointed or dispensed though an executrix *de son tort* is before the court (*Re* *Fisher* v. *Colton*, 8 P. R. 542).

The plaintiff filed his bill against his two brothers, s administration of his father's estate, of which he alleged the possessed themselves on his death in 1848. It appeared th plaintiff attained his majority in 1857, and it was not prove any fraud or concealment had been practised upon him:— that the suit was improperly constituted, as the father's pe

The decision of this question may involve an issue of pedigree or of legitimacy, and in either case the action is technically termed an interest suit. Pedigree and legitimacy.

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representative was not before the court (*Hughes* v. *Hughes*, 6 A. R. 373; see *Re Kirkpatrick*, *Kirkpatrick* v. *Stevenson*, 10 P. R. 4).

COMMISSION AND COSTS—ACTION BY CREDITOR AFTER ADMINISTRATION ORDER.—The court in making an order to stay the proceedings of a creditor who had instituted proceedings at law to recover his demand, after an order for the administration of the estate had been obtained in the court, ordered the creditor to receive his costs; the creditor and his attorney in the action both swearing that at the time of serving out the writ they were not aware of the pendency of the administration, and there being no reason to doubt the *bona fides* of their conduct, although it was shown that a year before they had been notified of the administration order (*Re Henderson*, *Henderson* v. *Henderson*, 26 Gr. 297).

CLAIMS BY NEXT-OF-KIN OF DECEASED LEGATEE.—A claim by the next-of-kin of a deceased legatee cannot be adjudicated upon in the absence of a personal representative of such legatee. But when entries had been made in the executor's books giving credit to such next-of-kin for portions of such deceased legatee's share, such entries were held to be evidence of the relationship between debtor and creditor, between such executor and next-of-kin, and could be read without entering into the consideration of the origin of the indebtedness (*Re Kirkpatrick*, *Kirkpatrick* v. *Stevenson*, 10 P. R. 4).

EFFECT OF ADMINISTRATION OF JUSTICE ACT.—Since the A. J. Act an executor or administrator is not entitled to come to the court for the purpose of administering the estate of the deceased, even when the personal assets are insufficient for the satisfaction of the debts (*Re Shipman*, *Wallace* v. *Shipman*, 24 Gr. 177).

PERSONAL REPRESENTATIVE OF LEGATEE.—An order may be obtained under the general orders for the administration of the personal estate of the testator by the personal representative of a legatee as well as by the legatee himself (*Simpson* v. *Horne*, 28 Gr. 1).

EXECUTOR NOT PROVING WILL.—An administration order applied for against a person named as executor in the will, but who had not taken out letters probate, was refused, there

Fitness of applicant.

It may involve a question of the relative fitness o respective claimants to administer to the deceased's es as where the contest is between a male and a female equal interests—the preference *cæteris paribus* being the male (*Cordeux* v. *Trasler*, 4 Sw. & Tr. 48; 37 L 127); or where a next-of-kin is preferred to a widow has eloped from her husband, or has cohabited another man in his lifetime (*Fleming* v. *Pelham*, 3 H

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being no duly appointed personal representative before the (*Outram* v. *Wyckhoff*, 10 C. L. J. 135; 6 P. R. 150).

CONCURRENT APPLICATIONS.—A creditor of an inte served notice of motion for an administration order under 638, on the intestate's widow and administratrix. The widow served a similar notice upon the heirs of her husband, and affidavits alleging a deficiency of the personalty to pay debts that creditors were suing, and also filed a consent of the heirs to an order in her favour. The Master at Chatham gr an administration order to the widow, and, on appeal, it has that he was right (*Re Draggon*, *Draggon* v. *Draggon*; *Re Dra Abell* v. *Draggon*, 8 P. R. 330).

GRANT OF ADMINISTRATION—NEXT-OF-KIN.— one of the next-of-kin, the sister of an intestate, resided in On and upon the consent of the sister and her children, lette administration were granted by a surrogate court to the defen the husband of the sister's daughter. A brother of the inte resident in the United States, brought this action to revok grant. It was stated in the defendant's petition that all o next-of-kin had renounced in his favour, but it was plain the renunciation which was filed, that this statement was int to refer only to the next-of-kin resident in Ontario:—*Held* the surrogate court had before it all those who were requir sec. 41 of the Surrogate Courts Act, R. S. O., 1897, Ch. 59, cited or summoned, and the consent and request of all of that the defendant should be appointed administrator, and, h regard to the nature of the property of the deceased, an advanced age and illiteracy of his sister, that the judge ha exercised his discretion improperly in directing the gran made to the defendant. *Semble*, that even if the discreti been improperly exercised, the grant would not have been re (*Carr* v. *O'Rourke*, 3 O. L. R. 632).

217, n. (b); *Conyers* v. *Kitson*, 3 Hagg. 556); or where she has lived separate from her husband (*Lambell* v. *Lambell*, 3 Hagg. 568; *Chappell* v. *Chappell*, 3 Curt. 429). But the widow will not be passed over unless there is a strong case of unfitness (*R. V. Cory, deceased*, 84 L. T. 270); and justifying security may be ordered, *Frost*, [1905] P. 140; or where the deceased, being a paper manufacturer and insolvent at the time of his death, the next-of-kin, who was a woman in low position of life, and quite unfitted to carry on and wind up the business, was passed over, and the grant made under s. 73 of the Court of Probate Act, 1857, to the principal creditor, with the sanction of other creditors (*In the goods of Farrand*, 1 P. D. 439).[73]

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[73] *PARTNER.*—Under an administration decree a creditor claimed by virtue of a partnership with the testator. It was objected that the establishment of his claims involved taking the partnership accounts, and they could not be gone into under the decree. The master held that the claim could be entertained, and directed that a third partner, who was a stranger to the suit, should be served with an office copy of the decree, and notified of the proceedings to take the partnership accounts (*Kline* v. *Kline*, 3 Ch. Ch. 137).

SALE UNDER FI. FA. AFTER PROOF IN MASTER'S OFFICE.—A creditor having proved his claim in the master's office afterwards proceeded to sell under a *fi. fa.* Upon application of a co-defendant the sale was restrained with costs (*Cahuac* v. *Durie*, 9 Gr. 485).

SET OFF.—In an action of trespass for entering the warehouse of a deceased person (of whom the plaintiff was the administrator) after his death, and taking and converting the goods therein, the defendant set off a debt due by deceased to him. An administration order had been made, of which the defendant had notice before defence. The set off was held bad under 27 Vict. c. 28, s. 28, and also because of the administration order (*Monteith* v. *Walsh*, 10 P. R. 162).

SUMMARY APPLICATION WHILE ACTION PENDING.—An administration order was granted by a local master under G. O. 638, while a suit was pending for the construction of the will

Majority of interests.

The decision may involve the question, Which o claimants is preferred as administrator by the majori

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of the testator, in which administration was asked, and in the executors were charged with misconduct, and before a had elapsed since the death of the testator. Upon appeal, ceedings before the master were stayed, and special directions as to the administration as set forth in the order on appeal *wood* v. *Sievewright*, 8 P. R. 79).

TITLE IN DEBTOR'S VENDORS.—A sale of real estat taken place in pursuance of the decree made in a creditor's It appeared that the legal estate remained in the debtor's ven to whom there was still owing a part of the purchase money. court ordered the vendors, upon payment of this amoun convey to the purchaser under the decree (*Heal* v. *Harper*, 695).

TWO ESTATES.—Where the plaintiff was a beneficiary the wills of I. and T., and the estate of I. had claims upo estate of T., and the executors of I. were the administrators the will annexed of the estate of T., an order was granted fo administration of the estate of I., and the proceedings were solidated with those under an order already obtained fo administration of the estate of T. (*Re Adams, Adams* v. *Mui* 6 P. R. 283).

UNREASONABLE DELAY.—Where the plaintiff unre ably delays in carrying on a creditor's suit, the court will giv carriage of the decree to another creditor upon his indemni the plaintiff against future costs (*Patterson* v. *Scott*, 4 Gr. 145)

WILFUL NEGLECT AND DEFAULT.—Where an ord administration of an estate is granted upon application of a interested in the estate adverse to the executor, the decree wi direct an inquiry as to wilful neglect and default (*Harris McGlashan*, 7 Gr. 531).

NEXT-OF-KIN — HEIRS — INFANTS — DISPEN WITH SERVICE.—Where the usual decree for administrat obtained by one of an intestate's next-of-kin, the master is make the other next-of-kin parties in his office, but is to se all have been served with an office copy of the decree und 6th general order of June, 1853, before he reports, and, gen speaking, before he proceeds with the reference (*English* v. *E* 2 Gr. 441).

In such a case the court may dispense with service of the

interests? (*Iredale* v. *Ford*, 1 Sw. & Tr. 305; *In the goods of Homan*, 9 P. D. 61). In the latter case the sister of the deceased as the larger legatee was preferred to his widow, who was living in adultery.

These questions may frequently be settled without an action. For instance:—

If it is desired that a party who has a prior right should be passed over, application should be made on motion to the court under the 73rd section of the Court of Probate Act, 1857. (See pp. 305–308.) Or where the question is that of the relative fitness of parties who are equally entitled, it is the practice to apply to the registrar on a summons, supported by affidavit, to determine who shall have the grant. (See pp. 212–216.)

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on any of the next-of-kin who are out of the province; and the application for this purpose may be made *ex parte* (*Ib.*).

So when the decree is for the administration of real estate, all the heirs must be served with an office copy of the decree, but are not to be made parties or served with the proceedings in the master's office, though any of them may by notice require to be so served if they desire it (*Ib.*).

The rule is the same when some of the next-of-kin or heirs are infants (*Ib.*).

PERSON ADVANCING MONEY TO PAY DEBTS.—Where the plaintiff had, at the request of the mother and natural guardian of infant heirs, advanced money to pay debts of their ancestor to save the costs of suits therefor:—*Held*, that he was entitled to sustain a suit for administration as a creditor (*Glass* v. *Munsen*, 12 Gr. 77).

PERSON CONCURRING IN BREACH OF TRUST.—Where a trustee commits a breach of trust the person participating is not a necessary party to a suit for the general administration of the trust estate (*Tiffany* v. *Thompson*, 9 Gr. 244).

Letters of administration issued after action and before the trial, when the plaintiff brings his action as administrator, are sufficient to support the action, even when the plaintiff has no interest in the estate (see *ante*, pp. 327, 328, 352, 353; and *post*, pp. 365, 366, 367, 368, 404, 405, 412, and 447.

(3) *Actions for Revocation of Grants.*[74]

Actions for revocation of probate.

An action for the revocation of probate is ins when probate has been granted of a will in commo and it is desired to obtain an order for its rev grounded on the alleged invalidity of the will, or o material informality in the form of the probate. object of such a suit is to compel the party w obtained the probate to propound the will, and result the suit becomes an action for proving the solemn form of law.

Actions for revocation of letters of administration.

An action for the revocation of letters of admi tic ı is instituted with a view to obtain an order f revocation grounded on the allegation of their havin granted to a person without sufficient interest estate of the intestate. The object of such a suit compel the party who has obtained the grant of ad tration to establish such a degree of relationship wi deceased as will entitle him to the grant, and in the it becomes an interest suit.

Grants to be called in by citation.

In an action either for the revocation of probate, the revocation of letters of administration, the objecting to the probate or to the letters of adminis must call in the probate or letters of administratio citation, and should allege on the indorsement of his on the writ of summons, and in his statement of cl the ground for revoking the grant, the invalidity will, or the defendant's want of interest.

The citation must either precede, or must issue taneously with, the writ, see pp. 380, 381.

Summary of Preliminary Steps in Actions

The following are summaries of the preliminary in actions in the Probate Division :— [74a]

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[74] S. C. Rule 1 (Guardians), *post*, p. 859.

[74a] The order of the judge of the proper surrogate court

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day this action was begun, by the issue of the writ of summons that letters of administration should be issued to the plaintiff, was such a declaration of the plaintiff's right to obtain letters as would make them, when issued, relate back to the date of the order (*Dini* v. *Fauquier et al.*, 8 O. L. R. 712).

The bill in the case of *Sievewright* v. *Leys*, 28 Gr. 498, distinctly charged that the defendant had misapplied the moneys of the estate of G., mixing them with his own, and emp[illegible]hem for his own purposes; a demurrer *ore tenus* that G.'s [illegible] was not properly represented, on the ground that one execu[illegible]ould not represent the estate of both G. and J., was overruled with costs, for although during the progress of the cause it might become necessary to have different persons represent the two estates, that did not constitute a ground of demurrer.

MORTGAGEES OF DEVISEE.—Where a devisee of land subject to a charge mortgaged the devised property, the mortgagees were held to be proper parties to a suit for the realization of the charge (*Goldsmith* v. *Goldsmith*, 17 Gr. 213).

NEXT FRIEND OF INFANTS.—An administration of an estate in which infants were interested, was made on the mere suggestion of their next friend that it would be for their benefit, without going into the merits of the case between the plaintiff and the defendant, the executor (*Re Wilson, Lloyd* v. *Tichborne*, 9 P. R. 89).

Upon an inquiry as to whether anything is due to a judgment debtor as residuary legatee, where he also has the character of executor, the legatees and creditors ought to be before the court; and the way to bring them before the court is by administration proceedings. *Quære*, whether the assignee of the judgment would be entitled to administration (*McLean* v. *Bruce*, 14 P. R. 190).

The Attorney-General is a necessary defendant to a bill filed to administer an estate, and declare a legacy for religious purpose void (*Long* v. *Wilmotte*, 2 Ch. Ch. 87).

Although the general rule is, that in an administration suit a debtor to the estate is not a proper party in the absence of collusion or insolvency, it is not limited to these cases, but applies equally when the creditor has obtained property from an executor acting hastily, improvidently, or contrary to his duty, which is known to such creditor (*Bank of Toronto* v. *Beaver and Toronto Mutual Fire Insurance Co.*, 26 Gr. 102; see *Irwin* v. *Bisk*, 6 P. R. 183).

A bill was filed praying a declaration of the true construction of a will, and for an administration of the estate. The bill was taken *pro confesso* against some of the defendants. At the hearing the

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plaintiff wished to abandon the prayer for an administrati
one defendant, who was a legatee, objected, contending
entitled to a decree for administration as prayed:—*Held*,
was so entitled (*Woodside* v. *Logan*, 15 Gr. 145).

One devisee of a trustee, against whose estate a suit is b
sufficiently represents those interested in the estate (*Ti*
Thompson, 9 Gr. 244).

An application for an administration order was made w
year from the death of the testator, by a legatee who claim
also a creditor of the estate, but whose claim, as such, had
been disputed by the executors, and was only supported
uncorroborated affidavit of the claimant. The court, un
circumstances, refused the application with costs (*Vivian*
brooke, 19 Gr. 471).

Legatees are not necessary parties defendant in an admini
suit (*Harrison* v. *Shaw*, 2 Ch. Ch. 44).

A suit against an administrator by a person entitled to
or distributive share of the estate, cannot be brought bef
expiry of a year after the death of the intestate (*Slater* v.
3 Ch. Ch. 1).

In a creditor's bill against the devisees of a debtor, it
indispensable that the heir-at-law should be a party (*F*
Priestman, 1 Gr. 133).

In a suit to administer the estate of a testator the hei
ought to be a party (*Tiffany* v. *Tiffany*, 9 Gr. 158).

But when the personal representatives filed such a bill
the devisee, alleging that no lands had descended as to wh
answer was silent, and the objection was not raised at the h
the court, under the circumstances, made a decree in the
of the heir (*Ib.*).

The other creditors need not be made parties to such a
the heirs-at-law must (*Ib.*)

An infant moving by his next friend, can properly m
application for an administration order (*Re Hill*, 10 C. L.
N. 87).

Judgment creditors under 13 & 14 Vict. c. 63 (see *Gil*
Van Egmondt, 6 Gr. 533).

Where the Executor desires to prove the Will in Solemn Form.[75]

A (an executor) issues a writ, and makes all persons prejudiced by the will defendants; if no one appears, he proceeds to enter the action for trial as a "short cause" (*q.v.*).

Where the Executor is put to Proof in Solemn Form.

A (an executor) lodges papers for grant in common form, and finds that—

B (a person interested under an intestacy or under another will) has entered a caveat.

A warns the caveat, disclosing his interest.

B appears to warning, disclosing his interest.

A (plaintiff) issues a writ of summons.

B (defendant) appears to writ.

Where the Action is for Revocation of Probate or to compel Probate in Solemn Form after grant in Common Form.

A has proved a will in common form.

B (plaintiff) disputes the will, enters a caveat, cites A to bring in grant, and issues writ of summons.

A (defendant) lodges grant in registry and appears to writ.[75a]

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[75] The executor is the person upon whom the duty devolves, providing he is willing to act, and he may prove the will in solemn form voluntarily (*In the Estate of John B. Milsom, deceased*, S. C. York, Jan., 1894) or compulsorily, *i.e.* at the instance of a third party whose interests are involved. In voluntary proceedings a citation or judge's order, under Rule 21, will issue to parties interested.

[75a] *AMENDMENT OF CLERICAL ERROR.*—On application for an administration order an amendment was allowed where an unimportant mistake had been made in the name of the intestate,

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which had misled no one, and the right person had been s
and an enlargement to answer the proceedings when amend
refused (*Re Fraser, Fraser* v. *Fraser*, 2 Ch. Ch. 457).

ASSIGNMENT FOR CREDITORS—REHEARING.—
suit for the administration of a debtor's estate, under an assig
for the benefit of creditors, creditors who come in under a
may rehear the cause, and this is the proper course whe
alteration is such as might be affected in that way by a party
cause (*Mulholland* v. *Hamilton*, 12 Gr. 413).

UNNECESSARY APPLICATION.—Although the cou
protect the estate of a testator by charging the executor wi
costs of a suit for administration unnecessarily brought by
will refuse an application for administration made by the ex
if no sufficient grounds exist for it (*Barry* v. *Barry*, 19 Gr. 4

*PRACTICE AND PROCEDURE—ACCOUNT WITH R
—APPEAL.*—The master has authority to take the accou
rests, under the ordinary reference, as against an execut
when he declines to charge the executor in this way, if it
tended to appeal, he should be required to report the f
enable the Court to determine on the propriety of his de
Quære, whether it is not the more proper course to bring the
up on further directions with all the materials for consid
spread out on the report, rather than to appeal in such
(*Sievewright* v. *Leys*, 1 O. R. 375).

ACCOUNTING FOR TIMBER CUT.—Under the or
administration decree in respect of a testator's real and p
estate, the master may take an account of timber cut with
the defendants are chargeable (*Stewart* v. *Fletcher*, 18 Gr. 2
post, p. 552).

ADDING PARTY.—In an administration suit the refe
no power to make an order allowing a person claimin
adversely to the heirs to be made a party in the master's
with a view of establishing a claim there (*Re Tobin, Tobin* v.
7 P. R. 67).

CHAPTER III.

PARTIES TO ACTIONS.[76]

RULES IN FORCE.
WHO MAY BE A PARTY.
PARTIES GENERALLY.
- Plaintiffs.
- Defendants.
- Interveners.
- Parties Cited.

PARTIES IN PARTICULAR.
- Party interested in Real Estate.
- Paupers.
- Married Women.
- Minors and Infants.
- Lunatics.

THE rules relating to parties are Rules 4, 5, and 6 (Contentious Business), which are inserted in the Appendix, p. 1136; and the Rules under Order XVI. R. S. C., for the full text of which and the notes and decisions thereunder the reader is referred to "The Yearly Practice."[76a] Rules in force.

Canadian Cases.

[76] The rule that all parties interested in the subject-matter of a suit must be before the Court, should only be relaxed under Con. order 57, where the interest of justice manifestly requires it (*Quantz* v. *Smeltzer*, 6 P. R. 228).

UNNECESSARY PARTIES.—Where unnecessary parties were made to an administration suit, the Court refused to burden the estate with any of the extra costs thereby occasioned (*Rodgers* v. *Rodgers*, 13 Gr. 457; and *post*, p. 544).

In a suit by a residuary legatee for the administration of an estate, the plaintiff represents all the residuary legatees; and the other residuary legatees are not entitled as of course to charge the general estate with the costs of appearing by another solicitor in the master's office. To entitle them to such costs some sufficient reason must be shown for their being represented by a separate solicitor (*Gorham* v. *Gorham*, 17 Gr. 386).

NECESSARY PARTY.—Where in an administration suit instituted by a creditor of a deceased debtor, it is necessary to make the heir-at-law a party defendant, he is entitled to be paid his costs as between solicitor and client in priority to all other claims, although the estate may be insufficient to pay the debts proved against it (*Hartrick* v. *Quisbey*, 21 Gr. 287).

[76a] Con. Rule 185, *et seq.*, *post*, p. 878.

Who may be a party.

The foundation of title to be a party to an act the Probate Division is interest—so that whenever be shown that it is competent to the court to m decree in a suit for probate or administration, or f revocation of probate or of administration, whicl affect the interest or possible interest of any (*Kipping and Barton* v. *Ash*, 1 Roberts. 270; 4 N. C *Crispin* v. *Doglioni*, 2 Sw. & Tr. 17; 29 L. J. 130) person has a right to be a party to such a suit character either of plaintiff, defendant, or intervene *In the goods of Timothy White*, L. R. Ir. 31 Ch. 451, a creditor of a person who took an interest under was held to have a sufficient interest to entitle h extract a citation to recall letters of administrati the purpose of obtaining probate of the will). quently a party may be entitled to oppose all th tamentary papers of a deceased, and yet be disenti oppose *one* paper only, in which he has no i (*Baskcombe* v. *Harrison*, 2 Roberts. 118). Such w rule in the Prerogative Court of Canterbury as foundation of title to be a party to a cause in that and it was retained in the Court of Probate under 4, 5, and 6 (Contentious Business), see p. 1136.

Rules of Supreme Court as to parties.

The rules made under the Judicature Act do not a the rights of the same persons to be parties to probe administration actions, but vary their liabilities as t (see *post*, pp. 543, 544, 545, and 567). See R. S. C. XVI.

"Subject to the provisions of the Acts and these "in all probate actions the rules as to parties in "the Courts of Probate previously to the commen "of the principal Act shall continue to be in force" XVI. r. 10).

Parties generally.

Parties to actions in the Probate Division are de as plaintiffs, defendants, interveners, or parties cite

Plaintiffs.

Definition of "plaintiff."

By s. 100 of the Judicature Act, 1873, the term "'plaintiff' shall include every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding whether the same be taken by action, suit, petition, motion, summons, or otherwise."

Joinder of plaintiffs.

"All persons may be joined in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist whether jointly, severally or in the alternative where if such persons brought separate actions any common question of law or fact would arise." (See Order XVI. r. 1.)

Defendants.

Definition of "defendant."

By the same section the term "'defendant' shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings."

Joinder of defendants.

"All persons may be joined as defendants against whom the right to any relief is alleged to exist whether jointly, severally or in the alternative." (See Order XVI. r. 4.)

Interveners.[76b]

Definition of "intervener."

It was a rule of the Prerogative Court that, when a suit was pending, a party whose interest might by possibility be affected by the suit, should be allowed to intervene to protect his interest. He was called an "intervener." By Rule 6, Contentious Business, it is provided that parties who, previously to the passing of the Probate Act, had a right to intervene in a cause, may do so with leave of the judge (*a*) or one of the registrars, obtained by order

(*a*) The order giving a party leave to intervene is made by a registrar on summons supported by an affidavit setting out the applicant's interest.

Canadian Cases.

[76b] S. C. R., C. B. 5, *post*, p. 840.

on summons, subject to the same limitations and t
same rules with respect to costs as heretofore, *i.e.*,
the Prerogative Court.

Distinction between intervener and defendant.

The distinction between an intervener and a defen
properly so called, in the Prerogative and Probate C
was, that an intervener was a person who put i
appearance in a suit while the suit was pending.
put in an appearance on the warning of his caveat,
answer to a citation served upon him by the plaint
the commencement of the suit, he was called a defen
or if in answer to a citation to see proceedings, he
called a party cited. (See below.)

Intervener take the action as they find it

By the practice of the Prerogative Court, interv
took the cause as they found it at the time of their
vention. Hence they could of *right* do only what
might have done had they been parties in the first inst
or had their intervention occurred at an earlier sta
the cause. An intervener could not, therefore, of
when a cause was formally concluded by the public
of evidence, give a plea in the principal cause, bu
court might allow him to do so *ex gratiâ* on cause s
(*Clements* v. *Rhodes*, 3 Add. 40).

Interest must be shown by affidavit.

"Any person not named in the writ may interven
"appear in the action on filing an affidavit showin
"interest" (see R. S. C., Order XII. r. 23), and if
cognisant of the proceedings he fail to do so, he w
bound by the proceedings (*Wytcherley* v. *Andre*
P. & D. 328; and *Young* v. *Holloway*, [1895] P. 87).

Party cited.

Practice of the Court of Probate retained.

The practice of the Court of Probate with regard
issuing of citations to see proceedings has not been a
by the Supreme Court Rules, Order XVI. r. 11 (*K*
way v. *Kennaway*, 1 P. D. 148).

Who may extract a citation.

Any party may cite persons having a contrary in
to see proceedings in order that they may be bou

them. The citation will give them notice to appear in the action if they think it for their interest so to do, with the intimation that in default of their appearance judgment will be given their absence notwithstanding.

Contrary interests to be shown.

The affidavit to lead the citation should show that the parties cited have interests in the action contrary to that of the citor.

Practice.

For practice as to citations, see p. 290, and for form of citation to see proceedings, see p. 984.

It has been held that a citation to see proceedings may be served abroad without special leave.

Appearance.

The appearance must be entered at the central office.

Particular Parties.

Party interested in the Real Estate.

Before the Probate Act, 1857.

Prior to 1858 a probate granted of a will by an ecclesiastical court did not affect a devise therein contained of real estate.

Before the Land Transfer Act, 1897.

But by the Probate Act of 1857 a probate of a will in solemn form had a binding effect on such a devise, provided the parties injuriously affected by it were parties to the suit in which probate in solemn form had been decreed. This they might become, either by intervening in it with the leave of the judge, or by the party propounding the will having cited them under an order obtained from the judge for that purpose.

Effect of Land Transfer Act.

But now by s. 2 (2) of the Land Transfer Act, 1897, "all enactments and rules of law relating to the effect of "probate or letters of administration as respects chattels "real, and as respects the dealing with chattels real before "probate or administration, and as respects the payment "of costs of administration and other matters in relation "to the administration of personal estate, and the powers, "rights, duties, and liabilities of personal representatives "in respect of personal estate, shall apply to real estate so

"far as the same are applicable, as if that real estate
"a chattel real vesting in them or him, save that it
"not be lawful for some or one only of several
"personal representatives, without the authority o
"court, to sell or transfer real estate" (*b*).

Under the above section a party propounding a
may now, without an order from or leave of the j
make all parties interested in real estate disposed
the will (copyholds and customary freeholds, whe
perfect title admission by the lord is necessary, exce
defendants in the action, by deposing in the affida
lead the writ of summons, that the will disposes o
estate, and that the parties in question are interest
such real estate, stating how they are interested.

Any party interested in such real estate, if not m
party to the action in the writ of summons, may be
a party by applying at any time before or at the
under R. S. C., Order XVI. rr. 11 and 12.

Paupers.

Case for counsel's opinion.

A person desirous of proceeding *in formâ pauperis*
lay a case before counsel for his opinion whether
he has reasonable grounds for proceeding. Counse
indorse his opinion upon the case.

Affidavit in support.

The applicant must make an affidavit stating tha
case contains a full and true statement of all the ma
facts; that he is not worth £25 after payment of
(saving wearing apparel) and showing the nature o
employment and the amount of his wages.

A married woman must further state in her affi
the employment of her husband and the amount o
wages.

Registrar's order.

The case with counsel's opinion indorsed and
affidavit must be left in the Contentious Departm

(*b*) See Robbins and Maw, Devolution of Real Estate, 3rd ed., p
32, 273-280.

and the order giving leave to proceed as a pauper (if the registrar is satisfied) will be drawn by the registrar's clerk.

In the case of a defendant, leave must be obtained by summons without fee, before a registrar, supported by affidavit and case as above. Application by defendant.

Subject to the practice set out above, Order XVI. rr. 22 to 31 would appear to be applicable to probate actions. Supreme Court rules.

Married Women.

"Married women may sue and be sued as provided by "the Married Women's Property Act, 1882" (rule 16). (*a*)

In probate suits in the Ecclesiastical Courts, and subsequently in the Court of Probate, a married woman might sue or be sued without her husband being a necessary party to the suit. But the court might, in its discretion, make an order for him to be joined with her as a party for the purpose of making him liable for costs.

Minors and Infants.[77]

The practice with regard to guardians of parties who are under 21 years of age varies in some respects from that in other divisions. Practice in non-contentious business followed.

(*a*) See also the recent case of ***Crickitt*** v. ***Crickitt*** mentioned on p. 569.

Canadian Cases.

[77] *INFANT—DEVASTAVIT.*—An infant, whether executor or executor *de son tort*, is not liable for a *devastavit* (*Young* v. *Purves*, 11 O. R. 597; and see *Hyne* v. *Brown*, 13 P. R. 17).

INFANT—LIABILITY TO ACCOUNT.—In a suit for the partition of the real estate of an intestate who was one of the executors of his father's will and had taken possession of the personal estate and who died a minor, it was claimed on behalf of infant legatees, who had not been paid their legacies, that an account should be taken of the personal estate which had come to the hands of such executor, and that their shares thereof might be charged upon the land in question before partition:—*Held*, that the executor

The president (Sir J. Hannen) directed that Rule
Contentious Business, must be followed when i
desired to institute proceedings or enter an appearanc
behalf of minors or infants.

The rule is as follows: "A minor may elect a guard

Canadian Cases.

having been a minor, his estate was not liable to account ther
(*Nash* v. *McKay*, 15 Gr. 247).

INFANT EXECUTOR.—Administration proceedings t
against an infant co-executor without observing the usual prac
of serving the official guardian, are invalid (*Re Jackson*, *Mass*
Crookshanks, 12 P. R. 475).

The provision of the rules and general orders as to servic
case of infancy apply whether the infant be a sole or a j
defendant, and whether he be sued personally or in a representa
capacity (*Ib.*).

INFANT'S MAINTENANCE.—Where the Court is satis
that the question of maintenance arose incidentally in a suit,
that it was properly instituted in order to the administration o
estate and not as an indirect mode of doing what ought to be d
under the provisions of 12 Vict. (now R. S. O., 1897, c. 168),
the order of this Court made to carry out the same, the ques
of maintenance, past as well as future, can properly be dealt w
inasmuch as a great deal of the information required by the stat
and orders referred to can be obtained in taking the account
such suit, but where such a suit was instituted by a party ask
for maintenance out of the corpus of the estate, the Court, s
check upon such suits, refused to make any direction as to ma
tenance (*Goodfellow* v. *Rannie*, 20 Gr. 425).

Infant children of an intestate obtained an administration or
against their mother, the administratrix, and the master found
proper to be allowed for their maintenance a sum to meet wh
the personal estate was inadequate, and on further directions a
was asked of the realty to satisfy the sum so allowed. The Co
refused to sanction such a sale, being satisfied that the suit
been instituted for that purpose merely, and was an indirect
of doing what ought to be done under the provisions of 12 V
(now R. S. O., 1897, c. 168), and the order of this Court made
carry that Act into effect, and as the report furnished only a su
part of the information which would necessarily be laid before
Court under the Act and order referred to (*Fenwick* v. *Fenwick*,
Gr. 381).

"for the purpose of carrying on, defending, or intervening "in a suit in the same manner and subject to the same "rules as in respect of non-contentious business, but a "guardian must be assigned to an infant by an order of "a registrar founded upon an affidavit."

Definition of minor and infant.

[A "Minor" is under 21 and over 7 years of age; an "infant" under 7 years.]

Practice.

If, therefore, there is no testamentary guardian, or guardian of the estate of the party appointed by the Chancery Division, the guardian *ad litem* must be the next-of-kin of the party unless such next-of-kin renounces, or is incapable of acting on one of the following grounds: (1) That he has an interest in the action contrary to that of the minor or infant; (2) that he himself is not *sui juris;* or (3) when a married woman is next-of-kin, the president (Sir G. BARNES), following the decision *In re Somerset*, 34 Ch. D. 465, held that she cannot act as guardian *ad litem*.

Married woman cannot act.

Where mother is guardian.

No election or assignment is required where the mother (being next-of-kin and a widow) or her appointee under the Guardianship of Infants Act, 1886, is the proposed guardian, but an affidavit showing that she has not any contrary interest is required.

Affidavit in support.

An affidavit by the solicitor must be filed showing that the proposed guardian is a fit and proper person to act, that he is next-of-kin of the party (or that the next-of-kin has renounced), that he has no contrary interest in the action, that there is no testamentary guardian or guardian of the estate of the minor or infant appointed by the Chancery Division, and exhibiting the consent of the proposed guardian to act. See also Rules 33–36, Non-Contentious Business, pp. 120 to 127, and p. 803.

Approval of registrar.

Before an appearance can be entered for a minor the affidavit election and appearance must be taken to a registrar for his approval.

Court to have regard to the

It is within the province of the court to inquire whether an action by a guardian *ad litem* on behalf of infants is

interests of minors and infants.

for their benefit, and to make an order for their prot (*Percival* v. *Cross*, 7 P. D. 234).

Default of appearance by minors.

Where the defendant was a minor resident out jurisdiction and notice of the writ was served upo her guardian (appointed by a foreign court) havi clined to enter an appearance, the court nominate official solicitor her guardian *ad litem* under Order r. 1, see p. 391 (*White* v. *Duvernay*, [1891] P. 290).

In *Brassington*, [1902] P. 1, the court granted p of a torn will to the executrix notwithstanding th persons who would have been interested under an int were not *sui juris*, and that no guardian had been appo to represent them.

For compromise on behalf of minors and in see p. 348.[77a]

Lunatics.

The rules contained in Order XVI. with rega actions by and against lunatics and persons of un mind are as follows:—

How insane persons may sue or defend.

"Where lunatics and persons of unsound mind "found by inquisition might respectively before the "ing of the principal Act have sued as plaintiffs or "have been liable to be sued as defendants in any "or suit, they may respectively sue as plaintiffs in

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Canadian Cases.

[77a] *PARTIES — NEXT-OF-KIN — REMOVAL TO COURT.*—The plaintiffs propounded a will in a surrogate under which they took the whole estate and were nam executors. The defendant, who was one of several next-of-k having an equal interest if the will was invalid, contest validity. The other next-of-kin also disputed the will, but not acting in concert with the defendant. Upon an obj taken by the defendant at the trial, it was held that the next-of-kin should be made parties; and the trial was adjo for that purpose, it appearing that they could convenien added (*Cornill et al.* v. *Smith* (1890), 14 P. R. 275).

"action by their committee or next friend according to "the practice of the Chancery Division, and may in like "manner defend any action by their committees or "guardians appointed for that purpose" (Rule 17).

Consent of persons under disability to proceed.

"In all causes or matters to which any infant or person "of unsound mind, whether so found by inquisition or "not, or person under any other disability, is a party, any "consent as to the mode of taking evidence or as to any "other procedure shall, if given with the consent of the "court or a judge by the next friend, guardian, committee, "or other person acting on behalf of the person under "disability, have the same force and effect as if such party "were under no disability and had given such consent.

"Provided that no such consent by any committee of a "lunatic shall be valid as between him and the lunatic "unless given with the sanction of the Lord Chancellor or "Lords Justices, sitting in lunacy" (Rule 21).

These rules would apparently govern the practice in the Probate Division save that the person preferred as guardian of the lunatic *ad litem* is the same (if there be no contrary interest) as he who would be entitled to take a grant on the lunatic's behalf, see pp. 128–131.

CHAPTER IV.

WRIT OF SUMMONS.[77b]

ACTIONS COMMENCED BY WRIT.
HOW ISSUED.
- Affidavit to lead Writ.
- Citations in Revocation Actions.
- Regulations as to Writs.
- Date and teste.

INDORSEMENTS OF CLAIM.
- Forms of Claim.
- Who should be Defendants.

INDORSEMENT OF ADDRESS.
PRACTICE ON ISSUING WRITS.
WRITS FOR SERVICE OUT OF JURISDICTION.
CONCURRENT WRITS.
CHANGE OF SOLICITORS.
RENEWAL OF WRITS.
SERVICE OF WRITS—
- Mode.
- Substituted service.
- On particular Defendants
- Indorsement of Service.
- Out of Jurisdiction.

Action commenced by writ.

AN action in the Probate Division, as in other division the High Court, "is commenced by a writ of summ "issued at the instance of the plaintiff against the de "dant, which is to be indorsed with a statement of "nature of the plaintiff's claim against the defenda (Order II. r. 1), and also the defendant's interest. (p. 383.)

HOW ISSUED.

Affidavit to lead writ.

"The issue of a writ of summons in probate act "shall be preceded by the filing of an affidavit made "the plaintiff or one of the plaintiffs in verification of "indorsement on the writ" (Order V. r. 15).

Certificate that affidavit is filed.

"No writs are to be issued in the Probate Divi "unless on a certificate [*i.e.* of the registrar] that the "davit required by Order V. r. 15 has been filed" (Prac Master's Rule).

Actions for

It is important to remember that the issue of a wr

Canadian Cases.

[77b] The Surrogate Court Rules do not provide for the comme ment of an action in the surrogate court by writ of summons proceedings subsequent to the commencement of the action f the practice of the High Court (S. C. Rules 2 and 3, C. B., pp. 839, 840). Actions are commenced in the surrogate cou (1) by entering a caveat (S. C. R. 21, *et seq.*); (2) by cit (S. C. R. 1, C. B., or judge's order, S. C. R. 21; *post*, p. 830 *ante*, p. 281). The address of the person commencing the a must be given (see Con. Rules of Practice, 134, 135, and 136; *ante*, p. 287).

summons in an action for the revocation of probate or of letters of administration must, by the practice, be either preceded by or be simultaneous with the issue of a citation against the party to whom the grant of probate or administration was made, requiring him to bring into and leave in the probate registry the grant, and to show cause why it should not be revoked.

revocation—citation to recall grant.

There must be an affidavit filed to lead this citation in verification of the facts on which it is founded, and it is convenient that this affidavit should contain particulars sufficient to lead the writ.

Affidavit in support of citation.

A caveat must be entered before the citation can issue (Rule 15, Contentious Business).

Entry of caveat.

For forms of citations to bring in grants, see pp. 984 to 986, and of indorsement of service, see p. 977; for practice as to citations, see p. 290.

The regulations as to issue of writs, the form of indorsements to be made on writs of summons, and the renewal and service of writs, are provided for in the Rules of the Supreme Court, from Order II. to Order XI.[77a]

Regulations as to writs.

"Every writ of summons and also (unless by any statute "or by these Rules it is otherwise provided) every other "writ, shall bear date on the day on which the same shall "be issued, and shall be tested in the name of the Lord "Chancellor, or, if the office of Lord Chancellor shall be "vacant, in the name of the Lord Chief Justice of England" (Order II. r. 8).

Date and teste.

Indorsements of Claim.

"The indorsement of claim shall be made on every writ "of summons before it is issued" (Order III. r. 1).

"In probate actions the indorsement shall show whether "the plaintiff claims as creditor, executor, administrator, "residuary legatee, legatee, next-of-kin, heir-at-law, de-"visee, or in any and what other character" (Order III. r. 5).

Indorsement to show plaintiff's interest.

Canadian Cases.

[77a] An affidavit is required before a citation will be issued (S. C. R. 30, *post*, p. 832).

Forms of Indorsements of Claim.

For probate in solemn form.

"1. By an executor or legatee propounding a w
"solemn form.

"The plaintiff claims to be executor of the last
"dated the day of of C. W., late of
"gentleman, deceased, who died on the day of
"and to have the said will established. This w
"issued against you as one of the next-of-kin of the
"deceased [*or as the case may be*].

For probate of will (or letters of administration) and revocation of probate of pretended will.

"2. By an executor or legatee of a former will,
"next-of-kin or devisee, etc., of the deceased seeki
"obtain the revocation of a probate granted in con
"form.

"The plaintiff claims to be executor of the last
"dated the day of of C. D., late of
"gentleman, deceased, who died on the day of
"and to have the probate of a pretended will of the
"deceased, dated the day of revoked.
"writ is issued against you as the executor of the
"pretended will [*or as the case may be*].

For probate of will and revocation of grant of administration.

"3. By an executor, legatee or devisee of a will
"letters of administration have been granted as i
"intestacy.

"The plaintiff claims to be executor of the last wi
"C. D., late of gentleman, deceased, who die
"the day of dated the day of

"The plaintiff claims that the grant of letters of
"ministration of the estate of the said deceased obta
"by you should be revoked, and probate of the said
"granted to him.

Interest suit.

"4. By a person claiming a grant of administratio
"a next-of-kin of the deceased, but whose interes
"next-of-kin is disputed.

"The plaintiff claims to be the brother and sole n
"of-kin of C. D. of gentleman, deceased, who
"on the day of intestate, and to have as

"a grant of administration to the personal estate of the "said intestate. This writ is issued against you because "you have entered a caveat, and have alleged that you "are the sole next-of-kin of the deceased [*or as the case "may be*]." (See Appendix Q, Part I., R. S. C.)

Who should be Defendants.

The interests of the defendant must also be indorsed on the writ.

In determining who are to be defendants to the writ, and in settling the indorsement of claim, it is of importance to consider:—

1. Who are to be made defendants in the action, and whether all or some of them only shall be made defendants to the original writ.

Consideration as to parties to be defendants to writ, as to indorsement of claim, and as to affidavit verifying indorsement.

When the action arises from the entry of a caveat the indorsement of the defendant's interest should correspond with that disclosed in his appearance to the warning, but all parties whose interests are or may by possibility be affected by the judgment claimed should be made defendants in the action in order to obtain an irrevocable grant.

At the commencement of an action it may be difficult to ascertain promptly and with certainty who all these parties may be, owing for instance in a testamentary suit to the plaintiff not having under his control all the deceased's testamentary papers, or to his not having necessary information as to the names and residences of the parties, and in such case it may be convenient to make some only of the proposed defendants parties to the writ in order that it may issue without delay, and to bring in the others by issuing a citation against them to see proceedings (*Kennaway* v. *Kennaway*, 1 P. D. 148), or by filing an amended copy of and suing out a writ of summons, and serving such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served (Order XVI. r. 13).

2. The nature of the claim to be put forward.

Thus, in an action for proof of a will in solemn is material to consider whether the plaintiff shall one or more testamentary instruments, or whether claim in the alternative, *e.g.*, probate of an earlier the event of the last will propounded by hin pronounced against, etc.

3. The nature of the defendants' interest.

The indorsement of claim must show the grou bringing the defendants into the action, whether a of-kin, heir-at-law, or as a party entitled in distribu as interested under another will; and if interested another will, the date of the will and the nature interest should appear. In framing the affidavit ve the indorsement, it is convenient to include in names of all the parties who by possibility mi affected by the decree claimed, and it will then se the affidavit to lead any subsequent citation that n issued by way of notice to make other parties defen

Indorsement of Address.[77d]

The address of the plaintiff and the name and add his solicitor must be indorsed on the writ.

Address for service. If the solicitor's address is more than three miles the Royal Courts of Justice, an address for service must be within that limit must be indorsed.

Agency cases. Where a solicitor is acting as agent, the nam address of his principals must also be inserted.

Party suing in person. A plaintiff suing in person must indorse his own aud address, and if necessary an address for service.

See more fully Order IV. rr. 1 and 2.

Practice.

Certificate of sufficient affidavit. The solicitor should bring the writ (for form, see p. 1 together with the affidavit in support, to the registrar,

Canadian Cases.

[77d] *Ante*, p. 380.

if satisfied, will sign the certificate that a sufficient affidavit in verification of the indorsement on the writ has been filed This certificate is printed on the form of writ for use in probate actions.

The affidavit should be made by a plaintiff, and should verify not only the plaintiff's claim, but also the interests of the defendants as set out in the indorsement, and, as has been suggested, those of any other persons whom it is proposed subsequently to add as defendants. **Affidavit.**

For form of affidavit, see p. 958.

The affidavit is left with the registrar. The writ is taken to the Writ Department, Royal Courts of Justice, where a sealed copy is issued by the proper officer (Order V. rr. 2 and 11). **Issue of writ.**

A copy of the writ must then be filed in the Contentious Department at the registry.

Writs for Service out of Jurisdiction.

No writ of summons for service out of the jurisdiction or of which notice is to be given out of the jurisdiction shall be issued without the leave of the court or a judge (R. S. C., Order II. r. 4). **Leave must be obtained.**

For practice, see under "Service out of Jurisdiction," p. 336.

For forms of writ, affidavit in support, and of notice in lieu of service, see pp. 1080, 967, and 1081 respectively.

Concurrent Writs.

A concurrent writ is issued under R. S. C., Order VI. for service either within or without the jurisdiction. It is issued in the same way as the original, and is marked "concurrent." It must be issued either simultaneously with, or within a year of, the original writ.

Sealing fee, 2*s.* 6*d.*

Change of Solicitor.[78]

A party to an action may change his solicitor
notice of such change being filed in the central
under R. S. C., Order VII. r. 2, but notice of change
also be filed in the Contentious Department at the regi
For forms of notices, see pp. 996, 997.

Renewal of Writ.

By R. S. C., Order VIII. r. 1, "No original wr
"summons shall be in force for more than twelve mo
"from the day of the date thereof."

The rule goes on to provide for the renewal of writs

Practice in registry.

The applicant should bring his writ to the regis
together with an affidavit setting out the date of the
and showing that the defendant has not been served,
it has not been possible to serve him, and generally
grounds of the application. The registrar will ind
leave for renewal on the writ.

Fee, 3*s.*

The affidavit is filed in the Contentious Department

The writ must be taken to the Central Office fo
newal.

Sealing fee, 2*s.* 6*d.*

Service of Writ of Summons.[78a]

Mode of Service.

Undertaking to accept service.

"No service of writ shall be required when the de
"dant, by his solicitor, undertakes in writing to ac
"service, and enters an appearance" (Order IX. r. 1).

Canadian Cases.

[78] An appeal for a change in the conduct of a reference mu
in the form of a substantive application (*Thompson* v. *Fairbair*
P. R. 533).

[78a] For service of citations, etc., see S. C. R. 30, *post*, p.
When service is not provided for by the S. C. R., it will follow
practice of the High Court.

"When service is required the writ shall, wherever it is "practicable, be served in the manner in which personal "service is now made (Order IX. r. 2), *i.e.*, by leaving "with the defendant a true copy of the writ and by showing him the original if so required." Personal service. Substituted service.

For form of affidavit of service, see p. 960.

Substituted Service.

"Every application to the court or a judge for an order "for substituted or other service, or for the substitution "of notice for service, shall be supported by an affidavit "setting forth the grounds upon which the application is "made" (Order X. r. 1). The application may be made to a registrar. Application, how made.

On Particular Defendants.

Order IX. rr. 3, 4, 5, and 8, provide as follows:—

"When husband and wife are both defendants to the "action, they shall both be served unless the court or a "judge shall otherwise order" (Rule 3). Husband and wife.

"When an infant is a defendant to the action, service "on his father or guardian, or if none, then upon the "person with whom the infant resides or under whose "care he is, shall, unless the court or a judge otherwise "orders, be deemed good service on the infant; provided "that the court or judge may order that service made or "to be made on the infant shall be deemed good service" (Rule 4). Infant.

"When a lunatic or person of unsound mind not so "found by inquisition is a defendant to the action, service "on the committee of the lunatic, or on the person with "whom the person of unsound mind resides or under "whose care he is, shall, unless the court or a judge "otherwise orders, be deemed good service on such defendant" (Rule 5). Lunatic.

Corporation.

"In the absence of any statutory provision r
"service of process, every writ of summons issue
"a corporation aggregate may be served on the
"other head officer, or on the town clerk, clerk,
"or secretary of such corporation . . ." (Rule 8).

Indorsement of Service.

Indorsement of service.

"The person serving a writ of summons shal
"three days at most after such service, indors
"writ the day of the month and week of the
"thereof, otherwise the plaintiff shall not be at
"in case of non-appearance, to proceed by defa
"every affidavit of service of such writ shall mer
"day on which such indorsement was made. T
"hall apply to substituted as well as other
(Order IX. r. 15).

Service out of Jurisdiction.[78b]

Order XI. r. 3 provides that:—

Leave to be obtained from judge.

"In probate actions service of a writ of sum
"notice of a writ of summons, may, by leave of t
"or a judge, be allowed out of the jurisdiction
application should be made to a judge (*a*).

Where there is only one defendant and he is ou
jurisdiction, or where all the defendants are out of t
diction, leave should be asked to *issue and serve* th

Affidavits in support.

"Every application for leave to serve such
"notice on a defendant out of the jurisdiction s
"supported by affidavit, or other evidence, stating
"the belief of the deponent the plaintiff has a goo

(*a*) Order XI. r. 8 has been applied to Russia and German
therefore it is desired to serve notice of writ in either country
cedure set out in that rule must be adopted. The fee on be
the service is £1.

Canadian Cases.

[78b] See Con. Rule 162.

"of action, and showing in what place or country such "defendant is or probably may be found, and whether "such defendant is a British subject or not, and the "grounds upon which the application is made; and no "such leave shall be granted unless it shall be made "sufficiently to appear to the court or judge that the case "is a proper one for service out of the jurisdiction under "this order" (Order XI. r. 4).

The affidavit should be taken to the judge's clerk for him to obtain the judge's approval. The judge will place his initials and the date on the affidavit. It should then be taken to the registrar's clerk at the registry, who draws up the order, in which is inserted the time limited for appearance. Practice.

Fee for order, 5*s.*; for filing affidavit, 2*s.* 6d.

"When the defendant is neither a British subject nor "in British dominions, notice of the writ, and not the "writ itself is to be served upon him" (Order XI. r. 6). Notice in lieu of writ.

When the order has been obtained, it should be taken to the Writ Department to be marked for service out of the jurisdiction.

For form of order, see p. 1057.

CHAPTER V.

APPEARANCE.[78c]

WHERE AND HOW ENTERED.
NOTICE OF APPEARANCE.
SERVICE OF NOTICE.
APPEARANCE AFTER TIME HAS EXPIRED.
DEFAULT OF APPEARANCE—
By Infant or Person of U
sound Mind.
Action may Proceed.

Entered at Central Office.

APPEARANCES to writs of summons and to citations to s proceedings are entered in the Writ Department at t Central Office.

The appearance of a party cited is entered on producti of the citation.

Notice of every appearance entered is given by t Central Office to the Probate Registry.

Mode of entry.

The form of appearance will be found on p. 968; th must be filled up in duplicate. One form must bear impressed stamp (fee, 2*s.* for each defendant), and delivered to the proper officer; the other is sealed a returned to the solicitor for transmission to the oppos party.

Address for service.

The defendant's solicitor must state in his appearan his place of business, and an address for service if h place of business is beyond three miles from the Centr Hall, Royal Courts of Justice.

See Order XII. rr. 2, 3, 8, and 10.

A solicitor cannot act for plaintiff and defendant.

The same solicitor cannot act for plaintiff and defe dant except by leave of the judge (President's direction)

Notice.

Notice of appearance must be given to the plaintif solicitor on the day upon which the entry is made.

Canadian Cases.

[78c] In contentious business the practice is that prescribed by t Con. Rules 168, *et seq.* (see S. C. R. 2, C. B., *post*, p. 839; S. C. 28, *post*, p. 831).

The notice may be served in the ordinary way, or it may be sent by post. In either case it must be accompanied by the sealed duplicate (Order XII. r. 9). Service of notice.

"A defendant may appear at any time before judgment. "If he appear at any time after the time limited by the "writ for appearance, he shall not, unless the court or a "judge shall otherwise order, be entitled to any further "time for delivering his defence, or for any other purpose, "than if he had appeared according to the writ" (Order XII. r. 22). Appearance after time has expired.

As to the appearance of interveners, see p. 372.

An appearance to warning or to a citation to accept or refuse a grant must be entered in the Contentious Department. Appearance to warning or to citation to accept or refuse grant.

Default of Appearance.[784]

There is no class of action in which the interests of infants and persons of unsound mind are more carefully safeguarded than those in the Probate Division; the rule, therefore, as to default of appearance by such is inserted verbatim.

"Where no appearance has been entered to a writ of [illegible]ns for a defendant who is an infant or a person [illegible]nsound mind not so found by inquisition, the plaintiff [illegible]shall, before further proceeding with the action against "the defendant, apply to the court or a judge for an order "that some proper person be assigned guardian of such "defendant, by whom he may appear and defend the "action. But no such order shall be made, unless it "appears on the hearing of such application that the writ "of summons was duly served, and that notice of such "application was, after the expiration of the time allowed "for appearance, and at least six clear days before the "day in such notice named for hearing the application, Infant or person of unsound mind.

Canadian Cases.

[784] S. C. R. 24, *post*, p. 831.

"served upon or left at the dwelling-house of the pers
"with whom or under whose care such defendant was
"the time of serving such writ of summons, and also
"the case of such defendant being an infant not resid
"with or under the care of his father or guardian) serv
"upon or left at the dwelling-house of the father
"guardian, if any, of such infant, unless the court or jud
"at the time of hearing such application shall dispe
"with such last mentioned service" (Order XIII. r. 1).

Official solicitor nominated guardian.

In *White* v. *Duvernay*, [1891] P. 290, the judge, und this rule, nominated the official solicitor of the co guardian *ad litem* of a minor residing abroad, wh guardian had been served with notice and refused appear, and ordered the plaintiff to provide for t guardian's costs.

Infant born after judgment.

Where an infant, a necessary party to the action, born after judgment, proceedings may be taken to ma him a party to a supplemental action (*Capps* v. *Cap* 4 C. D. 1; *Peter* v. *Thomas Peter*, 26 C. D. 181).

Action may proceed as if party had appeared.

In probate actions, in case the party served with t writ does not appear within the time limited for appea ance, upon the filing by the plaintiff of a proper affida of service, the action may proceed as if such party h appeared (Order XIII. r. 12).

For the practice under this rule if no defendant appea see "Short Causes," p. 525.

For affidavit of service of writ, see p. 960.

CHAPTER VI.

PRESERVATION OF PROPERTY DURING ACTION.

ADMINISTRATOR AND RECEIVER PENDENTE LITE.
- Power to appoint.
- Practice on application for.
- Principles on which Court acts.
- Nature of Grant.
- Administrator's Account.
  - How vouched.
  - Remuneration.

ORDERS FOR SALE OF PROPERTY.
ORDERS FOR DETENTION OF PROPERTY.
MANDAMUS AND INJUNCTION.
PAYMENT INTO COURT.
- Payment out.
- Practice.

CERTAIN interlocutory proceedings should now be noticed, by which the court protects, or otherwise deals with, the property of the deceased whose testamentary dispositions or representation are the subject of litigation before it. They are either statutory or under the rules of court. The first and most important of these is the appointment of an administrator and receiver *pendente lite*.

ADMINISTRATOR AND RECEIVER PENDENTE LITE.[78e]

Power to appoint administrator.

As to the appointment of an administrator *pendente lite*, see s. 70 of the Court of Probate Act, 1857:—

"Pending any suit touching the validity of the will of "any deceased person, or for obtaining, recalling, or re- "voking any probate or any grant of administration, the "Court of Probate may appoint an administrator of the "personal estate of such deceased person; and the ad- "ministrator so appointed shall have all the rights and "powers of a general administrator, other than the right of "distributing the residue of such personal estate; and "every such administrator shall be subject to the imme- "diate control of the court, and act under its directions."

Canadian Cases.

[78e] S. C. Act, s. 56, *post*, p. 680; *Re Beckwith*, 5 U. C. L. J., 1859, p. 256; and Con. Rules 195 and 1097, *post*, p. 878; and *ante*, p. 323.

See also, as to the House of Lords appeals, s. 22 Probate Act, 1858.

Power to appoint receiver.

As to the appointment of a receiver of the real est see s. 71 of the Court of Probate Act, 1857:—

"It shall be lawful for the Court of Probate to appo "any administrator appointed as aforesaid or any ot "person to be receiver of the real estate of any decea "person pending any suit in the court touching "validity of any will of such deceased person by wh "his real estate may be affected (*a*); and such recei "shall have such power to receive all rents and profits "such real estate, and such powers of letting and man "ing such real estate, as the court may direct." See a s. 21 of the Court of Probate Act, 1858.[79]

Application how made.

Applications made on motion.

Applications for the appointment of an administra or (and) a receiver *pendente lite* are made in the f

(*a*) It would seem that if the deceased died on or since January 1898, possessed of real estate, a receiver might be appointed in action.

Canadian Cases.

[79] *ADMINISTRATOR AD LITEM.*—It is competent to Court, on a proper case being made, to appoint or dispense with administrator *ad litem*, and then to direct an account, but to jus such an order it should appear not only in general terms that estate was small, but a statement showing the nature and amo of the personal estate ought to be produced and verified (*Re Co Fisher* v. *Colton*, 8 P. R. 542).

It is not intended by Con. Rule 311 that the business of surrogat court should in a large measure be transferred to High Court; the intention is to provide for necessities arising the progress of an action, when representation of an estat required in the action, and there has not been carelessness negligence on the part of the person who may require the appo ment to be made. Under the circumstances of this case, application for the appointment of an administrator *ad litem* refused (*Re Chambers*, 12 P. R. 649; distinguished *Meir* v. *Wil* 13 P. R. 33; and *ante*, p. 320).

instance to the court on motion, and the application should be supported by an affidavit of the applicant, or of his agent, stating the nature and value of the personal or real estate left by the deceased, and showing that there is some object or necessity in an administrator or receiver being appointed pending the action: *e.g.*, for the preservation or protection of the deceased's property; for the receipt and investment of rents, etc.; for the payment of debts and interest on mortgages, etc.

Notice to be served on all parties interested.

Notice of motion must be served on all parties to the action. Notice must be given to the heir-at-law (even if an infant) if the proposed administrator is to deal with realty as well as personalty (*Wiggin* v. *Hudson*, 80 L. T. 296); and if he is not before the court, evidence of service of the notice will be required.

The application may be made before the summons for directions (Order XXXI. r. 16), but the appointment cannot be made before the writ has been issued (*Salter* v. *Salter*, 65 L. J. 117; [1896] P. 291, C. A.).

If it is desired to serve the notice of motion simultaneously with the writ, leave may be obtained from the judge, and the fact that such leave has been obtained should be set out in the case on motion.

Principles upon which the Court acts.

Practice of Probate Court assimilated to that of Chancery.

The practice of the Probate Court is assimilated to the practice of Court of Chancery in appointing a receiver, and the general rule is, that whenever there is a suit pending, an administrator *pendente lite* will, on application, be appointed, irrespective of the condition of the estate, or of the person who has actual possession of it (*Bellew* v. *Bellew*, 4 Sw. & Tr. 58; 34 L. J. 125).

The Chancery Division will not appoint a receiver of personal estate, where an administrator *pendente lite* has been appointed by the Probate Court (*Veret* v. *Duprey*, L. R. 6 Eq. 329). Where there is a probate or administration action in the Probate Division, the Chancery

Division will not appoint a receiver unless a much stron case is made out than was required before the Probate came into operation (*Hitchen* v. *Birks*, L. R. 10 Eq. Ca 471).

But the Probate Court will appoint an administra *pendente lite* if it is just and proper to do so, althoug receiver may have been appointed by the Court of Chance in a suit pending between the same parties and affect the same property. The Court of Chancery will th discharge its own receiver and keep its hold over administrator appointed by the Probate Court (*Tichbo* v. *Tichborne*, 1 P. & M. 730; and also 2 P. & M. 41).

A husband appointed his wife sole executrix. She to probate of his will, and died leaving a will, the validity which was in dispute. Pending the action a represen tive of the husband was required to receive money due his estate. An administrator *pendente lite* was appoin to the husband's estate (*Fawcett*, 14 P. D. 152).

Cases where the court has declined to appoint an administrator *pendente lite*.

The court declined to appoint an administrator *pende lite* in a case where the deceased's property was inves in a farming business, which he had carried on in partn ship with his brother, who was continuing it, as there no sufficient evidence that the brother (who opposed application) was wasting the estate (*Horrell* v. *Wi* 1 P. & M. 103; 35 L. J. 55).

Lord PENZANCE, in that case, said: "The only result "making a grant of administration *pendente lite* now wo "be the appointment of some person to wrangle with "surviving partner as to the management of the fa "When one out of four or five partners in a commerc "firm dies, the court does not thrust a stranger to "business into the partnership, to represent the interest "the deceased partner. The same rule is applicable t "farming business. I do not say that an extreme c "might not arise in which the court would interfere "prevent the destruction of property which had b "held in partnership. At present the case is not str

"enough to induce the court to interfere; and I reject the "motion."

So, also, where a suit was pending to try the validity of a codicil only, which did not affect the appointment contained in the will of the executor, the court rejected, with costs, a motion for the appointment of an administrator *pendente lite*, on the ground that the executor was clothed with power, and was the proper person to administer the estate (*Mortimer* v. *Paul*, 2 P. & M. 85; 39 L. J. 47).

Appointment of administrator *pendente lite* on the application of a person not a party to the suit.

The court has appointed an administrator *pendente lite* on the application of a person not a party to the suit. Thus, in a contested suit, which was likely to be protracted, the court, on the application of a creditor, who was not party to the suit, appointed a person—who had been appointed receiver of the estate in the Court of Chancery—as administrator *pendente lite*, in order to enable the creditor to obtain payment of his debts (*Tichborne* v. *Tichborne*, 1 P. & M. 730; 39 L. J. 22. See also *Cleaver*, [1905] P. 319).

So, also, where the parties to a pending action were taking no steps to bring it to trial, and a receiver of the deceased's estate had been appointed in an administration action in Chancery, the receiver, on the application of a creditor, was appointed administrator *pendente lite* with directions to pay the debt (*Evans*, 15 P. D. 215).

Who is appointed.

Where the parties on the motion do not consent to the appointment of any particular person as the administrator or receiver, the practice is for the court to refer the matter to the registrar to appoint some indifferent person. A party unconnected with the suit is the most proper person to be appointed (*De Chatelain* v. *Pontigny*, 1 Sw. & Tr. 34; 27 L. J. 18); and the rule is that a party to a suit is never appointed unless all parties consent.

If the person is to be nominated by a registrar, an appointment for that purpose must be obtained from the

"taxing" registrar. The amount of the security to given will also be fixed at the appointment.

For form of Bond of Receiver *and* Administrator, p. 975.

When the administrator *pendente lite* was ordered give security in a penal sum of £10,455, the court allow him, on terms, to pay £50 out of the estate to a guaran society for entering into a bond on his behalf (*Harver Harver*, 14 P. D. 81).

Nature of Grant.

When the order has been made the solicitor shou lodge his papers for a grant in accordance with the pract described under non-contentious business (p. 131).

If the deceased died on or since January 1st, 1898 is convenient (unless the order otherwise directs) that t grant should include the real and personal estate.

But if the death occurred before that date (or if separate appointment is ordered), a formal appointme of a receiver must be obtained to enable the real estate be dealt with. The appointment (for form, see p. 96 is drawn by the registrar's clerk, stamped with t President's signature and sealed. Fee, £1. Form of Bo of Receiver, see p. 974.

Powers of Appointee.

Powers of appointee.

The powers of the person appointed are shown in t sections, see pp. 393, 394.

Direction of the Court may be obtained.

In the event of any difficulty or dispute arising in t administration, the direction of the court may be obtain by summons before a registrar. With regard to perso estate, he has all the powers of a general administra other than the right of distributing the residue.

An administrator *pendente lite* is merely an officer the court; his administration is to be under the directi of the court to represent the deceased (*Graves*, 1 Hag 313) In exercise of its control under s. 70 the co will not order an administrator *pendente lite* to pay

legatee his legacy under the will in question, except by consent of all parties interested (*Whittle* v. *Keats*, 35 L. J. 54).

In *Charlton* v. *Hindmarsh* (1 Sw. & Tr. 519) the court directed that he should not discharge claims on the deceased's estate until they had passed before the registrar. But the court will not interfere with an order made by the Chancery Division on him in reference to the sale or management of the property (*Tichborne* v. *Tichborne*, 2 P. & M. 41; 39 L. J. 22; *Cleaver*, [1905] P. 319).

The Probate Division has no power to stay proceedings brought against an administrator *pendente lite* in the Chancery Division. Leave should be given him to defend these proceedings, and he should apply for his costs both in the probate and chancery proceedings (*Martin* v. *Tolerman*, 77 L. T. 138)

Duration of office.

The duties of an administrator and a receiver, pending suit, commence from the date of the order of appointment, and terminate with the decree (*Wieland* v. *Bird*, [1894] P. 262); in the case of an appeal, they continue until the appeal has been disposed of (*Taylor* v. *Taylor*, 6 P. D. 29).

The administrator *pendente lite* and receiver holds the property only until the suit terminates, and he is then bound, and the court will compel him to pay all that he has received to the person pronounced by the court to be entitled (*Charlton* v. *Hindmarsh*, 1 Sw. & Tr. 519).

Accounts of Administrator and Receiver pending Suit.[79a]

"Every administrator *pendente lite* and receiver of real "estate shall exhibit an inventory and render an account "of the property of the deceased which comes to his "hands, and the accounts of every such administrator and "receiver shall be referred to the registrars of the principal

Canadian Cases.

[79a] *Beatty* v. *Haldan*, 4 A. R. 239, *ante*, p. 319; S. C. R. 35, *post*, p. 832; *Bell* v. *Landon*, 18 U. C. L. J. 178; *Grant* v. *McLaren*, 23 S. C. R. 510; 14 C. L. T. 363; and *ante*, p. 319.

"registry for investigation and report, before the same
"allowed by the court, unless the judge shall otherw
"direct; and the foregoing rules and orders respect
"the taxation of costs shall, so far as the same
"applicable, be observed with respect to the investigat
"of such accounts, and any other accounts referred
"the registrars for examination" (Rule 96, Contenti
Business).

Accounts to be filed.

Practice.—The administrator's and receiver's acco
together with the bill of the solicitor as to taking
administration pending suit, must be filed in the C
tentious Department.

Appointment before registrar.

An appointment, one clear day's notice of which m
be given to the other parties interested, will be sent
post to the applicant.

It is important that the persons interested in
residue (or, in the estate of the deceased, in case of
intestacy) should be represented before the registrar.

Affidavit in verification of account.

The account must be verified by affidavit, and vouch
for all payments must be produced. Form of affida
see p. 967.

The solicitor's bill will be taxed and the accou
vouched by the registrar.

The bond may be vacated (if so desired) on this appo
ment, or by registrar's summons.

Allocatur.

Form of Allocatur.—"I certify that, in the presence
'the solicitors for the parties concerned, I have vouc
"and allowed these accounts, and find that there is
"in the hands of the administrator and receiver *pend*
"*lite* a sum of £ due to the executors."

Remuneration.

Remuneration.[79b]—The registrar will further direct
amount of remuneration to be given to the administr
and receiver.

"The Court of Probate may direct that administra
"and receivers appointed pending suits involving mat

Canadian Cases.

[79b] S. C. Act, s. 56, *post*, p. 680.

"and causes testamentary shall receive out of the per-
"sonal and real estate of the deceased such reasonable
"remuneration as the court think fit" (The Court of Probate Act, 1857, s. 72).

The remuneration allowed varies from 3 per cent. to 5 per cent. of the receipts coming into his hands. In estimating the amount, the work done both in receiving and paying out monies is usually taken into consideration, and also whether or no he has provided his own sureties. If a guarantee society act as surety, a less amount is allowed.

Interim Preservation of Property.

Under the second heading come applications for interim preservation of property, etc., under the following rules:—

Orders for the sale of perishable property subject of a suit.

"It shall be lawful for the court or a judge, on the "application of any party to any action, to make any "order for the sale, by any person or persons named in "such order, and in such manner, and on such terms as "the court or judge may think desirable, of any goods, "wares, or merchandise which may be of a perishable "nature or likely to injure from keeping, or which for any "other just and sufficient reason it may be desirable to "have sold at once" (Order L. r. 2).

Orders for the detention, preservation, or inspection of property the subject of an action.

"It shall be lawful for the court or a judge, upon the "application of any party to a cause or matter, and upon "such terms as may seem just, to make any order for the "detention, preservation, or inspection of any property or "thing, being the subject of such cause or matter, or as "to which any question may arise therein, and for all or "any of the purposes aforesaid to authorise any persons to "enter upon or into any land or building in the possession "of any party to such cause or matter, and for all or any "of the purposes aforesaid to authorise any samples to be "taken, or any observation to be made or experiment to "be tried, which may seem necessary or expedient for "the purpose of obtaining full information or evidence" (Order L. r. 3).

MANDAMUS AND INJUNCTION.

Mandamus and injunction when to be granted.

"A mandamus or an injunction may be granted
"receiver appointed by an interlocutory order of
"court in all cases in which it shall appear to the c
"to be just or convenient that such order should be m
"and any such order may be made either unconditio
"or upon such terms and conditions as the court
"think just; and if an injunction is asked, either be
"or at, or after the hearing of any cause or matte
"prevent any threatened or apprehended waste or tres
"such injunction may be granted, if the court shall t
"fit, whether the person against whom such injuncti
"sought is or is not in possession under any claim of
"or otherwise, or (if out of possession) does or does
"claim a right to do the act sought to be restrained
"any colour of title; and whether the estates claime
"both or by either of the parties are legal or equit
(sub-s. 8 of s. 25 of the Judicature Act, 1873;
damus — *Glossop* v. *Heston Local Government*
12 C. D. 102; *Attorney-General* v. *Dorking Guar*
20 C. D. 595; Injunction—*Nicholas* v. *Dracachis*, 1
72; 45 L. J. 45. And see further the notes i
"Yearly Practice" under the sub-section).

Thus, an executor, without the consent of h
executor, and before probate, having intermeddled
estate, and made preparations to dispose of part of
court granted an injunction against him and app
a receiver on the application of his co-executor (
13 P. D. 37).

"An application for an order under section 25
"section 8 of the Act, or under Rules 2 or 3 of this
"may be made to the court or a judge by any par
"the application be by the plaintiff for an order un
"said sub-section 8 it may be made either *ex parte*
"notice, and if for an order under the said Rules
"of this Order it may be made after notice to the de

"at any time after the issue of the writ of summons, and "if it be by any other party, then on notice to the plain- "tiff, and at any time after appearance by the party "making the application" (Order L. r. 6).

"No writ of injunction shall be issued. An injunction "shall be by a judgment or order, and any such judgment "or order shall have the effect which a writ of injunction "previously had" (Order L. r. 11).[80]

Writ of injunction abolished.

Canadian Cases.

[80] *INJUNCTION.*—A., B., and G. were appointed executors. B., as acting executor, received a large sum belonging to his testator's estate, which he failed to account for, and a suit was commenced to administer the estate. This suit was compromised by the plaintiff therein, who was a beneficiary under the testator's will, and the co-executors, who took security for the sum found due from B., who agreed to cease all further interference with the estate, which was thenceforth to be managed by A. B. continued to meddle with the estate, whereupon A. and G. filed a bill praying for an account, and for an injunction to restrain B. from all further interference with the estate:—*Held*, on demurrer, that the proceedings in the former suit and its pendency were no bar to the relief sought (*Aikens* v. *Blain*, 11 Gr. 212).

Letters of administration to the real estate of an intestate, who died on October 18, 1900, were issued to the defendant on October 14, 1901. Prior to the latter date the defendant had advertised the lands for sale on October 22, 1901, on the day preceding which date the plaintiff, one of the heirs, applied for an injunction to restrain the sale. No caution had been filed within the year, nor did it appear that there were any debts of the deceased:—*Held*, that the plaintiff was entitled to an injunction, for when the defendant advertised the lands for sale, he had no right to do so, and at the proposed time of sale he had no right to sell, since by the operation of the Devolution of Estates Act the property had vested in the heirs (*Byer* v. *Grove*, 2 O. L. R. 754).

EXECUTOR SUFFERING JUDGMENT BY DEFAULT.—When a debtor died, leaving insufficient personal assets to pay his liabilities, and his executor notwithstanding allowed a creditor to recover a judgment against him by default:—*Held*, that the executor, on obtaining an administration order, was not entitled to an injunction against proceedings on the judgment (*Doner* v. *Ross*, 19 Gr. 229).

Payment of Money into Court.

Payment into court.

When an order has been made for money to be into court, whether from the protection of property o any other purpose, the solicitor should fill up in dupl a form of lodgment which can be obtained in the Con tious Department; he should take these to the se registrar's clerk, who will sign and return one copy retain the other. For form, see p. 1064.

The lodgment form so signed must be taken to Law Courts branch of the Bank of England, where money is paid in.

If the payment is for discovery or for security for c the form must be stamped with an impressed stamp o (Room 6, Royal Courts of Justice).

Payment out of court.

Application for payment out of money which has lodged in court should be made by filling up, in dupli the form of authority for payment out (to be obta in the Contentious Department), which should be with the registrar's clerk. The registrar, if satisfied the applicant is entitled to the money, signs the autho and sends it by post to the assistant paymaster-gen (Room 65 at the Law Courts). It is usual, howeve require the consent of the other side to be produced. solicitor should attend there two or three days later cheque, and should produce the receipt for the lodgme

Form of authority, see p. 1065.

See generally as to payment into, and out of, co Order XXII.[80a]

Canadian Cases.

[80a] Except as provided in Rule 195 of the Supreme Court (p. 880) and following rules, the surrogate court must appoi personal representative before the High Court will make an o or decree for the administration of the estate (*Re Marshall*, 1 Ch. 29; *Re Israel*, 2 Ch. Ch. 392; *Re Bill*, 3 Ch. Ch. 397; *Edinburgh Life Insurance Co.* v. *Allan*, 19 Gr. 593; *Re Co* 8 P. R. 542; *Re Armour*, 10 P. R. 448; and Devolution of Es Act, R. S. O., [1897] c. 127.

Canadian Cases.

Upon an application in the Court of Chancery for an administration order against a person named as executor who had not obtained letters probate, the order was refused, there being no duly appointed personal representative before the Court (*Outram* v. *Wyckoff*, 10 U. C. L. J. (N.S.) 135).

Next after payment of funeral expenses the expense of proving the will or taking out letters of administration are allowed out of the estate within proper limitations (*Smith* v. *Rose*, 24 Gr. 438).

Administration may be granted although the deceased had no real or personal property (*Jennings* v. *G. T. R. Co.*, 15 A. R. 477).

An executor may perform most of the acts appertaining to his office before probate; but with respect to an administrator, the general rule is, that a party entitled to administration can do nothing as administrator before letters of administration are granted to him; inasmuch as he derives his authority, not like an executor from the will, but entirely from the appointment of the Court (*McDonald* v. *McDonald*, 17 A. R. 192).

Letters of administration, however, relate back to the death of the deceased if the person is properly entitled. But as against the Statute of Limitations it would seem there is no action rightly begun so as to save the statutory bar unless administration has previously or contemporaneously issued, and that the time which has begun to run will continue till the time when the plaintiff has obtained his status as administrator (*Chard* v. *Rae*, 18 O. R. 371, 377).

When a deceased person had by an instrument *inter vivos* made over his property to the defendant, who became bound to pay his grandchildren $400 each after the death of the settlor, the Court dispensed with a personal representative of the settlor in a suit by one of the grandchildren to enforce payment of the $400 (*Mulholland* v. *Merriam*, 19 Gr. 288; S. C. 20 Gr. 152; and *ante*, p. 363).

CHAPTER VII.

SUMMONS FOR DIRECTIONS (R. S. C., Order XXX.).

TIME AND PLACE OF ISSUE.
WHEN RETURNABLE.
SCOPE OF ORDER.
NOTICE UNDER THE SUMMONS.
EVIDENCE.
ACTIONS IN WHICH THE SUMM
IS NOT REQUIRED.
TRIAL WITHOUT PLEADINGS.

Time of issue.

WITHIN fourteen days of the entry of appearance, plaintiff must take out a summons for directions (O XXX. rr. 1 and 8).

Form of summons, see p. 1077.

No fresh step in the action other than an application an injunction or for a receiver can be taken before summons is taken out (r. 1 (b)).

When returnable.

The summons is returnable in not less than four d *i.e.*, it must be served four days before the day upon w it is to be heard (r. 1 (a)).

Where issued.

It is issued in the Contentious Department.

Fees: for summons, 10*s.*; for order, 5*s.*

Scope of order.

The summons is heard by a registrar, who will mak order with respect to all proceedings in the action so as practicable and as to the costs thereof, and particularly with "respect to the following matt "Pleading, particulars, admissions, discovery, interr "tories, inspection of documents, inspection of real "personal property, commissions, examination of "nesses, place and mode of trial." (See Order XXX. as amended July, 1902.)[81]

Canadian Cases.

[81] *REMOVING AN EXECUTOR FROM OFFICE—DU NOT WHOLLY PERFORMED.*—An executor cannot be moved from his position when anything remains to be appertaining to his office, even although the will provides fo

Directions as to affidavits of scripts are also given upon this summons, and in this respect Rule 30, Contentious Business, and R. S. C., Order XX. r. 2, are no longer wholly applicable. Scripts.

Affidavits are not to be used on the hearing without leave, but if such applications as for examination of witnesses, trial at county court, or for security for costs are made, solicitors should bring affidavits in support. Affidavits not read without leave.

Parties should apply for directions as to any interlocutory matter on the hearing of this summons (Order XXX. r. 4).

Form of order, see p. 1060.

Subsequent applications (made before judgment) as to any interlocutory matter are made under the summons by two clear days' notice to the other side. The applicant may have to pay the costs of the subsequent application if it is held that the application should have been made at the hearing of the original summons. (See Order XXX. rr. 5 and 6.) Subsequent applications by notice.

Canadian Cases.

continuance as a trustee thereunder after his duties as an executor have ceased and he has acted as trustee by investing part of the trust monies (*In re Moore*, *Macalpine* v. *Moore*, 21 Ch. D. 778; distinguished *Re Bush*, 19 O. R. 1).

FORM OF REPORT—FURTHER DIRECTIONS.—In a creditor's suit the plaintiff, having the carriage of the decree, must see that the master's report states the priorities of the creditors; creditors who have proved debts in the master's office, but are not parties to the cause, should not be served with notice of the hearing on further directions (*Lavin* v. *O'Neil*, 13 Gr. 179).

FORM OF REPORT.—It is not proper, in a report in an administration suit, to append to the report a copy of the will (*McCargar* v. *McKinnon*, 15 Gr. 361; and *post*, p. 544).

FURTHER EVIDENCE.—When, in an administration suit, an alleged creditor was examined before the master, but failed to establish his demand, the Court, on affirming the master's finding, refused a reference back in order to afford the party an opportunity of calling other evidence to establish his demand (*Re Ritchie, Savery* v. *Ritchie*, 23 Gr. 66).

The notice is issued without fee, but 5*s.* is payable on the order.

For form of notice, see p. 1077.

On summons for further time under this order, a minute of the registrar's direction is endorsed on the summons, no order being necessary under Rule 7 of Order XXX., R. S. C.

Fee for minute, 3*s.*

Evidence. On the hearing of the summons it may be ordered that evidence of any particular fact, to be specified in the order, shall be given by statement on oath or by production of documents or entries in books or copies thereof.

Vacation. A summons for directions may be taken out during the Long Vacation by consent.

Actions in which the Summons is not taken out.

It is not necessary to take out a summons for directions :—

Default of appearance. In default of appearance by the sole defendant or by all defendants.

The plaintiff on entering the action for trial files an affidavit of scripts and two copies of the writ, together with an affidavit of service and certificate of non-appearance.

For practice, see under "Short Cause," p. 525.

Trial without pleadings. By R. S. C., Order XXX. r. 1 (d), the summons for directions need not be taken out in actions coming under the provisions of Order XVIII. (a), but "Trial without Pleadings" as provided for therein does not appear to be applicable to actions in this Division.[81a]

Canadian Cases.

[81a] A surrogate court now commits the administration of "all and singular the property" of a deceased to an executor or administrator, and include the real as well as the personal estate. In this respect they are to be distinguished from the grants of the Probate Division in England, which deals with personal estate only.

CHAPTER VIII.

APPLICATIONS IN CHAMBERS, ORDERS AND ENFORCEMENT OF ORDERS.

SUMMONSES.
Originating Summons.
For Directions.
To discontinue Proceedings.
Other Summonses in Contentious Business.
Ex parte APPLICATIONS—
To a Judge.
To a Registrar.
Jurisdiction of Registrars.
ORDERS.
How drawn.
ORDERS—*continued.*
Service of—
When not Personal.
Personal.
Indorsement of.
ENFORCEMENT OF ORDERS.
Writs of Fi. Fa., Elegit, and Sequestration.
Garnishee and Charging Orders.
Receiver by way of Equitable Execution.

SUMMONSES.[81b]

THE practice with regard to summonses in Contentious Business is the same as that in Non-contentious Business, and is fully described in Part II., p. 331.

Originating summons. Rules of Supreme Court.

An originating summons, by the definition in R. S. C., Order LXXI. r. 1 (a), means every summons other than a summons in a pending cause. Provision is made by R. S. C., Order LIV., for the adoption of originating summonses in the Probate Division, under following rules:—

Rule 4 (b) refers to the form of an originating summons, and provides that it shall be prepared by the applicant or his solicitor, and sealed, in probate matters, in the probate registry, the signature of the President being deemed to be equivalent to sealing.

By Rule 4 (c) "the parties served with an originating "summons shall, except as hereinafter provided (see rule

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Canadian Cases.

[81b] S. C. R. 7, C. B., *post*, p. 840.

"4 (f), before they are heard, enter appearances . .
"probate matters, at the probate registry, and give no
"thereof. . . ." The rule goes on to make provision
appearance out of time.

Rule 4 (d) provides for the sealing of a notice, giv
the day and hour for attendance and for the service of
notice, not less than four clear days before the return d

And by Rule 4 (f) it is laid down that when th
is no pending cause or matter a respondent shall
be required to enter an appearance to an originat
summons in probate matters relating to accepta
of foreign suretics, applications for grants notwithsta
ing caveat, and for leave to withdraw a caveat a
warning (*a*).

R. S. C. not applied in actual practice.

Notwithstanding the above provisions in the Rules
the Supreme Court, there is in actual practice no distinct
drawn between originating summonses and ordinary su
monses, either in their issue, form, or hearing, and
practice set out in Part II., p. 334, should be followed.

Summons for directions.

The summons for directions and subsequent noti
under the summons are dealt with in Chap. VII.,
406 and 407.

Summons to discontinue.

The registrar has power to make an order discontinui
proceedings *by consent* at any time up to trial. Leave m
be given to file terms, but the registrar has no power
make them a rule of court. Application may also
made for an order to discontinue where the opposition
the grant is clearly frivolous or vexatious, or where t
contest is between applicants of equal standing, for a gra
of letters of administration. Form of summons, p. 107
Fees: for summons, 3*s.*; for order, 10*s.*

Other summonses.

Instances of other summonses are:—applications
review a taxation (before a judge); for an injunctio
(before a judge); by an administrator and receiver *pe
dente lite*, if the direction of the court becomes necessary

(*a*) These applications, however, do not come within the definiti
of "Contentious Business."

to vacate the registration (under the Land Charges and Registration and Searches Act, 1888) of a writ of sequestration (see the Settled Land Act, 1890, s. 19), or to vacate the registration of a *lis pendens* (both these applications should be made to a judge). An application for a charging order on property "recovered or preserved" under the Solicitors Act, 1860, s. 28, should be made by summons before a judge.

"A summons may be taken out by any person in any "matter whether contentious or non-contentious, in which "there is no rule or practice requiring a different mode of "proceeding" (Rule 58, C. B.).

Ex parte APPLICATIONS.[82]

Ex parte applications—to a judge;

Applications *ex parte* may be made to the judge in chambers—either by *ex parte* summons returnable upon the day when summonses are heard (usually a Saturday), or upon affidavit. An application for leave to issue a writ for service out of the jurisdiction, or to serve out of the jurisdiction or to renew a writ, is made by affidavit. The application should in the first instance be made to the judge's clerk.

to a registrar.

Ex parte applications to a registrar may be made at any time either with or without affidavit according to the circumstances of the case.

Canadian Cases.

[82] *EX PARTE PROCEEDINGS.*—Although proceedings in the master's office may, under the general order, be taken *ex parte* against a defendant who has allowed a bill to be taken *pro confesso* against him, that mode of proceeding is irregular when an administration order has been obtained upon notice filed without bill (*Jackson* v. *Matthews*, *In re Pattison*, 12 Gr. 47).

LOCAL MASTER.—The jurisdiction of local masters in administration suits under G. O. Chy. 638, is not interfered with by Rule 422, O. J. Act, the practice in such matters being preserved intact by Rule 3, O. J. Act. In such matters there is power to direct service to be made out of the jurisdiction (*Re Allan*, *Pocock* v. *Allan*, 9 P. R. 277).

Jurisdiction of a Registrar.[83]

Under Order LIV. r. 12—

Jurisdiction of a registrar the same as of a judge at chambers.

". . . In the Probate, Divorce, and Admiralty Div

Canadian Cases.

[83] S. C. Rules 43-56 inclusive; S. C. Act, ss. 8-16 inclusive 74-77 inclusive, and Con. Rule 1220.

MASTER'S JURISDICTION. — The jurisdiction of master's office is not coextensive with that of the Court in inqu into and adjudicating upon the validity of documents; and is no authority to support any implied or assumed delegati the function of the Court to the master. Nor is there any pra in the master's office which allows parties to obtain a referen the master so as to evade the ordinary judicial functions of Court and then revoke those judicial functions in a tribuna delegated and subordinate jurisdictions. The plaintiffs, taking accounts before the master under the ordinary char order for the administration of personal estate, sought to hav declared that a bequest to R., who was one of the witnesses to will, was valid:—*Held*, (1) that the master had no jurisdic under such order, and, on oral pleadings, to adjudicate on validity of the will; (2) that even if there was such jurisdictio could not be exercised in the absence of a personal representa of R.'s estate (*In re Munsie*, 10 P. R. 98).

In proceeding to take the accounts under an ordinary char order for administration, certain unsecured creditors and ad ·inistrator sought to impeach the validity of certain wareho rec··ts assigned to the plaintiffs by the testator in his lifetime on which he had received advances. It was held that, as the Co takes possession of the estate for the purposes of administrati the master's office possesses all the powers requisite for the ministration of the assets, and had therefore jurisdiction to try question. And that, in the case of a creditor's administrat reference, any creditor had a right to resist or attack the claims any other creditor sought to be proved in the master's of (*Merchant's Bank* v. *Monteith*, 10 P. R. 458).

FORUM.—The jurisdiction in chambers to grant administrat orders applies only to simple cases of accounts, and the judge master in chambers may take the administration accounts chambers without referring them to the master's office. But to such reference Chancery Order 220 applies (*In re Munsie*, 10 P. 98; and *post*, p. 603).

ESTATE IN HANDS OF TRUSTEES.—When in a s against executors a decree was made referring it to the master

"a registrar may transact all such business and exercise all "such authority and jurisdiction in respect of the same, "as under the Acts or these Rules may be transacted or "exercised by a judge at chambers, except in respect of "the following proceedings and matters; that is to say:

Exceptions

"(a.) All matters relating to criminal proceedings or "to the liberty of the subject:

"(b.) Granting leave for service out of the jurisdiction "of a writ, or notice of a writ, of summons:

"(c.) The removal of actions from one division or judge "to another division or judge (*b*):

"(d.) The settlement of issues, except by consent:

. . . . . .

"(g.) Prohibitions:

"(h.) Injunctions and other orders under sub-sect. 8 of "sect. 25 of the principal Act:

"(i.) Awarding of costs, other than the costs of or "relating to any proceeding before a registrar, "and other than costs which by these rules, or "by the order of the court or a judge, he is "authorised to award:

"(k.) Reviewing taxation of costs:[84]

(*b*) The registrar has power to order an action to be tried at assizes. (See p. 519.)

Canadian Cases.

administer the estate, the master was not required to take any account of such portions of the estate as were left to trustees to be administered (*Clouster* v. *McLean*, 10 Gr. 576).

CONDUCT OF PROCEEDINGS.—No one has a special right to the conduct of proceedings in the master's office upon a reference under an administration order, but *ceteris paribus* it will be committed to those who have the greatest interest in conducting them properly and economically (*Perrin* v. *Perrin*, 3 Ch. Ch. 452; and *ante*, p. 339).

When an order for administration had been granted to a devisee who was also a creditor of the estate to a large amount, but did not state that fact when applying for administration, his silence as to it was considered a ground for sustaining an order transferring the conduct of the proceedings under the reference to another party interested under the will (*Ib.*).

[84] *UNNECESSARY PROCEEDINGS.*—In an administration

"(l.) Orders absolute for charging stocks,
"annuities, or share of dividends, or
"proceeds thereof" (Rule 12).[85]

Canadian Cases.

action commenced by writ, the plaintiff was allowed upon t
only such costs as would have been taxed had he begun h
ecedings by a summary application under Rule 965. The def
claimed to have taxed to him, and set off his additional c
curred by reason of the less expensive procedure not havin
adopted. He had not in the action admitted the right
plaintiff to an account, but had pleaded a release, and h
objected to the procedure adopted:—*Held*, that the defe
additional costs had not been incurred by reason of the pla
improper or unnecessary proceedings, but by his own con
not admitting the right to an account, and in not objecting
plaintiff's manner of proceeding at the earliest possible stag
the case therefore did not come within Rule 1195. *Sem*
would have been proper to raise the question at the hearin
the taxing officer had jurisdiction under Rule 1195 witho
order to "look into" it (*Moon* v. *Caldwell*, 15 P. R. 159).

SOLICITOR'S LIEN—JURISDICTION OF REFER
A referee before whom administration proceedings are take
no authority to make an order depriving a solicitor of his li
costs on a fund in Court on the ground that adverse parties
prior claim on such fund for costs, which said solicitor's clie
been personally ordered to pay, the administration orde
having so directed the referee, and there being no general
permitting such an interference with the solicitor's *primâ*
right to the fund (*Bell* v. *Wright*, 24 S. C. R. 656).

[85] *CONSOLIDATION OF MOTIONS.*—An applicatio
consolidate two motions for administration and partition pe
before a local master, should be made to him and not to a ju
chambers (*Lambier* v. *Lambier*, 9 P. R. 422).

CONDUCT OF REFERENCE.—An accounting party s
not have the carriage of the proceedings in the master's
especially when there is a competition between an executo
beneficiaries as to who should be first in obtaining an administ
order. Such an order obtained *ex parte* on the application
executor was varied by giving the conduct of the reference t
of the legatees, where the judge had not been referred t
course of practice, and so had exercised no discretion to pr
the interference of the Court. The order should not have

ORDERS.

Orders are drawn in court or in the registry. Copies of decrees or of orders made on motion can be ordered in the copy department; the original orders made on summons or *ex parte* can be obtained in Room 39 at the registry two days after they are made.[86] How drawn.

Solicitors, however, should themselves draw the order for issue of a subpœna to bring in scripts—forms of which can be obtained in the Contentious Department—and, in duplicate, garnishee or charging orders.

By Order LXVII. r. 1—

"Except in the case of an order for attachment, it shall "not be necessary to the regular service of an order that Service of orders, etc.

Canadian Cases.

made without notice to the legatees, who were named as parties defendants in the proceedings taken by the executor (*Re Curry, Curry* v. *Curry*, 17 P. R. 69).

In 1855 a motion was made, upon notice, for an administration order, under the orders of 1853, and no step since then was taken. An application there made, in 1859, in Chambers for a direction that the registrar should draw up the order was refused. After such a lapse of time all parties must be served with notice (*In re Forrester, Messnier* v. *Forrester*, 1 Ch. Ch. 29).

TAXED COSTS—LOCAL MASTER'S POWER.—A local master has no jurisdiction to make an order under Con. Rule 1187, allowing the parties to an action or proceeding for administration or proceeding for administration and partition taxed costs instead of the commission provided for by the rule "unless otherwise ordered by the Court or a judge." This was an action in which a judgment for partition and administration was pronounced by a judge:—*Held*, that more especially in this case a local master had no power to interfere, for by ordering taxed costs instead of commission he was varying the judgment (*Hendricks* v. *Hendricks*, 13 P. R. 79).

[86] *CERTIFICATE OF DEFAULT.*—A certificate given by a master that certain accounts filed under his order are not sufficient in substance and form, comes within G. O. 642, and cannot be enforced by attachment until confirmed by the lapse of a month (*Re Warden*, 9 P. R. 70).

"the original order be shown if an office copy of
"exhibited" (*i.e.*, service of an order which, if not com
with, may be enforced by attachment).

And by Rule 2—

Service when personal service is not required.

"All writs, notices, pleadings, orders, summ
"warrants, and other documents, proceedings, and w
"communications in respect of which personal serv
"not requisite shall be sufficiently served if left
"the prescribed hours (*c*), at the address for service
"person to be served as defined by Orders IV. and
"with any person resident at or belonging to such
"or if posted in a prepaid registered envelope addres
"the person to be served at such address for serv
"aforesaid; provided that where service under this
"made by registered post, the time at which the doc
"so posted would be delivered in the ordinary cou
"post shall be considered as the time of service ther

Personal service.

Personal service is effected in the manner pres
for the personal service of a writ of summons.
p. 386.)

Form of affidavit of service, see p. 960.

By Order XLI. r. 5—

Time to be stated for doing any act ordered to be done.

"Every judgment or order made in any cause or
"requiring any person to do an act thereby ordere
"state the time, or the time after service of the ju
"or order, within which the act is to be done, an
"the copy of the judgment or order which shall be
"upon the person required to obey the same there
"indorsed a memorandum in the words or to th
"following, viz.:—

Memorandum to be indorsed.

"If you, the within-named A.B., neglect to ob
"judgment [*or* order] by the time therein limited,
"be liable to process of execution for the purpose
"pelling you to obey the same judgment [*or* order]

(c) *I.e.*, before 6 p.m. on any week-day except on Saturd
service must be before 2 p.m. Service after such hours co
served on the following week-day (Order LXIV. r. 11).

It is the practice to indorse citations to bring in grants with this memorandum. (See *Evans* v. *Evans*, 67 L. T. 719.)

An application for attachment, for non-compliance with an order to take a grant, was refused on the ground that the order was not indorsed (*Bristowe*, 66 L. T. 60).

Enforcement of Orders.[86a]

Writs of attachment.

For the practice as to writs of attachment, see under Motions.

Writs of fi. fa., elegit, or sequestration.

Writs of fi. fa., elegit, or sequestration are issued in the Contentious Department on production of the order together with affidavits of service of, and non-compliance with, the order, and also the writ and præcipe, and, where necessary, the production of the order giving leave for the writ to issue. See R. S. C., Order XLII., and the notes in the "Yearly Practice."

Fees: 5*s.* for sealing writ; 2*s.* 6*d.* for each affidavit.

Garnishee orders.

Application for a garnishee order nisi may be made *ex parte* to a registrar, supported by the usual affidavits as to debt, jurisdiction, service of order and non-payment. The order will appoint a day upon which the garnishee may appear before the registrar, and show cause (if so advised) why the order should not be made absolute.

The application for order absolute is heard on a day upon which summonses are taken. For practice, see R. S. C., Order XLV.

Fees: 2*s.* 6*d.* for each affidavit filed; 5*s.* for order nisi, and deposit of 5*s.* for order absolute.

Charging orders.

Applications for charging orders are made in a similar manner, but the order absolute is made by a judge upon a day when he is hearing summonses. (See R. S. C., Order XLVI.) An application for a charging order under the

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Canadian Cases.

[86a] *Ruehall* v. *McGrath*, 14 App. Cases, 665.

Solicitors Act, 1860, is made to the judge suppor
affidavit. (See p. 411.)

Appointment of receiver by way of equitable execution.

The application for a receiver by way of eq
execution is made by a summons before a judge. Af
must be filed showing the amount of the debt du
particulars of the property and of service of the
(See Judicature Act, 1873, s. 25 (8), and R. S. C., O
rr. 15 (a), *et seq.*)

CHAPTER IX.

PLEADINGS GENERALLY.

PRACTICE AS TO PLEADINGS.
How Indorsed.
How Drawn.
Delivery of Pleadings.
Filing unnecessary.
Interest Causes.
PARTICULARS.
Rules and Practice.
AMENDMENT.
Without Order.
By Order.
Scandalous and Unnecessary Matter.
DEFAULT OF PLEADINGS.
STAY OF PROCEEDINGS.

PRACTICE AS TO PLEADINGS.[86b]

THE practice in the Probate Division as to pleadings is generally governed by the rules of Order XIX., R. S. C., but as there are some deviations from them the following notes may be useful.

How indorsed and headed.

All pleadings should be headed and indorsed—

"In the High Court of Justice,
Probate Divorce and Admiralty Division
(Probate).
(*a*) In the Estate of A. B., deceased.
C. A. against B. D."

A pleading must be further indorsed with the description of the pleading, the name and the description of the solicitor and agent delivering the same, and also with the date on which it is delivered.

Forms of pleadings will be found on pp. 1067, 1068.

How drawn.

The statements therein, under Rule 2, must be as brief

(*a*) The name of the deceased should appear before the title of the action in the headings and indorsements of all documents, whether pleadings, affidavits, summonses, or other papers.

Canadian Cases.

S. C. R. 3, C. B., *post*, p. 840; Con. Rule 242, *et seq.*

as the nature of the case will permit, and the reg
may disallow the costs of unnecessary prolixity.

By Rule 4 they must contain the material facts
upon, not the evidence by which the facts are to be p
They should be divided into numbered paragraphs;
sums, and numbers are to be in figures. If sett
counsel the draft pleadings are to be signed by him,
wise by the solicitor or by the party himself if ac
person. When more than ten folios in length pl
must be printed.

How delivered.

A pleading is not served personally, but a copy
is delivered at the address for service before 6 p
any week day but Saturday, when delivery must be
before 2 p.m. It is not necessary to file pleadin
when the action is entered for trial two copies
pleadings are left in the Contentious Department.

The time for delivery of pleadings may be exten
consent or under order.

Interest Causes.[86c]

In interest causes, as heretofore, each party sha
liberty to deny the interest of the other; and
cases both parties may, with and subject to the per
of the judge, adduce proof on one and the same
their interests respectively (Rule 61, C. B.).

In interest causes the pleading of each party mu
on the face of it that no other person exists having
interest to that of the claimant (Rule 62, C. B.).

PARTICULARS.

By the order on the summons for directions all p
are directed to be delivered with particulars.

Substance of the case.

Under Order XIX. 25 (a), "in probate actions
"be stated with regard to every defence which is

Canadian Cases.

[86c] *Mason* v. *Van Camp*, 14 P. R. 296.

"what is the substance of the case on which it is intended "to rely; and further, where it is pleaded that the testator "was not of sound mind, memory, and understanding, "particulars of any specific instances of delusion shall be "delivered before the case is set down for trial, and except "by leave of the court or a judge no evidence shall be "given of any other instances at the trial" (R. S. C., July, 1901, as amended October, 1904). Unsound mind.

By Rule 40, Contentious Business, "Any party pleading "that the deceased did not know and approve of the con- "tents of a will must therewith" (unless otherwise ordered by the judge) deliver particulars stating shortly the substance of the case which he intends to set up thereunder. Want of knowledge and approval.

"In all cases in which the party pleading relies on any "misrepresentation, fraud, breach of trust, wilful default, or "undue influence, and in all other cases in which particulars "may be necessary beyond such as are exemplified in the "forms aforesaid, particulars (with dates and items if "necessary) shall be stated in the pleading" (Order XIX. r. 6).[87] Fraud, etc.

In *Salisbury* v. *Nugent*, 9 P. D. 23, the names of the persons who were alleged to have exercised undue influence were ordered to be given, but not particulars of the acts nor the times and places. But the substance of the case must now be given under Order XIX. r. 25 (a). Undue influence.

Application for further and better particulars of any pleading, or for the substance of the case upon which it is intended to rely, should be made to the registrar by notice under the summons for directions. Further and better particulars.

Fee for order, 5*s*.

Canadian Cases.

[87] *FRAUD CHARGED—EXAMINATION.*—If in an administration suit fraud is charged in the pleadings, it may be proper for defendants to examine the plaintiff thereupon, in order to disprove the charge, even though they succeed in the objection that a proceeding by bill was not necessary (*McMillan* v. *McMillan*, 8 C. L. J. 285).

The time for delivery of the next pleading afte
delivery of particulars is, unless otherwise ordered
same as the applicant had at the return of the sum
(Rule 8).

AMENDMENT OF PLEADINGS.

Amendment without order.

Under R. S. C., Order XXVIII., amendments of plea
are allowed to be made (1) by the party pleading unde
following rules:—

"The plaintiff may, without any leave, amend his s
"ment of claim, whether indorsed on the writ or not,
"at any time before the expiration of the time limite
"reply and before replying, or, where no defence is deliv
"at any time before the expiration of four weeks fro
"appearance of the defendant who shall have last appe
"or where defence is delivered, but no order for re
"made within ten days from delivery of the defence o
"last of the defences" (R. S. C., Rule 2, amended
1905).

And the defendant who has set up a counterclaim
amend such counterclaim at any time before the expir
of the time allowed him for answering the reply and b
such answer, or in case there be no reply, then at any
before the expiration of 28 days from defence (see Ru

Application for the disallowance of amendments
without leave should be made by notice to the reg
under the summons for directions.

By order of judge or registrar.

(2) By order of the judge or registrar on the applic
of the party pleading; (3) By order of the judg
registrar on the application of the opposite party, o
ground that the pleading is immaterial or embarra
See further as to amendments, Order XXVIII.

Unnecessary or scandalous matter.

The court or a judge has power under Order
Rule 27, to order to be struck out or amended any m
which may be unnecessary on scandalous, or which
tend to prejudice, embarrass, or delay the fair trial o
action.

Default of Pleading.

"In probate actions, if any defendant make default in "filing and delivering a defence, the action may proceed, "notwithstanding such default" (Order XXVII. r. 10).

Stay of Proceedings.

The Probate Division has an inherent jurisdiction in common with other courts to stay proceedings which are frivolous and vexatious and an abuse of the proceedings of the court. Thus, where an action was brought to obtain revocation of letters of administration granted in 1798, the plaintiff claiming to represent the next-of-kin of the intestate, and the defendants being the representatives of the deceased administrator, it was held, that having regard to the lapse of time and to the fact that the action could lead to no possible good, it ought to be dismissed as frivolous and vexatious (*Willis* v. *Earl Beauchamp*, 11 P. D. 59). See also under summons to discontinue, p. 410.

CHAPTER X.

AFFIDAVIT OF SCRIPTS.

Definition of "Script."
Practice in Prerogative Court.
Rules of Probate Court and of Probate Division.
Wills lodged prior to Affidavit
Fees.
Inspection of Scripts.
Practice after Decree.

Definition of "script."

THE term "script" in the Probate Division comprises the testamentary papers of the deceased executed or executed, whether a will or codicil or other testament paper, draft of a will or codicil or other testament paper, or written instructions for the same.

Practice in the Prerogative Court.

In the Prerogative Court the first important step in probate cause after service of the decree or citation on defendant was the calling for the affidavit of scripts fr the several parties to the cause, each of whom was requi to bring in an affidavit stating what scripts had at time come to his possession or knowledge, and annex to his affidavit any script in his possession or under control. If any document or other script brought in torn or had alterations or obliterations on it, the affida was required to state its plight and condition at the ti of its coming into his possession or under his control.

Practice in Probate Court and Probate Division.

This practice as to the affidavit as to scripts was retain in the Court of Probate by the following rules, which still in force, except as regards the time limited for fil the affidavits:—

Plaintiff and defendant to

"In testamentary causes the plaintiff and defenda "within eight days (*a*) of the entry of an appearance

(*a*) The time for filing affidavits of scripts (if not already filed) is fixed by the registrar on the summons for directions. In an undefen action, where no summons for directions is necessary, the affidavi scripts should (unless otherwise directed) be filed before the actio entered for trial.

"the part of the defendant, are respectively to file their "affidavits as to scripts, whether they have or have not "any script in their possession" (Rule 30, C. B.). File affidavit as to scripts.

"Every script which has at any time been made by or "under the direction of the testator, whether a will, codicil, "draft of a will or codicil, or written instructions for the "same, of which the deponent has any knowledge, is to "be specified in his affidavit of scripts; and every script "in the custody or under the control of the party making "the affidavit is to be annexed thereto, and deposited "therewith in the registry" (Rule 31, C. B.).

"No party to the cause, nor his proctor, solicitor, or "attorney, shall be at liberty, except by leave of the "judge, or of one of the registrars of the principal "registry, to inspect the affidavit as to scripts, or the "scripts annexed thereto, filed by any other party to the "cause, until his own affidavit as to scripts shall have "been filed" (Rule 32, C. B.). Inspection of scripts.

"When any pencil writing appears on a will, script, or "other document filed in the registry, a fac-simile copy "of the will, script, or other document, or of the pages or "sheets thereof containing the pencil writing, must also "be filed with those portions written in red ink which "appear in pencil in the original. Such copy must be "examined by an examiner in the registry" (Rule 75, C. B.). Pencil writing on will or script, etc.

Where a defendant (the sole heiress-at-law of the deceased) had resided in Belgium for seventeen years, and was living in a convent in that country, had written a letter stating that she had not, and never had had, any testamentary documents belonging to the affairs of the deceased, the court dispensed with her making an affidavit of scripts, and allowed her solicitor to make one for her (*Walsh* v. *Tallon*, L. R. Ir. 31 Ch. 393). Affidavit made by solicitor under special circumstances.

Practice.—Every script should be marked with a letter for reference. If a will, referred to in the affidavit, has already been lodged in the principal registry either for a Wills lodged previously to affidavit.

grant, on subpœna or on renunciation, the clerk in filing-room should be so informed. If the will has b lodged in a district registry, the solicitor should requ the district registrar to forward it to the principal regis for the purposes of the action; the district registrar require a copy to be left, which will be examined in district registry.

Form of Affidavit of Scripts, p. 966.

Fees. Fees: For filing affidavit, 2*s.* 6*d.*; for filing scripts five scripts or under, 5*s.*; if more than five scripts, For examination, 3*d.* per folio of 72 words; if fac-sim 6*d.* per folio.

Inspection. Scripts may be inspected in the Contentious Depa ment.

Fee: For every hour or part of an hour occupied, 2*s.* 6 or not exceeding one day, 10*s.*

Practice after decree. When a will has been pronounced for, the execut may attend at the Contentious Department to be swo but if this course be inconvenient, the original will n be handed out to the solicitor on his giving a receipt it, and on his leaving in its place a copy (which must examined in the registry); to save expense, when grant is to be made in the principal registry, this c should be the "engrossment."

CHAPTER XI.

STATEMENT OF CLAIM.

Rules.
STATEMENTS OF CLAIM IN ACTIONS FOR PROBATE IN SOLEMN FORM.
Will Valid by Wills Act.
Prior to Wills Act.
Under Lord Kingsdown's Act.
Will of Foreigner Domiciled Abroad.
Soldiers' Wills.
Sailors' Wills.
STATEMENTS OF CLAIM IN ACTIONS FOR PROBATE IN SOLEMN FORM —*continued.*
Where Will is Lost.
Where Documents are Incorporated.
Alterations in Will.
STATEMENT OF CLAIM IN ADMINISTRATION ACTIONS.
STATEMENT OF CLAIM IN REVOCATION ACTIONS.

RULES.

ALTHOUGH by R. S. C., Order XX. r. 2, it has been provided that, "In probate actions the plaintiff shall, "unless otherwise ordered by the court or a judge, deliver "his statement of claim within six weeks from the entry of "appearance by the defendant, or from the time limited "for his appearance, in case he has made default; but "where the defendant has appeared, the plaintiff shall not "be compelled to deliver it until the expiration of eight "days after the defendant has filed his affidavit as to "scripts," now, the questions whether a statement of claim is necessary, and, if necessary, within what time it shall be delivered, are decided on the hearing of the summons for directions. (See p. 406.)

Order XX. r. 2, superseded by Order XXX.

The effect of Rule 5 of Order III. (which makes it compulsory for the plaintiff to state, in the indorsement on writ, the capacity in which he claims) has been to render it unnecessary, in a large number of actions, for a statement of claim to be ordered.

Even in the circumstances referred to in this chapter as being exceptional, it is often possible and convenient to set out the claim sufficiently in the indorsement on writ;

and whenever it is possible and convenient, it should done.

Claim beyond indorsement.

"Whenever a statement of claim is delivered, t "plaintiff may therein alter, modify, or extend his cla "without any amendment of the indorsement of the wri (Order XX. r. 4).

Relief to be specifically claimed.

"Every statement of claim shall state specifically t "relief which the plaintiff claims, either simply or in t "alternative, and the same rule shall apply to any count "claim made, or relief claimed by the defendant, in "defence" (Rule 6).

Denial of interest.

"In probate actions, where the plaintiff disputes t "interest of the defendant, he shall allege in his sta "ment of claim, that he denies the defendant's interes (Rule 9).

The defendant's interest is shown in his appearance warning if the proceedings have arisen from the entry a caveat; and, in all cases, that of the original defenda is set out in the indorsement on writ. (See, further, as who should be made defendants, p. 383.)

No appearance.

Claim to be filed.

Strictly, where no appearance is entered, the stateme of claim, if any, and every other document, which wou be otherwise delivered to the defendant, should be filed the Contentious Department in the Probate Registry, und R. S. C., Order XIX. r. 10, and where one or more of t defendants do not appear, as against them, the stateme of claim and other documents should be filed in addit to being delivered to the solicitor for the party appearin but this rule does not appear to be enforced. Two cop of the pleadings must be filed when the action is ente for trial. (See p. 526.)

Actions for Probate in Solemn Form.

What constitutes a Valid Will.

Under the Wills Act, 1837, and

With certain exceptions, a will, to be valid accord to English law, must be executed in accordance w

formalities required by the Wills Act, 1837, as amended by the Amendment Act of 1852. Amendment Act, 1852.

The form of statement of claim propounding a will in solemn form is given on p. 1067 as a guide for the formal parts only, as the indorsement would stand for statement of claim in a simple case.

In the following exceptions special averments are necessary in the statement of claim (if ordered) to show upon what grounds the will is alleged to be valid.

Before the Wills Act.

For the making of a valid will disposing of personalty before 1 Vict. c. 26 came into operation, no solemnities of any kind were necessary. By the Statute of Frauds a will of personalty was required generally to have been reduced into writing in the testator's lifetime; but the document was not required to be in the testator's handwriting, or even to have been signed by him, provided sufficient proof was produced to satisfy the court that it expressed the testator's last wishes regarding the disposition of his personal estate after his death. Wills made before 1 Vict. c. 26 came into operation.

Lord Kingsdown's Act.

A will made by a British subject (which includes a naturalized British subject: *Gally*, 1 P. D. 438; 45 L. J. 107) out of the United Kingdom, whatever be the domicile of such person at the time of making the same, or at the time of his or her death, is valid as regards personal estate in England, Ireland, or Scotland, if it is made according to the forms required by the law of the place where it was made, or by the law of the place of the testator's domicile at the time of its being made, or by the law of that part of her Majesty's dominions where he had his domicile of origin (24 & 25 Vict. c. 114, s. 1). 24 & 25 Vict. c. 114, s. 1. Formalities of execution of will made out of United Kingdom by a British subject.

A will made within the United Kingdom by any Sect. 2.

Where a will made in United Kingdom by a British subject wherever domiciled.

British subject (including a naturalized British subjec whatever be the domicile of such person at the time making the same, or at the time of his or her death, valid as regards personal estate, if the same be execut according to the forms required by the laws for the ti being in force for that part of the United Kingdom wh the same was made (*Ibid.*, s. 2).

A British subject residing in the Congo Free Sta where no specific form of will is required, made an ho graph unattested will in that State. The courts of Congo Free State would have upheld the will. The co held therefore that the will was valid under Lord Kin down's Act, s. 2 (*Stokes* v. *Stokes*, 78 L. T. 50).[88]

Wills of Foreigners.

Wills of movables by foreigners domiciled abroad.

For the making of a valid will disposing of mova estate in England by a person dying domiciled abro who was not a British subject, the forms to be obser are those required by the law of the testator's domic

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Canadian Cases.

[88] Following the English practice, it would seem that if a wil limited to property in a foreign country, it is not entitled probate in this country. But if an executor desires to sue in court of Ontario, it is necessary that he should prove the will of testator here, even though all the assets were abroad at the tim the death of the deceased; for the probate or the Act-book which the probate is a copy, is the only admissible evidence of character of executor (*Kelly* v. *Ardell*, 11 Gr. 579).

When monies are payable in a foreign state, a grant of admi tration taken out here is not sufficient (*Pritchard* v. *Standard Assurance Co.*, 7 O. R. 188).

A foreign grant is not sufficient to authorize executors administrators to deal with assets in this country. A for administrator cannot effectually release a mortgage on land in province (*Re Thorpe*, 15 Gr. 80).

In Quebec the administrator of a person dying abroad is re nized, and has the same powers there as in the country where was appointed and resides (*Irwin* v. *Bank of Montreal*, 38 U. C 375).

in accordance with the maxim "*Mobilia sequuntur personam.*"

In *Groos*, [1904] P. 269, it was held (1) that s. 3 of Lord Kingsdown's Act is not limited to the wills of British subjects; (2) that *semble* a will valid where made and valid up to time of change of domicil does not become invalid by change of domicil.

Wills of leaseholds by persons domiciled abroad.

But the will of a British subject or of a foreigner dying domiciled abroad, to pass leaseholds in England, must have been executed in the form prescribed by the Wills Act (*Freke* v. *Lord Carbery*, L. R. 16 Eq. Cas. 461, 466; *De Fogassieras* v. *Duport*, 11 L. R. Ir. Ch. D. 123); or, under a later decision (*In re Grassi*, [1905] 1 Ch. 584), in the case of a British subject, must be valid by the provisions of Lord Kingsdown's Act.

A will to pass realty in this country must be executed in accordance with the form prescribed in the Wills Act (*Freke* v. *Carbery*, *supra*, *per* Lord SELBORNE, at p. 466).

The law of the domicile of the testator governs questions as to his testacy or intestacy, or as to the construction of his will, and as to the rights of those who claim to be his next-of-kin. Where, therefore, a will has been made by a testator who has died domiciled abroad, and the court of his domicile has granted probate of that will, it is the duty of the English Probate Court, if he has left movable property in England, to grant ancillary probate to the foreign executors. The law on this point is thus laid down by Lord WESTBURY, L.C., in *Enohin* v. *Wylie*, 10 H. L. C. 13:—"I hold it to be now put beyond all "possibility of question, that the administration of the "personal estate of a deceased person belongs to the court "of the country where the deceased was domiciled at his "death. All questions of testacy and intestacy belong to "the judge of the domicile. It is the right and duty of "that judge to constitute the personal representative of "the deceased. To the court of the domicile belongs the "interpretation and construction of the will of the testator.

"To determine who are the next-of-kin or heirs of
"personal estate of the testator, is the prerogative o
"judge of the domicile. In short the court of the dom
"is the *forum concursûs* to which the legatees under
"will of a testator, or the parties entitled to the distr
"tion of the estate of an intestate, are required to res
In *Meatyard*, [1903] P. 125, the grant was given to
persons appointed by the foreign court rather than to
executors named in the will.

Special averments in statement of claim of a testator dying domiciled abroad.

In such cases the statement of claim should con
averments of the place abroad where the testator
domiciled, of the formalities required to be observed
the making of a valid will disposing of movable estat
the law of that place, and that the testator had, in
making of the will in question, complied with t
formalities.

Privileged Wills.

There are two other kinds of wills called privile
wills, permitted to be made by soldiers with regard
their personal estate when engaged on active mili
service, or by mariners or seamen when at sea, in wh
the formalities prescribed by the Wills Act are not
quired to be followed, and which should be propoun
in a statement of claim with special averments.

Privilege granted by Roman law.

The privilege of making testaments, without
observance of the ordinary formalities, was granted
the Roman soldiers by Julius Cæsar as a temporary
cession, and was made a general rule by Nerva, and
confirmed by Trajan. The law relating to military w
is to be found in the Institutes of Justinian, Lib.
tit. 11.[89]

The principle of this execution was borrowed from
Roman law, and was expressly reserved to soldiers

Canadian Cases.

[89] See *ante*, p. 53.

sailors by the 22nd section of the Statute of Frauds (29 Car. II. c. 3), which, after providing "that wills of "personal estate shall be in writing or committed to "writing within six days after the making of the same," excepted from its operation the wills made by soldiers in actual military service, or by mariners or seamen at sea, in these words: "Provided always, that notwithstanding "this Act, any soldier being in actual military service, or "any mariner or seaman being at sea, may dispose of his "movables, wages and personal estate, as he or they might "have done before the making of this Act." This exception is retained in the Wills Act (1 Vict. c. 26), s. 11, in these words: "Provided always, that any soldier being "in actual military service, or any mariner or seaman "being at sea, may dispose of his personal estate as he "might have done before the making of this Act."

Under Statute of Frauds.

29 Car. II. c. 3, s. 22.

Under the Wills Act.

1 Vict. c. 26, s. 11.

Upon this section three questions have arisen—1. Is a soldier engaged on actual military service, or a mariner or seaman at sea, competent to make a will, under the age of twenty-one years? 2. What formalities are required for a privileged will? 3. What constitutes being engaged on actual military service, or being at sea, within the meaning of the statute?

(1) *Soldiers' Wills.*[89a]

1. Is a soldier engaged on actual military service, or a mariner at sea, competent to make a will when under age?

Soldiers when on military expeditions, and mariners when at sea, may make wills of personalty at the age of fourteen.

According to Swinburne, Pt. 1, sect. 14, par. 2, a soldier on active service is not disabled from making a testament by any impediment, unless it be by reason of *furor* or lack of reason, or for some other disability allowed *jure gentium*. Before and after the Statute of Frauds, a soldier engaged on actual military service, or a sailor or seaman at sea, could make a will of personalty any time after the age of fourteen; and this privilege is still reserved to soldiers

Canadian Cases.

[89a] Wills Act, R. S. O., [1897] c. 128, s. 14, *post*, p. 693.

notwithstanding s. 7 of the Wills Act (*Farquha*
Notes of Cases, 651); and, on the same ground
reserved to mariners or seamen making wills whilst
are at sea.

In *Hiscock*, [1901] P. 78, probate was granted of a
made on actual military service by a soldier under the
of twenty-one.

Formalities for privileged wills.

2. The formalities required for making a privileged
are simply a declaration in writing, or orally, of the n
in which the testator wishes his personal estate to
disposed of after his death.

Nuncupative wills.

A will made by an oral declaration is called a nu
pative will. In order that such will may be admitte
probate the court must have before it evidence suffic
to satisfy it of the substance of the declaration, and of
fact that it was intended to be testamentary.

In the case of *C. S. Scott, deceased*, [1903] P. 243,
court on motion gave effect to an oral declaration of
testator, a soldier then on actual military service
which he directed his effects to be credited to his si
upon the evidence contained in the affidavits of two
commissioned officers, in whose presence the declara
was made. (See also *Morrell* v. *Morrell*, [1827] 1 H
Ecc. 51 (*a*).)

By the Roman law, if a soldier wrote his last wishe
blood on his shield, or in the dust of the field
his sword, it was treated as a good testament. (
6. 21. 15a.)

What is "actual military service."

3. The leading cases on what constitutes the b
engaged on actual military service are the following:—

Drummond v. *Parish*, 3 Curt. 522, in which Sir Her
Jenner Fust held that the principle of the exception
borrowed from the civil law, that in order to ascertain
extent and meaning of the exception the civil law m
fairly be resorted to (*ibid.*, 531); and after referring to

(*a*) The will, in the case of *Hiscock* quoted above, although desc
in the Law Reports as a nuncupative will, was in fact documenta

civil law he decided that probate could only be granted of the will of a soldier as a military will, if it were made whilst he was engaged on a military expedition.

Hiscock, deceased, [1901] P. 78, where a volunteer, who had been accepted for active service, had taken the step of going into barracks with a view to being drafted to the seat of war, and had made his will whilst in the barracks, Sir F. JEUNE held that he had brought himself under the operation of s. 11 of the Wills Act, and therefore pronounced for the will.

And *Gattward* v. *Knee*, [1902] P. 99, in which it was held that mobilization might fairly be taken as a commencement of that which in Roman law was expressed by the words "in expeditione."

See also *May* v. *May*, [1902] P. 103 (n.).

The following further points have been decided on military wills:—

Soldiers' wills which have been held to be privileged.

A surgeon in the East India Company's service was held to come within the term of "a soldier," as used in the statutes (*Donaldson*, 2 Curt. 386). The will of an officer in India, who had been attached to a regiment engaged in actual military service, and had been ordered to leave that regiment and rejoin his own, which was also engaged at the time in the same part of India in actual military service, made on the day of his death whilst on his way to rejoin his own regiment, was admitted to probate as a will made during actual military service (*Herbert* v. *Herbert*, Deane & Swabey, 10).

The will of an officer, who was in June, 1863, ordered from Jamaica with a detachment of his regiment to reinforce Her Majesty's troops on the Gold Coast, Africa, where there were disputes going on between England and the King of Ashantee, and made after he had joined an expedition on the Gold Coast formed to march into the interior, and in contemplation of such march, was admitted to probate as a military will (*Thorne*, 4 S. & T. 36; 34 L. J. 131).

A military officer on active service in the Maori
in New Zealand, in 1864, in a letter to his sister, sa
"If we remain here taking pahs for some time to
"the chances are in favour of more of us being
"and as I may not have another opportunity of
"what I wish to be done with any little money
"possess in case of an accident, I wish to make every
"I possess over to you. Keep this until I ask you
Held, that the disposition of deceased's property w
dependent on his death while on active service, and
"Conditional will" defined. the document was not, therefore, a conditional wi
that being good as a military will, it was entit
probate. *Held*, that if the will is clearly expres
take effect only on the happening, or not happening,
event, it is conditional. If the reason assigned for
the will was the uncertainty of life in general o
special reason, it is not conditional. If the wo
not clearly indicate whether the will was intended
conditional or unconditional, the whole language
document, and the surrounding circumstances, m
considered (*Spratt*, [1897] P. 28).

Soldiers' wills which have been held not privileged. A will made by an officer whilst engaged on a
inspection in India, was held not to be entitled to
as a military will (*Major-General Hill*, 1 Roberts. 2

So also was a will made by an officer in India
orders to proceed from his own station in one pre
to take part in a war going on in another presiden
days before he commenced the march (*Bowles* v.
1 Spinks' Eccl. & Adm. Rep. 294).

(2) *Sailors' Wills.*

Privilege extended to all sailors on a voyage. The right of making a privileged will, which wa
Roman law confined to soldiers, is by our law exte
sailors when at sea, and whether they are employe
Royal Navy or in the merchant service.

A purser of a man-of-war comes within the term

(*Hayes*, 2 Curt. 338). So also does a surgeon in the navy (*Saunders*, 1 P. & M. 16; 35 L. J. 26).

What constitutes "*being at sea*" within the 11th section of the Wills Act has been under consideration in several reported cases; the leading case is that of *M'Murdo*, 1 P. & M. 540; 37 L. J. 14, in which the application was to revoke a probate which had been granted of an informal will as having been made by a mariner at sea, the deceased being at the time when the will was made a mate on board Her Majesty's ship The Excellent, and the will having been made on The Excellent when she was laid up in Portsmouth Harbour, and when there was no immediate intention of sending her to sea. Lord PENZANCE, in refusing the application, said, "A will made under these circumstances, in my opinion, comes within the "description of the will of a mariner or seaman being at "sea. I see a great distinction between this case and that "of *Corby*, 1 Ecc. & Adm. 292, where the deceased wrote "a letter of which probate was sought, stating that he had "shipped on board a vessel lying in Melbourne Harbour "at the date of the letter. It did not appear whether the "letter was written before or after he went on board, and "the expressions which he used may have meant nothing "more than he had signed ship's articles, and had bound "himself to join the vessel at a certain date. The cases "appear to me to go this length, that where a man has "joined a vessel on service, and has commenced a voyage "in it, a will made in the course of that voyage will be "within the exception in the Act, even although such will "was in fact made on shore. That was the case in *Lay*, "2 Curt. 375. The Calliope was lying in the harbour of "Buenos Ayres, but whether she had gone there to refit, "or for provisions, or for some other temporary purpose, "or whether she was stationed there, does not appear. "But she was actually in the harbour at the time of the "making of the will, and the will was in fact made on "shore. In the case of *Admiral Austen*, 2 Roberts. 611,

"the will was made whilst the admiral was engage
"an expedition up a river, when, although he wa
"actually at sea, he was practically on maritime se
"which he had commenced by going to sea. It see
"me impossible to draw a distinction for this pu
"between The Calliope lying in Buenos Ayres Ha
"and The Excellent lying in Portsmouth Har
"Although a seaman on board The Excellent is not
"foreign country, still he is subject to the restrain
"the service, and might have no opportunity of ma
"a will with the usual formalities if he was taken i
"board when no lawyer was at hand. See, also, *Pa*
"*deceased*, 2 Sw. & Tr. 375; 28 L. J. 91."

In the case of *Adam Patterson, deceased*, 79 L. T. the will (which was upheld) was made in the form letter while the ship was lying in the Thames prepar to sailing.

Special averments are also required in the statem claim when it is desired to set up a will in the follo circumstances:—

Lost Wills.[90]

Probate granted of a lost will.

Where a will is propounded which has been dest in the testator's lifetime, either by himself unintentio

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Canadian Cases.

[90] A will was prepared and sent to testator, and was quently seen, signed by him, in the hands of his wife, by the of the residuary legatee and devisee, who read it over, and diately on his return home made a pencil memorandum names of the executors, as well as of the several bequests othe the provision for the wife; and five days before his deat testator told him that his will was still in existence, and th had given it to a person, whom he refused to name, to have a prepared, and a second memorandum was made by him fro words of testator of the contents of the will, which agree stantially with the first. After testator's death, no trace will could be discovered. The Court made a decree establ

or by any other person without his directions, or with his direction but not in his presence, or where a will has been destroyed after the testator's death or cannot be found, or where its disappearance is presumably attributable to accident, a copy or a draft of the contents or the substance of the will may be propounded and established as the will of the deceased, and probate will be decreed to issue of such copy, draft, or substance until the original will or a more authentic copy thereof be brought into and left in the registry.

Declarations by testator—how far admissible.

Where a will has been lost or destroyed unintentionally, declarations, written or oral, made by the testator both before and after the execution of a will, are admissible as secondary evidence of its contents. The contents of a lost will may be proved by the evidence of a single witness, though interested, whose veracity and competency is unimpeached (*Sugden* v. *Lord St. Leonards*, 1 P. D. 154; 45 L. J. 49).

But declarations made by a testator after the date of an alleged will are inadmissible to prove either the execution of the will or that it was executed in duplicate (*Atkinson* v. *Morris*, on appeal ([1897] P. 40 C. A.) 75 L. T. 440. See also *Eyre* v. *Eyre*, [1903] P. 137).

Where a will was lost, and no copy or draft of it could be found, and it was not proved that it bore any date, or contained any attestation clause, and both the attesting witnesses were dead, and the signature of the testator and of one only of the attesting witnesses was proved by an interested witness,—held, by LINDLEY and LOPES, L.JJ., that BUTT, J., was justified on the evidence in presuming

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Canadian Cases.

the will, and directing probate to be granted to the executors named therein (*Bessey* v. *Bostwick*, 13 Gr. 279).

When, in consequence of the state in which a testator left his papers, a reasonable doubt was created as to his having left a will, the cost of the parties necessary to discuss the question "will or no will" were ordered to be borne by his estate (*Ib.*, 14 Gr. 246).

that the last will was duly executed. COTTON, *contrà*, held, that the question whether the formal prescribed by s. 9 of 1 Vict. c. 26, had been com with was one of fact, and that there was no proof, a from presumption, as to these formalities having observed; that the contents of the will bore inte evidence, that it was prepared by some one who did know the law, and that the presumption on the facts not in favour of, but against the formalities having observed; and that the decision of the court below wrong, and dangerous, and likely to lead to docum being produced and propounded which had not executed with the formalities required (*Harris* v. *Kn* 15 P. D. at p. 177).

Probate of part of the contents of a lost will.

Where the court has not before it all the contents lost will, probate will be granted of its contents in so as they are proved (*Sugden and Others* v. *Lord St. Leona* 1 P. D. 154, 230; 45 L. J. 49).

In *Pearson*, [1896] P. 289, BARNES, J., expressed opinion that the contents of a lost will could not proved on motion without the consent of the next-of- nor if it disposes of real estate without the consent of heir-at-law; but in *Apted*, [1899] P. 272, in a clear where the estate was small and the next-of-kin had notice, he acceded to an application without requi the consent of all the persons entitled in the event of intestacy (*b*).

Statement of claim propounding a lost will.

Where the draft or an authenticated copy of a wi propounded, the practice is to refer to and identify in statement of claim the draft or copy annexed to affidavit of scripts as containing the contents of the executed by the testator. Where there is no draf copy forthcoming, the contents or substance of the should be set forth in the statement of claim. For f

(*b*) The registrars will make an order, in a clear case, for proba be granted of a lost will as contained in a copy or draft if every pe prejudiced by the will (being *sui juris*) consents (see p. 863).

see the declaration in *Sugden and Others* v. *Lord St. Leonards*, 1 P. D. 154–158; 48 L. J. 49.

A statement of claim propounding a lost will in addition to the usual averment as given in the ordinary statement of claim should allege—

1. That the said will never was revoked or destroyed by the testator, nor by any person in his presence and by his direction with the intention of revoking the same, and the same was at the time of his death a valid and subsisting will, but the same cannot be found.

2. That the contents of the said will were in substance or to the effect as follows: "This is the last will and testament of me, etc."—setting out the contents and substance so far as they are capable of proof.

Incorporation.[90a]

Doctrine of incorporation.

A testamentary paper, although unexecuted, may be entitled to probate by reason of its being incorporated in a duly executed one. Thus where a testamentary paper duly executed refers to an existing unexecuted document as embodying some of the testator's testamentary wishes in such terms that the document may be ascertained, the unexecuted paper is held to be incorporated in the duly executed one, and will be included in the probate. (See *Van Straubenzee* v. *Monck*, 3 Sw. & Tr. 12; 32 L. J. 21.)

The leading case on the doctrine of incorporation is that of *Allen* v. *Maddock*, 11 Moore, P. C. 427, where the law on this subject is thus laid down in the judgment delivered by Lord KINGSDOWN: "A reference in a will "may be in such terms as to exclude parol testimony, as "where it is to papers not yet written, or where the "description is so vague as to be incapable of being applied "to any instrument in particular; but the authorities seem "clearly to establish that where there is a reference to "any written document, described as then existing, in

Parol evidence—when admissible.

Canadian Cases.

[90a] Wills Act, R. S. O., [1897] c. 128, *post*, p. 693.

"such terms that it is capable of being ascertained, pa
"evidence is admissible to ascertain it, and the o
"question then is whether the evidence is sufficient
"the purpose (*ibid.*, 454). And when the parol evide
"sufficiently proves that, in the existing circumstanc
"there is no doubt as to the instrument, it is no object
"to it that, by possibility, circumstances might ha
"existed in which the instrument referred to could
"have been identified" (*Allen* v. *Maddock*, 11 Moo
P. C. 461).

In *Marchant*, [1893] P. 254, the testatrix left t
testamentary papers, the first of which made spec
bequests, but was unexecuted; the second was du
executed, and by it she bequeathed all her property
her nephew "for the purposes I require him to do ab
lutely." Incorporation of the first document was refus
probate was granted of the second, but the executor w
ordered to administer the estate according to the tru
of the first.

In *Smart*, [1902] P. 238, a book or memorandum w
referred to in the will as a future document, the codi
confirmed the will. Held, that the codicil, althou
executed subsequently to the date of the memorandu
could only be taken to refer to the memorandum as
future document.

It was decided in *Croker* v. *The Marquis of Hertfo*
4 Moore, P. C. 339, "That where a testator, having ma
"and duly executed various codicils, made a codicil whi
"was signed, but not duly attested, and by a subseque
"duly excuted codicil, ratified and confirmed his said w
"and codicils, such general reference was not sufficie
"to identify, and so incorporate the unexecuted codicil
"that of the duly executed one."

Where a woman during coverture made a will whi
was invalid, and subsequently when discovered du
executed a codicil written on the same piece of paper
the will, and immediately underneath it, beginning, "Th
"is a codicil to the last will and testament of me, etc

ard it was proved that she had made no other will, the court held, that the codicil incorporated the will (*Heathcote*, 6 P. D. 30).

Where incorporation is relied upon, the statement of claim should refer specifically to the documents said to be incorporated, as well as to the incorporating parts of the duly executed instrument. Statement of claim.

Statements made by a testator after the making of the will with reference to the constituent parts of it, as well as those made before the making of it, are admissible in evidence to show what papers constitute the will (*Gould* v. *Lakes*, 6 P. D. 1).

A testator duly made a will in 1878—made a first codicil in 1879 attested only by one witness, and a second codicil duly attested in 1880. The second codicil did not refer to the first, but the three instruments were written on the same paper. It was held, that the second codicil did not set up the first (*Spotten*, 5 L. R. Ir. Ch. D. 403; *Wilmott*, 1 Sw. & Tr. 36; *Phelps*, 6 N. C. 695).

Two duly executed testamentary papers in form of wills admitted to probate (*O'Conner*, 13 L. R. Ir. Ch. D. 406).

Obliterations and Alterations.[90b]

Where obliterations or erasures, interlineations or other alterations, are apparent on the face of the will, the question arises as to whether effect shall or shall not be given to them in the probate. Obliterations, erasures, interlineations or other alterations.

Sect. 21 of the Wills Act, 1 Vict. c. 26, provides, that "no obliteration, interlineation, or other alteration made "in any will after the execution thereof shall be valid or "have any effect, except so far as the words or effect of "the will before such alteration shall not be apparent, "unless such alteration shall be executed in like manner "as hereinbefore is required for the execution of the will; "but the will, with such alteration as part thereof, shall Sect. 21, Wills Act.

Canadian Cases.

[90b] Wills Act, R. S. O., [1897] c. 128, s. 23, *post*, p. 693.

"be deemed to be duly executed if the signature (*c*) of
"testator and the subscription (*c*) of the witnesses be n
"in the margin, or in some other part of the will oppo
"or near to such alteration, or at the foot or end o
"opposite to a memorandum referring to such alterat
"and written at the end or some other part of the wil

Rules. The following rules in the common form practice re exclusively to erasures and obliterations: "Erasures "obliterations are not to prevail unless proved to h "existed in the will at the time of the execution, or un "the alterations thereby effected in the will are e "executed and attested, or unless they have been rend "valid by the re-execution of the will, or by the su "quent execution of a codicil thereto. If no satisfac "evidence can be adduced as to the time when s "erasures and obliterations were made, and the w "erased or obliterated be not entirely effaced, but "upon inspection of the paper be ascertained, they r "form part of the probate" (Rule 10, N.-C. B.).

"In every case of words having been erased or ob "rated which might have been of importance an affid "is required" (Rule 11, N.-C. B.).

Obliterations or erasures. Where any words in a will have been so obliterate erased by the testator as to be intelligible without or the assistance of a magnifying glass, they will be inse in the probate, unless they are shown to have been revoked in one of the ways provided in the statute; where they are unintelligible even with the assistanc a glass, probate will pass in blank of the words obliter or erased, provided the court be of opinion that the obli tion or erasure was made *animo revocandi* (*Townle Watson*, 3 Curt. 769). In *Leigh*, [1892] P. 82, whe will had been partially destroyed after the testator's d it was restored from a copy.

Revocation by obliteration. Revocation by the obliteration of a bequest will no

(*c*) The initials of the testator and witnesses are sufficient *Blewitt*, 5 P. D. 116).

effectual, if experts by glasses can decipher the bequest, but it is not allowable to resort to physical interference with the document in order to decipher it. Slips of paper had been pasted over certain words in a will, but the words being readable by an expert placing a piece of brown paper over them, and holding the document against a window-pane, it was held that such concealment amounted to an obliteration, but as the words could be read by an expert, that they were apparent on the will within sect. 21 of the Wills Act (*Ffinch* v. *Combe*, [1894] P. 191). tion when effectual, and when not.

Where bequests have been obliterated or erased with the intention of substituting for them other bequests, and such substituted bequests fail to take effect in consequence of the defective execution of the alteration, probate will be decreed of the will in its original form, on the ground that the obliteration or erasure was made for the purpose of revocation conditional only on the substituted bequest taking effect (*Brooke* v. *Kent*, 3 Moore, P. C. 334). Dependent relative revocation.

Where a will had been duly executed, and the name of one of the attesting witnesses had been subsequently erased by the testator to be rewritten by the witness, and not with the intention of revoking the will, probate was granted of the will as originally executed (*Coleman*, 2 Sw. & Tr. 314; 30 L. J. 170).

The following rules in the common form practice relate to interlineations or other alterations in wills: "Interlineations and alterations are invalid unless they existed "in the will at the time of its execution, or, if made "afterwards, unless they have been executed and attested "in the mode required by the statute, or unless they have "been rendered valid by the re-execution of the will, or "by the subsequent execution of a codicil thereto" (Rule 8, N.-C. B.). Practice as to interlineations and other alterations.

"When interlineations or alterations appear in the will "(unless duly executed or recited in, or otherwise identified "by, the attestation clause), an affidavit or affidavits "in proof of their having existed in the will before its

"execution must be filed, except when the alteratio
"merely verbal, or when they are of but small importa
"and are evidenced by the initials of the attes
"witnesses" (Rule 9, N.-C. B.).

Presumption of law as to time of making of alterations.

The presumption of law, in the absence of all di evidence as to the date when the alterations, interlineati or erasures were made, is that they were made after execution of the will (*Cooper* v. *Bockett*, 4 Moore, P 419). But the mere circumstance of the amount legacy, or of the name of a legatee, being inserte different ink, and in a different handwriting, does not al constitute an obliteration, interlineration, or other alt tion within the meaning of s. 21 of the Wills Act (*Gre* v. *Tylee*, 7 Moore, P. C. 327).

Interlineations or other alterations appearing on face of a will executed prior to January 1st, 1838, the on which the Wills Act (1 Vict. c. 26) came into operat are, in the absence of evidence to the contrary, presu to have been made before the Act came into operation, will therefore be entitled to probate (*Streaker*, 4 Sw. & 192; 28 L. J. 50).

Correction of a misdescription in a will by extrinsic evidence.

Extrinsic evidence of the surrounding circumstan but not declarations of a testator, is admissible to corre misdescription in a will of an intended executor or lega (*Chappell*, [1894] P. 98 (C. A.)).

Form of statement of claim in cases of erasures, etc.

Where there appears upon the face of the will propoun an erasure, obliteration, interlineation, or other alterati a reference to such erasure, obliteration, interlineation other alteration should be made in the statement claim, and the party propounding the will should st whether he claims probate of it in its original or in altered state.

ADMINISTRATION ACTIONS.[91]

Administration actions.

Administration actions are for the most part instituted for the purpose of establishing the plaintiff's title to a grant of letters of administration of the estate of the deceased on the grounds of his having died intestate, and of the plaintiff being entitled to the whole or to a portion of his estate by reason of his marriage with the deceased, or by reason of his being his heir-at-law or one of his next-of-kin, or by reason of his being a party entitled under the Statutes of Distributions to share in the personal estate, and consequently entitled to be constituted his personal representative. Where the plaintiff's right to share in the estate is disputed on the ground of his want of interest—*i.e.*, on the ground of the deceased not having been lawfully married to the plaintiff, or of there having been no relationship between the plaintiff and the deceased, or not

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Canadian Cases.

[91] *NO SPECIFIC PRAYER FOR ADMINISTRATION.*—If the allegations in a bill state a case entitling a party to relief, he may, under the general prayer, have it, though his specific prayer may have been for other relief; but a plaintiff cannot take advantage of the ambiguity of his own pleading so as to claim, upon facts stated in the bill *alio intuito*, a relief entirely foreign to the scope of the bill. The bill which was filed against the executors of a testator, his widow and children, prayed that the proceeds of an insurance policy which had been effected by the deceased for his wife and children should be subjected, in the hands of the executors, to the payment of moneys lent by the plaintiff to the deceased, and applied by him to the support of his children, and that the executors might be restrained from paying over the money:—*Held*, that the plaintiff was not entitled to an administrative decree (*Gaughan* v. *Sharp*, 6 A. R. 417; and *ante*, p. 363. See also S. C. Act, s. 2, sub-s. 2; S. C. R. 6 and 11; Devolution of Estates Act, R. S. O., [1897] c. 127).

Letters of administration relate back to intestate's death (*Beard* v. *Kelcham*, 5 U. C. R. 120; and *Irwin* v. *Bank of Montreal*, 30 U. C. R. 275, *ante*, pp. 77, 197, 338, 430; and S. C. R. 15).

such near relatio..ship as to entitle the plaintiff to shar
the estate, the action becomes an interest suit.

Where parties are equally entitled.

Administration actions may also be instituted for
purpose of enabling the court to select which of tw
more of those interested in the deceased's personal es
shall be his personal representative or administrator.
court in determining its choice *primâ facie* prefers m
to females—the applicant who has the majority of inte
in support of his claim and the *prior petens*. Quest
of this nature are usually determined on a summons be
the registrar or on motion.

For the form of a statement of claim in an ordi
administration action, see Appendix V., p. 1067.

Interest Causes.

Interest causes.

"In interest causes, as heretofore, each party shal
"at liberty to deny the interest of the other; an
"such cases both parties may, with and subject to
"permission of the judge, adduce proof on one and
"same trial of their interests respectively" (Rule
C. B.).

"In interest causes the pleading of each party
"show on the face of it that no other person exists h
"a prior interest to th:t of the claimant" (Rule 62, C

ACTIONS FOR THE REVOCATION OF PROBATE OR
LETTERS OF ADMINISTRATION.

Actions for the revocation of probate or of letters of administration.

The nature and object of actions for the revocati
probate or of letters of administration have already
briefly described. (See *ante*, p. 364.)

Contents of statement of claim for a revocation of probate.

In an action for the revocation of a probate g
in common form, the statement of claim should st
(1.) The name, description, and residence of the te
and the date and place of his death. (2.) The fac
probate in common form had been granted (with th

of the probate) of an alleged will of the testator (with the date of the will) to the defendant in the principal or in a district probate registry of the High Court, and that such probate ought to be revoked. (3.) As one of the objects of the action is to obtain the revocation of probate, the grounds upon which the revocation of the grant is sought should appear (according to a decision of the president in chambers) in the statement of claim, either that the will proved was not entitled to probate, on the grounds of it having been unduly executed, of the incapacity of the deceased at the time of its execution, by reason of its execution having been obtained by undue influence, etc. Where the will is abandoned by the defendant the practice of the plaintiff setting forth in his statement of claim the grounds upon which its validity is impeached is convenient as entitling him to produce evidence at the hearing impeaching its validity, and the court, if satisfied with such evidence, will then be in a position to pronounce against the will. Where the plaintiff, who has called in the probate, relies on a prior will, he should propound it on his statement of claim, and the defendant in his statement of defence should propound his will in a counterclaim at the end of his statement of defence.

Contents of statement of claim for revocation of letters of administration.

In an action for the revocation of a grant of letters of administration, the statement of claim should state— (1.) The name, description, address, and date and place of the death of the deceased. (2.) The fact of a grant of letters of administration having issued to the defendant from the principal probate or a district probate registry, with the date of the grant. (3.) The ground on which the revocation of the grant is claimed, either that the defendant was not entitled to the grant as not being interested in the estate of the deceased either as next-of-kin or otherwise, and that the plaintiff is interested in the estate as next-of-kin or otherwise, or that the deceased had died testate, and that the plaintiff had an interest in his estate under his last will; the plaintiff should in the last

case propound the will, and claim not only that the
should revoke the grant of administration, but also sh
decree probate in solemn form of the will propounde
him (*d*).

In an action for revocation of probate in common
form eight years after it had been granted, under
XXXVII. r. 1, the affidavit of one of the attesting
nesses who could not be found, was allowed by Bu
(*dubitante*), to be read (*Gornall* v. *Mason*, 12 P. D. 1

(*d*) See *Jenkins* 76 L. T. 164, where an account was ordered
delivered by the administrator, on the application of the ex
under a will afterwards discovered.

CHAPTER XII.

DEFENCE AND COUNTERCLAIM.

Rules and Practice.

Forms of Defence.

Defences.

WANT OF DUE EXECUTION.
Signature.
Acknowledgment.
Attestation.
INCAPACITY.
Testamentary Capacity.
Persons Incapacitated.
Partial Insanity.
Delusions.
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UNDUE INFLUENCE.
What Constitutes.
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FRAUD.
Amounting to Barring Trial.
Surprise. New Trial.

WANT OF KNOWLEDGE AND APPROVAL.
Evidence Necessary.
Burden of Proof.
Suspicious Circumstances.
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REVOCATION BY WILL.
By Marriage.
By Subsequent Will.
By Destruction.
By Obliteration.
By Inconsistent Will.
Dependent Relative Revocation.
THREATS.
ESTOPPEL.
MINORITY AND COVERTURE.

RULES AND PRACTICE.

The time for the delivery of defence is specified in the order for the summons for directions. Time can be extended by consent without order (R. S. C., Order LXIV. r. 1), and if consent is refused, application may be made to the Registrar under the summons for directions.[92]

Under R. S. C., Order XXVII. r. 10, if the defendant make default in filing and delivering the statement of defence the action may proceed notwithstanding such default.

Under R. S. C., Order XXI. r. 9, "Where the court or a judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the court or judge may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted."

Costs occasioned by denial or non-admission of facts.

Canadian Cases.

[92] Con. Rule 246.

Counter-claim.

And under Rule 10, "Where any defendant seeks
"rely upon any grounds as supporting a right of coun
"claim, he shall, in his statement of defence, st
"specifically that he does so by way of counterclai
Facts stated in the defence may be incorporated in
counterclaim without restatement.

Title of counterclaim.

"Where a defendant by his defence sets up any coun
"claim which raises questions between himself and
"plaintiff along with any other persons, he shall add
"the title of his defence a further title similar to the t
"in a statement of claim setting forth the names of
"the persons who, if such counterclaim were to
"enforced by a cross action, would be defendants to s
"cross action, and shall deliver his statement of defe
"to such of them as are parties to the action within
"period within which he is required to deliver it to
"plaintiff" (Rule 11).

Citation to see proceedings by defendant.

Where any such person is not a party to the action,
usual practice is for the defendant to issue a cita
against him to see proceedings. See p. 294, and for f
of citation, p. 984. The appearance to the citation
entered at the Central Office. The alternative practic
under R. S. C., Order XXI. rr. 12, 13, and 14.

Notice of intention merely to cross-examine witnesses may be given with defence.

"In probate actions the party opposing a will n
"with his defence, give notice to the party setting up
"will that he merely insists upon the will being prove
"solemn form of law, and only intends to cross-exan
"the witnesses produced in support of the will, and
"shall thereupon be at liberty to do so, and shall no
"any event, be liable to pay the costs of the other
"unless the judge shall be of opinion that there was
"reasonable ground for opposing the will" (R. S. C., O
XXI. r. 18).[93]

A distinction is to be drawn between a party who s
to call in and obtain revocation of probate, and a

Canadian Cases.

[93] S. C. R. 6, C. B., *Appleman* v. *Appleman*, *post*, p. 501.

who enters a caveat and takes the ordinary steps in opposing a will being admitted to probate, and in *Tomalin* v. *Smart* [1904], P. 141, Rule 18 was held to apply only to the case of a party opposing a will in solemn form, not to that of a party who asks for revocation of a probate.

See also under costs, p. 565.

The notice must be served *with* the defence in order to have the protection as to costs provided by this rule (*Bone* v. *Whittle*, 1 P. & D. 249).

Leave to deliver further defence, or further reply, if required, under the provisions of R. S. C., Order XXIV., should be asked for by notice under the summons for directions. Further defence.

Forms of Defence.

The following specimens of defences are given in App. D., s. III., of the Rules of the Supreme Court:— [94]

Interest Suit.

The defendant is nephew and next-of-kin of the deceased, being son of G. B., the brother of the deceased, who died in his lifetime.

The defendant claims—

That the court pronounce that the defendant is the nephew and next-of-kin of the deceased, and entitled to a grant of letters of administration of the personal estate and effects of the deceased.

Probate of Will in Solemn Form.

"The defendant says as follows:—

"1. The said will and codicil of the said deceased were "not duly executed according to the provisions of the "statute 1 Vict. c. 26.

"2. The deceased at the time the said will and codicil "respectively purport to have been executed was not of "sound mind, memory, and understanding.

Canadian Cases.

[94] S. C. R., C. B., Statement of Defence, *post*, p. 858.

[Particulars of specific instances of delusion mus
given. See p. 420.]

"3. The execution of the said will and codicil
"obtained by the undue influence of the plaintiff
"others acting with him whose names are at pr
"unknown to the defendant].

[In *Salisbury* v. *Nugent*, 9 P. D. 23, the names o
persons alleged to have exercised undue influence
ordered to be given, but not particulars of the acts
time and places, but now the substance of the case
be given. See p. 421.]

"4. The execution of the said will and codicil
"obtained by the fraud of the plaintiff, such fraud, s
"as is within the defendant's present knowledge
"[*state the nature of the fraud*].

"5. The said deceased at the time of the executi
"the said will and codicil did not know and appro
"the contents thereof, or of the contents of the resid
"clause in the said will [*as the case may be*].

[Give particulars stating shortly the substance o
case. See p. 420.]

"6. The deceased made his true last will dated th
"of January, 1873, and in the said will appointe
"defendant sole executor thereof. [Propound this w
"in paragraphs 2 and 3 in statement of claim.]

"The defendant claims:—

"1. That the court pronounced against the said
"and codicil propounded by the plaintiff.

"2. That the court decree probate of the said w
"the deceased dated the 1st of January, 1873, in so
"form of law."

Other defences which may be set up to a will are—

7. That it was executed as a sham will.

8. That it has been revoked.

9. That the testator was prevented by threats
altering the will.

10. That the plaintiff is estopped.

11. That the testator was a minor, or, in some cases, a *feme coverte*.

[*Note* the substance of the case upon which it is intended to rely must be given with regard to *every* defence. See p. 420, and for particulars generally.]

For formal form of defence, see p. 1067.

Want of Due Execution.

The onus of proving that the will propounded was executed as required by law is on the plaintiff or party propounding it.

The form required for the execution of the will of a person domiciled in England (except in the case of a privileged will) since January 1st, 1838, is prescribed by s. 9 of the Wills Act (1 Vict. c. 26), and by s. 1 of the Wills Amendment Act, 1852 (15 & 16 Vict. c. 24). See pp. 602 and 610.[95]

If a will is required to be executed according to s. 9 of the Wills Act it should appear: Sec. 9 of Wills Act, 1837.

(1.) That on the face of the paper what purports to be the signature or mark of the testator is placed at the end of the will, or so placed as to come within the requirements of Lord St. Leonard's Act (15 & 16 Vict. c. 24, s. 1). See p. 610. (2.) That such signature or mark was made by the testator himself, or by some one for him in his presence and by his direction. (3.) That it was either so made or was acknowledged by the testator as his signature in the presence of two witnesses present at the same time. (4.) That each of these two witnesses, subsequently to the making or acknowledgment of the testator's signature, subscribed the will in the presence of the testator. All the above questions are raised by the plea of undue execution, including the charge that the signature or mark of the testator is a forgery. But where Forgery.

Canadian Cases.

[95] Wills Act, *post*, p. 693.

it is intended to set up a case of forgery, it is conveni with a view to prevent an adjournment at the hearing the ground of surprise, either in the statement of defe or by written notice to make the charge of forgery.

Signature.[96]

Execution by testator's signature.

The testator's signature to a will as required by Wills Act may be made by the testator himself sign his own name, or by his signing under an assumed na the assumed name being regarded as his mark (*Glo*

Execution by testator's mark.

5 N. C. 553; *Redding*, 2 Roberts. 339). Or by making a mark, and then it is usual to place the testat name against the mark. But a will signed by a mark entitled to probate, although the name of the testato not placed against the mark, provided it be identified the will of the testator (*Bryce*, 2 Curt. 325).

Wrong name placed against testatrix's mark.

The placing of a wrong name (her maiden name) agai the mark of a testatrix instead of her real name, wh the will was in the commencement described as the v of the testatrix by her real name, has been held not vitiate the mark (*Clarke*, 1 Sw. & Tr. 23; 27 L. J. 18).

Mark may be made either by a pen or other instrument.

The mark may be made either by a pen or by so other instrument. Thus, where the testator was in habit of using a stamp with his name engraved on it impress his signature to letters, and one of the attest witnesses with this stamp impressed by the testat directions, and in his presence, his name at the end o codicil, this was held to be a good execution by a m (*Jenkins* v. *Gaisford and Thring*, 3 Sw. & Tr. 93; 32 L 122).

A testator, in the presence of two subscribing witnes affixed a seal stamped with his initials to his will, wh was entirely written by himself, placed his finger on seal, and said, "This is my hand and seal"; held, t

Canadian Cases.

[96] Wills Act, *post*, p. 693.

the will was sufficiently signed by him (*Emerson*, 9 L. R. Ir. Ch. D. 443).

Signature made by another person by testator's directions.

When a person signs for a testator by his directions, he may sign either the testator's name or his own name for the purpose of giving effect to such directions (*Clarke*, 2 Curt. 329).

The testator's signature may be made by one of the attesting witnesses (*Bailey*, 1 Curt. 914; *Smith* v. *Harris*, 1 Roberts. 262).

Position of testator's signature in attestation clause.

As to the position of the testator's signature, it has been held, where the only signature of the testator was in the attestation clause, which as well as the will was in his handwriting, and he asked the subscribing witnesses to attest his will, the execution was valid under 1 Vict. c. 26 (*Huckvale*, 1 P. & M. 375; 36 L. J. 84; *Pearn*, 1 P. D. 70; 45 L. J. 31. See also *Walker*, 2 Sw. & Tr. 354; 31 L. J. 62; *Casmore*, 1 P. & M. 653; 38 L. J. 54).

Where, from the obvious sequence and sense of the context, the signature of the deceased really followed the dispositive part of the testamentary paper, though it occupied a place on the paper literally above it, probate of such paper was decreed (*Kimpton*, 3 Sw. & Tr. 427; 33 L. J. 153). So, also, where the testator's signature was written partly across the last line but one of the will and entirely above the last line, with the exception of one letter which touched the last line, probate was decreed of the paper (*Woodley*, 3 Sw. & Tr. 429; 33 L. J. 154).

The testator's signature, if placed in the middle instead of at the end of the will, is not to be treated as a good execution of all that preceded it (*Sweetland* v. *Sweetland*, 4 Sw. & Tr. 6; *Margary* v. *Robinson*, 12 P. D. 13).

In the goods of Wotton, 3 P. & M. 159, where the signature was placed at the foot of the first page in a lithographed form and the will commenced at the top of the second page and continued to near the end of the third page, the fourth page being blank, it was held that the second side of the paper was really the first, and the

first side the termination of the will, and the will
duly executed. This case is explained in *Royle* v. *Ho*
[1895] P. 163, where the will under somewhat sir
circumstances was held to be contained in the first
only. See also *Gilbert*, 78 L. T. 762; *Coombs*, 1 P & M.

Where a testator signed his name at the end of se
dispositive clauses in a will apparently written at diffe
times, the presumption is that he intended to give effe
the whole of what was written at the time he last r
his signature (*Cottrell* 3 Sw. & Tr. 419; 33 L. J. 106

Where the signature of the testator and of the attes
witnesses was made, not on the paper on which the
was written, but on a piece of paper attached to it
being pasted, this was held to be a good execution wi
15 & 16 Vict. c. 24, s. 1. "The signature being
"placed at the end of the will that it is apparent on
"face of it that the testator intended thereby to
"effect to the writing signed as his will" (*Cool*
Lambert, 3 Sw. & Tr. 46; 32 L. J. 93; *Gausden*, 2 Sw. &
362; 31 L. J. 53).

Where a testator, without naming executors in
body of the will, refers to "executors hereinafter nam
and in a clause written immediately under his signa
names them,—held, that this clause was not entitle
probate as a good execution within 15 & 15 Vict. c.
s. 1, or as incorporated in the will (*Re Dallow*, 1 P. &
189; *In the goods of White*, [1896] 1 Ir. Ch. 269).
where the clause was referred to by means of an aste
the nomination was included in the probate (*Tho*
Greenwood, [1892] P. 7).

Where the whole of the dispositions of a will
written on the first side of a foolscap sheet of paper,
second and third sides being blank, and the attesta
clause with the signature of the testator and the attes
witnesses being at the middle of the fourth side, it
held to be duly executed under this section (*Faller*, [18
P. 377).

Acknowledgment.

What amounts to acknowledgment to sign in the presence of attesting witnesses.

An acknowledgment of the testator's signature may be made expressly by words, or by implication—*e.g.*, by the testator producing the will with his signature visibly apparent on the face of it to the witnesses, and requesting them to subscribe it (*Gaze* v. *Gaze*, 3 Curt. 451; *Blake* v. *Knight*, *ib.* 547; *Ilott* v. *Genge*, 3 Curt. 172, 175); by gestures (*Davis*, 2 Roberts. 337; Deane & Swab. 3); by the testator's apparent assent to a request made by another person in his presence to the witnesses to subscribe the will, his signature being visible to the witnesses (*Faulds* v. *Jackson*, 6 N. of C., Supp. 1; *Inglesant* v. *Inglesant*, 3 P. & M. 172; 43 L. J. 43).

Where a testator signed his will in the presence of the attesting witnesses, who saw him in the act of writing on the paper containing the will, that which the court presumed to be his signature, and then by his request subscribed their names to the paper, the attestation was held to be good, although they did not know he was executing a will, and did not see the signature, and he did not acknowledge it (*Smith* v. *Smith*, 1 P. & M. 143; 35 L. J. 65).

Where the witnesses are unable to see the testator's signature, and he merely requests them to sign without giving them any explanation of the nature of the instrument they are signing, there is not a sufficient acknowledgment (*Ilott* v. *Genge*, 3 Curt. 160; 4 Moo. P. C. 265; *Fischer* v *Popham*, 3 P. & M. 246; 44 L. J. 47).

To constitute a sufficient acknowledgment, the witnesses must at the time of the acknowledgment, see, or have the opportunity of seeing, the signature of the testator, and if such be not the case, it is immaterial whether the signature be in fact there at the time of the attestation, or whether the testator say that the paper to be attested is his will, or that his signature is inside the paper (*Hudson* v. *Parker*, 1 Roberts. 40; *Blake* v. *Blake*, Court of Appeal (overruling *Becket* v. *Howe*, 2 P. & M. 1; 7 P. D. 102)).

Presence of Witnesses and Testator.

Presence of attesting witnesses at time of the making or acknowledgment of testator's signature.

It is necessary that the signature of the testator sh be made or acknowledged in the joint presence of attesting witnesses, and that the witnesses should atte the presence of the testator, although not of each (*Faulds* v. *Jackson*, 6 N. of C., Supp. 1).

Both witnesses must attest and subscribe after testator's signature has been made or acknowledge them, when both were present at the same time (*Coop Bockett*, 4 Moo. P. C. 419; *Hindmarsh* v. *Charlton*, 8 of L. 167; *Wyatt* v. *Berry*, [1893] P. 5), and such scription must be made in the presence of the testator.

What constitutes a valid subscription of an attesting witness.

What constitutes the presence of the testator has b the subject of some discussion; and the result of the c is, that it is sufficient for the witnesses to sign in suc place and in such a position that the testator might h seen them sign if he had chosen to look; but if he co not see them sign had he looked, the attestation wo be bad (*Colman*, 3 Curt. 118). The expression "in presence" must be taken to mean actual visual prese (*Brown* v. *Skirrow*, [1902] P. 3).

Where a testatrix signed a document in the presence two witnesses, who twenty minutes afterwards subscrib the document in an adjoining room, but out of her sig and without her being conscious of what they were doi the attestation was held to be bad (*Jenner* v. *Effi* 5 P. D. 106; and *Carter* v. *Seaton*, 85 L. T. 76).

Attestation.[97]

No form of attestation is necessary; [illegible] to make valid subscription and attestation, either the name of t witness, or some mark or name intended to represent h name, must be written or made by him in the presence the testator. Thus, where a witness signed simply

Canadian Cases.

[97] *Scott* v. *Scott*, 13 O. R. 551, and *ante*, p. 36; *O'Neil* v. *Owen*, 1 O. R. 525, and *ante*, p. 37; *Williamson* v. *Williamson*, 9 C. L. T. 393

servant to Mr. Sperling (the testator), he having been told by the testator's solicitor to sign as servant to Mr. Sperling, the attestation was held to be good (*Sperling*, 3 Sw. & Tr. 272; 33 L. J. 25; see also *Hindmarsh* v. *Charlton*, 8 H. of L. 160; 1 Sw. & Tr. 433). The correction of an error in the name of the witness, or his acknowledgment of his name, or the adding a date to the will, would not be a good subscription (*Maddock*, 3 P. & M. 169; 43 L. J. 29; *Hindmarsh* v. *Charlton*, 8 H. of L. 160).

It is sufficient for the witness to hold the pen and for another person to write his name or make his mark (*Lewes*, 2 Sw. & Tr. 153; *Bell* v. *Hughes*, 5 L. R. Ir. Ch. D. 407). A witness cannot acknowledge his signature by going over it with a dry pen as a testator can (*Horne* v. *Featherstone*, 73 L. T. 32).

Where a witness through feebleness or some other cause is unable to complete his signature, the execution is invalid (*Maddock*, 3 P. & M. 169; *McConville* v. *McCreesh*, 5 L. R. Ir. Ch. D. 73).

Position of subscription of attesting witnesses.

The Wills Act does not require the attesting witnesses to subscribe their names on any particular part of the instrument; what is required is, that the signatures should be on the face of the instrument, and that it should appear that they were meant to attest the signature of the testator (*Davis*, 3 Curt. 748; *Chamney*, 1 Roberts. 757; *Sullivan* v. *Sullivan*, 3 L. R. Ir. Ch. D. 299; see also *Roberts* v. *Phillips*, 4 E. & B. 450, upon the language of the Statute of Frauds, in which the same words are used with regard to the will being attested and subscribed as in the Wills Act). In *Streatley*, [1891] P. 172, the will was held to be good, although the names of the attesting witnesses only appeared in the margin opposite to certain amendments, on proof that the witnesses signed with the intention of witnessing the testator's signature. But where there are two testamentary instruments on the same sheet of paper, the subscription of the witnesses at the end of the first instrument was held not to be a good subscription for the second paper (*Taylor*, 2 Roberts. 411).

Where the deceased signed his name at the end will on the tenth sheet, and placed his initials on t nine sheets, and two out of the three witnesses their names only on the first nine sheets, it was he the testator's signature was not duly attested (*Phip Biddell* v. *Hale*, 3 P. & M. 166).

A signature subscribed at the end of a will, but not for the purpose of attesting the testator's signature, may be excluded from the probate.

Where a will was executed in the presence of tw nesses, and was subscribed by them, and also by a person who was a residuary legatee, the court re evidence to account for the signature of the third and, being satisfied that it was not written for the p of attesting the signature of the deceased, it ordere be excluded from the probate (*Sharman*, 1 P. & M 38 L. J. 47; *Smith*, 15 P. D. 2).

Where a will had been duly executed, and many afterwards the testatrix handed over the will with he deeds to the residuary legatee and executor (her nep and re-signed the will herself; and her nephew another person, by her request, signed their names a nesses to the transaction of the delivery of the wil nephew signing as executor: the court held this not a re-execution, and excluded the second set of signa from the probate (*Dunn* v. *Dunn*, 1 P. & M. 277).

But where a witness subscribed a will by the test request, in the double character of executor and atte witness, this was held to be a good attestation (*Griff Griffiths*, 2 P. & M. 300; 41 L. J. 14).

Presumption of due execution.

Where a testamentary paper is *ex facie* duly exec and the evidence of the attesting witnesses is more o adverse to its due execution; the court may, upon sideration of the circumstances of the case, pron for the paper (*Cooper* v. *Bockett*, 3 Moo. P. D. 663; v. *Roberts*, 12 Moo. P. C. 165).

Where a will appears to be duly executed, and the a complete attestation clause, the presumption *omnia esse acta* applies, and is not rebutted by the defe memory of an attesting witness (*Woodhouse* v. *Bal*

13 P. D. 2). See also *Dayman* v. *Dayman*, 71 L. T. 699, where the witnesses agreed that the will was not signed by them in the testator's presence, but their evidence on other matters disagreed, the court presumed due execution. Where the attestation clause is incomplete, the presumption also applies, but with less force. Where the attestation clause to a will was informal, and the memory of an attesting witness was defective, but it was proved that the will was signed by the deceased, and that the witness had been in the room with him for the purpose of attesting it, the presumption *omnia ritè esse acta* was held to prevail, and the court pronounced for the will (*Vinnicombe* v. *Butler and Another*, 3 Sw. & Tr. 580; 34 L. J. 18).

Where a codicil had been *ex facie* duly executed, and the testator was a man of business, and had showed an intelligent desire to do everything regularly, the presumption *omnia ritè esse acta* was held not to be rebutted by the adverse evidence of the attesting witnesses, who were nervous and confused at the time of execution (*Wright* v. *Sanderson*, 9 P. D. 149). The presumption was extended in the case of an informal holograph document where there was no attestation clause, and only evidence as to the handwriting of one witness (*Peverett*, [1902] P. 207).

Incapacity.[98]

Testamentary capacity.

"If a will, rational on the face of it, is shown to have "been executed and attested in the manner prescribed by "law, it is presumed in the absence of any evidence to "the contrary to have been made by a person of com- "petent understanding. But if there are circumstances "in evidence, which counterbalance that presumption, "the decree of the court must be against its validity "unless the evidence on the whole is sufficient to establish

Canadian Cases.

[98] S. C. Rules, *post*, p. 827; *Thomson* v. *Torrance*, 28 Gr. 253; *Wilson* v. *Wilson*, 22 Gr. 81; *Russell* v. *Le Francois*, 8 S. C. Rep. 335, and *post*, pp. 468 and 601.

"affirmatively that the testator was of sound mi
"he executed it" (*per* Sir C. CRESSWELL in *Symes*
1 Sw. & Tr. 401. See also *Sutton* v. *Sadler*, 3 C. B. (N

Amount of soundness of mind required for making a will.

On the question as to what amount of sound mind is required for making a will, Sir JAMES H in *Burdett and Another* v. *Thompson* (3 P. & M. says: "The question of unsoundness of mind is "degree, and it is impossible to lay down any "proposition of law which will guide you in dete "it. Probably the mind of no person can be sai "perfectly sound, just as the body of no person "said to be perfectly sound. The question is—W "there was such a degree of unsoundness of min "interfere with those faculties which ought to be "into action in making a will. If you are at lib "draw distinctions between various degrees of sou "of mind, then, whatever is the highest degree of "ness is required to make a will. From the char "the act it requires the consideration of a larger "of circumstances than is required in other acts "involves reflection upon the claims of the several "who, by nature, or through other circumstances, "supposed to have claims upon the testator's boun "the power of considering these several claims, "determining in what proportions the property sh "divided amongst the claimants; and, therefore, wh "degrees there may be of soundness of mind, the "degree must be required for making a will."

Four classes of persons incapacitated from making a will.

There are four classes of persons who are incapa from making a valid will by reason of mental un ness:—1. Idiots; 2. Lunatics; 3. Persons who a sound through visitation of God, that is, from sic accident, or old age; 4. Persons who are unsound th their own acts, namely, drunkenness.

1. Idiots.

1. An idiot is a person whose mind has been co ously unsound from his infancy.

2. Lunatics.

2. A lunatic is a person who is usually insane, bu

have lucid intervals, and, during such lucid intervals, he is competent to make a will.

In the books and cases insanity is divided into two kinds, general insanity, and partial insanity.

General insanity exists where the mind is unsound on multifarious matters, so as to indicate that it is diseased throughout. General insanity.

Partial insanity exists in the case of a monomaniac who has insane delusions, limited to a particular subject, or to particular subjects. Partial insanity.

A person whose mind is generally unsound is held to be incapable of making a valid will whilst such unsoundness continues.

A person whose mind is only partially unsound, that is, who is subject to one or more monomanias only, and who does not exhibit indications of his mind being diseased throughout, was held by the Judicial Committee of the Privy Council in *Waring* v. *Waring*, 6 Moo. P. C. 341, during the continuation of such partial unsoundness, to be equally incapable of making a will with a person generally deranged, on the ground that the mind is one and indivisible, and, therefore, if it is unsound on one subject, it is erroneous to suppose that such mind is really sound on other subjects, and that no confidence can be placed in the act of a diseased mind, however rational in appearance, because there is no security that the lurking delusion, the real unsoundness, does not mingle itself with or occasion the act under consideration.[99] *Waring* v. *Waring*, 6 Moo. P. C. 341. Delusions.

This doctrine was accepted by Lord PENZANCE in *Smith* v. *Tebbett*, 1 P. & M. 398; 36 L. J. 97. But in a later case (*Banks* v. *Goodfellow*, L. R. 5 Q. B. 549; 39 L. J. Q. B. 237) its correctness was controverted by the Court of Queen's Bench in the judgment of the court delivered by Lord Chief Justice COCKBURN, in which it *Banks* v. *Goodfellow*, L. R. 5 Q. B. 549.

Canadian Cases.

[99] *Ingoldsby* v. *Ingoldsby*, 20 Gr. 131; and *Estate of Wilkie*, 5 R. & G. (Nova Scotia).

was held, that inasmuch as in both the cases of *Warin* *Waring*, and *Smith* v. *Tebbett*, the delusions of the dece were multifarious, and of the wildest and most irrati character, abundantly indicating that the mind of testatrix in either case was diseased throughout, and a both there was an insane suspicion or dislike of per who should have been objects of affection, and, what still more important, as in both it was palpable that delusions must have influenced the testamentary disp tions impugned, they were cases of general and no partial insanity, and that the doctrine therefore embra in the judgments was wholly unnecessary to the partic decisions, and that this being so the question was concluded by authority.

The Court of Queen's Bench conceded, "That whe "delusion has had [as in the case of *Dew* v. *Clark*, 3 A "79, and Haggard's Special Reports], or is calculated "have had, an influence on the testamentary disposit "it must be held to be fatal to its validity. Thus, i "occurs in a common form of monomania, a man is u "a delusion that he is the object of persecution or att "and makes a will in which he excludes a child for w "he ought to have provided: though he may not h "adverted to that child as one of his supposed enemie "would be but reasonable to infer that the insane co "tion had influenced him in the disposal of his proper (*Ibid.*, 561). But where the delusion must be ta neither to have had any influence on the provisions of will nor to have been capable of having any, the c held that such a delusion did not destroy the capacit make the will, and that a will made under such circ stances should be upheld (*Ibid.*, 570). HANNEN, J., w party to this judgment, and followed it in *Boughto Knight*, 3 P. & M. 64.[100]

Burden of proof where there are delusions.

Where the defence of incapacity has been pleaded,

Canadian Cases.

[100] *Bell* v. *Lee*, 8 A. R. 185.

burden of proof rests upon those who set up the will (*a*), and *à fortiori*, when it has already appeared that there was in some particulars undoubtedly unsoundness of mind, that burden is considerably increased: and that burden is not discharged where the unsoundness consists of delusions, unless the court is satisfied that there is no reasonable connection between the delusion and the bequests in the will (*Smee* v. *Smee*, 5 P. D. 84, at pp. 91 and 92).

Definitions of delusion.

What constitutes an insane delusion has been the subject of argument and consideration in several cases.

In the leading case of *Dew* v. *Clark* (3 Add. 79; Haggard's Special Reports), Sir JOHN NICHOLL gives the following definition of what a delusion is:—"The true "criterion, the true test, of the absence or presence of "insanity I take to be the absence or presence of what, "used in a certain sense of it, is comprisable in a single "term, namely, delusion. Wherever the patient once "conceives something extravagant to exist which has still "no existence whatever but in his own heated imagina- "tion, and wherever at the same time, having once so "conceived, he is incapable of being, or at least of being "permanently, reasoned out of that conception, such a "patient is said to be under a delusion in a peculiar half "technical sense of the term; and the absence or presence "of delusions so understood forms, in my judgment, the "true and only test or criterion of absent or present "insanity. In short, I look upon delusion, in this sense "of it, and insanity, to be almost, if not altogether, "convertible terms; so that a patient under a delusion, "so understood, on any subject or subjects in any degree "is, for that reason, essentially mad or insane on such "subject or subjects in that degree."

In *Prinsep* v. *Dyce Sombre* (10 Moo. P. C. 247), the

(*a*) Here, as on p. 463, it must be borne in mind that the question of capacity only arises after doubts have been thrown upon it by the defence of incapacity having been set up.

Judicial Committee say: "We cannot err in saying,
"insane delusions are of two kinds—the belief in t
"impossible; the belief in things possible, but so in
"bable, under the surrounding circumstances, that no
"of sound mind would give them credit; to which we
"add, the carrying to an insane extent impressions n
"their nature irrational."

A repulsion to persons having natural claims on a testator's bounty may amount to a delusion.

A repulsion to children, or to persons having na claims on a testator's bounty, may be so unreasonab to amount to a delusion and so invalidate a will.

"A man moved by capricious, frivolous, mean, or "bad motives, or by taking an unduly harsh view of "character and conduct of his children, may by "either partially or wholly, disinherit them; but the "a limit beyond which it would cease to be only a h "unreasonable judgment, and must be held to pro "from some mental defect, so as to invalidate the "If such repulsion, amounting to delusion as to chara "is shown to have existed prior to the execution of "will, it will be for the party setting up that documer "establish that the delusion was inoperative at the "of its execution; and the jury, in determining whe "or not the delusion was operative, will have to re "the contents of the will and the circumstances surro "ing its execution" (*Boughton* v. *Knight*, 3 P. & M. 64-66, 69, and 76; 42 L. J. 25).

Insanity being once established, the onus of showing its cessation at the time of the execution of the will lies on the party propounding the will.

When general or partial insanity is once establis either by the evidence in the case, or by the finding jury under a commission of lunacy, to have affect testator prior to the date of a testamentary instru impugned, the rule is, that the onus of showing cessation of the insanity at the time of its execution is upon the party setting up the instrument.[101]

Thus, Lord PENZANCE in *Smith* v. *Tebbett* (1 P. & 434; 36 L. J. 36), says: "If unsoundness extending

Canadian Cases.

[101] *Russell* v. *Le Francois*, *ante*, p. 463.

"years be once proved by those who oppose a will, there "is no doubt, as a proposition of law, that they are not "bound to carry the evidence of insane actions or delusions "up to the very moment of the testament. A diseased "state of mind once proved to have established itself "would be presumed to continue, and the burden of show-"ing that health had been restored falls upon those who "assert it." So also Sir JAMES HANNEN, in *Boughton* v. *Knight*, 3 P. & M. 64; 42 L. J. 25.

So also the Judicial Committee in *Prinsep* v. *Dyce Sombre* (10 Moo. P. C. 245), held that where a jury under a commission of lunacy had found the deceased to be of unsound mind, the presumption of law was, that the verdict of the jury was well founded, and that the deceased continued lunatic so long as the commission was not superseded, and that the *onus probandi* must be upon whomsoever asserts complete or partial recovery.

Where a person, sometimes sane and sometimes insane, leaves a testamentary paper sounding to folly, and there is no direct proof of his state when he made the will, it would be presumed to have been made during his insanity (*Arbery* v. *Ashe*, 1 Hagg. 219).

Testamentary unsoundness of mind arising from old age or illness.

A person by the visitation of God, by extreme old age, or by some other infirmity or illness, or by being *in extremis*, may be unequal to the important act of disposing of his property. In *Harwood* v. *Baker* (3 Moo. P. C. 290), ERSKINE, J., in delivering the opinion of the Judicial Committee, says, that in order to constitute a sound disposing mind, "the testator must not only be able to understand "that he is by his will giving the whole of his property to "the object of his regard, but must also have capacity to "comprehend the extent of his property and the nature of "the claims of others whom, by his will, he is excluding "from participation in that property." [102]

Canadian Cases.

[102] *Freeman* v. *Freeman*, *post*, p. 476; *Baptist* v. *Baptist*, 2 S. C. Rep. 425; 23 S. C. Rep. 37; *Marquis* v. *Marquis*, 1 Quebec L. R. 50 Q. B. 1875.

Testamentary incapacity arising from drunkenness.

A will prepared for a testatrix from instructions g by her when of complete capacity, but executed by h *extremis* when unable to remember the instructions have understood them had they been put to her, nounced for, as she understood she was executing the for which she had given the instructions. Rule *nis* new trial granted. Case compromised (*Parker* v. *Fel* 8 P. D. 171).

When a man is drunk or under the influenc excessive drinking he is incapable of making a will; where, although an habitual drunkard, he is not u the excitement of liquor, he is not incapable of maki will (*Billinghurst* v. *Vickers*, 1 Phill. 193; *Ayrey* v. 2 Add. 266).

Undue Influence.[103]

Undue influence.

Another ground for invalidating a will, is that execution was obtained by undue influence, and the p alleging it, provided he neither disputes the due execu of the will nor the capacity of the testator at the tria entitled to begin (*Hutley* v. *Grimstone*, 5 P. D. 24). other words, the onus of proving undue influence is on party alleging it.

What constitutes undue influence.

Mountain v. *Bennett*.

On the subject of undue influence, Chief Baron E in *Mountain* v. *Bennett* (1 Cox, 355), says: "There "another ground which, though not so distinct as tha "actual force, nor so easy to be proved, yet if it should "made out, would certainly destroy the will; that i "dominion was acquired by any person over a mind "sufficient sanity for general purposes, and of suffici "soundness and discretion to regulate his affairs in gene "yet if such dominion or influence were acquired over h "as to prevent the exercise of such discretion, it would "equally inconsistent with the idea of a disposing mind

Canadian Cases.

[103] See S. C. R., *post*, p. 827. It must be influence depriv the party of the exercise of his judgment and his free action (*Ma* v. *Martin*, 15 Gr. 588).

On the same subject, Lord PENZANCE, in summing up in *Hall* v. *Hall* (1 P. & M. 482; 37 L. J. 40), gave the following direction to the jury: "To make a good will a "man must be a free agent. But all influences are not "unlawful. Persuasion, appeals to the affections, or ties "of kindred, to a sentiment of gratitude for past services, "or pity for future destitution, or the like,—these are all "legitimate, and may be fairly pressed on a testator. On "the other hand, pressure of whatever character, whether "acting on the fears or the hopes, if so exerted as to over- "power the volition without convincing the judgment, is "a species of restraint under which no valid will can be "made. Importunity or threats, such as the testator has "not the courage to resist, moral command asserted and "yielded to for the sake of peace and quiet, or of escaping "from distress of mind or social discomfort,—these, if "carried to a degree in which the free play of the tes- "tator's judgment, discretion, or wishes is overborne, will "constitute undue influence, though no force is either "used or threatened. In a word, a testator may be led "but not driven; and his will must be the offspring of his "own volition, and not the record of some one else's." *Hall* v. *Hall.*

Again, in *Wingrove* v. *Wingrove*, 11 P. D. 81, Sir JAMES HANNEN said: "To be undue influence in the eye of "the law there must be coercion.[104] Coercion may be of "different kinds, it may be in the grossest forms, such as "actual confinement or violence, or a person in the last "days or hours of life may have become so weak and "feeble that a very little pressure will be sufficient to "bring about the desired result, and it may occur that the "mere talking to him at that stage of illness and pressing

Canadian Cases.

[104] *McCaffrey* v. *McCaffrey*, 18 A. R. 599; *Baptist* v. *Baptist*, *ante*, p. 469; *Waterhouse* v. *Lee*, 10 Gr. 176; *Donaldson* v. *Donaldson*, 12 Gr. 431; *White, Kersten* v. *Fane*, 22 Gr. 547; 24 Gr. 224; *Wilson* v. *Wilson*, *ante*, p. 463; *Martin* v. *Martin*, *ante*, p. 470; *Lavin* v. *Lavin*, 7 A. R. 197; *Hogg* v. *Maguire*, 11 A. R. 507.

"something upon him may so fatigue the brain tha
"sick person may be induced for quietness' sake t
"anything. This would be equally coercion though
"actual violence. The fact that the testator was ind
"in making his will by immoral considerations does
"amount to undue influence."

Boyse v. *Rossborough.*

Nature of evidence by which undue influence may be established.

In *Boyse* v. *Rossborough*, 6 H. of L. Cases, 51, Chancellor CRANWORTH says, on the same subject: "order to set aside the will of a person of sound min "is not sufficient to show that the circumstances atten "its execution are consistent with the hypothesis o "having been obtained by undue influence. It must "shown that they are inconsistent with a contrary hy "thesis. The undue influence must be an influe "exercised in relation to the will itself—not an influe "in relation to other matters or transactions. But "principle must not be carried too far. Where a j "sees that at and near the time when the will sought "be impeached was executed the alleged testator was "other important transactions, so under the influence "the person benefited by the will, that as to them he "not a free agent, but was acting under undue contr "the circumstances may be such as fairly to warrant "conclusion, even in the absence of evidence bear "directly on the execution of the will, that in regard "that also the same undue influence was exercised."

FRAUD.[105]

Fraud and imposition upon weakness is a sufficie ground to set aside a will (*Lord Donegal's Case*, 2 V sen. 408). If a part of a will has been obtained by frau probate ought to be refused of that part, and granted the rest (*Allen* v. *McPherson*, 1 H. L. 207, 208).

Canadian Cases.

[105] S. C. R., C. B. forms, *post*, p. 857 ; and *Appleman* v. *Appleman ante*, p. 452, and *post*, p. 501 ; and *Freeman* v. *Freeman*, *ante*, p. 46 and *post*, p. 477.

Where the plaintiff had pleaded undue influence and the onus of establishing two codicils was on the defendant, evidence of fraud having been extracted from the defendant during his cross-examination, leave was given to the plaintiff, after his case was closed, to amend her reply by adding thereto a paragraph pleading fraud limited to matters arising upon the defendant's cross-examination. Order affirmed by Divisional Court (*Riding* v. *Hawkins*, 14 P. D. 56). Amendment during trial.

The Divisional Court held, however, that the defendant was not thereby precluded from arguing that he was taken by surprise by the evidence of fraud given at the trial, and granted him a new trial on the ground of surprise (*Ibid.*, 59). Surprise—new trial.

As to allegation of fraud after probate has been granted in solemn form, see *Birch* v. *Birch*, [1902] P. 131.

WANT OF KNOWLEDGE AND APPROVAL.[106]

It is essential to the validity of a will, that the testator should know and approve of its contents at the time of its execution. For a will to be valid the testator must know and approve of its contents at the time of its execution.

There are two dicta of Sir C. CRESSWELL, in *Middlehurst* v. *Johnson* (30 L. J. 14), and in *Cunliffe* v. *Cross* (3 Sw. & Tr. 37; 32 L. J. 68), to the effect that a man may make a good will without knowing anything of its contents. The correctness of this proposition was contested in *Hastilow* v. *Stobie* (1 P. & M. 64; 35 L. J. 18), when Lord PENZANCE ruled that on principle and authority it was by the law of England essential to the validity of a will, that at the time of its execution the testator should know and approve of its contents; and, shortly afterwards, a new rule of the Court of Probate was issued, permitting the setting up of such a defence to a will by plea (Rule 40, 1865); and

Canadian Cases.

[106] In the case of *Martin* v. *Martin*, 15 Gr. 588, a will was held valid, although the testator, owing to being *in extremis*, had great difficulty in giving directions for the will; and see S. C. R., C. B. forms, *post*, p. 857.

this defence is now sanctioned by the Judicature
(See par. 5 of Form of Statement of Defence,
p. 454.)

Nature of evidence requisite.

The question as to the nature of the evidence req
to establish or defeat this defence; and as to the par
whom the onus of proving the defence lies, has bec
subject of argument and decision in several cases
Guardhouse v. *Blackburn* (1 P & M. 116; 35 L. J.
Lord PENZANCE says, "After much consideratio
"following propositions commend themselves to the
"as rules which, since the statute (1 Vict. c. 26), oug
"govern its action in respect of a duly executed pap
"*First*, that before a paper so executed is entitled to
"bate, the court must be satisfied that the testator
"and approved of the contents at the time he signe
"*secondly*, that, except in certain cases, where susp
"attaches to the document, the fact of the testator's ex
"tion is sufficient proof that he knew and approved
"contents: *thirdly*, that although the testator knew
"approved the contents, the paper may still be reje
"on proof establishing, beyond all possibility of mist
"that he did not intend the paper to operate as a v
"*fourthly*, that although the testator did know
"approve the contents, the paper may be refused prob
"if it is proved that any fraud has been purposely pract
"on the testator in obtaining his execution thereof: *fift*
"that, subject to this last preceding proposition, the
"that the will has been duly read over to a capa
"testator on the occasion of its execution, or that
"contents have been brought to his notice in any ot
"way, should, when coupled with his execution ther
"be held conclusive evidence that he approved as well
"knew the contents thereof (*b*): *sixthly*, that the above ru
"apply equally to a portion of the will as to the whole

(*b*) The general presumption that a will, if read over by or to
testator, has been approved, may be rebutted if the court thinks tha
was not read over in a proper way: *Garnett-Botfield* v. *Garnett-Botf*
[1901] P. 335.

In *Cleare* v. *Cleare* (1 P. & M. 655 at p. 657; 38 L. J. 81), Lord PENZANCE says: "That the testator did know and "approve of the contents of the alleged will is part of the "burthen of proof assumed by every one who propounds "it as a will. The burthen is satisfied *primâ facie*, in "the case of a competent testator, by proving that he "executed it. But if those who oppose it succeed by a "cross-examination of the witnesses, or otherwise, in "meeting this *primâ facie* case, the party propounding "must satisfy the tribunal affirmatively that the testator "did really know and approve of the contents of the will "in question before it can be admitted to probate." Burden of proof on party propounding.

In *Phillips* v. *Longbourne* (not reported), Sir G. JESSEL, M.R. (JAMES, L.J., concurring), held (on the Attorney-General, Sir J. HOLKER, Dr. TRISTRAM with him, moving for a new trial), that where the capacity of the testator was admitted, the *primâ facie* presumption was that the testator knew and approved of all the contents of a will he had executed, and that the burthen of showing affirmatively that he did not know and approve of the contents, or of any portion of the contents of such will, was upon the party who denied such knowledge and approval. Nov. 1877.

In *Atter* v. *Atkinson* (1 P. & M. at 670), Lord PENZANCE directed the jury thus:—"If you are satisfied that the "testatrix read this document, then, as a proposition of "law, I feel bound to direct you that she must be taken "to have known and approved of its contents. If, being "of sound mind and capacity, she read this residuary "clause, the fact that she afterwards put her signature to "it, is conclusive to show that she knew and approved of "its contents."

The above propositions, as laid down by Lord PENZANCE in the last two cases, came under review in the House of Lords in *Fulton* v. *Andrew* (L. R. 7 Eng. & Ir. Appeals, 448; 44 L. J. 17), in which case the jury had found that the testator was of sound mind at the time of the execution of the will propounded, but that he did not know *Fulton* v. *Andrew*.

(*Fulton* v. *Andrew.*)

and approve of the contents of the residuary clause
taining an absolute bequest of his residuary esta
favour of two strangers in blood, the executors
plaintiffs, and who were instrumental in the maki
the will. The evidence was, that one of them rea
will over to the testator two days before its execu
and left it with him until the morning of its execu

Discrepancy between the instructions and the will itself.

There was, however, a discrepancy between the wr
instructions for the will, by which the residue was
undisposed of, and the will itself, which gave the re
to the plaintiffs, and it was admitted that the testa
attention was not, at the time of its execution, draw
this discrepancy. MELLOR, J., on this evidence, dire
the jury to take into consideration the discrepan
between the instructions for the will and the will it
and having done so, to determine whether the test
had known and understood the residuary clause.
jury found, as before stated, on this issue for the
fendants. Upon a motion for a new trial, Lord PENZA
held, that there was a misdirection, and that the ju
ought to have told the jury, that if they were satis
that the testator was of sound mind and read the
or had it read to him, and after that executed it, t
were bound to find that he knew and approved of
contents thereof including the residuary clause, and m
the rule absolute to enter a verdict for the plaint
The House of Lords reversed this decision, upholding
ruling of MELLOR, J., and the verdict of the jury. L
C. CAIRNS, in delivering his judgment, says: "It is s
"that it has been established by certain cases (*Guardh*
"v. *Blackburn* and *Atter* v. *Atkinson*), that in judging
"the validity of a will, or of part of a will, if you f
"that the testator was of sound mind, memory and und
"standing, and if you find, farther, that the will was r
"over to him, or read over by him, there is an end of
"case; that you must at once assume that he was aw
"of the contents of the will, and that there is a posit

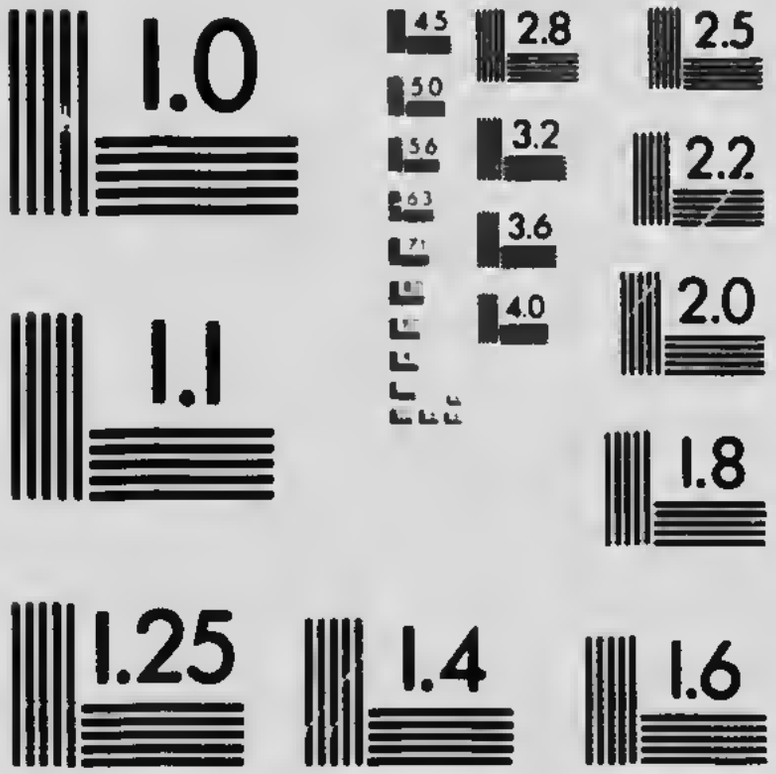
"and unyielding rule of law that no evidence against that "presumption can be received. My lords, I should in "this case, as indeed in all other cases, greatly deprecate "the introduction or creation of fixed and unyielding rules "of law which are not imposed by Act of Parliament. I "think it would be greatly to be deprecated that any "positive rule as to dealing with a question of fact should "be laid down, and laid down now for the first time, "unless the legislature has, in the shape of an Act of "Parliament, distinctly imposed that rule.[107] (*Fulton* v. *Andrew.*)

"But, now, let us see what is the authority for the "imposition of such a fixed and unyielding rule of law. "Before looking at the two cases which were cited, I will "take the liberty of reminding your lordships of the law "which has been laid down in general terms as to the "mode of dealing with testamentary instruments like the "present, where persons who are strangers to the testator, "and who themselves have obtained or conducted the "making of the will, are the persons benefiting by the "will. In the well-known case of *Barry* v. *Butlin*, "2 Moo. P. C. 480, before the Judicial Committee of the "Privy Council, Mr. Baron PARKE, delivering the opinion "of the Judicial Committee, said this:—'The rules of "'law according to which cases of this nature are to be "'decided do not admit of any dispute, so far as they are "'necessary to the determination of the present appeal, "'and they have been acquiesced in on both sides. These "'rules are two: the first, that the *onus probandi* lies in "'every case upon the party propounding a will, and he "'must satisfy the conscience of the court, that the in-"'strument so propounded is the last will of a free and "'capable testator. The second is, that if a party writes "'or prepares a will under which he takes a benefit, that "'is a circumstance that ought generally to excite the "'suspicion of the court, and calls upon it to be vigilant

Onus probandi where the principal beneficiary has taken part in the preparation of the will.

Canadian Cases.

[107] *Freeman* v. *Freeman*, 19 O. R. 141; and *ante*, p. 469.



"'and jealous in examining the evidence in supp
"'the instrument, in favour of which it ought
"'pronounce unless the suspicion is removed, an
"'judicially satisfied that the paper propounded
"'express the true will of the deceased. These prin
"'to the extent that I have stated, are well estab
"'The former is undisputed. The latter is laid do
"'Sir JOHN NICHOLL, in substance, in *Paske* v.
"'2 Phill. 323; *Ingram* v. *Wyatt*, 1 Hagg. 388; *E*
"'*hurst* v. *Vickers*, 1 Phill. 187; and is stated b
"'very learned and experienced judge to have been h
"'down to him by his predecessors, and this tribun
"'sanctioned and acted upon it in a recent case.'
"recent case was the case of *Baker* v. *Batt*, 2 Moo
"317. Now, my lords, bearing in mind the general
"ciples there enunciated, let me direct your lord
"attention to the two cases occurring in the Co
"Probate, and heard before the very learned judge
"whose decision the present appeal comes, two
"which were referred to in the argument of this
"The one is the case of *Atter* v. *Atkinson*, in which
"is a report of a charge of Lord PENZANCE to a jury
"that case the jurors, it appears, were discharged, a
"could not agree upon a verdict; but this is the p
"of the charge which was referred to. I should
"that that was a case in which, as here, a solicitor
"was a stranger to, or at least not a relative, o
"testatrix, was named as the residuary legatee unde
"will; but the execution of the will by the testatri
"performed in the presence of another solicitor.
"PENZANCE there addresses the jury in these term
"'The question of fact is, Did Mrs. Newcombe really
"'read the contents of this document? If you are sat
"'she read it, then, as a proposition of law, I feel b
"'to direct you that she must be taken to have k
"'and approved of its contents. If, being of sound
"'and capacity, she read this residuary clause, the

"'that she afterwards put her signature to it is conclusive (*Fulton* v. *Andrew.*)
"'to show that she knew and approved of its contents.
"'Reflect on the contrary proposition. Suppose that a
"'long will with a number of complicated arrangements
"'is read to a competent testator, and is executed by him,
"'if we were permitted some time after his death to enter
"'into a discussion as to how far he understood and
"'appreciated the bearings of all the different parts of the
"'will, we should upset half the wills in the country.
"'Once get the facts admitted or proved that a testator
"'is capable, that there is no fraud, that the will was
"'read over to him, and that he put his hand to it, and
"'the question whether he knew and approved of the
"'contents is answered.'

"My lords, although I do not think it necessary in the "present case to determine the question, I do not know "that there is anything in that direction, taken as a "whole, to which I could venture to make any objection; "but you will observe the very important qualification—I "say, 'taken as a whole.' In the first place, the jury "must be satisfied that the will was read over, and in the "second place must also be satisfied that there was no "fraud in the case. Now, applying these observations to "the present case, I will ask your lordships to observe "that we have no means of knowing what was the view "which the jury, in the present case, took with regard to "the reading over of the will. The only witnesses upon "the subject were those witnesses who themselves were "propounding the will. No person else was present—no "person else knew anything upon the subject. It appears "that these witnesses stated either that the will was read "over to the testator, or that it had been left with him "over-night for the purpose of being read over. The "jury may, or may not, have believed that statement, or "may have thought, even if there had been some reading "of the will, that that reading had not taken place in such "a way as to convey to the mind of the testator a due

There should be a proper reading over

or explanation of the will, so as to convey to the testator's mind the contents and effects of its dispositions.

"appreciation of the contents and effects of the res
"clause; and it may well be that the jurors, fin
"clear expression of the intention of the testator, o
"they may have thought to be a clear expression
"intention of the testator, in the instructions for th
"were not satisfied that there was any such proper r
"or explanation of the will as would apprise the t
"of the change, if there was a change, betwee
"instructions and the will.

"But, my lords, moreover, how does the qualifi
"that there must be no fraud bear upon the present
"It is very difficult to define the various grades or
"of fraud; but it is a very important qualificat
"engraft upon the general state of things, that the r
'over of a will to a competent testator must be tal
"have apprised him of the contents. If your lor
"find a case in which persons who are strangers
"testator, who have no claim upon his bounty, have
"selves prepared, for their own benefit, a will dis
"in their favour of a large portion of the property
"testator; and if you submit that case to a jury, i
"well be that the jury may consider that there
"want, on the part of those who propounded the w
"the execution of the duty which lay upon them, t
"home to the mind of the testator the effect of his
"mentary act; and that that failure in performi
"duty which lay upon them amounted to a greater
"degree of fraud on their part. The qualification o
"PENZANCE in the charge I have read may entirely
"to such a case.

The failure of a party, who has prepared a will in his own favour, to bring home to the testator's mind the effect of his testamentary act, would amount to a fraud.

"The other case which came before the same l
"judge is that of *Guardhouse* v. *Blackburn*. In tha
"the learned judge laid down certain propositions
"he said commended themselves to his mind as
"which since the statute ought to govern his act
"respect of a duly executed paper; and the statem
"those rules was this:—

"'Thirdly, although the testator knew and approved (*Fulton* v. *Andrew.*)
"'the contents, the paper may still be rejected, on proof
"'establishing, beyond all possibility of mistake, that he
"'did not intend the paper to operate as a will. Fourthly,
"'that although the testator did know and approve the
"'contents, the paper may be refused probate if it be
"'proved that any fraud has been purposely practised on
"'the testator in obtaining his execution thereof. Fifthly,
"'that, subject to this last preceding proposition, the fact
"'that the will has been duly read over to a capable
"'testator on the occasion of its execution, or that its
"'contents have been brought to his notice in any other
"'way, should, when coupled with his execution thereof,
"'be held conclusive evidence that he approved as well as
"'knew the contents thereof.'

"Therefore, my lords, I come to the conclusion that, "even if these rules, laid down in this way by Lord "PENZANCE, are to be accepted as rules which should be "applied to the case of every testamentary instrument, "still, with regard to the present case, they do not carry "to my mind any persuasion that there was a non-"direction, on the part of the learned judge who tried "the cause, in a matter which he ought to have laid "before the jury. It appears to me that, consistently with "the rules mentioned by Lord PENZANCE, the jurors here "may not have been satisfied that there was a proper "reading of the will to the testator, or may have been "satisfied, after hearing all the facts submitted to them by "Mr. Justice MELLOR, that there was, on the part of those "who propounded the will, such a dereliction of duty, "such a failure of duty on their part, as amounted to that "degree of fraud to which Lord PENZANCE refers in the "rules I have mentioned" (*Hegarty* v. *King*, 5 L. R. Ir. Ch. D. 249; 7 L. R. Ir. Ch. D. 18).

Will prepared under suspicious circumstances.

Where a will is prepared under circumstances which excite the suspicion of the court, whatever the nature of the circumstances may be, and though it has not been

prepared by or under the instructions of a person large benefits under it, the onus is cast upon th propounding it to remove such suspicions, and t affirmatively that the testator knew and approve contents (*Tyrrell* v. *Painton*, [1894] P. 157 (C. A.)

Insertions in will by mistake of draughtsman.

Where the testator, in his instructions for h directed that all his B. shares should be given nephews, but the word "forty" was inserted draughtsman before the word "shares," and the executed the will with this insertion without it been read over to him, or his attention directed insertion, the court directed the word "forty" to b out (*Morrell* v. *Morrell*, 7 P. D. 68). See also *W* 69 L. T. 419; *Bochm*, [1891] P. 247 (name of wrongly described, omitted); *Alfred Reade*, [190 (words of reference to former will omitted); *Van Clark* ("real" for "said"), 87 L. T. 144.

The other defences which may be set up to a addition to those specified in the form of a state defence given in the schedule to the rules un Judicature Act are[108] –

Sham Will.

A sham will.

That the paper, though testamentary on the fa and duly executed, was executed by the deceased any intention that it should affect the dispositio property after death; in other words, that it was e as a sham will (*Lister* v. *Smith*, 3 Sw. & Tr. 282; 29; *Trevelyan* v. *Trevelyan*, 1 Phill. 149; *Ni Nichols*, 2 Phill. 180).

Where a testatrix executed a will in virtue of of appointment disposing of a fund, and subse executed a document headed, "This is not meant

Canadian Case.

[108] Where a will was misread to the testator at the execution it was set aside (*Estate of Price*, 2 R. & Scotia, 307.

"but as legal guide," and by it making a different distribution of the fund, probate was refused of the document (*Ferguson Davie* v. *Ferguson Davie*, 15 P. D. 109).

REVOCATION.[109]

That the deceased had subsequently to the execution of the will, contracted a marriage valid by the law of England.

Revocation of a will by marriage of testator.

Canadian Cases.

[109] *REVOCATION OF PROBATE TO SET ASIDE WILLS.*—A bill impeaching a will of which probate had been granted to the plaintiff by the surrogate court, stated that after the probate had been granted the plaintiff had discovered a subsequent will of the testator, and that this subsequent will was the deceased's last will. The wills disposed of both real and personal estate:—*Held*, that whether the will had been proved in common form or in solemn form, this Court had jurisdiction to try its validity (*Perrin* v. *Perrin*, 19 Gr. 259).

BY DEALING WITH THE PROPERTY DEVISED.—A. devised to B., his son, a certain parcel of land not less than sixty acres, nor to exceed one hundred, bounded, etc., giving a description not sufficiently precise to mark out any certain piece of land. By a deed some years afterwards, for a consideration of £50, he bargained and sold to B. eighty acres of the same lots of land under a description which would include at least sixty acres of that which had been devised to B.:—*Held* that the deed revoked the devise to B., who could hold only what the deed covered (*Doe d. Marsh* v. *Scarborough*, 5 Q. B. 499).

One, S., died in 1867, leaving his next-of-kin, who, believing that S. died intestate, obtained administration. G. afterwards found an agreement and will under seal of S. in the same paper in the possession of F., the only witness to the execution. By it S. agreed to convey part of a lot of land to G. on certain conditions. S. owned at the date of the paper the other half of the same lot, and also some personalty. By this paper, in case the conditions were performed, S. devised all his real and personal estate to G. and his heirs. Some years after the date of the paper, S. conveyed the other half of the lot to G., and took a mortgage for part of the purchase-money:—*Held*, that this paper was a will, and not a deed, and therefore not revocable; but although the subsequent conveyance to G. and reconveyance by mortgage to S. might revoke

By 1 Vict. c. 26, s. 18, "Every will made by a
"woman shall be revoked by his or her marriage

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pro tanto the will relating to the realty, yet it would not a personalty. *Held*, also, that it was a good will of the per notwithstanding it devised real estate, and had only one wi its execution. *Held*, also, that the letters of administra brought in and cancelled, and the paper admitted to *Snider*, 5 L. J. N. S. 101 ; and *post*, p. 603).

A testator devised all his estate real and personal to He was the lessee with the right of purchase of certain la which he afterwards paid the balance of purchase-mon obtained a conveyance thereof :—*Held*, that the subsequent tion of the fee was not a revocation of the devise, and t widow was beneficially entitled to the land so purchas that the legal estate had passed to the heirs-at-law (*Sin Brown*, 17 Gr. 333).

A testator devised his real estate and personal property persons. Afterwards he contracted to sell a portion of estate, but the contract was never carried out, and after his in October, 1862, the parties interested under the contract to rescind the same, which was done accordingly :—*Held*, t contract operated in equity as a revocation of the will as r the beneficial interest in the real estate ; that the interest contract passed to the legatees under the residuary claus the devisees, being also legatees of the personal estate, were to the land, and that it did not go to the heirs-at-law (*Ross* 20 Gr. 203 ; and *ante*, p. 73 ; and see *Loughead* v. *Knott*, 15

BY DESTROYING SIGNATURE.—Where A., mean make a new will, and having the draft with him for that p cancelled the first will, not by obliterations and alterations, tearing off his name and seal, and then died suddenly executing the other will :—*Held*, that A. died intestate *Crooks* v. *Cummings*, 6 Q. B. 305).

REVOCATION BY ALTERATION.—In a will the of the lot devised had been altered from 18 to 17, the number having been struck out and the latter written over i alteration was in the same handwriting as the will, and at t of the will, before the attestation clause, was a note in th hand, "the word seventeen being the true number of the sa It was proved that the testator owned only lot 17 :—*Held*, t plaintiff was bound to show that the alteration had bee

"a will made in exercise of a power of appointment, when "the real or personal estate thereby appointed would not

Canadian Cases.

before execution, but that the jury might infer it from these circumstances; and *semble*, that the note should be treated as part of the will (*Field* v. *Livingstone et al.*, 17 C. P. 15).

J. S. C. died in the state of New York, leaving a will which the courts there declared as void having been improperly attested, and thereupon letters of administration of his effects in Ontario were granted to his widow by the proper Court; and she and the next-of-kin, all of whom were of age, made an agreement for a distribution of all the assets whereupon she filed a bill in this Court to have such agreement established and the intended will declared invalid, with a view of estopping the intended legatees thereunder from afterwards attempting to set up the same. The Court under the circumstances, and in view that the intended legatees were not parties, and that no controversy was shown to exist, refused to make any declaration and dismissed the bill, but, as the defendants were all assenting parties to the course pursued by the plaintiff, without costs (*Clarke* v. *Cook*, 23 Gr. 110).

The Court has jurisdiction to set aside a will as having been executed under improper influence, or where the testator was not of sufficient capacity, without waiting for a revocation of probate (*Perrin* v. *Perrin*, 19 Gr. [illegible] oved of and followed *Wilson* v. *Wilson*, 24 Gr. 377).

In ejectment, when the [illegible]ound that a will had been revoked by burning it and the execution of a subsequent deed, upon any conflicting evidence, the weight of which, in the opinion of the judge who had tried the cause, was against the finding, the Court refused a new trial (*Doe d. Magher* v. *Chisholm*, Dra. Rep. 216; and see *Cameron* v. *Cameron*, *post*, p. 490).

REVOCATION AND REVIVAL.—When by a codicil dated July 21, 1882, expressed to be a codicil to his will of July 17, 1880, the testator confirmed the said will, and it appeared that the said will consisted not merely of the document of July 17, 1880, but also of an intermediate codicil revoking a particular bequest therein: —*Held*, that though a reference simply to the date of the earlier document was not sufficient in itself to restrict the confirmation to that particular document, yet other words and surrounding circumstances could and did convey such an intention with reasonable certainty, and accordingly the will of July 17, after confirmation, was no longer affected by the partial revocation made by the intermediate codicil (*McLeod* v. *McNab*, [1891] A. C. 471).

"in default of such appointment pass to his or h
"customary heir, executor, or administrator, or the
"entitled as his or her next-of-kin under the Sta
"Distributions)." [110]

But where a testator has appointed under a po
property by his will which would, in default of a
ment, pass by virtue of the limitations contained
instrument creating the power to the heir-at-law,
mary heir, executor, administrator, or next-of-kin
the Statute of Distributions, and his will has inclu
disposition of other property, the marriage of the ap
will not revoke that part of the will, which rel
property to which he had in exercise of the
appointed, and a grant will go limited to such p
(*Fitzroy*, 1 Sw. & Tr. 133; *Russell*, 15 P. D. 111).

When a Frenchwoman domiciled in France m
will according to French law, and subsequently c
England and married a Frenchman who was domic
England at the time of the marriage, it was held on
that the will was revoked by the marriage (*
deceased, *Loustalan* v. *Loustalan*, [1900] P. 211, C.

Revocation by Subsequent Will.[111]

Will revoked by a subsequent testamentary

That the will propounded has been revoked,
expressly or by implication, by a will or other testam
paper of later date.

Canadian Cases.

[110] Wills Act, *post*, p. 693.

[111] *A CODICIL.*—A. made his will in 1843, and in 184
a codicil, merely appoint[illegible]g a new executor "of his said
written above:—*Held*, that the codicil was a confirmatio
revocation of the will, which must be considered as m
executed in 1843 (*Doe d. Baker* v. *Clark*, 7 Q. B. 44).

A codicil which refers expressly to the will must be looke
as forming part of it (*Doe d. Dickson et ux.* v. *Gross*, 9 Q.
Wright v. *Wright*, 16 Q. B. 184).

CODICIL.—The testator made a will on May 14, 1890, d
of all his estate, giving to certain charities specific propor

By s. 20 of 1 Vict. c. 26, "No will or codicil, or any "part thereof, shall be revoked otherwise than as afore- paper expressly or by implication.

Canadian Cases.

the residue, and naming three persons executors. In January, 1891, he made another will revoking all previous wills, and making a number of specific devises and bequests, but leaving a large residue undisposed of. In March, 1891, he executed a codicil, in which, after stating that "I will and devise that the following be taken as a codicil to my will of the 14th day of May, 1890," he revoked the appointment of one of the named executors in that will "to be one of the executors of this my will," and in his stead appointed another person "with all the powers and duties . . . in my said will declared." The attestation clause stated that this was signed, etc., by the testator "as a codicil to his last will and testament:"—*Held*, by the Supreme Court, that a will which has been revoked cannot, since the passing of the Ontario Wills Act, R. S. O., 1887, ch. 109, now R. S. O., 1897, ch. 128, be revived by a codicil, unless the intention to revive it appears on the face of the codicil, either by express words referring to the will as revoked and importing such intention, or by a disposition of the testator's property inconsistent with any other intention, or by other expressions conveying to the mind of the Court with reasonable certainty the existence of the intention in question a reference in the codicil to the date of the revoked will, and the removal of the executor named therein, and substitution of another in his place will not revive it. *Held*, also, that a codicil referring to the revoked will by date, and removing an executor named therein, is sufficient indication of an intention to revive such will, more especially when the several instruments are executed under circumstances showing such intention (*Macdonell* v. *Purcell*, *Cleary* v. *Purcell*, 20 A. R. 535, 23 S. C. R. 101; see also *Edwards* v. *Findlay*, 25 O. R. 489; and *post*, p. 502).

REVOCATION.—The testator, by his will made in June, 1880, gave the bulk of his property to plaintiff, his sister, with whom, in the autumn before his death, he had quarrelled, and it did not appear that she saw him again before he died. The defendant, another sister, claimed under a second will made an hour or two before the testator's death. The evidence showed that the testator was a very determined man, and not easily influenced; that he was suffering from excessive indulgence in drink; that he latterly spoke in very bitter and offensive terms of the defendant, and had frequently said that she should have nothing, that he had frequently, and as late as a few days before his death, stated that if

"said, or by another will or codicil executed in
"hereinbefore required, or by some writing de
"an intention to revoke the same and executed
"manner in which a will is hereinbefore requ
"be executed, or by the burning, tearing, or ot
"destroying the same by the testator, or by some
"in his presence and by his direction, with the in
"of revoking the same."

Where a testamentary paper contains express
of revocation of all testamentary dispositions o
date no difficulty arises as to the effect of such rev
clause.

Where different testamentary papers are co-ext
and in other respects so nearly identical as to
the court that they cannot exist together, proba
be granted of the latest in date, and parol evide

Canadian Cases.

he died everything was arranged, and that the plaintiff wo
his property. Shortly before his death the defendant h
brought to her house. On the night of his death the physi
attendance told defendant that if anything was to be se
should be done at once. A solicitor was sent for to draw
The defendant instructed him before he saw the testator, an
her instructions the will was drawn, which gave the bulk
property to the defendant, and a bequest of $1000 to the pl
This the solicitor read over to the testator, and asked him
approved of it. He made a sign of dissent. The defendant
the testator to give the plaintiff the $1000, but (as the defe
stated) he said $10 was enough for the plaintiff. The so
therepon went away, leaving the will with the defendant
during his absence it was signed. The evidence of various
nesses for the defendant was conflicting as to the incidents
happened during this time and until the testator's decease
while they all spoke of the testator's unwillingness to giv
plaintiff more than $10, there was no evidence other than th
the defendant of his desire to give her the bulk of his propert
to make any disposition of it:—*Held*, that the second will
not be established on the uncorroborated evidence of the defen
and the first will was declared to be the testator's last will (*Ho
Maguire*, 11 A. R. 507; and *ante*, p. 471; and *post*, p. 601).

admissible to prove intention (*O'Leary* v. *Douglass*, 3 L. R. Ir. Ch. D. 323).

Revocation of a will does not involve the revocation of a codicil not referred to in the revocatory paper (*Farrer* v. *St. Catharine's College, Cambridge*, L. R. 16 Eq. Cas. 19).

It is now held that general words of revocation revoke a will exercising a general or special power of appointment (*Sotheran* v. *Dering*, 20 Ch. D. 99; *Kingdon*, 32 Ch. D. 604). And from *Cadell* v. *Wilcocks*, [1898] P. 21 (following these cases), it follows that a general bequest by a later will or codicil inconsistent with the previous exercise of a general power should revoke it by exercising the power without special clause of revocation. (See s. 27 of Wills Act.)

Revocation by burning.

But where there is no express revocatory clause, and the only revocation (if any) is by implication, the question frequently is not one of easy solution.

Sir J. NICHOLL said (in *Methuen* v. *Methuen*, 2 Phill. 416), "in the Court of Probate the whole question [as to "what documents constitute the will of the testator] is one "of intention—the *animus testandi* and the *animus revo-"candi* are completely open to the investigation of the "court." (See *Chichester* v. *Quatrefages*, [1895] at p. 188.)

Where the dispositions of the subsequent will are wholly inconsistent with those contained in the prior will, the subsequent will works a total revocation of the prior one. Thus, where the latter will contains a complete disposition of the testator's property, the earlier will is thereby revoked.

If, upon the face of a testamentary document and the facts known to the testator at the time of its execution, it is doubtful whether he intended by it to revoke a former testamentary paper, parol evidence is admissible to ascertain the intention (*Thorne* v. *Rooke*, 2 Curt. 799; *Jenner* v. *Ffinch*, 5 P. D. 106).

But the mere fact that the later will contains the

expression, "This is my last will and testament," not alone work a revocation of all previous testame papers (*Cutto* v. *Gilbert*, 9 Moo. P. C. 131).

Where there are two testamentary papers, each pr ing in form to be the last will of the deceased, the in determining whether one or both of them are ent to probate, must be guided by the consideration, whether the testator intended them both to form will, but what dispositions of his property, as colle from the language of all the papers, he designed to re or retain. So that where a subsequent testamen paper is only partly inconsistent with one of an ea date, the latter instrument is only revoked as to t parts where it is inconsistent, and both of the papers entitled to probate (*Lemage* v. *Goodban*, 1 P. & M. 57; L. J. 28).[112]

Revocation by Destruction.

That the will was revoked by the same having b burnt, torn, or otherwise destroyed, by the testator, or some person in his presence, and by his direction, with intention to revoke the same (1 Vict. c. 26, s. 20).

Revocation by implication.

(a) A will may be revoked by the act of burning.

There must be an actual burning to some extent. attempt (not carried into effect), coupled with an intenti to burn, will not work a revocation. Thus in *Doe Harris* (6 A. & E. 209), a testator threw a will on the f with the intention of destroying it. A devisee snatch it off against his wishes, and afterwards promised him burn it, but never did. The envelope, but no part of t will, was affected by the fire. The Court of Queen Bench held that the will, so far as it related to freehol property, was not revoked, as there was no such burnin as would satisfy the Statute of Frauds, and this decisio

Canadian Cases.

[112] *Cameron* v. *Cameron*, 10 P. R. 522; and *ante*, p. 485.

is applicable to 1 Vict. c. 26, s. 20. 1 Williams on Executors, 10th ed. 102. It was laid down in this case, "that "there must be a partial burning of the instrument itself; "there must be a burning of the paper on which the "will is, so that the instrument no longer exists as "it was."

(b) A will may be revoked by the act of tearing, but the act must have been completed to effect a revocation. Revocation by tearing.

Thus in *Doe* v. *Perkes* (3 B. & A. 489), where the testator, in a fit of sudden anger against one of the devisees under his will, tore it twice through; but, his arm being arrested by a bystander, and his anger mitigated by the submission of the devisee, proceeded no further, and, after having fitted the pieces together, and finding that no particular word had been obliterated, said, "It is a good job "it is no worse"; the Court of King's Bench held that the jury were right in finding that there was no revocation. (See also *Colberg*, 2 Curt. 832.)

Again, in *Elms* v. *Elms* (1 Sw. & Tr. 155; 27 L. J. 96) the testator was on orders for India, and having expressed an intention to make a new will, tore his will almost in two pieces, but was stopped by the exclamations of persons in the room as to the danger of destroying the existing will before making another, and then let the will fall on the ground, and in a few minutes picked it up and refused to burn it. It was replaced in his drawers, and he afterwards burnt other papers when about to sail for India, but not the will, to which his attention was at the time drawn, and he subsequently showed a paper, which he called his will, to the principal legatee. He sailed for India, still expressing his intention of making a new will. Sir C. CRESSWELL held, that, in order to revoke a will by tearing, it is not necessary to rend it into more pieces than it originally consisted of, but that it is sufficient if the testator intended the tearing actually done of itself to work a revocation, without any further act; but that in this case, there being satisfactory evidence that the paper

had been duly executed, and no evidence to prove t
partial tearing, the testator had carried into effe
original intention he had to revoke the instrument,
entitled to probate.

Cutting is equivalent to tearing.

Where a testator tears or cuts away his own sig
to the will, or the signatures of either of the att
witnesses, this amounts to a revocation (*Hobbs* v. *H*
1 Curt. 768; *Gullan*, 1 Sw. & Tr. 23; 27 L. J. 15;
Fothergill, 2 P. & M. 148).

Scratching with a knife, which is a lateral cuttin
less carried by the testator to the extent of renderi
signature illegible, does not amount to revocation
Godfrey, deceased, 69 L. T. 22).

Where a testator, having executed a codicil at th
of his will, subsequently cut off his signature to the
upon proof that he thereby intended to remove the c
as well as the will, the codicil was held to have
revoked (*Bleckley*, 8 P. D. 169).

Where a testator had duly executed a will, in
handwriting of a solicitor's clerk, written on five sh
of paper, and had substituted three new ones in his
handwriting for the three original middle sheets, and
latter could not be found, the will was held to have
revoked (*Treloar* v. *Lean*, 14 P. D. 49). See also *Leo*
v. *Leonard*, [1902] P. 242, where two sheets of the
were destroyed, making the whole unintelligible, the c
held that the whole will was revoked.

But where a testator tears or cuts away only a por
of a will, leaving his own signature, or the signature
the attesting witnesses untouched, this is only a revoca
of the portions of the will torn or cut away (*Clark*
Scripps, 2 Roberts. 563).

The destruction of a will in the presence of the testa
without her consent was held not to be a revocat
although she subsequently, on its being suggested to
that she should make a fresh will, declined to do

Semble, no subsequent ratification of the act of destruction, unless executed as prescribed by the Wills Act, would make such a destruction a revocation (*per* BUTT, J., *Mills* v. *Millward*, 15 P. D. 20).

A testatrix tore up a codicil under the erroneous impression that it had been unduly executed, and sent the torn pieces to her solicitor to be copied for execution, but died before executing it. Held to be no revocation (*Thornton*, 14 P. D. 82).

Revocation by obliteration.

Where words obliterated in a will can be deciphered by magnifying glasses, or by an expert in writing placing a piece of brown paper around them, and holding the document against a window-pane or by any other method, without physical interference with the document by the use of chemicals or by the removal of a piece of paper pasted over them, such obliteration does not work a revocation (*Ffinch* v. *Combe*, [1894] P. 191; *Brasier*, [1899] P. 36).

Interpretation of the words "otherwise destroying."

"Otherwise destroying the same." This must be a destruction *ejusdem generis*, as burning and tearing, excluding cancelling (*Stephens* v. *Taprell*, 2 Curt. 458; *Cheese* v. *Lovejoy*, 2 P. D. 251; 46 L. J. 66).

Order for removal of a piece of blank paper pasted over part of a codicil.

A piece of blank paper having been pasted over some words written on the back of a codicil was ordered to be removed to ascertain what the words were, and whether as written they revoked the codicil (*Gilbert*, [1893] P. 183).

A will which has been in the custody of the testator, and is not found at his death, is *primâ facie* presumed to have been destroyed by him.

Where a will has been traced into the testator's custody and there is no evidence of its having subsequently gone out of his custody, and it is not forthcoming at his death, there is a *primâ facie* presumption of fact that it was destroyed by him *animo revocandi*. This presumption may be rebutted by probable circumstances, amongst which declarations by the testator of unchanged affection and intention have much weight (*Patten* v. *Poulton*, 1 Sw. & Tr. 55; 27 L. J. 41; *Welsh* v. *Phillips*, 1 Moo. P. C. 302).

The strongest proof of adherence to the will, and of the

improbability of its destruction, arises from the c
of the will itself (*Saunders* v. *Saunders*, 6 N. C. 52

Revocation by Inconsistent Will.

Two inconsistent wills.

Primâ facie any testamentary document duly ex
in accordance with the provisions of the Wills Act
to be admitted to probate. But if there are two
mentary documents of the same date, and it can
ascertained which of them was executed first, and
provisions are so inconsistent that they cannot
together, the presumption in favour of admissibili
be rebutted and neither will be admitted to probate.

But when the provisions of two testamentary docu
the priority of which is uncertain, and in either of
express words of revocation occur, are apparent
consistent, the court will endeavour so to constr
words that, if possible, the two documents may
together, and may both be admitted to probate
pressing together the whole testamentary intention
testator (*Townsend* v. *Moore*, [1905] P. 66 (C. A.). Se
Williams on Executors, 10th ed. p. 125).

A codicil not revoked by revocation of the will to which it was a codicil.

When a will has been revoked in one of the
directed by 1 Vict. c. 26, and the deceased has left a
executed codicil to such will, which has not by an
of his been expressly revoked, the question has been
as to whether the codicil falls with the will, as for
part of it. By the law prior to 1 Vict. c. 26, a codici
held to be *primâ facie* dependent on the will, and u
there was evidence that it was intended to op
separately from the will, the revocation of the wi
volved the revocation of the codicil. In *Grimwo*
Cozens and Others (2 Sw. & Tr. 364), Sir C. CRESS
decided that the statute had not altered the law.
in *Black* v. *Jobling* (1 L. R. 685; 38 L. J. 74),
PENZANCE, after a careful review of previous cases and
words of the statute, came to the conclusion that

effect of the statute had not been fully considered in the previous cases, and that the intention of s. 20 of 1 Vict. c. 26 was to do away with all implied revocations, and that, therefore, if a codicil itself was not revoked by one of the modes indicated by the statute, notwithstanding the revocation of the will, it was entitled to probate. (See also *Savage*, 2 P. & M. 78; 39 L. J. 25; *Turner*, 2 P. & M. 402; *Gardiner* v. *Courthope*, 12 P. D. 14; *Beardsley* v. *Lacey*, 78 L. T. 25.) [113]

Partial revocation by an inconsistent will.

Where the testator had disposed of the whole of his property, real and personal, by his will, and by a second will, which he afterwards revoked, had devised his real estate differently—held that the first will was partially revoked, and that the revoked part was not revived by the cancellation of the second, and therefore probate was directed to be limited to property not comprised in his second will (*Hodgkinson*, [1893] P. 339 (C. A.)).

The revocation of a will by a revocatory testamentary paper does not involve the revocation of a codicil not referred to in the paper (*Farrer* v. *St. Catherine's College, Cambridge*, L. R. 16 Eq. Cas. 19).

Revocation of a will executed in duplicate.

When a will has been executed in duplicate, the revocation of one duplicate by any of the modes directed by the statute is in law the revocation of both (*Killican* v. *Parker*, 1 Lee, 662; *Boughey* v. *Morten*, 3 Hagg. 191). There must be evidence that two wills were in fact duly executed. Declarations by a testatrix made after the execution of a will, that she had executed it in duplicate, where there was only one will forthcoming, were held to be inadmissible as evidence of her having so executed it (*Atkinson* v. *Morris*, [1897] P. 40 (C. A.); *Eyre* v. *Eyre*, [1903] P. at 137).

There must be the *animus revocandi* to work a revocation.

To effect a revocation, there must be an intention in the testator to revoke. Whenever, therefore, there is an absence of such intention,—as when a will is burnt,

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[113] Wills Act, *post*, p. 696, s. 22.

torn, or otherwise destroyed by a testator by
or when of unsound mind, or under an erroneous
sion of law or fact,—the act so done does not
revocation.

Presumption as to revocation by the act of a testator which has been done when it was uncertain whether he was sane or insane.

Where a will has been in the custody of a testa
time when he has been of unsound as well as
mind, and upon his death it is discovered to ha
torn by him, or is not forthcoming, the burden of
that it was revoked by him, by tearing or by des
when of sound mind, lies upon the party who sets
revocation (*Harris* v. *Ferrall*, 1 Sw. & Tr. 153; *Sp*
Sprigge, 1 P. & M. 608; 38 L. J. 4).

Two wills proved together.

A testator, having erased a clause in his will a
execution, asked a friend to make a fresh copy of
omitting the erased clause. The copy was made,
person who made it by mistake omitted severa
clauses. The copy was duly executed, and the o
were not discovered until after the testator's dea
wills having remained in his custody up to tha
The two wills were not inconsistent with each ot
the latter contained no express clause of rev
Probate was granted of both documents upon parol e
of the circumstances under which they were dra
and executed, as together containing the decease
will and testament (*Birks* v. *Birks*, 4 Sw. & Tr.
L. J. 90).

A testator, under the false impression that
was invalid, tore it up. Immediately afterwa
reconsideration, he collected the pieces and place
amongst his papers of importance, saying they wo
of use to the residuary legatee at some future ti
preserved them till his death. Lord PENZANCE hel
as the act done was not accompanied by an inten
revoke, the will was entitled to probate (*Giles and*
v. *Warren*, 2 P. & M. 401; 41 L. J. 59).

Words of revocation inserted in a will or codi
incuriam, without the knowledge of the testator, ar

omitted from the probate (*In goods of Sarah S. Moore*, [1892] P. 378; *In goods of Oswald*, 3 P. & M. 162).

Dependent relative revocation.

The tearing, cutting, or destruction of a will by a testator under a mistaken impression of law or fact is technically termed a dependent relative revocation, and as the act was conditional, and the condition is unfulfilled, there is no revocation. Thus where a testator had executed a will in 1864, which he destroyed in 1865, with an intention, expressed at the time, that he wished to substitute for it a will of 1862, which he held in his hand, Lord PENZANCE held, that the act of destruction being referable solely to his intention to validate the will of 1862, and that act being conditional, and the condition being unfulfilled, the will of 1864 was entitled to probate (*Powell* v. *Powell*, 1 P. & M. 209; 35 L. J. 100. See also *Cossey* v. *Cossey*, 82 L. T. 203).

A testatrix, having her will in her hand, dictated the alterations she desired to be made in the first part of it to a friend, who wrote them down. The testatrix, feeling unwell, desired her friend to stop there, and then tore off and burnt so much of her will as had been covered by the memorandum written at her dictation. This memorandum, together with the rest of the will, which contained the residuary clause and the signatures of the testatrix and witnesses and the attestation clause intact, was placed in a desk by the testatrix and locked up, and she believed when she did so that these papers constituted a new will, and were not merely instructions for such a will:—*Held*, that it was a case of dependent relative revocation, a revocation dependent on the papers locked up constituting a new will, and probate was granted of the original will as contained in the portion which remained and the draft of the part which was destroyed (*Dancer* v. *Crabb*, 3 P. & M. 98; 42 L. J. 53).

Distinguish cases where the testator did not, by destroying, wish to revoke, but destroyed because he thought the will already revoked by a later testamentary document.

In the latter case it is simply a question whet
will was destroyed with the intention of revoking it
s. 20, Wills Act, 1837 (*Perrott* v. *Perrott*, 14 Eas
followed by JEUNE, P., *Beardsley* v. *Lacey*, 78 L. T.

A testator, having left legacies by will to two
children, by codicil revoked the legacies on the
that the grandchildren were dead. They were ali
the cause of the revocation being false, whether b
information or mistake, was immaterial. There w
to be no revocation (*Campbell* v. *French*, 3 Ves. 323

The doctrine of dependent relative revocation
apply to a case where the document intended to be
tuted for that which was destroyed is non-existe
has never existed as a valid testamentary paper (*D
Solicitor to Treasury*, [1905] P. 42).

DECEASED PREVENTED BY THREATS FROM ALTER
WILL.

Declaration of trust.

That the deceased had been prevented by threats
part of the plaintiffs from making a fresh will or a
the will propounded. This is a new defence per
under the Judicature Act, and if established entitl
court to declare the executors of the will propoun
be trustees for the parties intended to have been be
by the propounded will (*Betts* v. *Doughty*, 5 P. D. 2

Plea allowed by HANNEN, P., "that after makin
"said alleged will of May, 1853, the deceased wa
"vented by force and threats from executing a f
"will prepared by and under his instructions whereb
"plaintiff would have been deprived of his interest
"the said alleged will."

By the Roman civil law, and the law of Fra
testator being desirous of revoking a testament, and
prevented from so doing by the violence, or in some
unlawful way, practised on him by parties who we
reap advantages from its dispositions, such dispos

will be annulled (Domat. on Civil Law, Bk. III., tit. 1, s. 6, Art. 26).

Where a testator has in a will given a legacy to A. B., and by the threats or undue influence or fraud of the residuary legatee of a subsequent will, has been induced to omit the legacy from the said will, A. B. may plead the fact and ask the court to declare the executors of the last will to be trustees for him of a sum of the estate equivalent to the amount of the legacy.

Estoppel.

The defendant may plead that the plaintiff is estopped by a previous judgment on the same issue between the same parties in another Division of the High Court from setting up the will. A will, the validity of which had been contested in the Probate Division, was by a compromise pronounced for. Subsequently the party who had contested the will discovered that it was a forgery, and obtained a decree in the Court of Chancery setting the compromise aside on the ground that the alleged will was a forgery, and that his consent to the compromise was procured by fraudulent representation. The defendant then propounded an earlier will, and the former plaintiffs the forged will, and the court held that they were estopped from denying the forgery (*Priestman* v. *Thomas*, 9 P. D. 70, 210, C. A.).

Minority.[114]

The defendant may plead that the deceased was under twenty-one at the time of his making the will. (See s. 7 of Wills Act, 1837.)

Coverture.

Lastly, he may plead, although such cases are unlikely now to occur, that the deceased was a *feme coverte* incapable

Canadian Cases.

[114] Wills Act, *post*, p. 693; *Re Murray Canal, Lawson* v. *Powers*, 6 O. R. 685; and *post*, p. 601.

of making a will during coverture without her h
assent, she having been married previously to
January, 1883, and the property disposed of by
having accrued to her before the operation of the
Women's Property Act, 1882.

But even then a *feme coverte* was entitled to mak
disposing of property over which she had a p
appointment by will, or of property belonging
separate use by settlement or by agreement w
husband (*Haddon* v. *Fladgate*, 1 Sw. & Tr. 48; 27 L
or which she was entitled to dispose of by the Divo
being judicially separated and having a protectio
or by the Married Women's Property Act (45 &
c. 75); also in the following cases:—

(1.) Of property acquired by a married woman
husband was a convict, after his conviction, and u
expiration of the sentence (*Martin*, 2 Roberts
Coward, 4 Sw. & Tr. 46; 34 L. J. 120).

(2.) Of personal property which belonged to a
woman whose husband had been banished by
Parliament (*Portland* v. *Prodgers*, 2 Vern. 104; *C*
v. *Collinson*, 2 Bro. C. C. 385).

(3.) A married woman might during coverture
will of personalty with her husband's assent, p
he had knowledge of the contents of the particul
(*Willock* v. *Noble and Others*, L. R. 7 Eng. and Ir. A
580), and did not subsequently withdraw his asse
survived her (*Smith*, 1 Sw. & Tr. 127; 27 L. J. 39
provided he gave his assent to the will after her
(*Maas* v. *Sheffield*, 1 Roberts. 364; 4 Notes of Cases

(4.) A married woman, being the sole or su
executrix, might make a will appointing an execu
carry on the chain of representation to her te
estate.

CHAPTER XIII.

REPLY AND SUBSEQUENT PLEADINGS.[115]

Rules as to Reply.
Not without Order.
When Ordered.
Revival of Revoked Will.
Pleadings subsequent to Reply.
Proceedings in Lieu of Demurrer.

No reply can be delivered without an order (R. S. C., Order XXIII. r. 1). Reply not delivered unless ordered.

If not ordered on the summons for directions, application should be made to the registrar for leave to deliver reply, by a notice under the summons for directions.

If no time be specified in the order, the time for delivery is ten days from the delivery of the last defence (R. S. C., Order XXIII. r. 2).

The registrar will not usually allow a reply to be delivered where such a reply would be a simple denial, for under R. S. C., Order XXVII. r. 13, where no reply is delivered, material statements of fact in the defence are deemed to have been denied and put in issue.

A reply would probably be ordered where there is a counterclaim or where the statement of defence contains a charge of undue influence or of fraud, or an allegation that the deceased at the time of the execution of the instrument propounded did not know and approve of its contents, or any averment other than a denial of the due execution of the will, and of the testamentary capacity of the deceased at the time of its execution. The plaintiff should in his reply specifically traverse the charge or allegation as pleaded. (See R. S. C., Order XIX. rr. 13–16, as to specific denial, and r. 17 as to evasive denials; *Thorp* v. *Holdsworth*, 3 Ch. D. 637; 45 L. J. Ch. 406; *Byrd* v. *Nunn*, 7 Ch. D. 284; 47 L. J. Ch. 1.) What allegations require to be specifically denied.

Canadian Cases.

[115] Con. Rule 256; *Appleman* v. *Appleman*, 12 P. R. 138.

A plaintiff is entitled to reply by traverse,
and avoidance, or both combined. "There is
said JAMES, L.J., in *Hall* v. *Eve* (4 Ch. D. 3
46 L. J. Ch. 145), "as to what may be said
"except that it must not be scandalous or
"The plaintiff is left as much at liberty in his r
"his statement of claim. . . . It is no par
"statement of claim to anticipate the defence, an
"what the plaintiff would have to say in answer

Revival of a revoked will.

Where in the statement of defence it is alleged
will propounded by the plaintiff has been revo
subsequent will or testamentary paper, the plai
plead the revival of the will he propounded, by
other testamentary paper executed subsequentl
execution of the revoking instrument.

In order to revive a revoked will by a subseque
mentary instrument, the revoked will must be in
at the time of the execution of the instrument
Tokelove, 2 Roberts. 318; *Rogers* v. *Goodenough*, 2
342; 31 L. J. 49; *Steel*, 1 P. & M. 575;[116] 37 L.
9 L. R. Ir. Ch. D. 516; *Alfred Reade*, [1902] P.
it must also, by referring in adequate terms to the

1 Vict. c. 26, s. 22.

will, show an intention to revive the same. (See
1 Vict. c. 26.) "No will or codicil, or any part there
"shall be in any manner revoked, shall be revive
"wise than by the re-execution thereof, or by
"executed in manner hereinbefore required, and
"an intention to revive the same; and when any
"codicil which shall be partly revoked, and af
"wholly revoked, shall be revived, such revival s
"extend to so much thereof as shall have been
"before the revocation of the whole thereof, u
"intention to the contrary shall be shown."

"In order to satisfy the requirement of the stat

Canadian Cases.

[116] *Purcell* v. *Bergen and Macdonald*, 20 A. R. 536;
Rep. 101; and *ante*, p. 487; *Coulin* v. *Coulin*, 24, U. C. L.

"a testamentary instrument has revived the revoked will, "it must show an intention to revive the same, and the "intention must appear on the face of the instrument, "either by express words referring to the will as revoked "and importing an intention to revive the same, or by a "disposition of the testator's property inconsistent with "any other intention, or by some other expression convey- "ing to the mind of the court with reasonable certainty "the existence of the intention. Since the passing of this "statute a will cannot be revived by mere implication" (*Steele*, see *infra*).

Thus, reference in a codicil to a revoked will by its date only has been held insufficient to revive it or to revoke an intermediate will, where there was no evidence on the face of the codicil of an intention to revive the will so referred to and to revoke the intermediate will (*Steele*, 1 P. & M. 575; 37 L. J. 72, n.).

But where the mistake of making a codicil as a codicil to a revoked will is the act of the solicitor, and not that of the testator, the revoked will if still in existence (*Reade*, [1902] P. 75) is revived, and the intermediate will may be included in the probate (*Stedham*, 6 P. D. 205; *Dyke*, 6 P. D. 207; *Chilcott*, [1897] P. 223).

Revival is not effected by the cancellation of an inconsistent document, *i.e.*, a later will (*Hodgkinson*, [1893] P. 339, C. A.; *Sanger* v. *Hart*, 77 L. T. 374).

For form of reply, see p. 1068.

Subsequent Pleadings.

Pleading subsequent to reply.

"No pleading subsequent to reply other than a joinder "of issue shall be pleaded without leave of the court or a "judge, and then shall be pleaded only upon such terms "as the court or judge shall think fit. Every pleading "subsequent to reply shall be delivered within the time "specified in the order giving leave to deliver the same or "if no time be so specified within four days after the "delivery of the previous pleading, unless the time shall

"be extended by the court or a judge" (R. S. C., O XXIII. r. 3).

A joinder of issue is not necessary, under R. S Order XXVII. r. 13.

Leave to deliver subsequent pleadings is obtaine a registrar's order under the summons for directions.

Further pleadings are called rejoinder, surrejoi rebutter, and surrebutter, but pleadings beyond rejo are rarely ordered.

Proceedings in Lieu of Demurrer.

The following are the provisions of R. S. C., O XXV.:—

"No demurrer shall be allowed" (Rule 1).

Points of law may be raised by pleadings.

"Any party shall be entitled to raise by his ple "any point of law, and any point so raised sha "disposed of by the judge who tries the cause at or "the trial, provided that by consent of the parties, o "order of the court or a judge on the application of e "party, the same may be set down for hearing "disposed of at any time before the trial" (Rule 2).

Dismissal of action.

"If, in the opinion of the court or a judge, the dec "of such point of law substantially disposes of the w "action, or of any distinct cause of action, groun "defence, set-off, counterclaim, or reply therein, the "or judge may thereupon dismiss the action or make "other order therein as may be just" (Rule 3).

Striking out pleading where no reasonable cause of action is disclosed.

"The court or a judge may order any pleading t "struck out, on the ground that it discloses no reaso "cause of action or answer, and in any such case "case of the action or defence being shown by "pleadings to be frivolous or vexatious, the court "judge may order the action to be stayed or dismisse "judgment to be entered accordingly, as may be (Rule 4).

CHAPTER XIV.

DISCOVERY.[117]

General Rules of Discovery.
Plaintiff's Right.
Defendant's Right.
Latitude in Probate Division.
Privilege.

Practice under Order XXXI.
Interrogatories.
Documents.
Production.
Inspection.
Admissions.

UNDER the Judicature Act, the right to discovery is regulated by the rules previously existing in the Court of Chancery (*Anderson* v. *Bank of British Columbia*, 2 Ch. D. 664; 45 L. J. Ch. 449).

General rule of discovery.

By the rule of the Court of Chancery, any party to an action was entitled to a discovery of any fact within his opponent's personal knowledge and of any documents in his custody or under his control which might assist him in establishing his right to relief, or in his defence to any relief claimed (Mitford on Pleading, 307). A defendant was not bound to disclose what was exclusively matter of defence, but that which was common to both the plaintiff and defendant might be inquired into by either. (See *Whately* v. *Crawford*, 5 El. & B. 709; 25 L. J. Q. B. 163.)

The rules which govern the relative rights of parties to discovery may be thus stated—

Plaintiff's right of discovery.

The plaintiff has a right of discovery from the defendant of all facts within the defendant's personal knowledge, and of all documents in his custody, or under his control, which may tend affirmatively to establish the plaintiff's case.

Canadian Cases.

[117] *McGregor* v. *McDonald*, 11 P. R. 386; *Hunt* v. *Barber*, 12 P. R. 467; Con. Rules 439, *et seq.* In an action to establish a will, all papers, though not evidence *per se*, if not protected, are to be produced (*Cameron* v. *Cameron*, 10 P. R. 522).

Defendant's right of discovery.

The defendant has a right of discovery from the plai of all facts within the plaintiff's personal knowledge, of all documents in his custody, or under his con which may tend affirmatively to establish the claim up by the plaintiff, or which may assist the defence.

The plaintiff is not entitled to discovery of fact documents which go solely to support the defence of defendant, in other words, which are exclusively matte defence; but the disclosure of facts or documents w may assist affirmatively to support either the cas the plaintiff or defendant may be required by either p from the other (*Whately* v. *Crawford*, 5 El. & B. 7 25 L. J. Q. B. 163).

Right of discovery of persons believing that they were interested under previous wills.

The executors and the solicitor of a deceased testa who refused to give information as to previous w alleged to have been executed by the testatrix, to per who believed that they had been benefited by them, w ordered, under s. 26 of the Court of Probate Act deposit in the registry all wills and testamentary pa of the deceased in their possession, with liberty to ap cants to take copies of them (*Shepherd*, [1891] P. 323)

Discovery in case of a counterclaim.

Where the defendant sets up a counterclaim, plaintiff will be entitled to discovery of all facts wi the defendant's personal knowledge, and of all docum in the defendant's custody or under his control, which tend affirmatively to establish the counterclaim, or w may assist his case against the counterclaim. And defendant will be entitled to discovery from the plai of all facts within the plaintiff's personal knowledge, of all documents in his custody or under his control, w tend affirmatively to establish his counterclaim.

The Probate Court exercises a wider latitude in ordering discovery in probate actions than other courts do, owing to

In consequence of the peculiar nature of the inq in probate actions, the court exercises a wider latitud ordering discovery in these suits than is exercised in o actions. Where the issue raised relates to the testamen capacity of the deceased the inquiry may legitimately tend to the history of a considerable portion, or of e the whole, of his life; and it is extremely difficult to

before the trial what evidence relating to any particular portion of his life may or may not at the trial turn out to be material to this issue. The same observation, though to a less extent, applies in cases where the issue raised is one of undue influence or of fraud, or that the deceased did not know and approve of the contents of a will.

the nature of the issues raised in probate actions.

The practice of the court, therefore, is to order discovery of all facts and documents throwing light on the history of the deceased, which might turn out to have any possible bearing on the issues raised.

With regard to documents and other papers belonging to the deceased, there seems to be no reason why they should not, subject to some limitation, be open to the inspection of either party, unless the party in whose custody, or under whose control they happen to be, can show that he has any special interest or property in them. Upon the death of the deceased they in very many cases come under the control of one of the parties to the suit, by the mere accident of his having been about him at the time of his death, or of his being first to take possession of his house, or of his employing his solicitor, and, unless an administrator *pendente lite* is appointed, they remain under his control pending the inquiry. But by this accident he ought not to be allowed an advantage in the action over his opponent.

Inspection of documents in the deceased's depositories.

In a probate action, the function of the court is not only to do justice between the parties, but also to do justice to the deceased, by ascertaining, and ultimately by its decree giving effect to all duly executed testamentary instruments by which he intended to dispose of his property; and, to ascertain this fact, the court should know as far as possible what he knew, and much of such knowledge is to be found in the papers left by him in his depositories. In justice to the testator, therefore, either party may claim to have an opportunity of directing the attention of the court to such of his papers as he may consider tends to support his own case, and to do this access to very many of them is necessary.

These general rules as to the title to discovery however, subject to some exceptions.

Privileged communications.

There are certain communications and documents w are termed in law privileged, and which a party t action is not compellable, under an order for disco to disclose to his adversary. Thus—

1. A party is not compelled to disclose communicat which have passed between himself and his legal adv pending the litigation in question, and with refer to it.

2. A party is not compelled to disclose communicat which have passed between himself and his legal adv before the litigation in question had arisen, but in an pation of and in reference to such litigation.

3. A party is not compelled to disclose communicat which have passed between himself and his legal adv after the dispute, which has resulted in litigation, arisen between the parties, but not in contemplatio or in reference to such litigation. (See *Minet* v. *Mor* L. R. 8 Ch. 361, at p. 368 (C. A.).)

There is no such privilege, however, where the issu fraud. (See p. 510.)

4. A party is not compelled to disclose advice given a legal adviser in reference to the subject in disp before the dispute arose (*Walsingham* v. *Goodr* 3 Hare, 122).

5. A party is not compelled to disclose cases, or st ments of facts, or documents prepared in relation to intended action, whether at the request of a solicito not, and whether ultimately laid before the solicito not, if they were prepared with a *bonâ fide* intention their being laid before him, with the intention of tak his advice thereon (*Southwark and Vauxhall Water Co Quick*, 3 Q. B. D. 315; 47 L. J. Q. B. 258).

6. A party is not bound to produce letters that h passed between himself and his solicitor, containing p fessional communications of a confidential character,

the purpose of getting legal advice. Letters containing mere statements of fact are not privileged; to be so, they must be of a professional and confidential character (*O'Shea* v. *Wood*, [1891] P., at 289, 290 (C. A.). See Order XXXVII. rr. 5, 7; and *Gardner* v. *Irvin*, 4 Ex. R. 49 (C. A.)).

7. A party is not bound to disclose documents which are not in his own possession, but are in the possession of his solicitor, as the solicitor's private property, though they relate to the issue (*O'Shea* v. *Wood*, [1891] P. 286 (C. A.)).

8. A party is not compelled to disclose cases or statements of fact relative to the question in issue, which have reference to disputes with other persons (*Wulsingham* v. *Goodricke*, *supra*).

9. Anonymous letters relating to the action, sent to a party to the action, are not, but if sent to her counsel or her solicitor are, privileged (*Young* v. *Holloway*, 12 P. D. 167 (C. A.)).

10. The plaintiff, under an order for inspection of documents relating to the matters in issue, produced her bank pass-books, sealing up parts irrelevant thereto. The court refused to make an order under s. 7 of the Bankers' Books Evidence Act, 1879, for the inspection of the bank books (*Parnell* v. *Wood*, [1892] P. 137 (C. A.)).

Matter tending to subject party to a penalty.

There are also certain other communications which a party is generally not bound to disclose, viz., any matter, or any one of a series or chain of facts, which may tend to subject him to any pain, penalty, or forfeiture, or disability in the nature of a forfeiture. (See Mitford on Pleading, 307; *Lee* v. *Read*, 5 Beav. 381.)

In a case in which the defendants (two executors and the universal legatee) were alleged to have exercised undue influence upon the testator, but the executors took no benefit under the will, interrogatories were allowed as to whether the two executors had received loans or gifts from the deceased during his lif (as tending to show their

influence over him), and as to whether they had rec
any of the property from the universal legatee sinc
death of the deceased, and whether this was by arr
ment made during his life (*Young* v. *Holloway*, 12
167 (C. A.)).

Communications relating to an intended fraud not privileged.

But wherever fraud, or what is equivalent to fra
the question in issue, the party against whom this c
is made is not entitled to shelter himself from disc
communications that have passed between himself ar
legal adviser prior to the litigation in relation to the
under the plea of privilege, on the ground that it i
within the scope of a solicitor's duty to aid his clie
carrying out a fraudulent intention (*Reynell* v. *Spry*
Beav. 51).

Inspection by the court.

By R. S. C., Order XXXI. r. 19A (2), "Where on a
"cation for an order for inspection privilege is claime
"any document, it shall be lawful for the court or a j
"to inspect the document for the purpose of decidi
"to the validity of the claim for privilege."

Discovery of facts and documents.

Discovery of facts is obtained by administering i
rogatories to the opposite party, and under certain
cumstances by a notice to admit facts, and discover
documents generally under an order requiring the opp
party to file an affidavit of documents, in the schedu
which he should state and describe all the docum
which he has in his custody, or under his control, rela
to the questions in issue; and in his affidavit he sh
state what documents, if any, he objects to being inspe
by his opponent, and the grounds of his objection.

For discovery by opening a coffin interred in consecr
ground on a question of identity, see *R.* v. *Dr. Trist*
[1898] 2 Q. B. 371; *Druce* v. *Young*, [1899] P. 84, a
arising out of an action for revocation.

The four objections that may be made to an application for discovery.

Thus, there are four grounds for objecting to discov
1. That the matter in respect of which discovery is sou
is immaterial to the issue. 2. That it may subject
opposite party to a penal consequence. 3. That it

privileged communication. 4. That it relates exclusively to a party's own case, and does not tend to support that of his adversary; or, in other words, that it discloses his own evidence.

See also the notes in the Yearly Practice to R. S. C., Order XXXI.

Practice.

Discovery by interrogatories.

The rules relating to discovery are those in R. S. C., Order XXXI. Under Rules 1 and 2 of that order with reference to discovery by interrogatories, the practice is that leave be obtained for the delivery of interrogatories on a notice under the summons for directions, when the proposed interrogatories must be submitted to the registrar, a copy having been delivered to the other side with the notice. The registrar, after hearing the parties, approves, alters, or disallows the various questions, and places his initials on the document.

The solicitor copies the interrogatories as altered. Interrogatories will not be ordered until after defence has been delivered, except under special circumstances.

For form of interrogatories, see p. 992; and of order, p. 1060.

Under Rule 8 interrogatories shall be answered by affidavit, to be filed within ten days unless otherwise ordered.

Form of affidavit, see p. 992.

Discovery of documents.

The order for discovery of documents and inspection is usually made on the summons for directions as a matter of course. No affidavit is required in support (Rule 12). The affidavit of documents must specify which (if any) of the documents disclosed the deponent objects to produce. (See Rule 13.)

For form of affidavit, see p. 965.

Security for costs of discovery, either by way of interrogatories or of documents, is not now usually ordered; but the applicant may be ordered to pay into court £5 or a further sum as security. (See Rule 26.)

The affidavit must be filed within ten days unless wise ordered.

Inspection. Inspection is also ordered on the summons for direc usually within four days of filing the affidavit of ments.

Order for production. The court may order the production of documen any party to a pending cause or matter, upon oath, Rule 14.

Every party may give notice, under Rule 15, t other party to produce any document referred to i pleadings or affidavits.

For form of notice to produce, see p. 998.

For form of notice to inspect, see p. 999.

Inspection of documents not disclosed. Any application to inspect documents other than referred to in pleadings, particulars or affidavits, mu supported by affidavit. (See Rule 18 (2).)

For the rules as to discovery and inspection an cases thereon, see the Yearly Practice.

Admissions.[118]

Notice to admit— Under R. S. C., Order XXXII. r. 1, any party give notice, by his pleading, or otherwise in writing he admits the truth of the whole or any part of the c any other party.

Documents, Under Rules 2 and 3 either party may call upo other party by notice to admit any document, an party may call upon any other party to admit

Facts. Notice to admit facts must be given not later tha days before the day for which notice of trial has given.

Forms of each notice, see pp. 1000 and 999 respec

Canadian Cases.

[118] Con. Rule 527.

CHAPTER XV.

EVIDENCE OF WITNESSES BEFORE TRIAL.

By Affidavit.
By Examination.
Within the Jurisdiction.
Without the Jurisdiction.
Commission.
Requisition.
By Examination—*continued.*
Rules in certain Countries.
Practice.
Mandamus.
Special Examiner.

Application may be made for leave to obtain the evidence of witnesses before trial by affidavit, by *viva voce* examination within the jurisdiction, by commission or requisition outside the jurisdiction, by mandamus or by special examiner.[119]

By Affidavit.[120]

Any application for leave to take the evidence of a witness by affidavit must be made to a judge. (See R. S. C., Order XXXVII. r. 1.)

(Proof of a will in solemn form by affidavit was refused in *Cook* v. *Tomlinson*, 24 W. R. 851; but in *Gornall* v. *Mason*, 12 P. D. 142, under special circumstances, Butt, J., "with doubt and hesitation," admitted an affidavit from an attesting witness (who could not be found) made eight years previously.)

By Examination.

Power to order examination of witness.

"The court or a judge may, in any cause or matter "where it shall appear necessary for the purposes of "justice, make any order for the examination upon oath "before the court or judge or any officer of the court, or "any other person, and at any place of any witness or

Canadian Cases.

[119] S. C. Act, *post*, p. 671, *et seq.*, ss. 25, 28, 29, 30, 31.

[120] Con. Rules, 516, *et seq.*

"person, and may empower any party to any such
"or matter to give such deposition in evidence ther
"such terms, if any, as the court or a judge may d
(R. S. C., Order XXXVII. r. 5).

Viva voce Examination within the Jurisdiction

Grounds upon which examination ordered.

Where it is shown that a material witness in an resident within the jurisdiction of the court, is abroad, or may be prevented, by illness or infirmit attending the trial, or that, on like grounds, his e is in danger of being lost by his death before th application should be made by notice to the r under the summons for directions, to make an or his examination, so that his deposition may be tak used at the trial in case of his unavoidable absence o

Affidavits in support.

An application for an order for the examinati witness should be supported by an affidavit applicant's solicitor, deposing that he is advis believes that the witness named as proposed to be ex is a material and necessary witness, and that hi cannot safely proceed to trial without his eviden that, owing to the fact that he is going abr.ad (or case may be), he cannot or may not be in attend the trial.

If the reason for the application is illness or i an affidavit will be required from the doctor of posed witness.

Examination of Witness outside the Jurisdict
By Commission or Requisition.[121]

Commission for the examination of a witness

Where a witness is residing in Scotland or Ire registrar will under similar circumstances issu mission for his examination; and where a w

Canadian Cases.

[121] Con. Rules, 499, *et seq.*; *Delap* v. *Charlebois*, 14
Kild v. *Perry*, 14 P. R. 364; *Hogabcom* v. *Cox*, 15 P.

residing in India or the colonies, or abroad, the registrar will in all cases, and, *without any special circumstances*, issue a commission for his examination, on the ground that the court has no power to compel his attendance at the trial by subpœna or otherwise.

residing in Scotland or in Ireland or in India, or in the colonies, or abroad.

A commission may be addressed to British consular officers, to British barristers-at-law, to Colonial officials, or to a foreign subject who is not an official of a foreign court. (If addressed to either of the two latter, it is usual to use the *form* of a requisition.)

Commission to whom addressed.

When the proposed examiner is a consular officer, the solicitor must ascertain at the Foreign Office whether there is any objection to his so acting.

A commission is signed by a registrar, and sealed and given out to the solicitor.

For form, see p. 987, and for practice, p. 516.

A requisition (or letter of request) is issued in lieu of a commission when required to be addressed to foreign courts or officials (but see notes below as to requirements in various countries), under R. S. C., Order XXXVI. r. 6A. The document is signed by the President, sealed, and forwarded by the registrar to the Foreign Office with all the necessary papers.

Requisition, to whom addressed.

Before any letter of request is sealed the solicitor applying for such letter of request must file a written undertaking in the words and to the effect following:—

Undertaking to pay expenses.

"*Title of Cause or Matter.*

"I (or we) hereby undertake to be responsible for all "expenses incurred by H. M. Secretary of State for [Foreign "Affairs *or* the Colonies, *as the case may be*] in respect of the "execution of the letter of request issued herein on the " day of , 19 , and on receiving due notifica- "tion of the amount of such expenses I undertake to pay "the same to the Senior Registrar."

(*Approved by the Lord Chief Justice and the President of the P. D. & A. D.*)

Requirements as to commissions or requisitions in various countries.

The following notes as to commissions and req to foreign countries may be useful:—

Austria and Hungary.—Requisitions must be panied by a certified translation in the Germ Hungarian languages respectively; such translati be made by a sworn translator. The expense to by the party making the request. (Direction from Office, December, 1895.)

Brazil.—"The Brazilian courts do not act o "of request sent through the diplomatic chann requisition is therefore given out to the soli transmission to his representative in Rio de who presents it at the Ministry of Justice a Affairs there. (See note to Rule 6A in the Practice.)

France.—The Secretary of State declines to Majesty's consular officers to take evidence on sion in France. Letters of request must be to the proper tribunal in France, and must through the diplomatic channel. (Direction of th Office.)

Germany.—German subjects can only be exa Germany by means of a requisition. (Direction Office, 1892.)

Portugal.—It is necessary that the names, and descriptions of all witnesses to be examin be inserted in the requisition.

Spain.—Spanish subjects can only be exa Spain by means of a requisition. (Direction Office, 1892.)

United States of America.—His Majesty's officers are at liberty to act, provided that personally willing to do so, and that there is no on the part of the local authorities.

Practice. Issue of commission.

When an order has been made for the issue mission or requisition, it will be necessary for t

to bring in a draft which is to be left in the Contentious Department to be settled by the registrar.

A copy of the commission or requisition, as settled, is delivered to the opposite party. It is then engrossed and brought into the registry to be signed and sealed. Fee, £1.

A copy of the pleadings must be sent to the commissioner with the commission. (See Order XXXVII. r. 10.)

Return of depositions.

The depositions must be returned to the Probate Registry, Somerset House.

On the return of the commission a minute of the opening of the commission is drawn up in the registry, and the depositions and any other documents returned therewith are annexed. The solicitor must attend to file the documents and pay the necessary fees, viz., for drawing registrar's minute, 3*s.*; for filing commission, 2*s.* 6*d.* Either side may then order copies.

Mandamus.

Mandamus for the examination of a witness in India or in the colonies.

The court will also, upon application made on motion, order a mandamus to issue under 13 Geo. III. c. 63, ss. 40-44, and 1 Will. IV. c. 22, s. 1, to a court in India, or in the colonies, to summon before it and examine a material witness residing within its jurisdiction.

Recourse is had to a mandamus where a material witness is known to be, or may be supposed to be, unwilling to attend for examination before a commissioner who is without power in such countries to compel his attendance.

Special Examiner.

Objection in practice to a requisition.

The objection in practice to examining a witness under a requisition in a foreign court is, that the judge generally conducts the examination of the witness himself, and

sometimes declines to put the questions suggested b
agents for the parties, and that in taking the eviden
does not necessarily adhere to the rules of eviden
recognised by the law of England.

The procedure also frequently involves delay.

Special examiner.

To avoid this, it is sometimes convenient to apply
R. S. C., Order XXXVII. r. 5, for a special examiner
appointed to take the evidence of the witness w
abroad.

See form, p. 1063.

See further as to examination of witnesses under R
Order XXXVII., in the Yearly Practice.[122]

Canadian Cases.

[122] For the rules of practice see Con. Rule 478, *et seq.*; *Lo*
Wolfe, 10 P. R. 488; *The Union Bank* v. *Starrs*, 13 P. R
Boulton v. *Blake*, 11 P. R. 196; *Coulton* v. *McPherson*, 12
630; *Queen Victoria Park* v. *Howard*, 13 P. R. 14; *A*
Banton, 13 P. R. 98; *Kingsley* v. *Dunn*, 13 P. R. 300.

CHAPTER XVI.

TRIAL.

PLACE OF TRIAL.
Middlesex.
Assize.
County Court.
MODE OF TRIAL.
Court itself.
Common Jury.
Special Jury.
"Short Cause."
NOTICE OF TRIAL.
By Plaintiff.
By Defendant.
ENTRY OF TRIAL
Time and Place of.
THE LIST.
SUBPŒNAS.
Issue of.
Service of.
THE HEARING.
JUDGMENT.

PLACE OF TRIAL.[123]

THE place of trial is fixed by the registrar under the summons for directions. (See R. S. C., Order XXXVI. r. 1.)

(1) *Middlesex.*

The Probate Court, unless reason be shown on affidavit (*Brandreth* v. *Brandreth and Wife*, 2 Sw. & Tr. 446; 31 L. J. 153) to the contrary, is the court in which the cause ought to be tried.

(2) *Assizes.*

The registrar has power to direct that an action be tried at assizes. (The contrary decision in *Lancaster* v. *Brook*, 14 P. D. 80, was overruled by the late President after argument, as having been made *per incuriam*: *King* v. *Brontoft*, on the 20th March, 1899, not reported.)

The following decisions show the principles upon which the court has acted:—

Canadian Cases.

[123] Con. Rules, 529, *et seq.*

Principles upon which the court has acted in directing place of trial.

In *Cooper* v. *Moss*, 1 Sw. & Tr. 143, the court refus direct an issue where the cause had excited consid discussion and feeling in the county where it was posed to be tried, also where there was a probability cause being made a remanet at the ensuing assizes (*I* v. *Fuller and Another*). And where, upon the mot the defendant, an issue was directed to be tried summer assizes to be holden at Norwich in 185 through the defendant's default it did not come trial, the court, upon application made by the pl (the defendant opposing) directed the cause to be tr the Court of Probate (*Esling* v. *Dixon*).

The only ground which induces the court to dir issue to the assizes is the saving of expense in resp the witnesses, and when one of the parties applies issue, and the other party opposes the applicatio offers to undertake to pay the extra costs occasion bringing the witnesses to London, the court direc cause to be tried in the Probate Court.

Practice as to transmitting scripts, etc.

When an order has been made for the action to b at the assizes, the solicitor must give notice in the tentious Department for the scripts (of which exa copies must be left) and papers that have been filed action to be sent to the district probate registry to the town in which the assizes are to be held; h also arrange with the district probate registrar fo production at the trial.

Associate's certificate.

On the conclusion of the trial the associate's cer must be obtained. This certificate must show that more witnesses have been orally examined; it mus in all cases set out the findings of the court (an verdict of jury, if any), and the direction as to costs.

The associate takes a fee of £1 for this certificate.

The certificate must be brought to the Conte Department in order that the decree may be dra for which a further fee of £[1] is payable.

(3) *County Courts.*

Where personalty under £200 and realty under £300, county courts have jurisdiction.

Where the personal property of the deceased, exclusive of what he is entitled to as a trustee, is under £200, but without deducting anything on account of debts, and the real property is under £300, the judge of the county court having jurisdiction in the place where the deceased had at the time of his death a fixed place of abode has the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto (ss. 10 and 12, Court of Probate Act, 1858; see also ss. 55, 56, 57, and 64, the Court of Probate Act, 1857). It was decided in *Davies* v. *Brecknell*, 2 P. & M. 177, that the limit of £300 in the case of realty must be read as the maximum without deductions for mortgages and other charges.

Optional to parties to apply to Probate Court or county court.

It is not, however, obligatory, in the above circumstances, on any person to apply through the county court for probate or administration. But when in any contentious matter it is shown to the Court of Probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the judge of a county court, the judge of the Court of Probate *may* send the cause to such county court, and the judge thereof shall proceed therein as if such application and cause had been made to and arisen in his court in the first instance (s. 59 of the Court of Probate Act, 1857). And where the county court is shown to have jurisdiction, the Probate Court may, though application be made on behalf of all the parties to the cause for it to be tried before the court itself or at the assizes, still, in its discretion, direct it to be tried in the county court (*Dunn* v. *Dunn*, 1 Sw. & Tr. 521; 30 L. J. 40).

The sections relating to the jurisdiction of the county courts in contentious probate business are ss. 55, 56, 57, and 59 of the Court of Probate Act, 1857 (see pp. 628

and 629), and ss. 10, 11, and 12 of the Court of I
Act, 1858. (See p. 656.)

Application, how made.

Application can be made for the action to be
mitted to the county court at any time after the is
the writ on an affidavit showing that the county co
jurisdiction under the provisions of the Court of I
Act, 1858, s. 10. The affidavit should follow the w
of the "minute," a form of which is given on p. 99

Before summons for directions.

The registrar, if the application is made befo
summons for directions, will sign the minute (f
founding the jurisdiction of the county court.

A copy of this minute must be lodged in the regi
the county court before entry of the plaint. (See
Court Rules XLIX. Rule 4.)

At summons for directions.

The registrar will, however, order the actio n to
at the county court under the summons for direct
the application be supported by an affidavit as abo

The solicitor must then give notiee in the Cou
Department of the scripts and other documents
filed) to be sent to the nearest district registry
purpose of produetion at the trial. The man
which the cause is to be tried, whether with or wi
jury, will be determined in the county court.

Proceedings in county court.

When the judgment of the county court has be
nounced on the issues raised on the pleadings, a
copy of the decree of the judge of the county court
be filed in the principal registry.

The county court, after a cause has been transf
it, is to make the final decree, and to decide all q
arising in the cause as to costs (*Macleur* v. *Macleu*
M. 604; 37 L. J. 68), and is to ascertain and decide

Appeal from county court.

application for a new trial. And the Court of
was only authorised to make an order in such caus
appeal from the determination of the county cou
point of law, or upon the admission or rejection of
under s. 58 of the Probate Act, 1857 (*Zealley*
yard and Bridle, 1 P. & M. 195).

Appeals from the county courts shall be to a divisional court of the Probate, Divorce, and Admiralty Division. (See R. S. C. Order LIX. r. 4.)[124]

Mode of Trial.[125]

The mode of trial is determined by the registrar on the summons for directions.

Questions of law before court itself.

Where the only issue is a question of law the action will be directed to be tried by the court itself.

Questions of fact. Discretion of the court.

"The court or judge may, if it shall appear desirable, "direct a trial without a jury of any question or issue of "fact, or partly of fact and partly of law, arising in any "cause or matter which previously to the passing of the "Act could, without any consent of parties, be tried with-"out a jury" (Order XXXVI. r. 4).[126] By the qualification contained in the last rule it is still in the discretion of the court in the Probate Division, in conformity with the practice of the Court of Probate, to determine whether questions of fact shall be tried by the court itself or with a jury, except where the heir-at-law is a party to the action, and insists, as he is entitled to do under s. 35 of the Court of Probate Act, 1857, upon having the issues of fact tried with the jury. (See *Burgoine* v. *Moordaff*, 8 P. D. 205, and Order XXXVI. rr. 3 and 4 (Rule 4 is in the same terms as the old Rule 26 referred to in this action).)[127]

Right of the heir-at-law to insist upon a jury.

In other cases it is within the discretion of the court to direct questions of fact to be tried with or without a jury (s. 35, Probate Act, 1857). Where the only issue raised is as to the due execution of the will, the court invariably directs the action to be tried without a jury. Where the issues raised are testamentary capacity, undue influence, or fraud, it is the practice of the court, on application made

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Canadian Cases.

[124] When any of the parties to a suit apply for a jury and the Court refuses, such refusal is subject to an appeal (S. C. Act, s. 33).

[125] S. C. Act, ss. 22, 23, *post*, p. 670.

[126] S. C. Act, ss. 22, 23.

[127] *Re Lewis, Jackson* v. *Scott*, 11 P. R. 107.

Discretion, how to be exercised.

by either party, to grant a jury. But where the a from the nature of the issues of fact raised, is a proper one to be tried before the court itself than jury, it will on application of either party be direc be tried without a jury, unless such application is op by the heir-at-law. Thus, where the plaintiff propo the contents of a lost will as universal legatee, an defendants pleaded that the contents were not those al the plaintiff's application for a jury was refused (*Q Quick and Another*, 3 Sw. & Tr. 460; 33 L. J. 108) also, where the main question to be decided being mixed law and fact, the presumptive revocation of a jury was refused (*Smith* v. *Hoad and Others*, 3 Sw. & Tr And where any of the parties to a suit, other than the at-law, apply for a jury, and the court refuses one refusal is, with the leave of the court, subject to an (ss. 35 and 39, the Court of Probate Act, 1857). the final decree is appealed, such refusal might a considered under appeal, as well as the final decree the Court of Probate Act, 1857).

By s. 38, when the court directed an issue, it was for it to direct such issue to be tried either before a of assize in any county, or at the sittings for the t causes in London or Middlesex, and either by a spe common jury, but not by a judge of assize without (*Bushell* v. *Blenkhorn*, 1 P. & M. 89; 35 L. J. 75), manner as was done by the Court of Chancery.

Special jury.

Where an action is directed to be tried with a co jury, either party may apply for a special jury eit the summons or by subsequent notice. Further, Order XXXVI. r. 7 (a) and (b), a plaintiff, if he is e to a jury, may have the issues tried by a specia upon giving notice in writing to that effect when h notice of trial; and a defendant has the same righ giving a like notice at any time after the close of ings or settlement of the issues and before notice or if notice of trial has been given, then not less th

clear days before the day for which notice of trial has been given.

By sub-s. (c) a judge may at any time make an order for a special jury upon such terms (if any) as to costs as may be just.

"*Short Cause.*"

Application, how made, and in what cases.

An application for leave to set an action down as a "short cause" must be made to a judge, and may be made in the following cases:—

(1) In an action to prove a will in solemn form where there has been no appearance entered.

The solicitor must previously file an affidavit of service of writ (and of citation, if any) with a certificate of no appearance, and should also file an affidavit of scripts, unless otherwise directed.

(2) Where all the defendants make default in filing their defences, or for some other reason the action becomes undefended, and it is desired to prove the will in solemn form.

(3) When the parties have come to terms.

Practice.

In all cases the judge will require to be satisfied that there will be no contest. Notice that leave has been obtained for the action to be tried as a short cause must be given in the Contentious Department, and, if the action has not already been entered for trial, the fees, £3, must be paid, and the two copies of the writ (or pleadings) must be filed and the action entered in the usual way.

Notice of Trial (see Order XXXVI. Part III.).

By plaintiff.

Notice of trial may be served by the plaintiff with the reply, or, where no reply is ordered, within four days of the filing of the last defence, or at any time after the pleadings are closed.

For form of notice, see p. 998.

Short notice.

Ten days' notice should be given, but by order, or by consent, "short notice" (four days) may be given.

By defendant.

The defendant may give notice of trial (or apply to

have the action dismissed for want of prosecution plaintiff does not give notice of trial within six after he first becomes entitled to do so.

Entry of Trial (see Order XXXVI. Part II

Time and place of entry.

The trial must be entered within six days afte has been given. The solicitor must leave in th tentious Department two copies of all the pl (including the writ and order for directions) ann due order. One copy must be indorsed with a the notice of trial.

Fee.

The fee, £3 (entry of trial, £2; decree, £1), affixed to a præcipe, which is filed.

The List.

Term list.

A notice indicating the last day for entering for trial is posted in the Contentious Departmen three weeks before the commencement of th sittings. After the list has been closed, it is prin published as soon as possible.

Term card.

The Term Card (published previously to the com ment of the sittings) will show the order in wh different classes of probate actions and divorce cau be taken.

Daily list.

The list of actions to be tried upon each day is at the Royal Courts of Justice on the previous aft

Supplemental list.

All questions as to the time of trial of any actio is in the printed list, or with regard to a suppl list, should be made to the Clerk of the Rules Probate Court.

Subpœnas.

Issue.

Subpœnas *ad testificandum* and *duces tecum* ar in the Contentious Department at the registry in ance with the rules in Order XXXVII. The should bring the subpœna, together with a præ

Room 41, where it is sealed. Each subpœna carries three witnesses.

Fee: 5*s*. For forms, see p. 1076.

Service must be personal (with conduct money), and can only be served in England or Wales, but an order or fiat for service in Scotland or Ireland may be obtained from a registrar *ex parte* on an affidavit of facts. This order is not usually drawn up. In the form of subpœna, the words "Wherever you shall be in our United Kingdom" must be added after the name of the witness, and the following note placed at the bottom of the writ: "Take "notice that this writ was ordered to be issued by an order "of His Majesty's High Court of Justice, dated day "of , 19 , pursuant to the Statute 17 & 18 Vict. "cap. 34."

Service.

Service in Scotland or in Ireland.

By Rule 132, Contentious Business, the issuing of fresh subpœnas in each term was abolished, and it is not necessary to serve more than one subpœna on any witness.

Fresh subpœna each term unnecessary.

The Hearing.

The rules of Order XXXVI. as to proceedings at the trial are for the most part applicable to probate actions.

If the party opposing a will should not appear at the trial, the party propounding it would proceed to prove it in solemn form.

The party propounding the last will and testament has the right to begin, but where only undue influence is alleged in opposition to a will, the party alleging it has the right to begin (*Hutley* v. *Grimstone*, 5 P. D. 24).

Right to begin.

Judgment.

The court registrar draws up and signs the decree.

The practitioner should order a "non-official" copy thereof for production when he makes the application for a grant.

The fee for drawing up the decree (£1) in the Probate Division is taken when the action is set down for trial. (See p. 526.)

CHAPTER XVII.

NEW TRIALS AND APPEALS.[128]

MOTION FOR NEW TRIAL.
Order XXXIX.
APPEALS TO COURT OF APPEAL.
Judicature Acts.
Practice.
Order LVIII.
Security for Costs.
APPEALS FROM INTERLO
ORDERS.
APPEALS FROM THE
COURTS.
APPEALS TO THE HOU
LORDS.
SUMMARY.

THE practice as to new trials and appeals to the of Appeal is almost entirely regulated by the Judi Acts, and the rules made under them. The ru the Supreme Court are therefore retained in this c and a summary has been inserted at the end fo convenient reference (*a*).

R. S. C., ORDER XXXIX.

MOTION FOR NEW TRIAL.

Motion for new trial, after trial without jury.

"Every motion for a new trial, or to set aside a "finding, or judgment, shall be made where th "been a trial without a jury, by appeal to the C "Appeal" (Rule 1).

Motion for new trial, after trial by jury.

"Every motion for a new trial, or to set aside a "finding, or judgment where there has been "thereof, or of any issue therein with a jury "entered in the Court of Appeal in the same "motions by way of appeal to the Court of Ap "now entered where there has been a trial withou "Such first-mentioned motions shall be subject "provisions of R. S. C., Order XXXIX. r. 4; a

(*a*) The summary is based on the useful "Appeal Table" by Mr. Manson for the "Annual Practice."

Canadian Cases.

[128] S. C. Act, *post*, p. 675, s. 36.

"be brought before the Court of Appeal in like manner as "an appeal, and upon the hearing of such motion the "Court of Appeal shall have all such powers as are "exercisable by it upon the hearing of an appeal" (Rule 1A) (*b*).

Same judge not to sit on motion for new trial.

"No judge shall sit on the hearing of any motion for "a new trial in any cause or matter tried with a jury "before himself" (Rule 2).

Mode of application for new trial.

"Every application for a new trial shall be by notice of "motion, and no rule *nisi*, order to show cause, or formal "proceeding other than such notice of motion, shall be "made or taken. The notice shall state the grounds of "the application, and whether all or part only of the "verdict or findings is complained of" (Rule 3). If this notice of motion alleges misdirection, the grounds on which it is alleged must be stated (*Murfett* v. *Smith*, 12 P. D. 116; and Judicature Act, 1890, s. 1).

Time for service of notice of motion.

"The notice of motion shall be a fourteen days' notice, "and shall be served within the times following: viz., if "the trial has taken place in London or Middlesex, within "eight days after the trial; if the trial has taken place "elsewhere than in London or Middlesex, within seven "days after the last day of sitting on the circuits for "England and Wales during which the trial shall have "taken place. The time of the vacations shall not be "reckoned in the computation of the time for serving the "notice of motion" (Rule 4).

Amendment of notice of motion.

"The notice may be amended at any time by leave of "the court or a judge on such terms as the court or judge "may think just" (Rule 5).

Ground for granting new trial.

"A new trial shall not be granted on the ground of "misdirection or of the improper admission or rejection "of evidence, or because the verdict of the jury was not "taken upon a question which the judge at the trial was "not asked to leave to them, unless in the opinion of the

(*b*) For the grounds upon which a new trial may be asked, see the note under this rule in the "Yearly Practice."

"court to which the application is made some sul
"wrong or miscarriage has been thereby occasione
"trial; and if it appear to such court that such
"miscarriage affects part only of the matter in con
"or some or one only of the parties, the court
"final judgment as to part thereof, or some or one
"the parties, and direct a new trial as to the ot
"only or as to the other part or parties" (Rule
Bray v. *Ford*, [1896] A. C. 44.

New trial ordered on any one question.

"A new trial may be ordered on any question,
"be the grounds for the new trial, without in
"with the finding or decision upon any other q
(Rule 7).

Wrong rulings as to sufficiency of stamp.

"A new trial shall not be granted by reaso
"ruling of any judge that the stamp upon any d
"is sufficient, or that the document does not
"stamp" (Rule 8).

Appeals to the Court of Appeal.[129]

Practice of the Chancery Division followed.

In the Probate Division the practice of the
Division is followed (see *Re Smith, Rigg* v.
9 P. D. 68); that practice has been considered in

Canadian Cases.

[129] *APPEAL.*—By virtue of R. S. O., [1897] c. 51, s. 75,
lies to a divisional court from an order of a surrogate c
allowing compensation to an executor under the Trustee
Alexander, 31 O. R. 167, and *post*, p. 559).

On a motion to quash an appeal from the surrogate
divisional court subsequent to the passing of 58 Vict. c. 1
which transfers such appeals from the Court of Ap
divisional court, on the ground that the notice of appe
specify the court to which the appeal was taken, and tha
filed followed the surrogate form "to the Court of A
Held, that the intention to appeal expressed in the
sufficient, and that the words, "the Court of Appea
bond might be read as an equivalent of "the proper
tribunal" (*Taylor et al.* v. *Delaney et al.*, 3 O. L. R. 380)

6 Ch. D. 346; *Holloway* v. *Cheston*, 19 Ch. D. 516; *Attorney-General* v. *Llewellyn*, 58 L. T. 367. See also ss. 49 and 50 Judicature Act, 1873, and Judicature Act, 1894, s. 1 (4), which in an action provides that "in matters of practice "and procedure every appeal from a judge shall be to the "Court of Appeal."

From an order from a judge in chambers *when he does not desire to adjourn the matter into court for further argument*, and from any order or decree of the judge in court, there is therefore an appeal to the Court of Appeal.

Thus, an appeal from a refusal on motion to grant a person claiming administration as a creditor lies under s. 19, Judicature Act, 1873 (*Clook*, 15 P. D. 132).

Appeals from a final decree to be heard before three judges at least.

"Every appeal to the Court of Appeal shall, where the "subject-matter of the appeal is a final order, decree, or "judgment, be heard before not less than three judges of "the said court sitting together, and shall, when the sub-"ject-matter of the appeal is an interlocutory order, decree, "or judgment, be heard before not less than two judges of "the said court sitting together. Any doubt which may "arise as to what decrees, orders, or judgments are final, "and what are interlocutory, shall be determined by the "Court of Appeal" (Judicature Act, 1875, s. 12).

Appeals from interlocutory orders to be heard before two judges at least.

Directions incidental to appeals may be given by a single judge of the Court of Appeal.

"In any cause or matter pending before the Court of "Appeal, any direction incidental thereto, not involving "the decision of the appeal, may be given by a single "judge of the Court of Appeal; and a single judge of the "Court of Appeal may at any time during vacation make "any interim order to prevent prejudice to the claims of "any parties pending an appeal as he may think fit; "but every such order made by a single judge may be "discharged or varied by the Court of Appeal or a "Divisional Court thereof" (Judicature Act, 1873, s. 52).

"... No judge of the Court of Appeal shall sit as a "judge on the hearing of an appeal from any judgment or "order made by himself, or made by any Divisional Court "of the High Court of which he was and is a member"

(Judicature Act, 1875, s. 4. See also s. 11 of Jud
Act, 1881).

Judicature Act, 1899, s. 1.

By the Supreme Court of Judicature Act, 189
if all parties to an appeal or motion before the
file a consent to the appeal or motion being hea
determined before two judges of the Court of
the appeal or motion may be heard and dete
accordingly, subject to the same right, if any, of
to the House of Lords. But if the two judges di
opinion the case shall, on the application of any p
the appeal, be re-argued and determined by three
of the Court of Appeal before appeal to the Ho
Lords.

If any of the parties to the appeal or motion is u
disability from being an infant, the consent of the
representing him must be approved of by a cour
judge, and if from being of unsound mind, by the
Chancellor or Lord Justices sitting in lunacy.

Practice.

The party appealing whether from a final dec
interlocutory order must leave in the Contentious D
ment at the registry three copies of the notice of
and three copies of the order appealed from. He
also leave in the Lord Justice's clerk's room (No. 3
the Royal Courts of Justice, three copies of the foll
documents put together in sets: The notice of a
the order or judgment appealed from, and the pleadi
other documents showing the nature of the appeal.

R. S. C., Order LVIII.

Appeals to the Court of Appeal.

Appeal to be by rehearing on motion.

"All appeals to the Court of Appeal shall be by
"rehearing, and shall be brought by notice of motio
"summary way, and no petition, case, or other
"proceeding other than such notice of motion sh
"necessary. The appellant may by the notice of

"appeal from the whole or any part of any judgment or "order, and the notice of motion shall state whether the "whole or part only of such judgment or order is com- "plained of, and in the latter case shall specify such part" (Rule 1).

Service of notice of appeal.

"The notice of appeal shall be served upon all parties "directly affected by the appeal, and it shall not be "necessary to serve parties not so affected; but the Court "of Appeal may direct notice of the appeal to be served "on all or any parties to the action or other proceeding, "or upon any person not a party, and in the meantime "may postpone or adjourn the hearing of the appeal upon "such terms as may be just, and may give such judgment "and make such order as might have been given or made "if the persons served with such notice had been origi- "nally parties. Any notice of appeal may be amended "at any time as the Court of Appeal may think fit" (Rule 2).

Amendment of notice.

Length of notice.

"Notice of appeal from any judgment, whether final or "interlocutory, or from a final order, shall be a fourteen "days' notice, and notice of appeal from any interlocutory "order shall be a four days' notice" (Rule 3).

Power of Court of Appeal to amend;

"The Court of Appeal shall have all the powers and "duties as to amendment and otherwise of the High "Court, together with full discretionary power to receive "further evidence upon questions of fact, such evidence to "be either by oral examination in court, by affidavit, or "by deposition, taken before an examiner or commissioner. "Such further evidence may be given without special "leave upon interlocutory applications, or in any case "as to matters which have occurred after the date of "the decision from which the appeal is brought. Upon "appeals from a judgment after trial or hearing of any "cause or matter upon the merits, such further evidence "(save as to matters subsequent as aforesaid) shall be "admitted on special grounds only, and not without "special leave of the court. The Court of Appeal shall

admit further evidence, or draw inferences of fact.

"have power to draw inferences of fact and to give
"judgment and make any order which ought to have
"made, and to make such further or other order as
"case may require. The powers aforesaid may be
"cised by the said court, notwithstanding that the n
"of appeal may be that part only of the decision ma
"reversed or varied, and such powers may also be exer
"in favour of all or any of the respondents or pa
"although such respondents or parties may not
Costs of appeal. "appealed from or complained of the decision. The
"of Appeal shall have power to make such order as t
"whole or any part of the costs of the appeal as ma
"just" (Rule 4).

Power to order new trial. "If upon hearing of an appeal, it shall appear t
"Court of Appeal that a new trial ought to be ha
"shall be lawful for the said Court of Appeal, if it
"think fit, to order that the verdict and judg
"shall be set aside, and that a new trial shall be
(Rule 5).

Notice of appeal by respondent. "It shall not, under any circumstances, be necessar
"a respondent to give notice of motion by way of
"appeal, but if a respondent intends, upon the heari
"the appeal, to contend that the decision of the
"below should be varied, he shall within the time spe
"in the next rule, or such time as may be prescribe
"special order, give notice of such intention to any p
"who may be affected by such contention. The omi
"to give notice shall not diminish the powers conf
"by the Act upon the Court of Appeal, but may, i
"discretion of the court, be ground for an adjournme
"the appeal, or for a special order as to costs" (Rule

Length of notice of, by respondent. "Subject to any special order which may be
"notice by a respondent under the last preceding
"shall in the case of any appeal from a final judgme
"an eight days' notice, and in the case of an appeal
"an interlocutory order a two days' notice" (Rule 7)

Setting down appeal. "The party appealing from a judgment or order

"produce to the proper officer of the Court of Appeal the "judgment or order or an office copy thereof, and shall "leave with him a copy of the notice of appeal to be filed, "and such officer shall thereupon set down the appeal by "entering the same in the proper list of appeals, and it "shall come on to be heard according to its order in such "list, unless the Court of Appeal or a judge thereof shall "otherwise direct, but so as not to come into the paper for "hearing before the day named in the notice of appeal" (Rule 8).

Appeals from refusal of *ex parte* application.

"Where an *ex parte* application has been refused by the "court below, an application for a similar purpose may be "made to the Court of Appeal *ex parte* within four days "from the date of such refusal, or within such enlarged "time as a judge of the court below or of the Court of "Appeal may allow" (Rule 10).

Evidence on appeal as to questions of fact.

"When any question of fact is involved in an appeal, "the evidence taken in the court below bearing on such "question shall, subject to any special order, be brought "before the Court of Appeal as follows:—

"(a) As to any evidence taken by affidavit, by the "production of printed copies of such of the "affidavits as have been printed, and office "copies of such of them as have not been "printed:

"(b) As to any evidence given orally, by the production "of a copy of the judge's notes, or such other "material as the court may deem expedient" (Rule 11).

Order to print evidence.

"Where evidence has not been printed in the court "below, the court below or a judge thereof, or the Court "of Appeal or a judge thereof, may order the whole or "any part thereof to be printed for the purpose of the "appeal. Any party printing evidence for the purpose of "an appeal without such order shall bear the costs thereof, "unless the Court of Appeal or a judge thereof shall "otherwise order" (Rule 12).

Evidence as to direction of judge to jury or assessors.

"If, upon the hearing of an appeal, a question ar
"to the ruling or direction of the judge to a ju
"assessors, the court shall have regard to verified
"or other evidence, and to such other materials a
"court may deem expedient" (Rule 13).

Interlocutory order not to prejudice appeal.

"No interlocutory order or rule from which ther
"been no appeal shall operate so as to bar or pre
"the Court of Appeal from giving such decision upo
"appeal as may be just" (Rule 14).

Time for appealing from interlocutory and final order.

"No appeal to the Court of Appeal from any
"locutory order, or from any order, whether fi
"interlocutory, in any matter not being an action,
"except by special leave of the Court of Appeal, be br
"after the expiration of fourteen days, and no
"appeal shall, except by such leave, be brought aft
"expiration of three months. The said respective p
"shall be calculated, in the case of an appeal from an
"in chambers, from the time when such order wa
"nounced, or when the appellant first had notice th
"and in all other cases, from the time at which the
"ment or order is signed, entered, or otherwise perf
"or, in the case of the refusal of an application, fro
"date of such refusal. Such deposit or other securi
"the costs to be occasioned by any appeal shall be
"or given as may be directed under special circumst
"by the Court of Appeal" (Rule 15).[130]

Appeal from order on

"The time for appealing against an order made

Canadian Cases.

[130] An appeal to a divisional court from an order of a su
court is not duly lodged, and will be quashed if security h
been given and an affidavit of the value of the property a
filed as required by rule 57 of the Surrogate Court Rules o
which are made applicable by s. 36 of the Surrogate Cour
R. S. O. (1897), ch. 59, notwithstanding the provision o
Rule 825 that no security for costs shall be required on a
or appeal to a divisional court (*In re Wilson, Trusts Corp
of Ontario* v. *Irvine* (1897), 17 P. R. 407; applied and fo
Re Nichol, 1 O. L. R. 213).

"further consideration of a cause, and on the hearing of a "summons to vary the certificate on which such order is "made, shall be the same as the time for appealing against "the order on further consideration" (Rule 15A (R. S. C., December, 1885)). — further consideration and summons to vary.

"An appeal shall not operate as a stay of execution "or of proceedings under the decision appealed from, "except so far as the court appealed from, or any "judge thereof, or the Court of Appeal, may order; "and no intermediate act or proceeding shall be invali- "dated, except so far as the court appealed from may "direct" (Rule 16). — Stay of proceedings on appeal.

"Wherever under these rules an application may be "made either to the court below or to the Court of "Appeal, or to a judge of the court below or of the Court "of Appeal, it shall be made in the first instance to the "court or judge below" (Rule 17). — Applications which may be either made to court below or Court of Appeal to be made first to court below.

"Every application to a judge of the Court of Appeal "shall be by motion, and the provisions of Order LII. "shall apply thereto" (Rule 18). — Applications to a single judge.

Security for costs of appeal will usually be ordered when the respondent can show that the appellant if unsuccessful would be unable through poverty to pay the costs of appeal (*Hall* v. *Snowdon & Co.*, [1899] 1 Q. B. 593 (C. A.)). — Security for costs of appeal.

This applies also to motions for new trials (*Wightwick* v. *Pope*, [1902], 2 K. B. 99; and see "Yearly Practice" under notes to R. S. C., Order LVIII. r. 15).

The form of order for security for costs is to be given to the satisfaction of the judge in chambers in case the parties differ (*Hope* v. *Hope*, 86 L. T. 363 (C. A.) Notice C. A., Feburary 26th, 1904).

Appeals from Interlocutory Orders.

(i.) There are certain interlocutory orders from which no appeal lies. (ii.) There are others from which no appeal

lies, except with leave of the judge making the or
and others (iii.) from which an appeal lies as of righ

Cases where no appeal allowed.

(i.) There is no appeal from interlocutory orders
by the judge in chambers in the exercise of a disc
vested in him.

Appeals by leave of judge or court

(ii.) An appeal from an order made by the jud
court by the consent of parties, or from an order
costs, is not allowed, except by leave of the court or
making such order.

"No order made by the High Court, or any judge th
"by the consent of parties, or as to costs only, whi
"law are left to the discretion of the court, shall be su
"to any appeal, except by leave of the court or
"making such order" (Judicature Act, 1873, s. 49).

Appeals as of right.

(iii.) An appeal is allowed, as of right, from an
made by the judge sitting in chambers—not in the ex
of his discretion—to the judge in court; but no app
allowed from an order of the judge in chambers, t
aside which no motion has been made in court, unles
judge making the order gives leave to appeal, or ce
that he does not wish to hear further argument (*R
Hughes, 9 P. D. 68).

Reference by registrar to judge.

By Order LIV. r. 20, "If any matter appears t
"master proper for the decision of a judge the master
"refer the same to a judge, and the judge may either
"pose of the matter or refer the same back to the m
"with such directions as he may think fit."

Appeal from registrar.

And by Rule 21, "Any person affected by any ord
"decision of a master may appeal therefrom to a jud
"chambers. Such appeal shall be by way of indorse
"on the summons by the master at the request of
"party, or by notice in writing to attend before the j
"without a fresh summons, within five days after
"decision complained, or such further time as ma
"allowed by a judge or master. Unless otherwise or
"there shall be at least one clear day between servi
"the notice of appeal and the day of hearing."

Appeals from the registrars of the Probate Division are governed by this rule (*John Patrick, deceased*, 14 P. D. 42 (C. A.)).

It is found convenient that the "notice in writing" should take the form of a summons by way of appeal, for which no fee is chargeable.

Appeals from County Courts.

Appeals from the decision of county courts in probate and administration actions lies to the Divisional Court of the Probate, Divorce, and Admiralty Division (R. S. C., Order LIX. r. 4).

Appeals to the House of Lords.

From the decision of the Court of Appeal there is an appeal to the House of Lords within one year from the date of the decree or order appealed against, subject to the appellant giving by his own recognizance security for costs to the amount of £500 and a bond for £200, or in lieu of the bond, paying £200 into the fee fund of the House of Lords.

Appeals to the House of Lords are regulated by the Appellate Jurisdiction Act, 1876, and the Forms, Method of Procedure, and Rules and Standing Orders of the House of Lords. (See Denison's Appeal Practice of the House of Lords. See also Court of Probate Act, 1858, s. 22.)

Form of appeal to the House of Lords.

"Every appeal shall be brought by way of petition to "the House of Lords, praying that the matter of the order "or judgment appealed against may be reviewed before "her Majesty the Queen in her Court of Parliament, in "order that the said court may determine what of right, "and according to the law and custom of this realm "ought to be done in the subject-matter of such appeal" (s. 4, Appellate Jurisdiction Act, 1876).

SUMMARY AS TO APPEALS.

Appeal from Registrar (R. S. C., Order LIV. r. 21).

To what Court . Judge in chambers.

Mode . . . By filing fresh summons by of appeal in Contentious partment (no fee), or by in ment of summons by regi notice of which must be in the Contentious Depart

Time . . . Must be asked for within five

Note . . . No stay of proceedings (Rule

Appeal from Judge at Chambers (R. S. C., Order LVI

To what Court . (a) To judge himself in open (*Smith*, 9 P. D. 68; *A.-G.* v. *Llewellyn*, 58 367).

(b) To Court of Appeal, if c cate given that no f argument is required.

Mode . . . (a) Adjournment or notic motion (*Pearce*, W. N 114 (C. A.)).

(b) Notice of motion.

Time . . . (a) Within fourteen days of pronounced whether locutory or final (Rule

(b) Fourteen days if interlocu three months if final (Rule 15).

Setting down . (a) In Contentious Departme

(b) In Contentious Depart and also Central Office

Note . . . A motion to discharge an made in chambers is a rehe not an appeal (*Giles*, [189 C. D. p. 395).

Appeal from Judge in Court (R. S. C., Order LVIII.).

To what Court .	Court of Appeal (J. A., 1873, s. 19).
Mode . . .	Notice of motion (fourteen days' notice if from judgment or final order, and four days' notice if from interlocutory order; or if there is no action or if by respondent, eight days' and two days' notice respectively) (Rules 3 and 7).
Time . . .	Within three months if from final order or judgment, and within fourteen days if from interlocutory order or if there is no action (Rule 15).
Setting down .	In Contentious Department and in Central Office. The appeal must be entered before the day mentioned in the notice (*National Funds*, 4 Ch. D. 305).

Appeal from Judge with Jury (R. S. C., Order XXXIX.). (Application for new trial.)

To what Court .	Court of Appeal.
Mode . . .	Notice of motion (fourteen days' notice) (Rule 4).
Time . . .	Eight days after trial in London or Middlesex, or seven days from last day of circuit sitting after trial elsewhere (Rule 4).
Setting down .	In Contentious Department and at Central Office.

Appeal from Court of Appeal (Appellate Jurisdiction Acts and Standing Orders).

To what Court .	House of Lords (App. J. A., 1876 and 1887).
Mode . . .	By petition (s. 2, App. Jur. Acts,

1876) (two clear days' n
(Directions to Agents, 2).

Time . . . Within one year from da
order or judgment (St
Order 1).

Setting down . See Standing Order 5 (1
Directions to Agents, 30.

Appeal from County Court (R. S. C., Order LIX.).

To what Court . Divisional Court (Rule 4).

Mode . . . Notice of motion (eight
notice) (Rule 10).

Time . . . Within twenty-one days (Ru

Setting down . In Contentious Department

CHAPTER XVIII.

COSTS.[131]

DISCRETION OF THE COURT.
Under the Judicature Acts and Rules.
COSTS OF SUCCESSFUL PARTIES.
Costs follow Event.
Executor proving in Solemn Form.
Beneficiary proving in Solemn Form.
Will successfully opposed.
EXCEPTIONS—COSTS OF UNSUCCESSFUL PARTIES—
In Prerogative Court.
In Probate Court and Probate Division.
RIGHT OF NEXT-OF-KIN, ETC.
To compel Probate in Solemn Form.
Practice in Prerogative Court
Notice to Cross-examine.
Costs of Heir-at-law.
Interveners.
APPORTIONMENT OF COSTS.
PAUPERS' COSTS.
SECURITY FOR COSTS.
TAXATION OF COSTS.

DISCRETION OF THE COURT.

THE question of costs has always been in the discretion of the court, whether under the practice of Prerogative

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Canadian Cases.

[131] Rules of the Supreme Court, 1130, *et seq.*

RESISTING DOUBTFUL CLAIM.—The Court, although it considered the plaintiff entitled to be paid his demand, thought the executor, under the peculiar circumstances, was justified in having resisted payment without the sanction of the Court, and that in the administration of the estate the executor would be entitled to be paid his costs of litigation (*Griffith* v. *Paterson*, 20 Gr. 615).

REVERSED DECREE.—Executors will be ordered personally to repay costs paid to them or their solicitor under a decree which is afterwards reversed (*Davidson* v. *Thirkell*, 1 Gr. 284).

IMPROPER CONDUCT.—Where executors had improperly dealt with a portion of the funds of the estate, by allowing one of their number to retain it in his hands at a low rate of interest, the Court refused their costs prior to decree (*Ashbough* v. *Ashbough*, 10 Gr. 433).

Court, under the rules of the Court of Probate (see R
4, 5, and 6, Contentious Business), or under the Judica
Acts and Rules of the Supreme Court.

Canadian Cases.

*LIABILITY OF ESTATE FOR COSTS OF ADMI
TRATOR'S ACTION.*—Where an administrator brought a
founded action against the testator's widow, which she wa
to costs in defending :—*Held*, but her only remedy for such
was against the administrator personally, not against the
(*Rodgers* v. *Rodgers*, 13 Gr. 457 ; and , p. 369

OUT OF ESTATE.—Where an executrix appealed again
master's report, and the appeal was allowed without costs :—
that she could not, on further directions, claim the costs
appeal out of the estate (*Story* v. *Dunlop*, 13 Gr. 375 ; and *post*, p

MODERATION OF COSTS.—Where an executor has i
faith paid his solicitor's bill of expenses incurred in adminis
the estate, the master may, without taxing the bill, moderat
deducting charges which appear not to be proper (*McCa
McKinnon*, 17 Gr. 525 ; and *ante*, p. 407).

NEGLECTING TO PREPARE ACCOUNTS.—Whe
executors, by neglecting to prepare accounts or afford infor
reasonably called for by the legatees, had given rise to th
they were charged to the general costs thereof, less certai
occasioned by unfounded claims set up by the bill (*Smith* v.
Gr. 311).

SUIT RECKLESSLY INSTITUTED.—The next fr
infants filed a bill against the mother of the infants—their g
appointed by the surrogate court and her husband—
certain acts of misconduct, which were not established in e
and the accounts taken under the decree resulted in sh
balance of about $22 in the hands of the defendants. T
being of the opinion that the suit had been recklessly i
and without proper inquiry, ordered the next friend of the
to pay the costs of the defendants as between party a
(*Hutchinson* v. *Sargent*, 17 Gr. 8).

IMPERFECT ACCOUNTS.—In a suit for administ
appears that the personal representative had kept very
accounts of the estate, and that those brought into the
office had been made up partly from scattered entries a
from memory :—*Held*, a sufficient justification for the
the suit, and that the plaintiff was entitled to the

R. S. C., Order LXV. r. 1, is as follows:—

"Subject to the provisions of the Acts and these rules, R.S.C., Order LXV. r. 1.

Canadian Cases.

defendant up to the hearing, although no loss had occurred to the estate (*Killins* v. *Killins*, 29 Gr. 472, *infra*).

RETAINING COSTS OUT OF PLAINTIFF'S SHARE.—A bill had been dismissed, with costs to be paid by the plaintiff. Two of the defendants were administrators, and as such had fund in their hands to which the plaintiff was entitled as one of the heirs and next-of-kin of the intestate. The defendants had been unable to obtain the costs by *fi. fa.*, and filed a petition asking to be allowed to retain the funds in the hands of the administrators: held that the Court had no control over the funds, and the petition was dismissed with costs (*Black* v. *Black*, 1 Ch. Ch. 360).

IMPROPER MANAGEMENT.—Executors may be deprived of their costs where they have improperly managed the affairs of the estate, though not guilty of any wilful misconduct: and this rule was acted on where the personal representative of one of the executors was a party to the suit, though he had not acted in the management of the estate, his testator's estate being ample (*Kennedy* v. *Dingle*, 27 Gr. 305).

UNAUTHORIZED INVESTMENTS.—It was shown that the personal representative had invested the moneys of the estate in land out of the jurisdiction of the Court as well as on personal security; but no loss had been sustained, the money having been repaid by the borrowers:—*Held*, that these facts did not constitute any ground for depriving her of the costs of suit subsequent to the decree (*Killins* v. *Killins*, 29 Gr. 472, *supra*).

PLAINTIFF'S ACTIONS.—An infant is incapable of bringing suit in his own name or of making himself or the estate he assumes to represent liable for the costs of such suits (*Merchants' Bank* v. *Keith*, 10 [illegible] 334).

ORDER FOR PAYMENT OF COSTS PAID BY EXECUTOR.—Bills of costs for services rendered to an estate after a testator's death, down to the date for an order for the administration of the estate, were paid by the executor under such order and pending administration proceedings:—*Held*, that there could be no taxation of the bill as against the executor at the instance of creditors, but that the bill should be moderated. So far as the solicitors were concerned, the payment by the executor was to be regarded as payment of the bill, and to obtain a taxation after payment a case would have to be made against the solicitors. Practically, the

" the costs of and incident to all proceedings in the Su
" Court, including the administration of estates and t

Canadian Cases.

moderation might be so conducted, if warranted by special c
stances, as to differ but little from a taxation (*Re Hague*, 7
Bank v. *Murray*, 12 P. R. 119).

MORTGAGE ACTION—PERSONAL ORDER.—Wh
action to enforce a mortgage by foreclosure is brought agai
executors of a deceased mortgagor, and an order for payı
the mortgage debt is, in addition, asked against the executo
judgment is entered for default of appearance, only the ad
costs occasioned by the latter claim should be taxed agai
executors personally (*Miles* v. *Brown*, 15 P. R. 375).

LITIGATION WITH THIRD PARTIES.—In litigati
third parties, executors are, with respect to costs, in th
position as parties who litigate in their own right (*Great*
Railway Co. v. *Jones*, 13 Gr. 355).

RESERVING COSTS.—On the opening of the
charging an executor with misconduct, the plaintiff offered t
a reference to take accounts. The Court, in the absence of
showing whether or not the plaintiff was justified in mal
charges, reserved the general costs of the suit, as well
additional costs, caused by the filing of the bill (*Eberts* v
25 Gr. 565; and *ante*, p. 353).

INSOLVENT ESTATE—ADMINISTRATOR'S ST
The administrator is a necessary party to an administrat
and as such should get his general bill of costs incurre
ordinary proceedings in which he took part; but when an
insolvent, the creditors are the persons really interested
litigation, and it is for them, and not for the administrator
active steps by way of appeal to reduce the claims of
creditors. The administrator is entitled to attend u
appeals, and to tax a watching brief, but not such costs
were the principal litigant (*Re Monteith, Merchants' Bank* v.
11 P. R. 361).

PERSONAL LIABILITY.—Executors employing an
are personally responsible to him for the costs (*Dickson*
M. T. 4 Vict.). A trustee or executor stands in the sam
as any other litigant with respect to costs (*Smith* v. *Willi*
P. R. 126).

JUST ALLOWANCE—UNSUCCESSFUL LITIG
ADVICE OF COURT.—When the administrators of

"shall be in the discretion of the court or judge: Provided "that nothing herein contained shall deprive an executor,

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Canadian Cases.

of a deceased assignee for creditors defended in good faith an action brought by his successor in the trust to recover damages for the breach of trust committed by the intestate, and being unsuccessful was obliged to pay the plaintiff's costs and those of their own solicitors, they were held entitled to credit for their payments in passing their accounts. Where it is plain that a dispute can be settled only by litigation, it is not necessary for a trustee to ask the advice of the Court before defending (*In re Williams*, 22 A. R. 196).

MISCONDUCT OF LEGATEE—CHARGING COSTS ON SHARE.—The plaintiff wished to administer the estate of his brother in the county of Westmoreland, N.B., but was unable to give the necessary administration bond until the defendant W. and one J. agreed to become his bondsmen, securing themselves by having the estate placed in the hands of the defendants. A portion of the estate consisted of some English railway stock, which the defendants wished to convert into money, but the plaintiff would not assist them in doing so. In passing the accounts of the estate in the Probate Court, it was found that there were several persons entitled to participate as next-of-kin of the deceased, and the respective amounts due to several claimants were settled by the Court. Owing to the plaintiff's refusal to join in realizing the stock, however, the defendants were unable to pay some of these parties their respective shares; and finally the plaintiff filed a bill to compel the defendants to pay him his portion of the estate, with $1000 which he claimed as commission, and also to hand over to him the shares of the next-of-kin. A decree was made directing the estate to be disposed of by the defendants, and that they were entitled to their costs as between solicitor and client, which could be retained out of the plaintiff's share of the estate (*O'Sullivan* v. *Hartz*, 10 A. R. 76; 11 S. C. R. 322).

SOLICITOR-EXECUTOR—COSTS REMUNERATION.—On the passing of executors' accounts, one of the executors being a member of the firm of solicitors who acted for the estate, the bill of costs of the executor-solicitor's firm was objected to on the ground that an executor can make no profit out of the estate:—*Held*, that the solicitors' bill of costs might be allowed as part and parcel of the remuneration (*Re Leckie*, 36 C. L. J. 136).

PLAINTIFF CLAIMING TOO MUCH.—The plaintiff being

"administrator, trustee, or mortgagee who has no
"reasonably instituted or carried on or resisted any
"ceedings, of any right to costs out of a particular
"or fund to which he would be entitled according
"rules hitherto acted upon in the Chancery Div
Jury. "Provided also that, where any action, cause, mat
"issue is tried with a jury, the costs shall follow the
"unless the judge by whom such action, cause, mat
"issue is tried, or the court, shall, for good cause, oth
"order."

By s. 5 of the Judicature Act, 1890—

Judicature Act, 1890, s. 5. "Subject to the Supreme Court of Judicature Act
"the rules of court made thereunder, and to the e
"provisions of any statute, whether passed before o
"the commencement of this Act, the costs of and i
"to all proceedings in the Supreme Court, includi

Canadian Cases.

a lunatic, and entitled to maintenance out of the income o
in the hands of the executors, brought an action for the inc
for administration. The master reported a balance of in
the hands of the executors, being an amount charged agai
for interest upon moneys retained by them and not
according to the terms of the will; but the conduct of the e
was otherwise proper:—*Held*, that if the question of the li
the executors for the interest had been the only one in th
the executors should have been ordered to pay the costs;
much as a general administration was unnecessarily sou
and granted, no costs should be awarded for or against the
(*McCardle* v. *Moore*, 2 O. R. 229).

UNSUCCESSFUL DEFENCE OF VALIDITY OF
—M. H. proved a will as executrix; afterwards a subseq
was found dated about a time when the testator was in a w
of health, both physical and mental. A suit was brought
the executor in the later will, against M. H., to set aside
and establish the second will, which was successful, and
M. H. was ordered to pay costs:—*Held*, that M. H., in
for an account of her dealings with the estate, having a fai
for litigation in endeavouring to uphold the first will, wa
to the costs thereof out of the estate (*Hill* v. *Hill*, 6 O. R

"administration of estates and trusts, shall be in the "discretion of the court or judge, and the court or judge "shall have full power to determine by whom and to what "extent such costs are to be paid."

By R. S. C., Order LXV. r. 14D—

Costs may be ordered out of any portion of the estate.

"In any probate action in which it is ordered that any "costs shall be paid out of the estate, the judge making "such order may direct out of what portion or portions of "the estate such costs shall be paid, and such costs shall be "paid accordingly" (R. S. C., October, 1904). See *Dean* v. *Bulmer*, [1905] P. 1; *Harrington* v. *Butt*, [1905] P. 3 n.[132]

Notice to prove in solemn form.

The discretion of the judge as to costs, under R. S. C., Order XXI. r. 18, as amended in August, 1898, where the party opposing the will has given notice that he merely insists on the will being proved in solemn form, is dealt with later in this chapter. (See pp. 564-565.)

There were certain rules, however, from time to time laid down in the cases in the Prerogative Court for the guidance of the court in determining the question of costs. These rules have been followed by the judges of the Probate Court and Probate Division, who have supplemented them by some additional rules suggested by the special circumstances of particular cases coming under their consideration.[133]

Canadian Cases.

[132] *DEFENDING ACTION.*—An order for partition or sale or sale of the estate of one M. deceased, was made under G. O. 640 by a local master. In proceeding under that order the master advertised for creditors, and M. & M. sent in a claim for obtaining letters of administration, and for defending an action in the Court of Common Pleas brought by W. M., a defendant in this suit, and entitled to a share of the estate, against the administratrix. The master allowed the claim, and W. M. appealed on the ground that neither the deceased nor his estate was indebted to M. & M., and that they were not entitled to prove as creditors in this cause:—*Held*, that she was justified in defending the suit, and the appeal was dismissed (*McKay* v. *McKay*, 8 P. R. 354).

[133] *DISALLOWANCE OF EXECUTOR'S CLAIMS.*—The

Costs follow event.

The general rule is, and always has been, as laid by BARNES, J., in *Twist* v. *Tye*, [1902] P. 92, and *Williamson*, 87 L. T. 146, that costs follow the eve

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Canadian Cases.

report in an administration suit found £1403 chargeable ag executor. Of this sum £1247 was for the price of land, clai received by the executor, the testator's son, as heir, and to this had long been acquiesced in by the other parties in till held otherwise in this suit, when the purchase mo declared to pass under the testator's will to the claimant a as legatees. A sum of £133, the value of the testator' property, left by the executor in the hands of the testator and finally lost to the estate, made up the remainder of charged to this executor, except a balance of about £34. the circumstances the executor was allowed his costs, administration suit out of the estate; and was not char interest on the balance in his hands, which he was require into Court within a month after deducting therefrom his the estate as legatee (*Blain* v. *Terryberry*, 12 Gr. 221).

134 *COSTS OF OTHER LITIGATION.*—In an admi suit it appeared that the stepfather of one of the childr deceased who had the care of the child had been sue child's board while at school, his mother being a cr the estate, and neither she nor her husband having any pay for such board while there were funds applicable t *Held*, that the stepfather should be allowed the costs of (*Menzies* v. *Ridley*, 2 Gr. 544).

In an administration suit the widow of the testator ha claim for dower, which had been allowed, and upon an ap that decision the Court of Appeal reversed the judgme Court below, in so far as it had allowed the claim for d gave no direction as to the payment of the costs of app appellants having paid their own costs of the appeal, upheld the finding of the master in allowing them such c the estate (*Ib.*).

EXECUTOR'S MISCONDUCT.—Where a bill was fil an executor and trustee for administration, and praying on the ground of the executor becoming embarrassed, a lately sold a valuable farm belonging to the estate to hi at an undervalue, without advertising the same or com with the *cestui que trust* under the will, and of his havi mortgage for the payment of the purchase money in his

Costs of Successful Parties.

Costs of Executor proving in Solemn Form.

An executor who proves a will in solemn form, whether he has done so of his own motion, or has been put on proof of the will by parties interested, is entitled to have his costs out of the estate. It is unnecessary for him to make any application to the court for them, as he has a right to take them out of the estate *without an order of court*. This right would seem to flow as a consequence from the ancient rule, that all the expenses incidental to proving a will are a charge upon the estate of the testator and that the party who takes probate is entitled to recoup himself out of the estate for the costs he may have incurred in obtaining such probate.

An executor proving a will in solemn form is entitled to take his costs out of the estate.

Where, also, executors had obtained a verdict in favour of the validity of a will, and a new trial was granted to parties who had appeared but had not originally pleaded, the court made an order for the executors to have the

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Canadian Cases.

individually and not as trustee, and, the circumstances justified alarm on the part of the *cestui que trust*, the executor was charged with so much of the costs of the suit up to the hearing as was occasioned by the suit being for a receiver (*Bald* v. *Thompson*, 17 Gr. 154; and *ante*, p. 21).

Where the only important difficulties in the administration of an estate were created by a large claim of the executors which they failed to make good, and a claim of their father's which he had made by their persuasion, and against his own wish, and the executors had more money in their hands than was required to pay all other claims against the estate, they were charged with the costs of an administration suit brought by a creditor (*McGill* v. *Courtice*, 17 Gr. 271; and *ante*, p. 19).

Where an executor had power under a will to sell real estate for payment of debts and legacies, and there was more than enough in money to pay the debts, the Court, considering a suit for administration unnecessary, refused the executor the costs and his commission (*Graham* v. *Robson*, 17 Gr. 271).

costs of the first trial out of the estate (*Boulton* v. *B*
1 P. & M. 456; 37 L. J. 19).

An executrix having lost a will through carelessness not allowed full costs.

But where an executrix, who through carelessne
lost a will and proved a draft of it in solemn for
was only allowed such costs as she would have in
in proving the original will in solemn form, and w
demned in the costs of the defendant (*Burls* v.
1 P. & M. 472; 36 L. J. 125).

So executors were ordered to pay the costs incu
unreasonably propounding a will which could no
ported (*Rogers* v. *Lecocq*, 65 L. J. P. 68).[135]

Canadian Cases.

[135] *EXECUTOR ACTING WITHOUT PROVING* W
Where an executor and trustee named in a will had acted
to the advantage of the estate, without having proved the
was allowed his costs as between party and party of an ad
tion suit to which he was a party defendant, excepting so
which he had needlessly incurred (*Sanby* v. *McCrae*, 2 Ch.

EXECUTOR APPLYING UNNECESSARILY FO
MINISTRATION.—Where an executor obtained the usu
for the administration of his testator's estate, and upon the
upon further directions no reason was shown for invoking
of the Court, and the guardian for the infants did not obje
way to the course taken by the executor, the Court refu
parties their costs (*Springer* v. *Clarke*, 16 Gr. 664).

DISALLOWANCE OF PART OF COSTS.—The exe
this case were held entitled to their costs, because the a
not occasioned by their miconduct; but they were disall
costs of such part of the inquiry as was caused by the mi
tion of the funds or their failure to make reasonably
entries of their dealing with the estate (*In re Houseberger*
10 O. R. 521; and *post*, p. 559).

DISPUTING CLAIMS.—In an administration suit, t
tors were charged with so much of the expenses of the ref
was incurred in the master's office in establishing charg
they disputed (*Stewart* v. *Fletcher*, 18 Gr. 21; and *ante*, p

Costs of a Beneficiary under a Will, who proves in Solemn Form.

When costs allowed out of the estate.

A beneficiary under a will who propounds it in solemn form *loco executoris*, and obtains a decree in favour of such will, is entitled to have his costs also out of the estate (*Williams* v. *Goude and Bennett*, 1 Hagg. 610; *Thorne* v. *Rooke*, 2 Curt. 831; *Sutton* v. *Drax*, 2 Phill. 323). But he has not, like an executor, a right to take them *ex officio*, unless he becomes administrator *cum testamento annexo*. For when the court pronounces for a will propounded by an executor, the executor takes probate of it himself and is put in possession of the fund, out of which he may recoup himself for the expenses he has incurred in the suit. But when the court pronounces for a will propounded by a residuary legatee or a legatee, the residuary legatee or legatee is not of right entitled to letters of administration with the will annexed. It is competent to the executor, upon the will being pronounced for, if he has not renounced, though he has been cited to propound it and has not done so, to come in and take probate in common form, or if he is disqualified from taking probate or is unwilling to take it, it is competent to a non-litigant residuary legatee to take letters of administration with the will annexed in preference to a propounding legatee (*Bewsher* v. *Williams*, 3 Sw. & Tr. 62).[136]

Canadian Cases.

[136] *FAILURE TO ESTABLISH WILL—COSTS OF PERSON NAMED AS EXECUTOR.*—Where the person named as an executor in a written instrument failed, in the final result of this action, to establish it as the last will of the testator, and the Court of last resort refused to order that his costs incurred therein should be paid out of the estate:—*Held*, that the Court of first instance could not make an order for payment, out of the moneys paid into that Court by the administrators *pendente lite*, of these costs as costs of the litigation, because they were refused by the only tribunal which had jurisdiction to award them, nor as costs and expenses properly incurred by the applicant in the performance

Should the person having a prior title to the gra
it in priority to a legatee having an inferior titl
who has established the will, the latter is without
over the estate of the testator, and therefore without
to recoup himself for the expenses incurred by
obtaining the decree. The most convenient mode
securing payment of his costs is by applying to th
to include in the decree pronouncing for the will a
that his costs be paid out of the estate. The appl
should be made on the court pronouncing for the v
of the will. But in *Bewsher* v. *Williams and Others*,
where no order had been made as to costs when the
was pronounced, the court subsequently ordered the

Application should be made to the court.

Order for costs has been made subsequently to decree.

Canadian Cases.

of his duties as executor, because he never was an executo
v. *Bugin*, 16 P. R. 301).

GROUNDLESS CHARGES OF MISCONDUCT.—W
of several persons beneficially interested under the will of a
without making proper inquiries into the conduct and
with the estate by the executors, instituted proceedings
them, and groundlessly charged them with misconduct,
thereby unnecessary costs and trouble, the Court, being
with the conduct of the executors, refused to take the
administration and winding up of the estate out of thei
and it being shown that all the other persons interested
estate were satisfied with the conduct of the executors, ord
plaintiff to pay the costs of the suit (*Rosebatch* v. *Parry*, 27

Where the plaintiff charged improper conduct against
ministratrix which was not sustained in evidence, he w
to pay all costs other than of an ordinary administrat
(*Hodgin* v. *McNeil*, 9 Gr. 305).

CLAIM NOT ALLOWED—BOOKS NOT KEPT.—
cutor who obtains an order for the administration of his
estate is not always entitled to the costs. An executor to
administration order for the purpose of establishing a cla
he made against the estate, and of having it paid by sa
realty, but he failed to prove his claim, and, on the co
small balance was found against him It appeared, also
had not kept proper books of account as executor:—*Held*
should pay the costs of the suit (*Sullivan* v. *Sullivan*, 16 G

who had propounded the will, to have her costs out of the estate.[137]

Where a legatee propounded a codicil.

A legatee, who has propounded and established a codicil, is entitled to the same costs as an executor under similar circumstances, and therefore when the court has given the legatee party and party costs against the executor who unsuccessfully opposed the codicil, it further ordered, the legatee should have *nomine expensarum* such sum as the registrar should consider sufficient to cover his extra costs (*Wilkinson* v. *Corfield*, 6 P. D. 27). In this case the codicil was ultimately proved by Thomas Corfield, the executor who had proved the will.

Costs of next-of-kin or executors or legatee of a former or later will.

When a next-of-kin or person entitled in distribution, or an executor or legatee of a former will, successfully contests the validity of a later will, the court will give him costs out of the estate, or against the unsuccessful party (*Critchell* v. *Critchell*, 3 Sw. & Tr. 41; 32 L. J. 108). As to separate sets of costs when there is a sufficient divergence of interest between the defendants, see *Bagshaw* v. *Pimm*, [1900] P. 148 (C. A.). If the unsuccessful party is condemned in costs and unable to pay them, the other party, if he takes probate to a former will, or letters of administration with (a former) will annexed, or administers to the estate of the deceased, may take them out of the estate as part of the expenses incidental to obtaining probate or administration. But if he does not prove a former

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Canadian Cases.

[137] *COSTS AND EXPENSES OF ADMINISTRATION.*—Executors are usually entitled to their costs as between solicitor and client out of the estate, and if the executors, in addition to the costs of the suit, have incurred any other costs, charges, and expenses in the administration of the estate, on this fact being stated to the Court, but not otherwise, an inquiry will be directed, and the master will be authorized to include them in his account (*Story* v. *Dunlop*, 13 Gr. 375; and *ante*, p. 544).

A retaining fee paid by executors to their solicitor in an administration suit may be a reasonable disbursement (*Chisholm* v. *Barnard*, 10 Gr. 479).

will himself, etc., or does not administer, he loses his
to costs as against the estate (*Nash* v. *Yelloly*, 3 Sw
59; but see *Bewsher* v. *Williams*, 3 Sw. & Tr. 62

(*a*) The question of the costs of a party propounding a former
will or codicil, who does not himself take administration with
annexed or probate, seems to have been dealt with in two differ
in two groups of cases.

(1) Those decided by Sir C. CRESSWELL:—

In *Bewsher* v. *Williams*, 3 Sw. & Tr. 62, they were given t
pounding legatee of a later will who was himself almost without
Subsequently in *Nash* v. *Yelloly*, 3 Sw. & Tr. 59, in a case of p
ing a former will, the same judge refused to follow *Bewsher* v. W
as being exceptional, and refused the costs to the next-of-kin.

(2) In *Wilkinson* v. *Corfield*, 6 P. D. 27, where a legatee est
a codicil, and the executor who had propounded the will was d
(and ultimately took the grant), Sir JAMES HANNEN gave the p
ing legatee his costs out of the estate on the authority of
Drax, 2 Phill. 323, and *Bremer* v. *Freeman and Bremer*, 2 D
258.

Canadian Cases.

138 *BREACH OF TRUST.*—An executor or trustee w
times be entitled to his costs in a suit for administration,
standing he may have committed a breach of trust, if n
sustained by the estate by reason of such breach (*Wiard*
8 Gr. 458).

ATTACKING PLAINTIFF MADE TO PAY C
One of several children of an intestate instituted pr
against her mother, the administratrix, and the adminis
the estate, seeking an account of the personalty, and al
rents and profits of the real estate, which it was proved
received by the administratrix alone, none having been pa
administrator. The accounts taken in the master's offic
that, in respect of the personal estate, the personal repres
had properly expended $400 more than they had received,
the administratrix had expended the rents so received
supporting the plaintiff and the other children of the inte
that all the parties interested therein other than the pla
released the administratrix from all liability in respect
which release the plaintiff had also promised to join in,
quently refused to execute. The Court, under the circu
though it could not deprive the plaintiff of her share of
ordered her to pay the administrator his costs of suit, a
pay to the administratrix her costs, less so much there

The disposition of the court is to grant administration to a party who has upset a will, provided the issue of the grant is in its discretion (*Dew* v. *Clark*, 1 Hagg. 311).

When unsuccessful in the suit.

Where a person of this class is unsuccessful in the suit, it is still competent to the court, if the circumstances of the case are such as to warrant it, to allow him costs out of the estate; if not, it will either condemn him in costs or leave him to pay his own costs.

Next-of-kin and executors of former wills in a more favourable position as to costs than legatees.

But next-of-kin and executors of former wills, even when unsuccessful in a suit, stand in a more favourable position than legatees do in respect of their rights and liabilities for costs.[139] (See pp. 561–567.)

Canadian Cases.

occasioned by her resisting the claim of the plaintiff to the rents (*Parsill* v. *Kennedy*, 22 Gr. 417).

Where executors in good faith unsuccessfully defended a suit on a note given by their testator, the Court, in pronouncing a decree against them, declared them entitled to deduct their costs as between solicitor and client out of their testator's estate (*McKillon* v. *Prangley*, 25 Gr. 545).

Executors having omitted to set up the defence that they had fully administered or had not assets to pay any balance that might be found due, petitioned to have the decree rectified so as to exempt them from liability for a greater amount than the assets come to their hands; the Court made the order as asked, but, under the circumstances, directed the executors to pay the costs of the application (*Ib.*).

[139] *COSTS.*—The right of an executor to compensation depends entirely upon R. S. O., 1877, c. 107, ss. 37–41, and as that statute has fixed no standard, each case is to be dealt with on its merits, according to the discretion of the judge. The Courts have laid down no inflexible rule in this regard, and the adoption of any hard-and-fast commission (such as five per cent.) would defeat the intention of the statute order below (11 P. R. 472 reversed, *Re Fleming*, 11 P. R. 426).

COMPENSATION.—The rate of compensation to executors or trustees should depend upon the amount passing through their hands, and the time and labour spent by them. In this case a commission of five per cent. on all moneys received and expended by them, and half that amount on the moneys received but not

Costs of Unsuccessful Parties.

Exceptions have been grafted on the rule that follow the event by the judges both in the Prerog Court and in the Court of Probate.

(1) *In the Prerogative Court.*

Exceptions.

In the Prerogative Court it was only under sp circumstances that the judges felt themselves authoris give costs out of the estate to a person who had unsu fully propounded or contested the validity of a will (v. *Russell*, 3 Phill. 334).

When the Prerogative Court directed the costs of an unsuccessful party to be paid out of the estate.

There were two classes of cases in which, by the pra of the court, this was generally done:

1. When a party had been led into the contest, wh as plaintiff or defendant, by the state in which the dec had left his papers (*Hillam* v. *Walker*, 1 Hagg. *Blake* v. *Knight*, 2 N. of Cas. 346; *Abbott* v. *H* 4 Hagg. 381; *Armstrong* v. *Huddlestone*, 1 Moo. 491; *Ayres* v. *Ayres*, 5 N. of Cas. 381).

2. Where the validity of a will had been cont on a doubtful point of law (*Robins and Paxton* v. *Do* 1 Sw. & Tr. 518; 27 L. J. 24; *Brooke* v. *Kent*, 3 P. C. 334).[140]

Canadian Cases.

expended, having been allowed, an appeal from the master's on the ground of excess was allowed (*Thompson* v. *Freeman*, 384).

ACCOUNTS INACCURATE — TIME FOR ALLO COMPENSATION.—An executor who discharges his honestly, but owing to want of business training keeps his ac loosely and inaccurately, is entitled to compensation for hi pains, and trouble; but the amount of compensation should such a case be relatively large. Compensation, when allowed, be credited to the executor at the end of each year (*Hoover* v. 24 A. R. 424).

[140] A testator devised his real estate to his widow, and event of her remarriage, to his children. The widow afte

There were three other classes of cases in which the Prerogative Court in the exercise of its discretion, having regard, however, to the peculiar circumstances of each individual case, allowed costs out of the estate to a party who had unsuccessfully propounded or opposed a will.

Doubt as to testator's capacity.

(1.) Where there was a reasonable doubt as to the testator's testamentary competency at the time of the execution of the will.

Thus, where a sister and sole next-of-kin disputed the validity of the will of a testator, which was wholly inofficious, and by which he bequeathed his fortune to

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Canadian Cases.

filed a bill against the executors, charging maladministration, which was wholly disproved; and the master having found that the personal assets were insufficient to discharge the remaining liabilities, the Court directed the executors to receive their costs out of the estate; that a competent portion of the real estate should be sold; and that the testator's children should be made parties to the suit in the master's office for the purpose of retaking the accounts, if desired by the guardians, they not being bound by the accounts already taken; and under the circumstances refused the widow her costs (*Norris* v. *Bell*, 9 Gr. 23[illegible]).

The Court will not refer it to the surrogate judge to settle the amount of compensation or commission to be allowed to an executor or administrator, but, having possession of the subject-matter of litigation, will finally dispose of the rights of all parties (*McLennan* v. *Havard*, 9 Gr. 279).

EFFECT OF SURROGATE ACT.—The old rule as to compensation of trustees has only been abrogated by the Surrogate Act so far as relates to trusts under wills (*Wilson* v. *Proudfoot*, 15 Gr. 103).

COSTS.—The taking of administration proceedings does not deprive executors of their functions or even suspend them, and a reasonable allowance should be made for moneys received *pendente lite* (*In re Housberger, Housberger* v. *Kratz*, 10 O. R. 521; and *ante*, p. 552).

FIXING COMPENSATION—APPEAL FROM SURROGATE COURT JUDGE.—By virtue of R. S. O., 1897, c. 59, s. 36, an appeal lies to a divisional court from an order of a surrogate court judge, allowing compensation to an executor under the Trustee Act, R. S. O., 1897, c. 129, s. 43 (*In re Alexander*, 31 O. R. 167; and *ante*, p. 530).

charity, it being established in evidence that the
was eccentric in an extraordinary degree, that
taken an unfounded dislike to his sister and other m
of his family, and that his moral feelings were pe
Sir HERBERT JENNER FUST, though he pronounced
will, directed the costs of the sister to be paid
the estate (*Frere* v. *Peacock*, 1 Rob. Ecc. Rep
Waring v. *Waring*, 5 N. of Cas. 324; *Borlase* v.
and Others, 4 N. of Cas. 140).

(2.) Where a party principally benefited by th
opposed had been guilty of improper acts, which
him to the suspicion of fraud or undue .flue
procuring its execution (*Browning* v. *Budd*, 6
P. C. 430).

(3.) Where a case from its peculiar circum
pre-eminently called for investigation (*Jones* v. C
5 Moo. P. C. 16; *Coventry* v. *Williams*, 3 N. of Ca
Symons v. *Tozer*, 3 N. of Cas. 55; *Keating* v. *Broo
Others*, 4 N. of Cas. 273; *Gregory* v. *Her Majesty's
and Others, 4 N. of Cas. 643).

When an unsuccessful party forfeited his claim to have costs out of the estate.

The right, however, of the unsuccessful party to h
was forfeited:—

(1.) Where by his plea or his cross-examinat
attempted to make a case of fraud or conspira
justified by the evidence (*Barry* v. *Butlin*, 2
P. C. 492).

(2.) When, prior to the commencement of th
circumstances, which *primâ facie* cast suspicion
instrument sought to be impeached, had or migh
been removed by inquiries which he had made
had opportunities of making (*Nichols* v. *Binns*, 1 Sw
239).

(3.) When from circumstances disclosed duri
progress of the cause he might have earlier judged
ought not to have proceeded further in it (*Dean* v.
3 Phill. 334).

An executor who had unsuccessfully propounded

was entitled, subject to the rules and limitations above laid down, to have his costs out of the estate; but if the court considered that the circumstances of the case did not entitle him to costs, it might either condemn the unsuccessful party personally in costs, or make no order as to costs, so leaving him to pay his own costs.

When an executor was condemned in costs.

Thus, where probate was refused of a will propounded by an executor, who was himself principally benefited by it, and against whom there were strong suspicions of fraud (*Dodge* v. *Meech*, 1 Hagg. 612; see also *Saph* v. *Atkinson*, 1 Add. 162); and again, where probate was refused of a will propounded by an executor (the husband of the testatrix), on the ground that it had been unduly obtained by him from his wife (*Marsh* v. *Tyrrell and Harding*, 2 Hagg. 141; *Baker* v. *Batt*, 1 Curt. 172), the executor in such cases was condemned in the costs of the cause.

(2) *In the Probate Court and Probate Division.*

General rules laid down in the Probate Court incorporating the above exceptions.

The question of costs being addressed to the discretion of the court, and depending not infrequently upon the special circumstances of each particular case, is often a difficult and embarrassing one. The first case in which anything like a general classification has been made, or a general rule has been laid down on this subject, is that of *Mitchell* v. *Gard*, 3 Sw. & Tr. 275; 33 L. J. 7, in which there are two general rules enunciated by Lord PENZANCE (*b*).

When the unsuccessful party is entitled to costs out of the estate.

1st. That the unsuccessful party is entitled to costs out of the estate where the cause of litigation takes its origin in the fault of the testator by reason of his testamentary papers being surrounded by confusion or uncertainty in law or fact, or where the party interested in the residue has by his own improper conduct induced a litigation which the court considers reasonable. See also *Goodacre* v. *Smith*, 1 P. & M. 359; 36 L. J. 43. Thus in *Boughton* v.

Where conduct of testator caused litigation.

(*b*) See also *Twist* v. *Tye*, [1902] P. 92; *Brown* v. *Fisher*, [1890] 63 L. T. 465.

Knight, 3 P. & M. 64; 42 L. J. 41, Sir JAMES HANN
that *primâ facie* an executor is justified in propo
his testator's will, and if the facts within his knowl
the time he does so tend to show eccentricity me
the part of the testator, and he is totally ignorant
time of the circumstances and conduct, which afte
induce the court or a jury to find that the testat
insane at the date of the will, he will, on the pr
that the testator's conduct was the cause of the liti
be entitled to receive his costs out of the estate, al
the will be pronounced against.

Where conduct of beneficiary under the will caused the litigation.

So, where a next-of-kin had taken out adminis
after application made to the residuary legatee of
whether there was a will, to which application h
no answer, and a will was twelve months afte
produced and proved in solemn form, the court he
the administrator, who was the defendant in the s
entitled to have his costs out of the estate, includi
costs of taking out administration (*Smith* v. *Smith*
& Tr. 3; 34 L. J. 57. See also *Williams* v. *He*
Sw. & Tr. 471; 33 L. J. 110).

An unsuccessful party is also entitled to his cost
one of the principal beneficiaries under a will h
actively engaged in its preparation, and has not
by disinterested evidence that its dispositions we
over or explained to and approved of by the
before its execution (*Dale* v. *Murrell*, March, 18
reported).

See further as to the allowance of the costs of un
ful party out of the estate (*Orton* v. *Smith*, 3 P. &
Davies v. *Gregory*, 3 P. & M. 28; *Wilson* v. *Bassil*
P. 239).

When the unsuccessful party will not be condemned in costs.

2nd. That the losing party will not be conde
costs if there be a sufficient and reasonable ground,
to his knowledge and means of knowledge, for
question either the execution of the will or
of the testator, or to put forth a charge of undue i

or fraud. Thus, where the attesting witnesses gave conflicting accounts as to the due execution of the will (*Ferrey* v. *King*, 3 Sw. & Tr. 51; 31 L. J. 120), or the judge of assize was satisfied with a verdict establishing a will, but would not have been dissatisfied with a contrary verdict (*Bramley* v. *Bramley*, 3 Sw. & Tr. 430; 35 L. J. 111, n.), or where a next-of-kin, who had unsuccessfully opposed a will upon information given to him by one of the attesting witnesses, the testator's medical attendant, to the effect that when the will was read over the testator signified his approval of it by gesture only, and that he could not swear that the testator was of sound mind (*Tippett* v. *Tippett*, 1 P. & M. 54; 35 L. J. 41), the court refused to condemn the unsuccessful party in costs.

Where the principal beneficiary took instructions for the will himself, and the solicitor who drew the will did not see the testator, it was held that the circumstances so far invited inquiry as to justify the court in refusing to condemn in costs the party opposing the will (*Aylwin* v. *Aylwin*, [1902] P. 203).

See also the rule in *Davies* v. *Gregory*, 3 P. & M. 28.

Rights of Next-of-Kin, etc.

By the practice of the Prerogative Court, next-of-kin (*Green* v. *Proctor and Newey*, 1 Hagg. 340), an executor of a former will (*Mansfield* v. *Shaw*, 3 Phill. 22; *Boston* v. *Fox*, 29 L. J. 68), and a creditor (*Dabbs* v. *Chisman*, 1 Phill. 160, and note), or other person in possession of administration, were permitted, *before probate had been granted in common form*, to put an executor on proof of the will without being liable for costs, provided they did not do so vexatiously, or did not plead or attempt to set up in the interrogatories (*Barry* v. *Butlin*, 2 Moo. P. C. 492) a case of fraud or conspiracy which the evidence did not justify them in doing. But if they exercised this right vexatiously, or pleaded, or laid charges in the

When next-of-kin or executors of

a former will were liable to be condemned in costs.

interrogatories which they were not justified by th dence in doing, they were liable to be condemned in (*Constable and Bailey* v. *Tuffnell and Mason*, 4 Hagg *Coppin* v. *Dillon*, 4 Hagg. 375; *Huble* v. *Clarke*, 1 127). Again, when they put an executor on proof af has taken probate in common form, they did so peril of costs (*Bell* v. *Armstrong*, 1 Add. 375).

Review of the practice in the Prerogative Court.

By the practice which prevailed in the Prero Court, the first pleading in a cause of proving a v solemn form was given in by the executor. It co of an allegation, generally in the form of what was t a common condidit, wherein the executor pleade factum of the instrument propounded, the instructio it, the testator's knowledge and approval of its co the due execution of it, and the testamentary ca of the testator at the time the instructions were give the instrument executed. In support of this allegati executor, before the adverse party could plead, pr and examined witnesses, who were liable to cross-ex tion on interrogatories administered by him; and th of-kin of the deceased, or a person entitled in distri to his personal estate, or the executor of a forme were entitled to administer interrogatories without liable for costs, provided the interrogatories did no tain aspersions on character or charges which we warranted by the evidence. If they pleaded, they at the risk of being condemned in the costs, at l those incurred from the time when their allegati given in.

The same favour was not extended in the Prer Court to a legatee of a will who merely interrogat witnesses produced by the executor. The princip which the court acted in these cases is thus stated JOHN NICHOLL, in *Urquhart and Waterman* v. 3 Add. 57: "Where a next-of-kin," says that judge, "calls for proof of a will *per testes*, and "cross-examines the witnesses produced in support

"will, he is not subject to costs generally speaking. I "add this last, because I can easily conceive a case in "which even a next-of-kin may exercise his undoubted "right in this matter so vexatiously as to make himself "responsible, if not wholly, in part, for the costs of his "opponent. But next-of-kin are favourites of courts of "law; their interests, in cases of intestacy, accrue by *mere* "operation of the law, and they have the plainest and "most undoubted right to be satisfied that those interests "are not defeated but upon good and sufficient grounds. "A legatee under a former will is not so favourably "regarded; he *may*, certainly, call for proof *per testes* of "a will by which his interests under a former will are pre-"judiced; he as certainly may interrogate the witnesses "produced in support of that will; but *he*, I apprehend, "must clearly do this at the risk of being condemned in "costs, if the court has reason to *suspect* him of undue "and vexatious litigation. And this especially in a case "like the present, where the legatee is a *mere* legatee, "acting for his own sole benefit; that is, where he is "neither an executor at the same time of the will under "which he claims, nor a trustee in it for the benefit of "some other person or persons, for whose interest, in "common with his own, he can be suggested to have acted "in opposing the latter will."

Notice to Cross-examine under R.S.C., Order XXI. r. 18.

The practice of the Ecclesiastical Courts, by which a party, although not desirous of contesting a suit beyond insisting that the execution of the will should be strictly proved, *i.e.*, by examination of the attesting witnesses, was continued in the Court of Probate by Rule 41 (Contentious Business), which rule was re-enacted by R. S. C., Order XXI. r. 18.

Party giving notice protected from

Under this rule a party was protected from condemnation in costs by this notice, or if he gave a conditional notice,

condemnation in costs.

that if both the attesting witnesses to the will were duced, he only intended to cross-examine the wit (*Leeman* v. *George*, 1 P. & M. 542; 37 L. J. 13), or pleaded that the deceased did not know and appr the contents of the will (*Cleare* v. *Cleare*, 1 P. & M 38 L. J. 81); but not if he pleaded "undue influe "fraud" (*Ireland* v. *Rendall*, 1 P. & M. 194); or wh party had called in probate with a view to havi rescinded (*Leigh* v. *Green*, [1892] P. 17; *Beale* v. 3 P. & D. 180; *Tomalin* v. *Smart*, [1904] P. 141). essential that the notice be delivered with the d (*Bone* v. *Whittle*, 1 P. & M. 249; *Leeman* v. *G* 1 P. & M. 542).

Cases to which the protection does not extend.

Where, however, the circumstances of the case have warranted a decree of costs out of the estate t next-of-kin, who had put an executor on proof of a which was established, but the court was satisfied th had put the executor on proof of the will, not for the pose of taking the opinion of the court upon it, b ancillary to another suit pending as to real estate, a the nature of a bill of discovery to get evidence, might be available on the trial of an issue at commo it refused him his costs (*Swinfen* v. *Swinfen*, 1 Sw. 283; 29 L. J. 153).

Where a defendant next-of-kin having given noti his intention only to cross-examine, insisted upon th being tried before a jury, the court, being satisfied his opposition was wanton, took advantage of the pro in the Judicature Act that the costs of every action by a jury shall follow the event unless the judge othe direct, and condemned the defendant in costs (*Fo Brogan*, 1 L. R. Ir. Ch. D. 421. But see now *Dav Jones*, [1899] P. 161).

Amended rule.

By an amendment made in August, 1898, the judg given discretion if he be of opinion that there w reasonable ground for opposing the will, and the rule stands as follows:—

"In probate actions the party opposing a will may, with "his defence, give notice to the party setting up the will "that he merely insists upon the will being proved in "solemn form of law, and only intends to cross-examine "the witnesses produced in support of the will, and he "shall thereupon be at liberty to do so, and shall not, in "any event, be liable to pay the costs of the other side "*unless the judge shall be of opinion that there was no reason-*"*able ground for opposing the will.*"

The following are cases since the amendment: *Spicer* v. *Spicer*, [1899] P. 38; *Davies* v. *Jones*, [1899] P. 161.

Costs of Heir-at-law.

The heir-at-law on same footing in regard to costs as the next-of-kin.

It would seem to have been the intention of the legislature, by s. 61 of the Probate Act, 1857, to extend to the heir-at-law the same privileges with respect to costs as are enjoyed by the next-of-kin (*Fyson* v. *Westropp*, 1 Sw. & Tr. 279; 29 L. J. 139).

But where the heir-at-law contended in the same interest as the next-of-kin, subsequently to the Land Transfer Act, 1897, he was not allowed separate costs (*Twist* v. *Tye*, [1902] P. 98).

Where the heir-at-law and an executor of a former will respectively contested the validity of certain testamentary instruments, but pleaded separately and were condemned in the costs of the suit, the court, on reviewing its decree as to costs, held, that each party was liable in respect of that part of the costs which belonged to his own case. And where costs had been incurred in a matter equally applicable to both parties, so that it could not assign them more to one than to the other, that portion of costs was directed to be taxed equally between them (*Fyson* v. *Westropp*, 1 Sw. & Tr. 279; 29 L. J. 139).

Where a next-of-kin contested the validity of a will—and the heir-at-law, not having been cited, intervened—and the will was pronounced against on the ground of

the incapacity of the deceased, the party propoundi
will was condemned in the costs of the next-of-ki
of the heir-at-law (*Rayson* v. *Parton*, 2 P. & M
39 L. J. 20).

Interveners.

Interveners.

"Interveners in the Court of Probate possess the
"rights and are subject to the same limitations an
"same rules, with respect to costs, as they were i
"Prerogative Court" (Rule 6, C. B.), subject to th
cretion of the judge. Supreme Court of Judicatur
1890 (53 & 54 Vict. c. 44), s. 5.

The grounds upon which interveners will be al
their costs, relieved from costs, or condemned in costs
depend upon the circumstances of each particular ca

In ordinary cases, where the executor is before the
interveners, supporting the will, will not be allowed
costs out of the estate (*Colvin* v. *Frazer*, 2 Hagg. 36

An intervener allowed his costs.

In *Burgoyne* v. *Showler*, 1 Roberts. 5 (see also *C*
Cross, etc., 3 Sw. & Tr. 292; 33 L. J. 49), next-of-kin
vening, in a question as to the due execution of a w
order to take the opinion of the court as to alter
which appeared in the will affecting their interests
(although the alterations were pronounced invalid) al
their costs out of the estate.

Where an intervener had been cited by the defen
and charged by them with undue influence, the defe
having failed in the action were condemned to pa
intervener's, as well as the plaintiff's, costs (*Tenn*
Cross and Another (*Thorold* intervening), 12 P. D. 4

An intervener refused his costs.

But where the executor in his affidavit of scri
effect denied the validity of a legacy to a perso
intervened, but, subsequently, by his plea, admitt
validity, and such intervener appeared by counsel
hearing of the cause, the court refused to allow hi
costs out of the estate (*Shaw* v. *Marshall*, 1 Sw. & Tr

Intervener a married

Where a married woman intervened as plaintiff,

held that the summons was a proceeding instituted by her within s. 2 of the Married Woman's Property Act, 1893, and therefore that the court had jurisdiction, although she adopted the plaintiff's pleadings, to order the costs of the action, as from the date of the summons to intervene, to be paid out of her separate property, including property which was subject to a restraint upon anticipation (*Crickitt* v. *Crickitt* (*Crickitt* intervening), [1902] P. 177 C. A., 1902, W. N. 94, C. A.). woman condemned in costs.

Apportionment of Costs.

The Probate Division having now, by the Land Transfer Act, 1897, jurisdiction to grant probate of wills disposing of real and personal estate or of real estate only, has jurisdiction to order costs in actions relating to wills to be paid out of the real as well as out of personal estate. Apportionment of costs where decision for the benefit of the real as well as personal estate.

By a rule of the Court of Chancery, when the decision is for the benefit of the real as well as of the personal estate, and the costs are directed to be paid out of the estate, they are to be paid rateably out of the real and personal estate according to their respective values (*Bennett* v. *Foster*, 2 Ph. 161). And where, after the termination of the probate suit, the estate is administered in the Chancery Division, that court has jurisdiction to make an order for the real estate to bear its rateable proportion of the costs of the litigation in the Court of Probate.

Under the new rule, 14b, of Order LXV., R. S. C., by which the judge may direct out of what portion of the estate the costs shall be paid (see p. 549), in *Dean* v. *Bulmer*, [1905] P. 1, the costs of both plaintiff and defendant were ordered to be charged on and paid out of the corpus of certain real estate devised by the will of the deceased to successive life tenants; and in *Harrington* v. *Butt* [1905] P. 3 *n*, the court ordered the costs of all parties Direction as to the part of the estate out of which the costs are to be paid.

to be paid out of that part of the residuary estate pa
under the will to four out of six defendants.

Liability of a Person suing in Formâ Pauperi for Costs.

When condemned in costs.

When a person suing *in formâ pauperis* is unsucce
in his suit, and his conduct has been vexatious, or su
to expose him to suspicion of fraud or improper act
court may condemn him in costs (*Carless* v. *Thomp*
Sw. & Tr. 21), but it will be a matter of discretion (*Ri*
Davies, 4 Hagg. 394) whether the court, unless he sh
cease to be a pauper, would proceed to enforce their
ment by attachment. In *Wagner* v. *Mears*, 2 Hagg
(see also *Lemann* v. *Bonsall*, 1 Add. 389), where a p
was condemned in costs in the Prerogative Cour
vexatious conduct, the court intimated that it woul
enforce the decree against her, unless she should su
to property.

Where pauper omits to proceed to trial.

"Where a pauper omits to proceed to trial, pursua
"notice, he or she may be called upon by summons to
"cause why he or she should not pay costs, thou
"or she has not been dispaupered, and why all futur
"ceedings should not be stayed until such costs are
(Rule 25, C. B.).[141]

Security for Costs.[142]

In Prerogative Court.

By Order, February 13th, 1830 (2 Hagg. XVI.), i
provided, that, in all cases, the Prerogative Court

Canadian Cases.

[141] *FOREIGN CLAIMANTS—SECURITY.*—Parties r
out of the jurisdiction who come into the master's office
administration action pursuant to a notice to creditors, an
to be creditor of an estate administered there, will be requ
give security for costs (*Re Rees, Urquhart* v. *Toronto Tru*
10 P. R. 425).

[142] Rules of the Supreme Court, R. 1199.

upon application made to it, direct security for costs to be given by either or all the parties.

When a will had been propounded, and an appearance in opposition thereto had been given for the only next-of-kin of the deceased, who was absent from England, the court directed that he should, on account of his absence, give security for costs in the sum of £50 (*Hillam* v. *Walker*, 1 Hagg. 72). And where a party who had propounded a will afterwards became bankrupt, he was also directed to find security for costs (*Goldie* v. *Murray*, 2 Curt. 797).

In the Court of Probate.

The Court of Probate, however, has adopted the rules of the court of common law, and under these there are three main classes of cases in which security is generally ordered to be given by a plaintiff.

Cases in which security is generally ordered.

(1) Residence of plaintiff abroad.

(1) The most important is that of residence abroad. In *Robson* v. *Robson*, 3 Sw. & Tr. 568, WILDE, P., required security to be given by a plaintiff who was absent from or about to leave the country; and in *Crispin* v. *Doglione*, 1 Sw. & Tr. 522, Sir C. CRESSWELL refused it because the plaintiff, though a foreigner, was in England, and there was no reason to suppose that he was on the point of going away. There is now a specific rule dealing with this question, viz., R. S. C., Order LXV. r. 6A, which is as follows: "A plaintiff ordinarily resident out of the jurisdiction may "be ordered to give security for costs, though he may be "temporarily resident within the jurisdiction." According to the decision in *Crispin* v. *Doglione*, *supra*, the residence, to exempt a party from giving security, need not be "permanent." It is, however, a question of discretion in each case, the question being what kind or amount of residence satisfies the court that there is no need for security. (See further on this question *Michiels* v. *Empire Palace Co.*, 66 L. T. 132.)

(2) Misdescription of residence.

(2) A misdescription of plaintiff's residence is generally held a reason for ordering security. (See cases quoted in Annual Practice under R. S. C., Order LXV. r. 6.)

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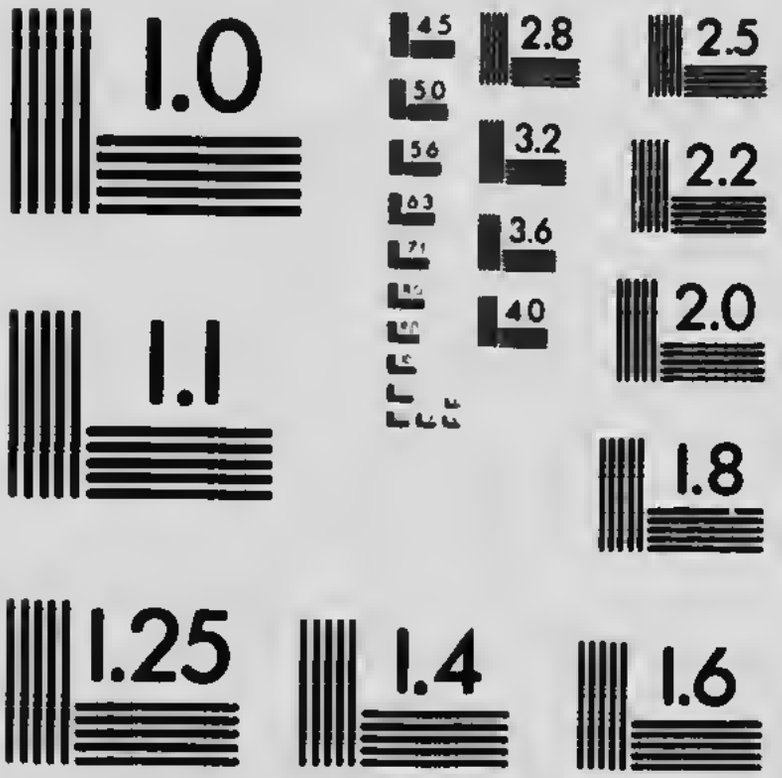

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(3) Insolvent person suing as nominal plaintiff.

(3) An insolvent person suing as nominal plaintif the benefit of a third party is ordered to give secu Such a case, however, is not so likely to occur in Probate Division as in other branches of the High Co

Security for costs refused.

On the other hand, security is *not* ordered—

(1) On ground of poverty.

(1) On the ground of poverty or insolvency o plaintiff (but see *Lambert* v. *Bessett*, below);

(2) On the ground that plaintiff is a married woman.

(2) Nor on the ground that the plaintiff is a ma woman, suing without her husband. (See Ma Women's Property Act, 1882, s. 1, sub-ss. (1) and (2) *Threlfall* v. *Wilson*, 8 P. D. 18.)

Not usually given by a defendant.

(3) It is not ordered to be given by a defendant i common law courts unless he sets up a counterclaim the question is rather different in the Probate Div (See headnote in *Robson* v. *R.*, *infra*, because the re tive positions of plaintiff and defendant in the Pr Division are not always analogous to those in the co law courts. The nominal position of plaintiff an fendant depends on the mode in which the cause menced. In *Lambert* v. *Bessett*, 11 Ir. Eq. R. 29 defendant, a caveator, being an uncertificated ban was ordered to find security for costs. This is only as showing that a *defendant* might be ordered t security, though the ground of the order might vary

Amount of Security.

"In any cause or matter in which security for c "required, the security shall be of such amount, "given at such times and in such manner and form "court or a judge shall direct" (R. S. C., Order LX

Substantial security, varying according to the r ments of the case, is now required (*Republic of Cos* v. *Erlanger*, 3 Ch. D. (C. A.) 62; 45 L. J. Ch. 74 also other cases quoted in Annual Practice under t rule).

Taxation of Costs.

Bills of costs are taxed by the taxing registrar during the sittings at the registry. They are filed in the Contentious Department. Fee, 2*s.* 6*d.* A deposit of 1*s.* for every £2 on two-thirds of the total of the bill is also taken in adhesive stamps, to be placed on the front of the bill. The figures must be cast before the bill is filed.

Bills of costs to be lodged registry for taxation.

It is not necessary to produce the order for taxation.

The fees payable are— Fees.

Where the amount does not exceed £4 ... 2*s.*
" " exceeds £4—
For every £2 or fraction thereof ... 1*s.*

Where there are two or more bills to be taxed in the same action (as in the case where the costs of several parties are ordered to be paid out of the estate), it is convenient that they should all be taxed together. If, therefore, they are not lodged at the same time, the solicitor who first brings in his bill should mention when filing that there are other bills in the action.

Two or more bills in the same action.

The appointment to tax is sent by post to the applicant, who should give notice of the appointment with the copy bill to the other parties as soon as possible. [One clear day's notice *must* be given, under Order LXV. r. 16, but such short notice may necessitate an application for an adjournment.] Appointment.

By R. S. C., Order LXV. r. 27 (37), "The rules, orders, "and practice of any court whose jurisdiction is trans- "ferred to the High Court of Justice or Court of Appeal, "relating to costs, and the allowance of the fees of "solicitors and attorneys, and the taxation of costs, "existing prior to the commencement of the principal Act, "shall, in so far as they are not inconsistent with the "principal Act and these rules, remain in force and be "applicable to costs of the same or analogous proceedings, "and to the allowance of the fees of solicitors of the "Supreme Court and the taxation of costs in the High "Court of Justice and Court of Appeal," Scales of costs in force.

On questions as to costs, solicitors should therefo to Order LXV. and Appendix N of the R. S. C.; any particular upon which they are silent, to the costs to be allowed to solicitors in contentious busi

The Practice Masters Notes of 1902 ("Blue although useful as a guide, do not, of course, nec apply to taxations in the Probate Division.

On appointment, vouchers, receipts, etc., to be produced.

All vouchers for counsel's fees and receipts fr nesses must be produced at the appointment, and s should also bring the briefs and any other docume may be required by the registrar.

If any party does not attend within a quarte hour of the time appointed, the registrar may proce the taxation in his absence. An affidavit of se notice will be required.

After the taxation is completed the solicitor agree the figures and sign the bill (in the waiting and return it to the registrar's clerk, to whom the of fees must be paid, and by whom the allocatur is

A copy of the allocatur may be ordered at any t

In cases where it is necessary, the registrar's cl draw up an order for payment of costs. Fee, 5*s*.

Objections.

Any party who may be dissatisfied with the all or disallowance of the whole, or any part, of an may carry in objections. (See R. S. C., Order LXV Filing fee, 2*s*. 6*d*. The objections should be dr three columns, (i.) the item objected to, (ii.) the obj (iii.) in blank, for the registrar's observations.

The registrar will consider the objections, and, if sary, will send a further appointment to the party ing; and if either party be then dissatisfied w decision, reference may be made to the judge by su to review the taxation with regard to such items.

For further details, see R. S. C., Order LXV. rr. 39

Canadian Cases.

[143] And see *Wilson* v. *Wilson*, 22 Gr. 377.

CHAPTER XIX.

TIME TABLE.

THE following Table is arranged alphabetically. Where the references are to the Rules of the Supreme Court, the items which appear to be applicable to the practice of the Probate Division have been taken from the Table in the Yearly Practice.

R. S. C. O. XXXII. r. 4.	**ADMISSIONS.**	
	Notice in writing to admit facts may be given:	Not later than nine days before day for which notice of trial has been given.
	Cost of proving facts to be borne by party refusing or neglecting to admit *if facts not admitted.*	Within six days of service of notice to admit.
	AFFIDAVIT OF SCRIPTS. *See* "SCRIPTS."	
R. S. C. O. XXVIII. r. 2.	**AMENDMENT.**	
	Plaintiff may amend statement of claim without leave—	
	(a) Once:	Before expiration of time limited for reply, and before replying.
	(b) Where no defence delivered:	Before expiration of four weeks from last appearance entered.
	(c) Where defence is delivered, but no order for reply:	Within ten days from delivery of defence, or last of the defences.
r. 3.	*Defendant may amend counterclaim* without leave—	
	(a) When reply delivered:	Before expiration of time allowed for answering reply, and before answer.

	(b) When no reply:	Before expirat twenty-eight d defence.
r. 4.	*Application to disallow amendment* may be made:	Within eight delivery of pleading.
r. 5.	Opposite party shall *plead to amended pleading*, or *amend* his *pleading*:	Within time lim pleading, or eight days f livery of am whichever sh expire.
r. 7.	*Amendment* must be made:	Within time lim order giving if no time within fourte from date of
r. 10.	*Amended indorsement or pleading* to be delivered:	Within time all amending.

R. S. C. O. LVIII.	APPEALS TO THE COURT OF APPEAL	
r. 3.	*Notice of appeal* from—	
	(a) Any judgment, whether final or interlocutory, or from final order:	Fourteen days'
	(b) Interlocutory order:	Four days' noti
r. 7.	*Notice of intention of respondent* to contend that *decision* of court below should be *varied* in case of appeal from—	
	(a) *A final judgment*:	Eight days' not
	(b) An interlocutory order:	Two days' noti
r. 10.	Where *ex parte application refused by court below*, similar application may be made *ex parte* to Court of Appeal:	Within four da fusal.
r. 15.	*Appeals to* Court of Appeal from *any interlocutory order*, or *any order interlocutory* or *final in any matter not being an action* to be brought:	Within fourtee
	Any other appeal:	Within three
	Such periods shall be calculated—	

	(a) In case of *appeal from order in chambers:*	From date of order or from time when appellant first had notice thereof.
	(b) *In all other cases:*	From time when judgment or order is signed, entered, or otherwise perfected.
	(c) In case of *refusal* of an application:	From date of such refusal.
r. 15A.	*Appeal* against *order on further consideration* of cause, and on summons to *vary* certificate:	Within same time as appeal against the order on further consideration.
	Appeal from Registrar.	*See* "Summons."
R. S. C. O. LIX.	APPEAL FROM DIVISIONAL COURTS.	
rr. 9, 10, 12.	*Appeals* from county courts and other courts of inferior jurisdiction shall be by:	Eight days' notice of motion.
	To be *served* on every party directly affected, and *appeal entered:*	Within twenty-one days from date when judgment or order is signed, entered, or otherwise perfected, or finding or refusal made or given.
r. 14.	*Appeal not to operate as stay unless so ordered* by inferior court, or *unless deposit* made or security given to satisfaction of inferior court:	Within ten days after decision.
	APPEARANCES.	
r. 27 C.-B.	*Appearance to citation to accept or refuse a grant, or to propound a will* to be entered in the registry—	
See form of citation, p. 977.	(1) If served personally:	Within eight days of service.
	(2) If served by advertisement:	Within one month of last advertisement.
	(3) If served abroad:	Within the time limited in citation.
See form of citation, p. 984.	*Appearance to citation to see proceedings* to be entered at the Royal Courts of Justice:	At any time before final judgment.
r. 65, N.-C. B. See form.	*Appearance to warning* to be entered in registry:	Within six days of service.

R. S. C. O. XII.	APPEARANCE TO WRIT OF SUMMONS.	
r. 9.	*Notice of appearance* must be given:	On day of entei pearance.
r. 22.	*Appearance* by defendant may be at any time:	Before judgment.
	Defendant not entitled to further time for defence if *appearance*:	After time limi writ.

Appearance—Default of. *See* "Default of Appearance.

APPLICATIONS [illegible] AMBERS. *See* "SUMM

CAVEATS.

r. 60, N.-C. B.	A *caveat* remains in force:	For six months f of entry.
Old Practice.	A *caveat* may be *subducted*:	(1) At any tin warning (2) Before se warning davit service (3) Within si entry ing.

R. S. C. O. XVII.	CHANGE OF PARTIES BY DEATH, ET	
r. 5.	*Appearance* to be entered after service of order to carry on proceedings:	Within same after service summons.
r. 6.	*Application to vary or discharge order* must be:	Within twelve service.
r. 7.	*If person under disability and no guardian* ad litem:	Within twelve appointment dian *ad litem*
r. 10.	*Cause marked "abated"* in cause book to be struck out:	After one year.

CITATIONS.

See form, p. 982.	*Citation to bring in grant.* Grant to be lodged in Contentious Department at registry:	Within eight d vice of citati

Citation to see Proceedings. *See* "Appearance."

R. S. C. O. XX. r. 2.	CLAIM—STATEMENT OF.	
	In *probate actions statement of claim* must be delivered:	Within the time ordered on the summons for directions, or if no time is specified, within six weeks of appearance or of time limited for appearance.

See also "Amendment."

CONCURRENT WRIT. *See* "WRIT."

COMMITMENT. *See* "EXECUTION."

R. S. C. O. LXV. r. 16.	COSTS.	
	Notice of taxing costs to be:	One day's notice.
r. 27 (41).	*Party dissatisfied with certificate* may apply to judge at chambers for *order to review taxation as to any item or part item* objected to:	Within fourteen days of certificate or *allocatur* of taxing officer.
r. 27 (48).	*Refresher fees* allowed according to scale.	For every clear day beyond the first five hours during which the trial has lasted.

COUNTERCLAIM. *See* "DEFENCE."

DEATH OF PARTY. *See* "CHANGE OF PARTY."

R. S. C. O. XII. r. 1.	DEFAULT OF APPEARANCE.	
	Notice of application to assign guardian to infant or person of unsound mind in *default of appearance* must be served:	After time for appearance and six clear days before day for hearing application.
	Application in such case must be made by plaintiff:	Before further proceeding with action.

R. S. C. O. XXI. r. 6.	DEFENCE AND COUNTERCLAIM.	
	Defence must be delivered:	Within time limited by the order on the summons for directions.

	Further Defence.	
R. S. C. O. XXIV. r. 7.	*Further defence or further defence to counterclaim* may be delivered:	Within eight day ground of defe arisen.
	Directions—Summons for.	
R. S. C. O. XXX. r. 1 (a).	*Summons for directions* by plaintiff to be returnable:	In not less tha days.
r. 1 (b).	*Such summons* to be taken out:	After appearanc before fresh ste exceptions) to plaintiff.
r. 5.	*Application subsequent to original summons* by any party to be made by:	Two clear days' to the other pa
r. 8.	*Defendant may apply to dismiss action* (if plaintiff has not taken out summons for directions):	After expiration teen days fr pearance.
	Discontinue Proceedings.	
See p. 410.	Summons to discontinue by consent may be taken out:	At any time up t
	Discovery and Inspection.	
R. S. C. O. XXXI. r. 7.	*Application to set aside or strike out interrogatories* may be made:	Within seven d service of i tories.
r. 8.	*Affidavit in answer to interrogatories to* be filed:	Within ten da service of i tories.
r. 17.	Party receiving notice to produce shall deliver to party, giving same *a notice* stating a time within three days at which *documents* can be inspected—	
	(a) As to documents set forth in his affidavit under r. 13:	Within two d receipt of produce.
	(b) As to *documents not so set forth:*	Within four d receipt of produce.
r. 26.	*Time for answering interrogatories* or making *discovery* if deposit ordered to commence from:	Date of service for payment i

DIVISIONAL COURT. *See* "APPEAL."

DOCUMENTS. *See* "DISCOVERY."

R. S. C. O. XXXVII.	EVIDENCE.	
r. 3.	*Evidence in another cause or matter may be read* by leave on *ex parte* application, and in any other case by giving to other parties:	Two days' notice of intention to read.
r. 24.	*Affidavit or deposition filed or made before issue joined* not to be received at the hearing unless notice of intention to use is served:	Within one month after issue joined.
r. 34.	*Service of subpœna* not valid unless made:	Within twelve weeks after *teste*.
r. 44.	*Examiner of court* on production of order to give appointment specifying place and time for examination:	Within seven days.
	Notice of such appointment to be given to other parties by party prosecuting order:	Within twenty-four hours, or less if order so directs.

EXAMINER OF COURT. *See* "EVIDENCE."

R. S. C. O. XLII.	EXECUTION.	
r. 18.	On the judgment or order for payment of money and costs *second writ for costs only* may be issued:	Not less than eight days after first writ.
r. 20.	*Writ of execution*, if unexecuted, shall remain in force:	For one year only from issue.
	Such writ may, by leave, be *renewed before expiration* from time to time:	For one year from renewal.
	Such *renewed writ* to have *priority and effect*:	According to time of original delivery.
rr. 22, 23.	As between original parties to judgment or order, *execution may issue*:	Within six years from judgment or order, or afterwards by leave.

r. 25.	*Order of commitment* under Debtors' Act, 1869, continues *in force*:	For one year fr of order.
	Order of commitment may be *renewed*:	In manner prov writs of execu 1. 20, *supra*).

INSPECTION. *See* "DISCOVERY."

INTERROGATORIES. *See* "DISCOVERY.

JURISDICTION—SERVICE OF WRIT OUT OF. *See*

JURY. *See* "TRIAL."

MOTIONS.

R. S. C. O. LII. r. 5.	Between *service of notice of motion* and day named therein for *hearing* motion there must be *generally*:	At least two cle
Registrar's direction.	Papers to be filed for motion:	Not later than the Wednesd the Monday the motion heard.

MOTION FOR NEW TRIAL.

R. S. C. O. XXXIX. r. 4.	*Notice of motion for new trial* shall be:	A fourteen day
	And shall be *served*, if *trial* has taken place—	
	(a) In *London or Middlesex*:	Within eight trial.
	(b) *Elsewhere*:	Within seven last day o during which place.

NOTICE TO ADMIT. *See* "ADMISSION

NOTICE TO INSPECT. *See* "DISCOVER

NOTICE OF TRIAL. *See* "TRIAL."

PLEADING GENERALLY.

R. S. C. O. XIX. r. 8.	*Time for pleading after delivery of particulars*:	Same as at summons fo lars, unles limited by t

REFRESHER FEES. *See* "COSTS."

RENEWAL OF WRIT. *See* "WRIT."

R. S. C. O. XXIII.	REPLY AND SUBSEQUENT PROCEEDINGS.	
r. 1.	*Reply (if any) to be delivered:*	Within the time specified in the order; if no time specified, within ten days after defence or last defence.
r. 3.	*Pleading subsequent to reply:*	Within the time specified in the order; if no time specified, within four days of previous pleading.
	SCRIPTS.	
See p. 966.	*Affidavit of scripts* of all parties to be filed:	Within the time specified in the order on summons for directions.
r. 32, C.-B.	*Inspection of scripts* of opposite party:	Not before the party's own affidavit of scripts has been filed.
r. 73, C.-B., and form.	*Subpœna to bring in scripts:* Scripts to be lodged in the Record-keeper's Department in the registry:	Within eight days of service of subpœna.

SERVICE OF PLEADINGS. *See* "TIME."

SERVICE OF WRIT. *See* "WRIT."

SUBDUCTION OF CAVEAT *See* "CAVEAT."

SUBPŒNA. *See* "EVIDENCE" and "SCRIPTS."

R. S. C. O. LIV.	SUMMONS.	
r. 4E.	*Summons* to be served:	Two clear days before return thereof.
r. 4E.	*Summons for time* only to be served:	On day previous to return.
r. 21.	*Appeal from registrar* by notice to attend before judge:	Within five days of the decision complained of.
	Between service of notice and day of hearing:	One clear day (unless otherwise ordered).

See also "Summons for Directions" and "Summons to Discontinue."

R. S. C. O. LXIV.		Time.
r. 1.	Month unless otherwise expressed means :	Calendar month.
r. 2.	*Sunday, Christmas Day, and Good Friday* not reckoned :	In any limited tim than six days.
r. 3.	Where *time limited for proceeding expires on Sunday or other day when offices closed*, such proceeding may be taken :	On next day offic open.
r. 4.	*In causes to be tried at autumn assizes* when commission day before December 1st *pleadings may* be amended, delivered, or filed, and *summonses issued* :	On and after Octo
r. 5.	*Long Vacation* not to be *reckoned* except as in r. 4 :	In time for am delivering, or pleadings.
r. 6.	*Time limited for pleadings, etc.*, to be exclusive of :	Day of service o for security fo and up to and ing day when given.
r. 7.	*Time* under these rules may be *enlarged* or *abridged* by court or judge:	
r. 8.	*Time for amending, delivering, or filing pleading, etc., may be enlarged*:	By consent in without order.
r. 11.	*Service of pleadings, etc.*, to be effected :	Before hour of afternoon.
	Except on Saturdays, when it must be :	Before hour of afternoon.
	Service after six shall be deemed to be service :	On following day
	Except on *Saturday, when service after two shall be deemed to be* service :	On following Mo
r. 12.	*Days* not expressed to be *clear* days to be reckoned :	Exclusively of f inclusively of
r. 13.	In cause or matter where *no proceeding for one year*, party desiring to proceed must give to other party :	One month's n intention to p
r. 14.	*Application to set aside award* may be made at any time :	Before last day o next after awa and published.

R. S. C. O. XXXVI.		
	TRIAL.	
r. 6.	In any cause or matter or issue of *fact* an order shall be made for *trial with jury* on *application of any party thereto:*	Within ten days after notice of trial.
r. 7 (b).	*Plaintiff* when entitled to jury may have issues tried by *special jury* by giving notice in writing to defendant:	At time of giving notice of trial.
r. 7 (c).	Defendant when entitled to jury may have issues tried by *special jury* by giving notice in writing:	(1) At any time after close of pleadings or settlement of issues, and before notice of trial; or, (2) After notice of trial not less than six clear days before day for which notice of trial has been given.
r. 11.	*Notice of trial* may be given by *plaintiff:*	With reply (if any) or when issues of fact are ready for trial.
r. 12.	*Notice of trial* may be given by *defendant*, or he may apply to *dismiss action:*	At expiration of six weeks after close of pleadings, if plaintiff has not given notice of trial.
r. 14.	*Notice of trial* (unless by consent or order):	Ten days' notice.
	Short notice of trial:	Four days' notice.
r. 15.	*Notice of trial* to be given:	Before entering trial.
r. 16.	*In London and Middlesex, notice of trial* no longer *in force* unless trial entered:	Within six days after notice of trial.
r. 17.	*Notice of trial*—	
	(a) For *London or Middlesex* operates;	For any day after expiration of notice.
r. 18.	(b) *Elsewhere:*	For first day of next assizes at place named.
r. 18A.	*Notice at Manchester or Liverpool*, where not in time for first day of autumn or Easter assizes, may be:	For second, third, or fourth day of assizes, or for November 20th at Manchester.
r. 20.	In *London and Middlesex* if *party giving notice* does *not enter trial:*	On day of notice or on day after.

	Party receiving notice if not countermanded may *enter trial:*	Within four days.
r. 22B.	Cause for trial *elsewhere* than in *London or Middlesex* may be *entered for trial* in the district registry:	At any time not le seven days befo mission day.

VACATION, LONG. *See* "TIME."

WARNING. *See* "APPEARANCE."

R. S. C. O. VI. r. 1. — WRIT OF SUMMONS—CONCURRENT.

	Concurrent writ or writs may be issued:	Within twelve from issue of writ.

R. S. C. O. VIII. r. 1. — WRIT OF SUMMONS—RENEWAL OF.

	Writ of summons remains in force:	Twelve months fr of date inclusiv
	Unserved may be renewed for six months:	Within twelve from day of d clusive.
	Renewed and unserved may be renewed for six months:	Within six mont date of renew clusive.

R. S. C. O. IX. r. 15. — WRIT OF SUMMONS—SERVICE OF.

	Writ of summons to be indorsed with day of month and week of service:	Within three da service.

O. XI. r. 5. — WRIT OF SUMMONS—SERVICE OUT OF T JURISDICTION.

	Time for defendant to enter *appearance:*	Limited by orde leave.

See also "Appearance to Writ."

WRIT OF EXECUTION. *See* "EXECUTION.

CHAPTER XX.

TABLE OF FEES TAKEN IN CONTENTIOUS BUSINESS.

Fees in Contentious Business are taken in accordance with the order as to Supreme Court Fees, 1884, which came into operation on January 25th, 1884, and superseded the scale of "Fees to be taken in Court and Contentious Business in the Court of Probate" (1862).

The following table contains those items in the order of 1884 which are usually required in Contentious Probate Business:—

	£	s.	d.
Advertisements (S. C. F. 126) (*a*).			
On signing, settling, or approving an advertisement	0	10	0
Affidavits (S. C. F. 26 and 27).			
For taking an affidavit or affirmation or attestation upon honour in lieu of an affidavit or a declaration for each person making the same	0	1	6
And in addition thereto for each exhibit therein referred to and required to be marked	0	1	0
Amending.			
Amending an appearance. See "Appearances."			
Amending a pleading. See "Filing."			
[Note.—The filing fee is taken whether or no a fresh copy of the pleading is filed.]			
Appeals. See "Hearing."			
Appearances (S. C. F. 17).			
On entering an appearance—for each person	0	2	0
On amending the same	0	2	0

(*a*) The numbers in parentheses refer to the items in the order of 1884.

	£	s.
Assignment of Bond (S. C. F. 130).		
On assignment of a bond . . .	0	5
[NOTE.—This is in addition to the 5*s*. impressed stamp for duty.]		
Associate's Certificate (S. C. F. 53).		
On entering directions of a judge at a trial pursuant to Order XXXVI. rr. 41 and 42, and certifying the same when required	1	0
[NOTE.—This fee is taken by the associate.]		
Attendances (S. C. F. 25).		
On an application with or without subpœna for any officer to attend as a witness, or to produce records or documents to be given in evidence (in addition to the reasonable expenses of the officer), for each day or part of a day he shall necessarily be absent from his office	1	0
The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or clerk taking such deposit shall thereupon make a memorandum thereof on the application.		
The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited.		
Bond. See "Assignment."		
Certificates (S. C. F. 42 and 43).		
On a certificate of appearance or of a pleading, affidavit, or proceeding having been entered, filed, or taken or of the negative thereof, unless otherwise provided	0	2

	£	s.	d.
Or if required for use in a foreign country	0	5	0

"Associate's certificate." See thereunder.

Citations (S. C. F. 136)

On a citation	0	5	0

[No fee for settling citation. Filing affidavit, 2*s.* 6*d.*; filing citation, 2*s.* 6*d.*]

Commissions (S. C. F. 15).

On sealing or issuing a commission . .	1	0	0

Copies.

The fees for making copies are, by the direction of the Treasury, those charged in "Non-contentious Business." See p. 897.

Rule 20, S. C. F., is held not to apply, but copy depositions may be certified to be correct on payment of the collating fee, *i.e.*, 3*d.* per folio.

The folio in contentious business is seventy-two words.

Decrees. See "Orders."

Filing (S. C. F. 31 and 32).

On filing scripts in a probate action, or on depositing pursuant to an order in any cause or matter any documents for safe custody or production—

If the number does not exceed five .	0	5	0
If exceeding five	0	10	0

[For filing the affidavit, 2*s.* 6*d.*]

(S. C. F. 29). On filing, unless otherwise provided, an affidavit, deposition, or set of depositions (including any exhibits annexed to such affidavit or depositions), and every other proceeding in a probate action . . 0 2 6

Hearing (S. C. F. 52).

On entering or setting down (or re-entering or re-setting down) an appeal to the Court of Appeal or a cause or matter for

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trial or hearing in any court in London or Middlesex, including hearing a further consideration where no such fee was paid on the original hearing, whether a summons adjourned from chambers or otherwise, and including special case, a petition in a divorce or matrimonial cause or matter by which a proceeding is commenced, and petition of right, but not any other petition, nor any other summons adjourned from chambers 2

[NOTE.—The fee £1 for drawing up the judgment or decree is taken when the action is set down.]

Judgments. See "Orders."

Judge's Notes (S. C. F. 133).

On application to produce judge's notes . 0

Memorandum in lieu of Order (S. C. F. 67).

On signing a note or memorandum of an order pursuant to Order LII. r. 14, when required for production where no order is drawn up 0

[NOTE.—It was held by the President that S. C. F. 67 applies to all minutes of orders made by the registrar which do not require personal service (January 30th, 1884).]

Minute. See "Memorandum."

Motions. See "Orders."

[The 10*s.* fee for the order, and 2*s.* 6*d.* for each affidavit filed, is taken when the motion is set down.]

Notice under summons for directions, no fee; but the fee for the order is taken when the notice is issued.

Oaths. See "Affidavits."

Orders (S. C. F. 57, 58, and 66).

On drawing up and entering judgments, decrees, and orders:

	£	s.	d.
If made in court on the original hearing, or hearing on further consideration, of a cause, or on the hearing of a special case or petition, or on any application to the Court of Appeal, unless otherwise provided	1	0	0
If a judgment without hearing in court or a final order in a probate action by a registrar, or if an order made in a probate action, or a motion including filing the case or application on which the order is made	0	10	0
On any other order	0	5	0
Receipts (S. C. F. 33).			
On a receipt for scripts in a probate action or any other document or documents, when delivered out of the Principal Probate Registry	0	2	6
Receiver of Real Estate (S. C. F. 128).			
On an appointment of a receiver in probate actions	1	0	0
References (S. C. F. 83).			
On a reference, investigation, or inquiry, including examination of witnesses, if any —for every hour or part of an hour the officer is occupied	0	10	0
[NOTE.—The time taken in drawing a report is considered as part of the time occupied.]			
Requisitions. See "Commissions."			
Searches (S. C. F. 45, 46, and 47).			
On an application to search for an appearance or an affidavit, and inspecting the same	0	1	0
On an application to search an index and inspect a pleading, judgment, decree, order, or other record, unless otherwise expressly provided for by any Act of Parliament or this order, and to inspect			

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scripts filed or documents deposited for safe custody or production, for each hour or part of an hour occupied 0

Not exceeding one day 0

Scripts. See "Filing" and "Searches."

Setting down. See "Hearing."

Subpœna (S. C. F. 5 and 6).

On sealing a writ of subpœna for witnesses, not exceeding three persons . 0

On sealing a subpœna pursuant to Court of Probate Act, 1858, s. 23 . . . 0

[And 5*s.* for the order, and 2*s.* 6*d.* for filing the affidavit.]

Summonses (S. C. F. 10 and 11).

On sealing or issuing a summons for directions under Order XXX. . . . 0

On sealing or issuing any other summons 0

[The fee for the order is taken on issuing the summons (or notice), viz., 10*s.* for the final order, 5*s.* for any other order, and 3*s.* for memorandum (*q.v.*).]

Taxation of Costs (S. C. F. 102 and 103).

On taxing a bill of costs where the amount allowed does not exceed £4 . . 0

Where the amount exceeds £4, for every £2 allowed or fraction thereof . . . 0

[These fees, unless otherwise provided, shall be taken on signing the certificate, or on allowance of the bill of costs. The taxing officer may demand a deposit on account of fees.]

[NOTE.—One third of the fee, which is payable on the bill as untaxed, is taken as a deposit.]

[2*s.* 6*d.* is charged for filing the bill, and 5*s.* for order if required.]

Writs (S. C. F. 6).

On sealing a writ . . . . . (

On sealing a writ of summons on commencement of action (S. C. F. 1) . . (

APPENDIX I.

STATUTES.

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STATUTES.

In the following quotations of Acts of Parliament Clauses and Sections which appear to have no bearing on the practice of the Court are omitted.

NOTE.—*The portions printed in italics have been repealed.*

AN ACT TO MAKE FURTHER REGULATIONS WITH RESPECT TO ARMY PENSIONS, 1830.

(1 WILL. IV. c. 41, s. 5.)

Officers' and soldiers' pension, prize money and pay not exceeding £50, may be paid without letters of administration.

It shall be lawful for the said commissioners of the said hospital at Chelsea [with respect to pension or prize money, and for the secretary at war of his own proper authority with respect to pay] to authorise the agent for pensions, or other proper officer charged with the payment thereof, to pay to any person or persons who shall prove him, her, or themselves, to the satisfaction of such commissioners [with respect to pension and prize money, or of the secretary at war with respect to pay,] to be the next-of-kin or legal representative, or otherwise legally entitled to any pension or prize money [or pay,] due to any deceased officer, non-commissioned officer, soldier, or pensioner, such pension, prize money, [or pay,] provided the same does not exceed fifty pounds, although the person so entitled shall not have taken out letters of administration, or have procured probate of any will, of such deceased officer, non-commissioned officer, soldier, or pensioner.

ARMY PRIZE MONEY AMENDMENT ACT

(2 WILL. IV. c. 53, s. 26.)

Prize money to foreign non-commissioned officers or soldiers, paid without letters of administration.

In all cases of claim for prize money made by the kin of foreigners who shall have been in the pay of Hi as non-commissioned officers or soldiers, and who s died intestate, it shall be lawful, when such next-of reside out of His Majesty's dominions, for the tre deputy treasurer of the said Royal Hospital for the ti to pay and discharge such claims to such next-of-ki person or persons duly authorised by such next-of-kin, the same, without requiring the production of letters of tration; and in all such cases where such foreign missioned officers or soldiers shall have made wills, i lawful for the said treasurer or deputy treasurer in lik to pay and satisfy such claims to the person or per by inspection of the original will or an authentica thereof, shall appear to be entitled thereto, or to suc or persons as he, she, or they shall duly authorise t the same, without requiring the production of such wi

WILLS ACT, 1837.

(1 VICT. c. 26.)

An Act for the Amendment of the Laws with respect to Wills.
[3rd July 1837.]

Meaning of certain words in this Act.

[*Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that*] *the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows: (that is to say,) the word "will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament or devise of the custody and tuition of any child, by virtue of an Act passed in the twelfth year of the reign of King Charles the Second, intituled "An Act for taking away the Court of Wards and Liveries, and Tenures in capite and by Knights Service and Purveyance, and for settling a Revenue upon his Majesty in lieu thereof," or by virtue of an Act passed in the parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled "An Act for taking away the Court of Wards and Liveries and Tenures in capite and by Knights Service," and to any other testamentary disposition; and the words "real estate" shall extend to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to any undivided share thereof, and to any estate, right, or interest (other than a chattel interest) therein; and the words "personal estate" shall extend to leasehold estates and other chattels real, and also to monies, shares of government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.*]

"Will;" 12 Car. II. c. 24.

"Real estate;"

"Personal estate;"

Number;

Gender.

Repealed by 37 & 38 Vict. c. 35 (S.L.R.).

Repeal of the Statutes of Wills, 32 Hen. VIII. c. 1, and 34 & 35 Hen. VIII. c. 5.

10 Car. I. sess. 2, c. 2 (I.).

Sections 5, 6, 12, 19, 20, 21. Statute of Frauds, 29 Car. II. c. 3; 7 Will. III. c. 12 (I.).

Section 14 of 4 & 5 Anne, c. 16.

6 Anne, c. 10 (I.).

Section 9 of 14 Geo. II. c. 20.

25 Geo. II. c. 6 (except as to colonies).

25 Geo. II. c. 11 (I.).

II. [*And be it further enacted, that an Act passed* thirty-second year of the reign of King Henry the Eig tituled "*The Act of Wills, Wards, and Primer Seisins,* a Man may devise Two Parts of his Land;" *and also* passed in the thirty-fourth and thirty-fifth years of the the said King Henry the Eighth, intituled "*The Bill co* the Explanation of Wills;" *and also an Act passed in the* ment of Ireland in the tenth year of the reign of King the First, intituled "*An Act how Lands, Tenements, etc.,* disposed by Will or otherwise, and concerning Wards and Seisins;" *and also so much of an Act passed in the twen* year of the reign of King Charles the Second, intituled " for Prevention of Frauds and Perjuries," *and of an Act* in the parliament of Ireland in the seventh year of the King William the Third, intituled "*An Act for Preve* Frauds and Perjuries," *as relates to devises or bequests of* tenements or to the revocation or alteration of any devise ing of any lands, tenements, or hereditaments, or any thereof, or to the devise of any estate pur autre vie, or such estate, being assets, or to nuncupative wills, or to the altering, or changing of any will in writing concerning an or chattels or personal estate, or any clause, devise or therein; *and also so much of an Act passed in the fou* fifth years of the reign of Queen Anne, intituled "*An Act* Amendment of the Law and the better Advancement of J and of an Act passed in the parliament of Ireland in th year of the reign of Queen Anne, intituled "*An Act* Amendment of the Law and the better Advancement of J as relates to witnesses to nuncupative wills; *and also so* an Act passed in the fourteenth year of the reign of King the Second, intituled "*An Act to amend the Law con* Common Recoveries and to explain and amend an Act the twenty-ninth year of the reign of King Charles the intituled 'An Act for Prevention of Frauds and Perjurie relates to estates pur autre vie; *and also an Act passed* twenty-fifth year of the reign of King George the Second, i "*An Act for avoiding and putting an end to certain Dou* Questions relating to the Attestation of Wills and Codici cerning Real Estates in that part of Great Britain called E and in his Majesty's Colonies and Plantations in Am except so far as relates to his Majesty's colonies and plantat America; *and also an Act passed in the parliament of Ire* the same twenty-fifth year of the reign of King George the intituled "*An Act for the avoiding and putting an end to* Doubts and Questions relating to the Attestation of Wil Codicils concerning Real Estates;" *and also an Act pas* the fifty-fifth year of the reign of King George the Third, in

"*An Act to remove certain Difficulties in the Disposition of Copyhold Estates by Will,*" *shall be and the same are hereby repealed, except so far as the same Acts or any of them respectively relate to any wills or estates pur autre vie to which this Act does not extend.*] 55 Geo. III. c. 192.

Repealed by 37 & 38 Vict. c. 35 (S.L.R.).

III. *And be it further enacted, that* it shall be lawful for every person to devise, bequeath, or dispose of, by his will executed in manner hereinafter required, all real estate and all personal estate which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed, or disposed of, would devolve upon the heir-at-law or customary heir of him, or, if he became entitled by descent, of his ancestor, or upon his executor or administrator; and that the power hereby given shall extend to all real estate of the nature of customary freehold or tenant right, or customary or copyhold, notwithstanding that the testator may not have surrendered the same to the use of his will, or notwithstanding that, being entitled as heir, devisee, or otherwise to be admitted thereto, he shall not have been admitted thereto, or notwithstanding that the same, in consequence of the want of a custom to devise or surrender to the use of a will or otherwise, could not at law have been disposed of by will if this Act had not been made, or notwithstanding that the same, in consequence of there being a custom that a will or a surrender to the use of a will should continue in force for a limited time only, or any other special custom, could not have been disposed of by will according to the power contained in this Act, if this Act had not been made; and also to estates pur autre vie, whether there shall or shall not be any special occupant thereof, and whether the same shall be freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether the same shall be a corporeal or an incorporeal hereditament; and also to all contingent, executory, or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate, as the testator may be entitled to at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

All property may be disposed of by will,

comprising customary freeholds and copyholds without surrender and before admittance, and also such of them as cannot now be devised;

estates pur autre vie;

contingent interests;

rights of entry;

and property acquired after execution of the will.

As to the fees and fines payable by devisees of customary and copyhold estates.

IV. Provided always, *and be it further enacted*, that
any real estate of the nature of customary freehold or t
right, or customary or copyhold, might, by the custom o
manor of which the same is holden, have been surrender
the use of a will, and the testator shall not have surren
the same to the use of his will, no person entitled or clai
to be entitled thereto by virtue of such will shall be entitl
be admitted, except upon payment of all such stamp d
fees, and sums of money as would have been lawfully due
payable in respect of the surrendering of such real esta
the use of the will, or in respect of presenting, registerin
enrolling such surrender, if the same real estate had
surrendered to the use of the will of such testator: Pro
also, that where the testator was entitled to have been adm
to such real estate, and might, if he had been admitted the
have surrendered the same to the use of his will, and shal
have been admitted thereto, no person entitled or claimin
be entitled to such real estate in consequence of such will
be entitled to be admitted to the same real estate by v
thereof, except on payment of all such stamp duties, fees,
and sums of money as would have been lawfully due and
able in respect of the admittance of such testator to such
estate, and also of all such stamp duties, fees, and sum
money as would have been lawfully due and payable in res
of surrendering such real estate to the use of the will
of presenting, registering, or enrolling such surrender,
the testator been duly admitted to such real estate, and a
wards surrendered the same to the use of his will; all w
stamp duties, fees, fine, or sums of money due as afore
shall be paid in addition to the stamp duties, fees, fine
sums of money due or payable on the admittance of
person so entitled or claiming to be entitled to the same
estate as aforesaid.

Wills or extracts of wills of customary freeholds and copyholds to be entered on the court rolls;

V. *And be it further enacted, that* when any real estate of
nature of customary freehold or tenant right, or customar
copyhold, shall be disposed of by will, the lord of the ma
or reputed manor of which such real estate is holden, or
steward, or the deputy or such steward, shall cause the wil
which such disposition shall be made, or so much thereo
shall contain the disposition of such real estate, to be ente
on the court rolls of such manor or reputed manor; and w
any trusts are declared by the will of such real estate, it s
not be necessary to enter the declaration of such trusts, bu
shall be sufficient to state in the entry on the court rolls t
such real estate is subject to the trusts declared by such w

and the lord to be entitled

and when any such real estate could not have been disposed
by will if this Act had not been made, the same fine, her

dues, duties, and services shall be paid and rendered by the devisee as would have been due from the customary heir in case of the descent of the same real estate, and the lord shall, as against the devisee of such estate have the same remedy for recovering and enforcing such fine, heriot, dues, duties, and services, as he is now entitled to for recovering and enforcing the same from or against the customary heir in case of a descent.

Fine, etc., when such estates are not now devisable as he would have been from the heir in case of descent.

VI. *And be it further enacted, that* if no disposition by will shall be made of any estate pur autre vie of a freehold nature, the same shall be chargeable in the hands of the heir, if it shall come to him by reason of special occupancy, as assets by descent, as in the case of freehold land in fee simple; and in case there shall be no special occupant of any estate pur autre vie, whether freehold or customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether a corporeal or incorporeal hereditament, it shall go to the executor or administrator of the party that had the estate thereof by virtue of the grant; and if the same shall come to the executor or administrator either by reason of a special occupancy or by virtue of this Act, it shall be assets in his hands, and shall go and be applied and distributed in the same manner as the personal estate of the testator or intestate.

Estates pur autre vie.

VII. *And be it further enacted, that* no will made by any person under the age of twenty-one years shall be valid.[144]

No will of a person under age valid;

Canadian Cases.

III *TESTAMENTARY CAPACITY.*—In a so-called will executed a few days before her death, G., L.'s wife, assumed to devise the land in question to L. At the date of this will G. was only eighteen years of age:—*Held*, that the will was invalid. C. S. U. C., c. 73, s. 16 (R. S. O., 1897, c. 128, s. 9, sub-s. 5, *et seq.*), only removes the disability of coverture in respect to wills not of infancy (*Re Murray Canal, Lawson* v. *Powers*, 6 O. R. 685, and *ante*, p. 499).

As to mental incapacity to make a will, see *Thompson* v. *Torrance*, 9 A. R. 1; *Russell* v. *Lefrancois*, 8 S. C. R. 335, and *ante*, pp. 463, 468; *Freeman* v. *Freeman*, 19 O. R. 141, and *ante*, p. 469; *Bell* v. *Lee*, 8 A. R. 185, and *ante*, p. 466; *Hogg* v. *Maguire*, 11 A. R. 507, and *ante*, p. 488.

CAPACITY.—An Indian male or female may make a will, and may by such will dispose of real or personal property, subject to the provisions of the Indian Act, R. S. C., c. 43, or other statute.

Quære, whether the last part of s. 20 of the Indian Act, R. S. C., c. 43, does not leave all questions arising in reference to the distribution of the property of a deceased Indian male or female to the Superintendent-General, so that his decision, and not that of the

nor of a feme covert, except such as might now be made.

VIII. Provided also, *and be it further enacted*, that no made by any married woman shall be valid, except such a as might have been made by a married woman before passing of this Act.

Every will shall be in writing, and signed by the testator in the presence of two witnesses at one time. [Amended. See 15 Vict. c. 24, p. 610.]

IX. *And be it further enacted, that* no will shall be v unless it shall be in writing and executed in manner her after mentioned; (that is to say,) it shall be signed at the or end thereof by the testator, or by some other person in presence and by his direction; and such signature shall made or acknowledged by the testator in the presence of or more witnesses present at the same time, and such witne shall attest and shall subscribe the will in the presence of testator, but no form of attestation shall be necessary.

Appointments by will to be executed like other wills, and to be valid, although other required solemnities are not observed.

X. *And be it further enacted, that* no appointment made will, in exercise of any power, shall be valid, unless the s be executed in manner hereinbefore required; and every executed in manner hereinbefore required shall, so far respects the execution and attestation thereof, be a valid ex tion of a power of appointment by will, notwithstandin shall have been expressly required that a will made in exer of such power should be executed with some additional other form of execution or solemnity.

Soldiers and mariners' wills excepted.

XI. Provided always, *and be it further enacted*, that soldier being in actual military service, or any mariner seaman being at sea, may dispose of his personal estate as might have done before the making of this Act.

Act not to affect certain provisions of 11 Geo. IV. and 1 Will. IV. c. 20, with respect to wills of petty officers and seamen and marines.

XII. And be it further enacted, that this Act shall prejudice or affect any of the provisions contained in an passed in the eleventh year of the reign of his Majesty George the Fourth and in the first year of the reign of late Majesty King William the Fourth, intituled "An Ac amend and consolidate the Laws relating to the Pay of Royal Navy," respecting the wills of petty officers and sea in the royal navy, and non-commissioned officers of mar and marines, so far as relates to their wages, pay, prize mo bounty money, and allowances, or other moneys payabl respect of services in her Majesty's navy.

Publication not to be requisite.

XIII. *And be it further enacted, that* every will execute manner hereinbefore required shall be valid without any o publication thereof.

Will not to be void on

XIV. *And be it further enacted, that* if any person who

Canadian Cases.

Court, should determine such questions (*Johnson* v. *Jones*, 26 C 109).

attest the execution of a will shall at the time of the execution thereof or at any time afterwards be incompetent to be admitted a witness to prove the execution thereof, such will shall not on that account be invalid. account of incompetency of attesting witness.

XV. *And be it further enacted, that* if any person shall attest the execution of any will to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made, such devise, legacy, estate, interest, gift, or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.[145] Gifts to an attesting witness to be void.

XVI. *And be it further enacted, that* in case by any will any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose Creditor attesting to be admitted a witness.

Canadian Cases.

[145] A devise by a testatrix, who died in 1860, to a married woman, whose husband was one of the two witnesses to the execution of the will, was held void, notwithstanding the provisions of the Evidence Act, 1852, 16 Vict. c. 19 (*Crawford* v. *Boyd*, 22 Chy. 398; and see *In re Snider*, 5 L. J. N. S. 101; and *ante*, p. 483).

Where the devisee witnesses the will, the devise to him is void, although there are two other witnesses, and the will would therefore have been sufficiently attested without him (*Little* v. *Aikman, et al.*, 28 Q. B. 337).

Quære, whether, since *Ryan* v. *Devereux*, 16 Q. B. 100, *ante*, p. 40, a bequest to one of the witnesses of a will would be held to be invalid (*In re Munsie*, 10 P. R. 98; and *ante*, p. 412; but see *Munsie* v. *Lindsay*, 11 O. R. 520; see also *Morrison* v. *Morrison*, 9 O. R., at p. 225).

The Chancery Division has jurisdiction to declare a will valid (*Dickson* v. *Monteith*, 14 O. R. 719; and *ante*, pp. 175 and 341).

INTEREST OF WITNESS.—Where one of several residuary legatees was also a witness to the will, it was held that the gift must be treated as blotted out and distributed rateably among other residuary legatees (*Farewell* v. *Farewell*, 22 O. R. 573).

BEQUESTS TO ATTESTING WITNESS.—(See *Hopkins* v. *Hopkins*, 3 O. R. 223; and *post*, p. 693).

debt is so charged, shall attest the execution of such will, suc
creditor, notwithstanding such charge, shall be admitted
witness to prove the execution of such will, or to prove th
validity or invalidity thereof.

Executor to be admitted a witness.

XVII. *And be it further enacted, that* no person shall, o
account of his being an executor of a will, be incompetent
be admitted a witness to prove the execution of such will, or
witness to prove the validity or invalidity thereof.

Will to be revoked by marriage.

XVIII. *And be it further enacted, that* every will made by
man or woman shall be revoked by his or her marriage (exce
a will made in exercise of a power of appointment, when th
real or personal estate thereby appointed would not in defau
of such appointment pass to his or her heir, customary hei
executor, or administrator, or the person entitled as his or h
next-of-kin, under the Statute of Distributions).

No will to be revoked by presumption.

XIX. *And be it further enacted, that* no will shall be revoke
by any presumption of an intention, on the ground of a
alteration in circumstances.

No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction.

XX. *And be it further enacted, that* no will or codicil, or an
part thereof, shall be revoked otherwise than as aforesaid,
by another will or codicil executed in manner hereinbefor
required, or by some writing declaring an intention to revok
the same and executed in the manner in which a will is herei
before required to be executed, or by the burning, tearing,
otherwise destroying the same by the testator, or by som
person in his presence and by his direction, with the intentio
of revoking the same.

No alteration in a will shall have any effect unless executed as a will.

XXI. *And be it further enacted, that* no obliteration, inte
lineation, or other alteration made in any will after the execu
tion thereof shall be valid or have any effect, except so far as th
words or effect of the will before such alteration shall not b
apparent, unless such alteration shall be executed in like manne
as hereinbefore is required for the execution of the will; bu
the will, with such alteration as part thereof, shall be deeme
to be duly executed if the signature of the testator and th
subscription of the witnesses be made in the margin or o
some other part of the will opposite or near to such alteratio
or at the foot or end of or opposite to a memorandum referrin
to such alteration, and written at the end or some other pa
of the will.

No will revoked to be revived otherwise than by re-execution or a codicil to revive it.

XXII. *And be it further enacted, that* no will or codicil, o
any part thereof, which shall be in any manner revoked, sha
be revived otherwise than by the re-execution thereof, or by
codicil executed in manner hereinbefore required, and showin
an intention to revive the same; and when any will or codic

which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

A devise not to be rendered inoperative by any subsequent conveyance or act.

XXIII. *And be it further enacted, that* no conveyance or other act made or done subsequently to the execution of a will of or relating to any real or personal estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

A will shall be construed to speak from the death of the testator.

XXIV. *And be it further enacted, that* every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

A residuary devise shall include estates comprised in lapsed and void devises.

XXV. *And be it further enacted, that* unless a contrary intention shall appear by the will, such real estate or interest therein as shall be comprised or intended to be comprised in any devise in such will contained, which shall fail or be void by reason of the death of the devisee in the lifetime of the testator, or by reason of such devise being contrary to law or otherwise incapable of taking effect, shall be included in the residuary devise (if any) contained in such will.

A general devise of the testator's lands shall include copyhold and leasehold as well as freehold lands.

XXVI. *And be it further enacted, that* a devise of the land of the testator, or of the land of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, and any other general devise which would describe a customary, copyhold, or leasehold estate if the testator had no freehold estate which could be described by it, shall be construed to include the customary, copyhold, and leasehold estates of the testator, or his customary, copyhold, and leasehold estates, or any of them, to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

A general gift shall include estates over which the testator has a general power of appointment.

XXVII. *And be it further enacted, that* a general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be), which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will;

and in like manner a bequest of the personal estate of th testator, or any bequest of personal property described in general manner, shall be construed to include any persona estate, or any personal estate to which such description shal extend (as the case may be), which he may have power t appoint in any manner he may think proper, and shall operat as an execution of such power, unless a contrary intention shal appear by the will.

A devise without any words of limitation shall be construed to pass the fee.

XXVIII. *And be it further enacted, that* where any rea estate shall be devised to any person without any words o limitation, such devise shall be construed to pass the fe simple, or other the whole estate or interest which the testato had power to dispose of by will in such real estate, unless contrary intention shall appear by the will.

The words "die without issue," or "die without leaving issue," shall be construed to mean die without issue living at the death.

XXIX. *And be it further enacted, that* in any devise o bequest of real or personal estate the words "die withou issue," or "die without leaving issue," or "have no issue," o any other words which may import either a want or failure o issue of any person in his lifetime or at the time of his death or an indefinite failure of his issue, shall be construed to mea a want or failure of issue in the lifetime or at the time of th death of such person, and not an indefinite failure of his issue unless a contrary intention shall appear by the will, by reaso of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words a limitation of an estate tail to such person or issue, or other wise: Provided, that this Act shall not extend to cases where such words as aforesaid import if no issue described in a pre ceding gift shall be born, or if there shall be no issue who shal live to attain the age or otherwise answer the description re quired for obtaining a vested estate by a preceding gift to such issue.

No devise to trustees or executors, except for a term or a presentation to a church, shall pass a chattel interest.

XXX. *And be it further enacted, that* where any real estat (other than or not being a presentation to a church) shall b devised to any trustee or executor, such devise shall be con strued to pass the fee simple or other the whole estate o interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute o determinable, or an estate of freehold, shall thereby be given to him expressly or by implication.

Trustees under unlimited devise, where the trust may endure

XXXI. *And be it further enacted, that* where any real estate shall be devised to a trustee, without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such

beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied. beyond the life of a person beneficially entitled for life, to take the fee.

XXXII. *And be it therefore enacted, that* where any person to whom any real estate shall be devised for an estate tail or an estate in quasi entail shall die in the lifetime of the testator leaving issue who would be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will. Devises of estates tail shall not lapse.

XXXIII. *And be it further enacted, that* where any person being a child or other issue of the testator to whom any real or personal estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will. Gifts to children or other issue who leave issue living at the testator's death shall not lapse.

XXXIV. *And be it further enacted, that* this Act shall not extend to any will made before the first day of January one thousand eight hundred and thirty-eight, and [that] every will re-executed or republished, or revived by any codicil, shall for the purposes of this Act be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived; and [that] this Act shall not extend to any estate pur autre vie of any person who shall die before the first day of January one thousand eight hundred and thirty-eight. Act not to extend to wills made before 1838, nor to estates pur autre vie of persons who die before 1838.

XXXV. *And be it further enacted, that* this Act shall not extend to Scotland. Act not to extend to Scotland.

XXXVI. *And be it enacted, that this Act may be amended, altered, or repealed by any Act or Acts to be passed in this present session of Parliament.* Act may be altered this session.

Repealed by 37 & 38 Vict. c. 35 (S.L.R.).

AN ACT TO AMEND THE LAWS RELATING LOAN SOCIETIES, 1840.

(3 & 4 Vict. c. 110, s. 11.)

Sums under £50 in a loan society payable without grant.

In case any debenture holder, depositor, or other claim entitled to receive any sum not exceeding fifty pounds ou the funds of any such loan society, shall die, it shall be la for the trustees or trustee thereof, from and after the expira of three calendar months after the death of such deben holder, depositor, or other claimant, if they shall be satisfied no will was made and left by such deceased person, and tha letters of administration of the goods, chattels, rights, credits of such deceased person have or will be taken ou pay the same to any person who shall appear to the trustees or trustee to be the person or one of the per entitled under the Statute of Distribution to the effects of deceased intestate, although no letters of administration have been taken out; and the payment of any such sur money shall be valid and effectual with respect to any dem of any other person as next-of-kin of such deceased intes or as the lawful representative of such person against funds of such society, against the trustee, treasurer officers thereof; but nevertheless such next-of-kin or re sentatives shall have remedy for such money so paid as af said against the person who shall have received the same.

This Act is made perpetual by 26 & 27 Vict. c. 56.

AN ACT FOR COMPENSATING THE FAMILIES OF PERSONS KILLED BY ACCIDENTS, 1846.

(9 & 10 VICT. c. 93, s. 2.)

Every such (*a*) action shall be for the benefit of the wife, husband, parent, and child of the person whose death shall have been so caused, and shall be brought by and in the name of the executor or administrator of the person deceased; and in every such action the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action shall be brought; and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the jury by their verdict shall find and direct. (See Amendment Act, p. 702.)

(*a*) *I.e.*, the action allowed by s. 1 of this Act against any person causing death through neglect, etc.

WILLS ACT AMENDMENT ACT, 1852.

(15 VICT. c. 24.)

(Lord St. Leonard's Act.)

An Act for the Amendment of an Act passed in the first the reign of her Majesty Queen Victoria, intituled An the Amendment of the Laws with respect to Wills.

[17th June

1 Vict. c. 26.

I. Where by *an Act passed in the first year of the reig Majesty Queen Victoria, intituled "An Act for the Ame of the Laws with respect to Wills"* (*a*), it is enacted, will shall be valid unless it shall be signed at the foot thereof by the testator, or by some other person presence, and by his direction: Every will shall, so far regards the position of the signature of the testator, o person signing for him as aforesaid, be deemed to b within the said enactment, as explained by this Act, signature shall be so placed at or after, or following, o or beside, or opposite to the end of the will, that it apparent on the face of the will that the testator inte give effect by such his signature to the writing signe will; and that no such will shall be affected by the stance that the signature shall not follow or be imm after the foot or end of the will, or by the circumstanc blank space shall intervene between the concluding wor will and the signature, or by the circumstance that th ture shall be placed among the words of the testi clause or of the clause of attestation, or shall follow or or under the clause of attestation, either with or wi blank space intervening, or shall follow or be after, o or beside the names or one of the names of the sub witnesses, or by the circumstance that the signatnre sha a side or page or other portion of the paper or papers iug the will whereon no clause or paragraph or dispos of the will shall be written above the signatnre, or circumstance that there shall appear to be sufficient or at the bottom of the preceding side or page or other of the same paper on which the will is written to con signature; and the enumeration of the above circu

When signature to a will shall be deemed valid.

(*a*) The Wills Act, 1837.

shall not restrict the generality of the above enactment; but no signature under the said Act or this Act shall be operative to give effect to any disposition or direction which is underneath or which follows it, nor shall it give effect to any disposition or direction inserted after the signature shall be made.

Act to extend to certain wills already made.

II. The provisions of this Act shall extend and be applied to every will already made, where administration or probate has not already been granted or ordered by a court of competent jurisdiction in consequence of the defective execution of such will, or where the property, not being within the jurisdiction of the ecclesiastical courts, has not been possessed or enjoyed by some person or persons claiming to be entitled thereto in consequence of the defective execution of such will, or the right thereto shall not have been decided to be in some other person or persons than the persons claiming under the will, by a court of competent jurisdiction, in consequence of the defective execution of such will.

Interpretation of "will."

III. The word "will" shall in the construction of this Act be interpreted in like manner as the same is directed to be interpreted under the provisions in this behalf contained in the *said Act of the first year of the reign of her Majesty Queen Victoria* (*a*).

Short title of Act.

IV. This Act may be cited as "The Wills Act Amendment Act, 1852."

(*a*) The Wills Act, 1837.

COURT OF PROBATE ACT, 1857.

(20 & 21 Vict. c. 77.)

An Act to amend the Law relating to Probates and Lett
Administration in England. [25th August 1

[*For short title see "Court of Probate Act, 1858," s. 38.*]

Whereas it is expedient that all jurisdiction in relation t
grant and revocation of probates of wills and letters of admin
tion in England should be exercised, in the name of her Ma
by one court: Be it enacted by the Queen's most Exc
Majesty, by and with the advice and consent of the
Spiritual and Temporal, and Commons, in this present P
ment assembled, and by the authority of the same, as follow

Commencement of Act. [*The day appointed was January 11th, 1858.*]

I. *This Act (except where otherwise specially provided)*
come into operation on such day, not sooner than the first
January one thousand eight hundred and fifty-eight, a
Majesty shall by Order in Council appoint, provided tha
Order shall be made one month at least previously to the
to be appointed.

Section 1 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Interpretation of terms.

II. In the construction of this Act, unless the cont
inconsistent with the meaning hereby assigned—

"Will" shall comprehend "testament" and all other
mentary instruments of which probate may n
granted:

"Administration" shall comprehend all letters of adm
tion of the effects of deceased persons, whether
without the will annexed, and whether grant
general, special, or limited purposes:

"Matters and causes testamentary" shall compreh
matters and causes relating to the grant and rev
of probate of wills or of administration:

"Common form business" shall mean the business of
ing probate and administration where there is
tention as to the right thereto, including the
of probates and administrations through the C
Probate in contentious cases when the contest i
nated, and all business of a non-contentious na
be taken in the court in matters of testacy and in
not being proceedings in any suit, and also the

of lodging caveats against the grant of probate or administration.

Testamentary jurisdiction of ecclesiastical and other courts abolished.

III. *The voluntary and contentious jurisdiction and authority of all ecclesiastical, royal, archiepiscopal, peculiar, manorial, and other courts and persons in England now having jurisdiction or authority to grant or revoke probate of wills or letters of administration of the effects of deceased persons, shall in respect of such matters absolutely cease, and no jurisdiction or authority in relation to any matters or causes testamentary, or to any matter arising out of or connected with the grant or revocation of probate or administration, shall belong to or be exercised by any such court or person.*

Section 3 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Testamentary jurisdiction to be exercised by a Court of Probate.

IV. The voluntary and contentious jurisdiction and authority in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons now vested in or which can be exercised by any court or person in England, together with full authority to hear and determine all questions relating to matters and causes testamentary, shall belong to and be vested in her Majesty, and shall, except as hereinafter is mentioned, be exercised in the name of her Majesty in a court to be called the Court of Probate, and to hold its ordinary sittings and to have its principal registry at such place or places in London or Middlesex as her Majesty in Council shall from time to time appoint.

Power to her Majesty to appoint a judge of the Court of Probate. [*Amended by* "*Court of Probate Act*, 1858," *ss.* 1, 3, 4, *and* 5.]

V. *There shall be one judge of her Majesty's Court of Probate; and it shall be lawful for her Majesty from time to time, by letters patent under the Great Seal of the United Kingdom, to appoint a person, being or having been an advocate of ten years standing, or a barrister-at-law of fifteen years standing, to be such judge.*

Judge's tenure of office.

VI. *The judge of the Court of Probate shall hold his office during good behaviour, provided that it shall be lawful for her Majesty to remove any such judge from his office upon an address of both Houses of Parliament.*

Sections 5 and 6 repealed by 44 & 45 Vict. c. 59, s. 3.

Judge before acting to take the following oath.

VII. *Every judge of the Court of Probate shall, before executing any of the duties of his office, take the following oath, which the Lord Chancellor or the Master of the Rolls for the time being is hereby respectively authorised and required to administer:*

"*I, A. B., do solemnly and sincerely promise and swear, that I will duly and faithfully, and to the best of my skill and power, execute the office of judge of the Court of Probate.*

So help me God."

Section 7 repealed by 34 & 35 Vict. c. 48, s. 8.

Rank and precedence of judge, who shall appoint a secretary and usher.

VIII. *The judge shall have rank and precedence w puisne judges of her Majesty's superior courts of common Westminster according to the date of his appointment, shall have a secretary and usher, to be from time to time ap and removed by him at his pleasure.*

Section 8 repealed by 42 & 43 Vict. c. 78, s. 29.

Salaries of judge, secretary, and usher.

IX. *There shall be paid to the judge the net yearly of four thousand pounds, and to his secretary the net salary of three hundred pounds, and to his usher the net salary of one hundred and fifty pounds.*

Section 9 repealed by 44 & 45 Vict. c. 59, s. 3.

Judge of Court of Probate to be also judge of the Admiralty Court on the next vacancy.

X. *Upon the next vacancy in the office of judge of th Court of Admiralty of England it shall be lawful Majesty, if she so think fit, to appoint the person then bein of the Court of Probate to be also judge of the said C Admiralty, or in case the office of judge of the Court of become vacant before the office of judge of the Court of Adm the judge of the Court of Admiralty may, with his con appointed to and hold also the office of judge of the C Probate, and after the union of the said two offices they s thenceforth held by the same person.*

Section 10 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

As to increase of salary upon union of the two offices.

XI. *From and after the union under this Act of the tw of judge of the Court of Probate and judge of the C Admiralty in the same person, the said yearly salary thousand pounds payable under this Act shall be increased thousand pounds, and the salary now payable to the judg Court of Admiralty shall cease.*

Section 11 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

Retiring pensions of judges.

XII. *Her Majesty, by letters patent under the Great the United Kingdom, may grant unto any person execut office of judge of her Majesty's Court of Probate an annu exceeding two thousand pounds, or if such person be also ex the office of judge of the said Court of Admiralty, not ex three thousand five hundred pounds, to commence imm after the day when the person to whom such annuity s granted shall resign the said office or offices, and to c during his natural life; provided that her Majesty may, by such letters patent, limit the duration of payment annuity, or any part thereof, to such periods of time dur natural life of such person in which he shall not exercise a of profit under her Majesty, so that such annuity, togeth the salary and profits of such other office, shall toget exceed in the whole the said sum of two thousand pounds*

thousand five hundred pounds, as the case may be: Provided also, that no annuity granted to any person having executed the office of judge under this Act, except the present judge of the prerogative court, shall be valid unless such person shall have held such office for the period of fifteen years, or have held such office and any of the offices of judge in any of the superior courts of law or equity or the High Court of Admiralty for periods amounting together to fifteen years, or shall be afflicted with some permanent infirmity disabling him from the due execution of his office, which shall be distinctly recited in the said grant.

Section 12 repealed by 44 & 45 Vict. c. 59, s. 3.

District registries to be established as in schedule (A.)

XIII. There shall be established for each of the districts specified in schedule (A.) to this Act, and at the places respectively mentioned in such schedule, a public registry attached to and under the control of the Court of Probate, hereinafter referred to as "the district registry."

Appointment of officers of the Court of Probate.

[*Amended by "Court of Probate Act, 1855," ss. 6, 7, 24, and 35.*]

XIV. *There shall be three registrars, two record keepers, and one sealer for the principal registry of the Court of Probate, and there shall be one district registrar for each district registry hereinafter referred to as the district registrar, and there shall be so many clerks and other officers for the court and the principal registry as the judge of the court, with the sanction of the Commissioners of her Majesty's Treasury, may from time to time think fit: Provided, that if at any time it appear to her Majesty in Council that the duties of the registrars of the principal registry of the Court of Probate can be performed by two registrars, it shall be lawful for her Majesty by Order in Council to direct that the number of registrars for such principal registry be reduced accordingly.*

Section 14 repealed by 42 & 43 Vict. c. 78, s. 29.

As to appointment of the first officers of the principal registry.

XV. *Charles Dyneley, Esquire, John Iggulden, Esquire, and William F. Gostling, Esquire, the present deputy registrar of the Prerogative Court of Canterbury, shall, if willing to accept the office, be the first registrars of the principal registry of the Court of Probate; Joseph Todd and John Smith, the present record keepers of the said Prerogative Court, shall, if willing to accept the office, be the first record keepers at the said principal registry; and William John Berry, the present sealer of the said Prerogative Court, shall, if willing to accept the office, be the first sealer at the said principal registry; and George Jarvis Foster, clerk of the papers in the said Prerogative Court, shall, if willing to accept the office, be the first clerk of papers at the said principal registry.*

Section 15 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

Clerks and officers of Prerogative Court to be transferred to like offices in Court of Probate.

XVI. *The other clerks and officers now employed in th Prerogative Court shall be transferred to such situations Court of Probate and the principal registry thereof as the Chancellor may in that behalf direct, so that their duties such as, in the opinion of the said Lord Chancellor, may nearly as possible similar to those which they have her discharged in the said Prerogative Court: Provided alway no such clerk or other officer shall be so transferred wh said Lord Chancellor shall consider to be from age, infirm other cause, incompetent to the discharge of his duties.*

Section 16 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

Existing diocesan registrars to be entitled to be appointed district registrars at the same places.

XVII. *The registrar or deputy registrar (as the case m now executing in person the duties of registrar of a dioce other court exercising testamentary jurisdiction at any p which a district registry is to be established under this where there is more than one such registrar or deputy regis acting such one of them as the judge shall select, shall be ap the first district registrar fo such district, save where th shall consider such registrar or deputy registrar, or a registrars or deputy registrars if more than one, to be fro infirmity, or other cause incompetent to the discharge of the of district registrar; provided that where there is now mo one such registrar or deputy registrar compelent to the di of the duties, the judge may appoint them or more than them to hold such office of district registrar jointly with be survivorship.*

Section 17 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

As to appointment to offices.

Salaries of officers.

XVIII. *The registrars, district registrars, and other off the Court of Probate, except as herein provided, shall be ap by the judge: There shall be paid to the several officers me in schedule (B.) to this Act the several salaries set opposite respective titles in the same schedule, and the said district re shall, for the performance of their duties under this Act, in the services of any clerks they may employ, be entitled to respect of the business in their respective district registri fees as shall be fixed as hereinafter provided; and, except as said, there shall be paid to the several clerks and other appointed under this Act such salaries or other remunerat the judge, with the consent of the Commissioners of her M Treasury, shall from time to time in each case direct.*

Section 18 repealed by 42 & 43 Vict. c. 78, s. 29.

Tenure of office of officers.

XIX. The registrars and district registrars shall hold offices during good behaviour, *subject to be removed by of the Lord Chancellor for some reasonable cause to*

such order expressed; and the other officers of the court may be removed by the judge, with the sanction of the Lord Chancellor.

See 42 & 43 Vict. c. 78, s. 29.

Qualification of registrars and district registrars.

XX. No person shall be appointed a registrar or district registrar who shall not be or have been an advocate, barrister-at-law, proctor, solicitor, or attorney-at-law, unless at the time of the passing of this Act he is performing in person the duties of registrar or deputy registrar of some ecclesiastical court in England, or is acting as articled clerk or paid clerk to a proctor in Doctors Commons, or as officer or clerk in the office of the said Prerogative Court, or of the Prerogative Court of York, or of any diocesan court.

Amended by 21 & 22 Vict. c. 95, s. 8.

Officers of the court to execute their offices in person.

Registrars, etc., not to act as proctors, etc.

XXI. All registrars, district registrars, officers, and clerks of the Court of Probate shall execute their respective offices in person and not by deputy; and no registrar of the principal registry of the court, nor any officer or clerk in the principal registry thereof, shall during the time of his holding such office directly or indirectly practise as an advocate, barrister, proctor, solicitor, or attorney, or receive or participate in the fees of any other person so practising.

Power to judge to cause seals of the court to be provided.

XXII. The judge shall cause to be made seals for the Court of Probate, that is to say, one seal to be used in its principal registry, and separate seals to be used in the several district registries, and may cause the same respectively from time to time to be broken, altered, and renewed at his discretion; and all probates, letters of administration, orders, and other instruments, and exemplifications and copies thereof respectively, purporting to be sealed with any seal of the Court of Probate, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

Amended by 21 & 22 Vict. c. 95, s. 33.

The court to have throughout all England the same powers as the Prerogative Court within the province of Canterbury.

XXIII. The Court of Probate shall be a court of record; and such court shall have the same powers, and its grants and orders shall have the same effect, throughout all England, and in relation to the personal estate in all parts of England of deceased persons, as the Prerogative Court of the Archbishop of Canterbury and its grants and orders respectively now have in the province of Canterbury, or in the parts of such province within its jurisdiction, and in relation to those matters and causes testamentary and those effects of deceased persons which are within the jurisdiction of the said Prerogative Court; and all duties which, by statute or [illegible]rwise, are imposed on or should be performed by ordinaries generally, or

on or by the said Prerogative Court, in respect of prob
administrations, or matters or causes testamentary within
respective jurisdictions, shall be performed by the Cou
Probate: Provided that no suits for legacies, or suits fo
distribution of residues, shall be entertained by the cou
by any court or person whose jurisdiction as to matters
causes testamentary is hereby abolished.

Suits for legacies or distribution not to be entertained.

Power to examine witnesses.

XXIV. The Court of Probate may require the attend
of any party in person, or of any person whom it may
fit to examine or cause or be examined in any suit or
proceeding in respect of matters or causes testamentary
may examine or cause to be examined upon oath or affirm
as the case may require, parties and witnesses by wo
mouth, and may, either before or after or with or without
examination, cause them or any of them to be examin
interrogatories, or receive their or any of their affidav
solemn affirmations, as the case may be; and the court
by writ require such attendance, and order to be pro
before itself or otherwise any deeds, evidences, or writin
the same form, or nearly as may be, as that in which a w
subpœna ad testificandum, or of subpœna duces tecum, i
issued by any of her Majesty's superior courts of l
Westminster; and every person disobeying any such wri
be considered as in contempt of the court, and also be
to forfeit a sum not exceeding one hundred pounds.

As to production of deeds, etc.

Powers of the court to enforce orders.

XXV. *The Court of Probate shall have the like powers*
diction, and authority for enforcing the attendance of
required by it as aforesaid, and for punishing persons
neglecting, or refusing to produce deeds, evidences, or writ
refusing to appear or to be sworn, or make affirmation or
tion, or to give evidence, or guilty of contempt, and gener
enforcing all orders, decrees, and judgments made or given
court under this Act, and otherwise in relation to the ma
be inquired into and done by or under the orders of th
under this Act, as are by law vested in the High C
Chancery for such purposes in relation to any suit or
depending in such court.

Section 25 repealed by 44 & 45 Viet. c. 59, s. 3.

Order to produce any instrument purporting to be testamentary.

XXVI. The Court of Probate may, on motion or
or otherwise, in a summary way, whether any suit
proceeding shall or shall not be pending in the cou
respect to any probate or administration, order any
to produce and bring into the principal or any
registry, or otherwise as the court may direct, an
or writing being or purporting to be testamentary

may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the court may direct such person to attend for the purpose of being examined in open court, or upon interrogatories respecting the same; and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit in the court and had made such default; and the costs of any such motion, petition, or other proceeding shall be in the discretion of the court.

Section 26 amended by 21 & 22 Vict. c. 95, s. 33.

Registrars, etc., to have power to administer oaths.

Power to appoint also, commissioners to administer oaths, etc.

XXVII. *The registrars and district registrars shall respectively have full power to administer oaths; and all persons who at the commencement of this Act shall be acting as surrogates of any ecclesiastical court, and any other persons whom the judge shall, under the seal of the court, from time to time appoint, shall respectively have full power to administer oaths and perform such other duties in reference to matters and causes testamentary as may be assigned to them from time to time by the Rules and Orders under this Act; and the persons so appointed shall be styled "Commissioners of her Majesty's Court of Probate:" Provided, that any party required to be examined, or any person called as a witness or required or desiring to make an affidavit or deposition under or for the purposes of this Act, shall be permitted to make his solemn affirmation or declaration instead of being sworn in the circumstances and manner in which a person called as a witness or desiring to make an affidavit or deposition would be permitted so to do under the Common Law Procedure Act, 1854, in cases within the provisions of that Act; and any person who shall wilfully give false evidence, or who shall wilfully swear, affirm, or declare falsely in any affidavit or deposition before the Court of Probate, or before any registrar, district registrar, or commissioner of the court, shall be liable to the penalties and consequences of wilful and corrupt perjury.*

Section 27 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Penalty on forging or counterfeiting seals

XXVIII. If any person forge the signature of any registrar, district registrar, or commissioner for taking oaths, or forge or counterfeit any seal of the Court of Probate, or knowingly use

or signatures of officers.

or coneur in using any such forged or counterfeit signat
seal, or tender in evidence any document with a fal
counterfeit signature of such registrar, district registr
commissioner, or with a false or counterfeit seal, knowin
same signature or seal to be false or counterfeit, every
person shall be guilty of felony, and shall upon convicti
liable to penal servitude for the term of his life *or an*
not less than seven years, or to imprisonment for any ter
exceeding three years, with or without hard labour.

Practice of the court.

XXIX. The practice of the Court of Probate shall,
where otherwise provided by this Act, or by the Ru
Orders to be from time to time made under this Act,
far as the circumstances of the case will admit, accordi
the present practice in the Prerogative Court.

Rules and Orders to be made for regulating the procedure of the court.

XXX. *And to the intent and end that the procedure and*
tice of the court may be of the most simple and expeditious
racter, it shall be lawful for the Lord Chancellor, at any
after the passing of this Act, with the advice and assistance
Lord Chief Justice of the Court of Queen's Bench, or any
the judges of the superior courts of law to be by such Chief J
named in that behalf, and of the judge of the said Prero
Court, to make Rules and Orders, to take effect when th
shall come into operation, for regulating the procedure and pr
of the court, and the duties of the registrars, district regis
and other officers thereof, and for determining what sha
deemed contentious and what shall be deemed non-conten
business, and, subject to the express provisions of this Ac
fixing and regulating the time and manner of appealing fro
decisions of the said court, and generally for carrying the
visions of this Act into effect; and after the time when th
shall come into operation it shall be lawful for the judge o
Court of Probate from time to time, with the concurren
the Lord Chancellor and the said Lord Chief Justice, o
one of the judges of the superior courts of law to be by
Chief Justice named in this behalf, to repeal, amend
to, or alter any such Rules and Orders as to him, with
concurrence as aforesaid, may seem fit.

Mode of taking evidence in contentious matters.

XXXI. Subject to the regulations to be established by
Rules and Orders as aforesaid, the witnesses, and
necessary the parties, in all contentious matters where
attendance can be had, shall be examined orally by or b
the judge in open court: Provided always, that, subje
any such regulations as aforesaid, the parties shall
liberty to verify their respective cases, in whole or in
by affidavit; but so that the deponent in every such affi

shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party orally in open court as aforesaid, and after such cross-examination may be re-examined orally in open court as aforesaid by or on behalf of the party by whom such affidavit was filed.

Court may issue commissions or give orders for examination of witnesses abroad, or who are unable to attend.

XXXII. *Provided, that where a witness in any such matter is out of the jurisdiction of the court, or where, by reason of his illness or otherwise, the court shall not think fit to enforce the attendance of the witness in open court, it shall be lawful for the court to order a commission to issue for the examination of such witness on oath, upon interrogatories or otherwise, or if the witness be within the jurisdiction of the court to order the examination of such witness on oath, upon interrogatories or otherwise, before any officer of the said court, or other person to be named in such order for the purpose; and all the powers given to the courts of law at Westminster by the Acts of the thirteenth year of King George the Third, chapter sixty-three, and of the first year of King William the Fourth, chapter twenty-two, for enabling the courts of law at Westminster to issue commissions and give orders for the examination of witnesses in actions depending in such courts, and to enforce such examination, and all the provisions of the said Acts, and of any other Acts for enforcing or otherwise applicable to such examination, and the witnesses examined, shall extend and be applicable to the said Court of Probate and to the examination of witnesses under the commissions and orders of the said court, and to the witnesses examined, as if such court were one of the courts of law at Westminster, and the matter before it were an action pending in such court.*

Section 32 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Rules of evidence in common law courts to be observed.

XXXIII. *The rules of evidence observed in the superior courts of common law at Westminster shall be applicable to and observed in the trial of all questions of fact in the Court of Probate.*

Section 33 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Common law judges may sit, on request of judge of court.

XXXIV. *It shall be lawful for the judge of the Court of Probate to sit, with the assistance of any judge or judges of any of the superior courts of law at Westminster, who, upon the request of the judge of the Court of Probate, may find it convenient to attend for that purpose.*

Section 34 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Court may cause questions of fact to be tried by a jury before

XXXV. *It shall be lawful for the Court of Probate to cause any question of fact arising in any suit or proceeding under this Act to be tried by a special or common jury before the court itself, or by means of an issue to be directed to any of the superior courts of common law, in the same manner as an issue may now*

itself, or direct an issue to a court of law.

be directed by the Court of Chancery, and such question sh so tried by a jury in any case where an heir-at-law, cit otherwise made party to the suit or proceeding, makes appli to the Court of Probate for that purpose; and in any othe where all the parties to the suit or proceeding concur in su application, and where any party or parties other than such at-law make a like application (the other party or parties no curring therein), and the court shall refuse to cause such qu to be tried by a jury, such refusal of the court shall be subj appeal as herein provided.

Section 35 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Powers of the court for the trial of questions by a jury.

XXXVI. *When the court shall order a question of fact tried before itself by a jury, the court may make all such and Orders upon the sheriff or any other person for procuri attendance of a special or common jury for the trial of question as may now be made by any of the superior cou common law at Westminster, and may also make any such which to such court may seem requisite; and every such shall consist of persons possessing the qualifications, and s struck, summoned, balloted for, and called in like manne such jury were a jury for the trial of any cause in any of t perior courts; and every juryman so summoned sh entitled to the same rights, and subject to the same duti liabilities, as if he had been duly summoned for the trial such cause in any of the said superior courts; and ever to any such proceeding shall be entitled to the same right challenge and otherwise as if he were a party to any such and generally for all purposes of or auxiliary to the questions of fact by a jury before the court itself, and in of new trials thereof, and also for all purposes in relatio consequential upon the direction of issues, the Court of shall have the same jurisdiction, powers, and authority respects as belong to any superior court of common law, o judge thereof, or to the High Court of Chancery, or an thereof, for the like purposes.*

Section 36 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Question to be stated, and jury sworn to try it.

Court, on trial, to have the same authority as a judge at nisi prius.

XXXVII. *When any such question shall be so order tried by a jury before the court itself, such question reduced into writing in such form as the court shall direc the trial the jury shall be sworn to try the said questio true verdict to give thereon according to the evidence; a every such trial the Court of Probate shall have the same jurisdiction, and authority as belong to any judge of an said superior courts sitting at nisi prius.*

Section 37 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Court may direct where issues shall be tried.

XXXVIII. *Where the Court of Probate directs an issue, it shall be lawful for such court to direct such issue to be tried either before a judge of assize in any county or at the sittings for the trial of causes in London or Middlesex, and either by a special or common jury, in like manner as is now done by the Court of Chancery.*

Section 38 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Appeal to the House of Lords.

XXXIX. *Any person considering himself aggrieved by any final or interlocutory decree or order of the Court of Probate may appeal therefrom to the House of Lords: Provided always, that no appeal from an interlocutory order of the Court of Probate shall be made without leave of the Court of Probate first obtained, but on the hearing of an appeal from any final decree all interlocutory orders complained of shall be considered as under appeal as well as the final decree.*

Section 39 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Advocates admitted to practise.

Barristers may practise in contentious causes.

XL. *All persons who at the time of the passing of this Act have been admitted advocates in any of the ecclesiastical courts shall be entitled to practise as advocates or counsel in all matters and causes whatsoever in the Court of Probate; and all serjeants and barristers-at-law shall be entitled to practise as advocates or counsel in all contentious matters and causes in the said court; and such persons who have been so admitted advocates and serjeants and barristers-at-law shall have respectively the same rank and precedence which they now have before the Judicial Committee of the Privy Council, unless and until her Majesty shall otherwise order.*

[*Amended by "Court of Probate Act," 1858," s. 2.*]

Section 40 repealed by 44 & 45 Vict. c. 59, s. 3.

Advocates admitted to practise as barristers.

XLI. *All persons who at the time of the passing of this Act have been admitted as advocates as aforesaid shall be entitled to practise as counsel in any of her Majesty's courts of law or equity in England, with the same eligibility to appointments, under Acts of Parliament or otherwise, as if they had respectively been duly called to the degree of barrister-at-law on the days on which they respectively were so admitted as advocates, and with the same rank and precedence which they now have before the said Judicial Committee, unless and until her Majesty shall otherwise order.*

Section 41 repealed by 44 & 45 Vict. c. 59, s. 3.

Proctors admitted to practise.

XLII. *Every person who at the time of the passing of this Act is actually admitted and practising as a proctor in the courts in Doctors' Commons, or in the Prerogative Court of York, or in any diocesan court, or in any archidiaconal court, having previously duly served under articles of clerkship either to an attorney*

or proctor, may, upon his application, at any time wit year after the passing of this Act, be admitted a proctor Court of Probate, without payment of any fee or stamp du

Section 42 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

Admission of registrars and proctors as solicitors.

XLIII. *Every person who at the time of the commenc this Act is acting as registrar or deputy registrar of any astical court, or is actually admitted and practising as a in the courts in Doctors Commons, or in any ecclesiastic in England or Wales, may, within one year after the pa this Act, be admitted, without the payment of any stam fee, charge, or gratuity whatsoever, as a solicitor of th Court of Chancery, upon the production of his appoint admission as such registrar, deputy registrar, or procto official certificate thereof; and upon the production of an certificate that such appointment or admission continued at the time of the passing of this Act, and upon signing th solicitors of the High Court of Chancery, but not otherwi person shall be entitled to be admitted as a solicitor of su and to be afterwards in like manner admitted and enroll attorney of her Majesty's superior courts.*

Section 43 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

Admission of articled clerks to proctors as solicitors.

XLIV. *Every person who at the time of the commenc this Act has served or is actually serving as an articled cl proctor entitled to take such articled clerk, and who has admitted as a proctor, shall be entitled to be admitted as a of the High Court of Chancery, in the same manner, and to the same rules and regulations, and upon the same co as if he had before the commencement of this Act been ar a solicitor or to an attorney-at-law; and such admissi entitle such articled clerk so admitted as a solicitor to b wards in like manner admitted and enrolled as an att her Majesty's superior courts: Provided, that if any such to whom any such clerk is now articled shall retire from after the passing of this Act, he shall and is hereby to transfer such articled clerk to some other proctor, solicitor, or to an attorney-at-law, for the unexpired ter articles of clerkship; provided that the court shall at have the same power to transfer such clerk, during the u term of his articles of clerkship, to any other proctor, solicitor, or to an attorney-at-law, as the judge of the Pro Court now has in respect to clerks articled to proctors pr in the Court of Arches.*

Section 44 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

Practitioners.

Amended by

XLV. *All solicitors and attornies-at-law may pra the Court of Probate, and the laws and statutes now*

concerning solicitors and attornies shall extend to solicitors and attornies practising in the said court; and the commissioners for taking oaths in the High Court of Chancery shall be commissioners for taking oaths in the Court of Probate. ["Court of Probate Act, 1858," s. 86.]

Section 45 repealed by 44 & 45 Vict. c. 59, s. 3.

Probate and administration may be granted in common form by district registrars, if it shall appear by affidavit that the testator, etc., had a fixed place of abode.

XLVI. Probate of a will or letters of administration may, upon application for that purpose to the district registry, be granted in common form by the district registrar in the name of the Court of Probate and under the seal appointed to be used in such district registry, if it shall appear by affidavit of the person or some or one of the persons applying for the same that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the district in which the application is made, such place of abode being stated in the affidavit; and such probate or letters of administration shall have effect over the personal estate of the deceased in all parts of England accordingly.

Affidavit to be conclusive for authorising grant of probate.

XLVII. Such affidavit shall be conclusive for the purpose of authorising the grant, by the district registrar, of probate or administration; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the district at the time of his death; and every probate and administration granted by any such district registrar shall effectually discharge and protect all persons paying to or dealing with any executor or administrator thereunder, notwithstanding the want of or defect in such affidavit, as is hereby required.

District registrars not to make grants where there is contention, etc.

XLVIII. The district registrar shall not grant probate or administration in any case in which there is contention as to the grant, until such contention is terminated or disposed of by decree or otherwise, or in which it otherwise appears to him that probate or administration ought not to be granted in common form.

As to transmission of notice of application for grants of probate, etc., to district registrar.

XLIX. Notice of every application to any district registrar for the grant of probate or administration shall be transmitted by such district registrar to the registrars of the principal registry by the next post after such application shall have been made; and such notice shall specify the name and description, or addition (if any), of the testator or intestate, the time of his death, and the place of his abode at his decease, as stated in the affidavit made in support of such application, and the name of the person by whom the application has been made, and such other particulars as may be directed by Rules or [*Amended by* "*Court of Probate Act*, 1858," s. 26.]

Orders under this Act; and no probate or administratio
be granted in pursuance of such application until such
registrar shall have received a certificate, under the h
one of the registrars of the principal registry, that no
application appears to have been made in respect of the
of the same deceased person, which certificate the said
trar of the principal registry shall forward as soon as
to the district registrar; all such notices in respect of a
tions in the district registries shall be filed and kept
principal registry; and the registrars of the principal r
shall, with reference to every such notice, examine all
of such applications which may have been received fr
several other district registries, and the applications
may have been made for grants of probate or adminis
at the principal registry, so far as it may appear neces
ascertain whether or no application for probate or adm
tion, in respect of the goods of the same deceased perso
have been made in more than one registry, and shal
municate with the district registrars as occasion may
in relation to such applications.

District registrar, in case of doubt as to grant, to take the directions of the judge.

L. In every case where it appears to a district regist
it is doubtful whether the probate or letters of admini
which may be applied for should or should not be gra
where any question arises in relation to the grant, or
tion for the grant, of any probate or administrati
district registrar shall transmit a statement of the ma
question to the registrars of the Court of Probate, wh
obtain the directions of the judge in relation thereto;
judge may direct the district registrar to proceed in the
of the application according to such instructions as
judge may seem necessary, or may forbid any further
ing by the district registrar in relation to the matter
application, leaving the party applying for the gr
question to make application to the Court of Probate
its principal registry, or, if the case be within its juris
to a county court.

District registrars to transmit lists of probates and administrations, and copies of wills.

[*Amended by "Court of*

LI. On the first Thursday of every month, or of
required by any Rules or Orders to be made in that
every district registrar shall transmit to the registrar
principal registry a list, in such form and containi
particulars as may be from time to time required by th
of Probate, or by any Rules or Orders under this Act
grants of probate and administration made by such distri
trar up to the last preceding Saturday, and not inclu
previous return, and also a copy, certified by the

registrar to be a correct copy, of every will to which any such probate or administration relates. *Probate Act, 1858," s. 25.]*

District registrars to preserve original wills.

LII. Every district registrar shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him, in the public registry of the district, subject to such regulations as the judge of the Court of Probate may from time to time make in relation to the due preservation thereof, and the convenient inspection of the same.

As to caveats.

LIII. Caveats against the grant of probates or administrations may be lodged in the principal registry or in any district registry; and (subject to any Rules or Orders under this Act) the practice and procedure under such caveats in the Court of Probate shall, as near as may be, correspond with the practice and procedure under caveats now in use in the Prerogative Court of Canterbury; and immediately upon a caveat being lodged in any district registry, the district registrar shall send a copy thereof to the registrars to be entered among the caveats in the principal registry; and immediately upon a caveat being entered in the principal registry, notice thereof shall be given to the district registrar of the district, if any, in which it is alleged the deceased resided at the time of his decease, and to any other district registrar to whom it may appear to the registrar of the principal registry expedient to transmit the same.

Where personalty is under £200, and real property is under £300, county court to have jurisdiction.

LIV. *Where it shall appear by affidavit of the person or some or one of the persons applying for probate or letters of administration that the testator or intestate had at the time of his death his fixed place of abode in one of the districts specified in Schedule (A.) to this Act, and that the personal estate in respect of which such probate or letters of administration should be granted under this Act, exclusive of what the deceased shall have been possessed of or entitled to as a trustee, and not beneficially, but without deducting anything on account of the debts due and owing from the deceased, is under the value of two hundred pounds, and that the deceased at the time of his death was not seised or entitled beneficially of or to any real estate, or that the value of the real estate of or to which he was seised or entitled beneficially at the time of his death was under the value of three hundred pounds, the judge of the county court having jurisdiction in the place in which it shall be sworn that the deceased had at the time of his death his fixed place of abode shall have the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of*

administration of the effects of such deceased person, in cas
be any contention in relation thereto.

Section 54 repealed by 21 & 22 Vict. c. 95, s. 11.

Registrar of county court to transmit certificate decree for grant or revocation of probate.

LV. On a decree being made by a judge of a county for the grant or revocation of a probate or administra any such cause, the registrar of the county court shall t to the district registrar of the district in which it sha been sworn that the deceased had at the time of his his fixed place of abode a certificate under the seal county court of such decree having been made; and the on the application of the party or parties in favour o such decree shall have been made, a probate or admini in compliance with such decree shall be issued from such registry; or, as the case may require, the probate or le administration theretofore granted shall be recalled o by the district registrar according to the effect of such

The judge of the county court to decide causes and enforce judgments as in other cases.

LVI. The judge of any county court before whom puted question shall be raised relating to matters and testamentary under this Act shall, subject to the Ru Orders under this Act, have all the jurisdiction, pow authority to decide the same and enforce judgment and to enforce orders in relation thereto, as if the su been an ordinary action in the county court.

Affidavit of the facts giving the county court jurisdiction to be conclusive, unless disproved while the matter is pending.

LVII. The affidavit as to the place of abode and sta property of a testator or intestate, which is to give co jurisdiction to the judge of a county court under the provisions shall, except as hereinafter provided, be co for the purpose of authorising the exercise of such juri and the grant or revocation of probate or administr compliance with the decree of such judge; and no su of probate or administration shall be liable to be revoked, or otherwise impeached by reason that the te intestate had no fixed place of abode within the jurisd such judge or within any of the said districts at the ti death, or by reason that the personal estate sworn to the value of two hundred pounds did in fact amou exceed that value, or that the value of the real estate which the deceased was seised or entitled beneficial time of his death amounted to or exceeded three pounds: Provided, that where it shall be shown to t of a county court before whom any matter is pendi this Act that the place of abode or state of the proper testator or intestate, in respect of whose will or estate have been applied to for grant or revocation of p administration, has not been correctly stated in the

and if correctly stated would not have authorised him to exercise such contentious jurisdiction, he shall stay all further proceedings in his court in the matter, leaving any party to apply to the Court of Probate for such grant or revocation, and making such order as to the costs of the proceedings before him as he may think just.

As to appeals from county court.

LVIII. Any party who shall be dissatisfied with the determination of the judge of the county court in point of law, or upon the admission or rejection of any evidence in any matter or cause under this Act, may appeal from the same to the Court of Probate, in such manner and subject to such regulations as may be provided by the Rules and Orders to be made under this Act; and the decision of the Court of Probate on such appeal shall be final.

Not obligatory to apply for probate, etc., to district registries or county court, but may in every case be made to Court of Probate.

LIX. It shall not be obligatory on any person to apply for probate or administration to any district registry, or through any county court; but in every case such application may be made through the principal registry of the Court of Probate, wherever the testator or intestate may at the time of his death have had his fixed place of abode: Provided, that where in any contentious matter arising out of any such application it is shown to the Court of Probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the judge of a county court, the Court of Probate may send the cause to such county court; and the judge thereof shall proceed therein as if such application and cause had been made to and arisen in his court in the first instance.

[*Amended by "Court of Probate Act, 1858," ss. 12 and 20.*]

Rules and Orders for regulating the procedure of county courts under the Act to be made by the judges now having authority for the like purpose.

LX. *For regulating the procedure and practice of the county courts, and the judges, registrars, and officers thereof, in relation to their jurisdiction and proceedings under this Act, Rules and Orders may be from time to time framed, amended, and certified by three county court judges appointed for the time being to frame Rules and Orders for regulating the practice of the county courts under the Act of the session holden in the nineteenth and twentieth years of her Majesty, chapter one hundred and eight, and shall be subject to be allowed or disallowed or altered, and shall be in force from the day named for that purpose by the Lord Chancellor, as in the said Act is provided in relation to other Rules and Orders regulating the practice of the same courts; and for establishing Rules and Orders to be in force when this Act comes into operation, the power given by this enactment shall be exercised as soon as conveniently may be after the passing of this Act.*

[*Amended by "Court of Probate Act, 1858," s. 13.*]

Section 60 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Where a will affecting real estate is proved in solemn form, or is the subject of a contentious proceeding, the heir and persons interested in the real estate to be cited.

LXI. Where proceedings are taken under this A proving a will in solemn form, or for revoking the prob a will, on the ground of the invalidity thereof, or where other contentious cause or matter under this Act the v of a will is disputed, unless in the several cases aforesa will affects only personal estate, the heir-at-law, devise other persons having or pretending interest in the real affected by the will shall, subject to the provisions of th and to the Rules and Orders under this Act, be cited proceedings, or otherwise summoned in like manner next-of-kin or others having or pretending interest personal estate affected by a will should be cited or sum and may be permitted to become parties or intervene fo respective interests in such real estate, subject to such and Orders, and to the discretion of the court.

Where the will is proved in solemn form, or its validity otherwise decided on, the decree of the court to be binding on the persons interested in the real estate.

LXII. Where probate of such will is granted afte proof in solemn form, or where the validity of the otherwise declared by the decree or order in such cont cause or matter as aforesaid, the probate, decree, or or spectively shall enure for the benefit of all persons int in the real estate affected by such will; and the proba of such will, or the letters of administration with su annexed, or a copy thereof respectively, stamped with t of her Majesty's Court of Probate, shall in all courts, all suits and proceedings affecting real estate, of wh tenure, (save proceedings by way of appeal under this for the revocation of such probate or administration,) ceived as conclusive evidence of the validity and cont such will, in like manner as a probate is received in e in matters relating to the personal estate; and where is refused or revoked, on the ground of the invalidity will, or the invalidity of the will is otherwise decla decree or order under this Act, such decree or orde enure for the benefit of the heir-at-law or other persons whose interest in real estate such will might operate; a will shall not be received in evidence in any suit or pro in relation to real estate, save in any proceeding by appeal from such decrees or orders.

Heir in certain cases not to be cited, and where not cited not to be affected by probate.

LXIII. Nothing herein contained shall make it n to cite the heir-at-law or other persons having or pre interest in the real estate of a deceased person, unle shown to the court and the court is satisfied that the d was at the time of his decease seised of or entitled to power to appoint by will some real estate beneficially any case where the will propounded or of which the is in question would not in the opinion of the court,

established as to personalty, affect real estate; but in every such case, and in any other case in which the court may, with reference to the circumstances of the property of the deceased or otherwise, think fit, the court may proceed without citing the heir or other persons interested in real estate: Provided that the probate, decree, or order of the court shall not in any case affect the heir or any person in respect of his interest in real estate, unless such heir or person has been cited or made party to the proceedings, or derives title under or through a person so cited or made party.

Probate or office copy to be evidence of the will in suits concerning real estate, save where the validity of the will is put in issue.

LXIV. In any action at law or suit in equity, where, according to the existing law, it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition to give to the opposite party, ten days at least before the trial or other proceeding in which the said proof shall be intended to be adduced, notice that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition the probate of the said will or the letters of administration with the will annexed, or a copy thereof stamped with any seal of the Court of Probate; and in every such case such probate or letters of administration, or copy thereof respectively, stamped as aforesaid, shall be sufficient evidence of such will and of its validity and contents, notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid in a contentious cause or matter, as herein provided, unless the party receiving such notice shall, within four days after such receipt, give notice that he disputes the validity of such devise or other testamentary disposition.[146]

Canadian Cases.

[146] *PROBATE AS EVIDENCE.*—Where a probate is used as evidence under C. S. U. C., c. 16, it is evidence of the testator's death as well as of the will (*Davis* v. *Van Norman*, 30 U. C. R. 437).

In an action by or against the representatives of a deceased person, the corroborative evidence required by R. S. O., 1897, c. 73, s. 10, may be found in the other facts adduced in the case, raising a reasonable and natural inference in support of the evidence whereof corroboration is required. *Semble*, corroborative evidence within the meaning of that enactment may be given by an interested party, so long as he is not the party obtaining the decision (*In re Curry, Curry* v. *Curry*, 32 O. R. 150).

As to costs of proof of will.

LXV. *In every case in which, in any such action or su original will shall be produced and proved, it shall be lawfu the court or judge before whom such evidence shall be gi direct by which of the parties the costs thereof shall be paid.*

Section 65 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Place of deposit of original wills.

LXVI. There shall be one place f deposit under the co of the Court of Probate, at such place in London or Midd as her Majesty may by Order in Council direct, in whic the original wills brought into the court or of which pr or administration with the will annexed is granted unde Act in the principal registry thereof, and copies of all wil originals whereof are to be preserved in the district regis and such other documents as the court may direct, sha deposited and preserved, and may be inspected unde control of the court and subject to the Rules and O under this Act.

Judge to cause calendars to be made from time to time in the principal registry, and to be printed.

LXVII. The judge shall cause to be made from ti time in the principal registry of the Court of Probate cale of the grants of probate and administration in the pri registry, and in the several district registries of the cour such periods as the judge may think fit; each such cal to contain a note of every probate or administration wit will annexed granted within the period therein specified also a note of every other administration granted withi same period, such respective notes setting forth the da such grants, the registry in which the grants were made names of the testators and intestates, the place and ti death, the names and descriptions of the executors and adm trators, and the value of the effects; and the calendars so made shall be printed as the same are from time to completed.

Registrar to transmit

LXVIII. The registrars shall cause a printed copy of

Canadian Cases.

PROVING STATUS OF PERSONAL REPRESE TIVE.—Where a bill is filed against the estate of an inte alleging that letters of administration have been granted t defendant, such allegation is sufficiently established by show the hearing of the case that the defendant has obtained lett administration, although the grant thereof may have been subsequently to the filing of the bill and the putting in a answer, and although the defendant has taken the objecti way of defence in answer (*Edinburgh Life Insurance Co.* v. 9 Gr. 593).

calendar to be transmitted through the post or otherwise to each of the district registries, and to the Office of her Majesty's Prerogative in Dublin, the Office of the Commissary of the County of Midlothian in Edinburgh, and such other offices, if any, as the Court of Probate shall from time to time by rule or order direct; and every printed copy of a calendar so transmitted as aforesaid shall be kept in the registry or office to which it is transmitted, and may be inspected by any person on payment of a fee of one shilling for each search, without reference to the number of calendars inspected. Printed copies to certain offices.

LXIX. An official copy of the whole or any part of a will, or an official certificate of the grant of any letters of administration, may be obtained from the registry or district registry where the will has been proved or the administration granted, on the payment of such fees as shall be fixed for the same by the Rules and Orders under this Act. Official copy of whole or part of will may be obtained.

LXX. Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling, or revoking any probate or any grant of administration, the Court of Probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the court, and act under its direction. Administration pendente lite. [*Amended by "Court of Probate Act," 1858," s.* 22.]

LXXI. It shall be lawful for the Court of Probate to appoint any administrator appointed as aforesaid or any other person to be receiver of the real estate of any deceased person pending any suit in the court touching the validity of any will of such deceased person by which his real estate may be affected, and such receiver shall have such power to receive all rents and profits of such real estate, and such powers of letting and managing such real estate, as the court may direct. Receiver of real estate pendente lite. [*Amended by "Court of Probate Act," 1858," s.* 21.]

LXXII. The Court of Probate may direct that administrators and receivers appointed pending suits involving matters and causes testamentary shall receive out of the personal and real estate of the deceased such reasonable remuneration as the court think fit. Remuneration to administrators and receivers pendente lite.

LXXIII. Where a person has died or shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person be resident out of the United Kingdom of Great Britain and Power as to appointment of administrator.

Ireland, and it shall appear to the court to be neces convenient in any such case, by reason of the insolvency estate of the deceased, or other special circumstances, to some person to be the administrator of the personal es the deceased, or of any part of such personal estate, othe the person who, if this Act had not been passed, would have been entitled to a grant of administration of such p estate, it shall not be obligatory upon the court to administration of the personal estate of such deceased to the person who, if this Act had not passed, would have been entitled to a grant thereof, but it shall be law the court, in its discretion, to appoint such person as th shall think fit to be such administrator, upon his givin security (if any) as the court shall direct; and ever administration may be limited as the court shall think fi

38 Geo. III. c. 87, extended to administrators.

[*Amended by "Court of Probate Act*, 1858," *s.* 18.]

LXXIV. The provisions of an Act passed in the eighth year of his late Majesty King George the Third, eighty-seven, shall apply (in like manner) to all cases letters of administration have been granted, and the pe whom such administration shall have been granted sh out of the jurisdiction of her Majesty's courts of la equity.

After grant of administration no person to have power to sue as an executor.

LXXV. After any grant of administration, no perso have power to sue or prosecute any suit or otherwise executor of the deceased, as to the personal estate con in or affected by such grant of administration, unti administration shall have been recalled or revoked.

Revocation of temporary grants not to prejudice actions or suits.

LXXVI. Where before the revocation of any tem administration any proceedings at law or in equity hav commenced by or against any administrator so appointe court in which such proceedings are pending may order suggestion be made upon the record of the revocation administration, and of the grant of probate or administ which shall have been made consequent thereupon, an the proceedings shall be continued in the name of th executor or administrator, in like manner as if the proc had been originally commenced by or against such new ex or administrator, but subject to such conditions and vari if any, as such court may direct.

Payments under revoked probates or administration to be valid.

LXXVII. Where any probate or administration is re under this Act, all payments bonâ fide made to any ex or administrator under such probate or administration, the revocation thereof, shall be a legal discharge to the making the same; and the executor or administrator wh

have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration shall be afterwards granted might have lawfully made.

Persons, etc., making payment upon probates granted for estate of deceased person to be indemnified.

LXXVIII. All persons and corporations making or permitting to be made any payment to transfer bonâ fide, upon any probate or letters of administration granted in respect of the estate of any deceased person under the authority of this Act, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or letters of administration.

Rights of an executor renouncing probate to cease as if he had not been named in the will.

LXXIX. Where any person, after the commencement of this Act, renounces probate of the will of which he is appointed executor or one of the executors, the rights of such person in respect of the executorship shall wholly cease; and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor.

[*Amended by "Court of Probate Act," 1858," s. 16.*]

Sureties to administration bonds.

LXXX. *So much of an Act passed in the twenty-first year of King Henry the Eighth, chapter five, and of an Act passed in the twenty-second and twenty-third years of King Charles the Second, chapter ten, and of an Act passed in the first year of King James the Second, chapter seventeen, as requires any surety, bond, or other security to be taken from a person to whom administration shall be committed, shall be repealed.*

Section 80 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

Persons to whom grant of administration shall be committed shall give bond.

LXXXI. Every person to whom any grant of administration shall be committed shall give bond to the judge of the Court of Probate to enure for the benefit of the judge for the time being, and, if the Court of Probate or (in the case of a grant from the district registry) the district registrar shall require, with one or more surety or sureties, conditioned for duly collecting, getting in, and administering the personal estate of the deceased, which bond shall be in such form as the judge shall from time to time by any general or special order direct: Provided that it shall not be necessary for the solicitor for the affairs of the Treasury or the solicitor of the Duchy of Lancaster applying for or obtaining administration to the use or benefit of her Majesty to give any such bond as aforesaid.

Penalty on bond.

LXXXII. Such bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn, unless the court or district registrar, as the

case may be, shall in any case think fit to direct the sam
reduced, in which case it shall be lawful for the court or
registrar so to do; and the court or district registrar m
direct that more bonds than one shall be given, so as t
the liability of any surety to such amount as the co
district registrar shall think reasonable.

Power of court to assign bond.

LXXXIII. The court may, on application made on
or petition in a summary way, and on being satisfied th
condition of any such bond has been broken, order one
registrars of the court to assign the same to some per
be named in such order; and such person, his execut
administrators, shall thereupon be entitled to sue on t
bond, in his own name, both at law and in equity, as
same had been originally given to him instead of to the
of the court, and shall be entitled to recover there
trustee for all persons interested the full amount reco
in respect of any breach of the condition of the said bon

Pending suits transferred to Court of Probate.

LXXXIV. *All suits, whether original or by way of*
which at the commencement of this Act shall be pending
court in England respecting any grant of probate or adm
tion, shall be transferred, with all the proceedings therein,
Court of Probate, there to be dealt with and decided accor
the rules and practice of the said court, except so far as suc
may think it expedient to adopt, for the purposes of such
ferred suits or any of them, the rules or practice of the c
which the same shall have been pending, to which end the
of Probate shall, for the purposes of such suits, have
jurisdiction, power, and authority possessed by the cour
which such suit shall be transferred; but this enactmen

Not to apply to appeals pending before her Majesty in Council.

not apply to proceedings by way of appeal pending bef
Majesty in Council, which proceedings shall be carried
prosecuted in the same manner in all respects as if this A
not passed; and every person who if this Act had not
might have appealed to her Majesty in Council against an
ceeding, decree, or sentence of any court respecting the g
any probate or administration, may, notwithstanding th
appeal to her Majesty in Council against such proceeding,
or sentence: Provided also, that her Majesty in Counc
remit to the Court of Probate any cause or proceeding pend
way of appeal as aforesaid, or to be brought before her Ma
Council upon appeal as aforesaid, with such directions
justice of the case may require.

Section 84 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

Power to judges whose

LXXXV. *Provided, that if at the commencement of th*
any cause which would be transferred to the Court of

under the enactment hereinbefore contained shall have been heard before any judge having jurisdiction in relation to such cause before the commencement of this Act, and shall be standing for judgment, such judge may, at any time within six weeks after the commencement of this Act, give in to one of the registrars of the court a written judgment thereon, signed by him, and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment; and every such decree or order shall have the same force and effect as if it had been drawn up in pursuance of a judgment of the Court of Probate on the day on which the same shall so be delivered to the registrar, and shall be subject to appeal under this Act.

jurisdiction is determined to deliver written judgments.

Section 85 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

LXXXVI. *All grants of probates and administrations made before the commencement of this Act, which may be void or voidable by reason only that the courts from which respectively the same were obtained had not jurisdiction to make such grants, shall be as valid as if the same had been obtained from courts entitled to make such grants: Provided, that any such grants of probate or administration shall not be made valid by this Act when the same shall before the commencement of this Act have been revoked or determined by any court of competent jurisdiction to have been void; nor shall this Act prejudice or affect any proceedings pending at the time of the passing of this Act in which the validity of any such probate or administration shall be in question: If the result of such proceeding shall be to invalidate the same, such probate or administration shall not be rendered valid by this Act; and if such proceedings abate or become defective by reason of the death of any party, any person who but for this Act would have any right by reason of the invalidity of such probate or administration shall retain such right, and may commence proceedings for enforcing the same within six calendar months after the death of such party.*

Void and voidable probates and administrations.

Section 86 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

LXXXVII. Legal grants of probate and administration made before the commencement of this Act, and grants of probate and administration made legal by this Act, shall have the same force and effect as if they had been granted under this Act; but in every such case there shall be due and payable to her Majesty such further stamp duty, if any, as would have been chargeable on any probate or administration which but for this Act would or ought to have been obtained in respect of the personal estate not covered by the grant; and all inventories and accounts in respect thereof shall be returnable to the Court of Chancery; and all bonds taken in respect

Probates and administrations granted before this Act comes into operation.

thereof may be enforced by or under the authority
Court of Chancery, at the discretion of the court.

Probate or administration may be granted of personal estate not affected by the former grants.

LXXXVIII. Provided, that where any probate or ad
tration has been granted before the commencement of th
and the deceased had personal estate in England not
the limits of the jurisdiction of the court by which the p
or administration was granted, or otherwise not with
operation of the grant, it shall be lawful for the Co
Probate to grant probate or administration only in resp
such personal estate not covered by any former prob
administration; and such grant may be limited accordin

Judges of ecclesiastical courts and others to transmit all wills, etc., to the registry.

[*Amended by "Court of Probate Act*, 1858," *ss.* 27 *and* 37.]

LXXXIX. The acting judge and registrar of every
and other person now having jurisdiction to grant p
or administration, and every person having the custody
documents and papers of or belonging to such court or
shall, upon receiving a requisition for that purpose, un
seal of the Court of Probate, from the registrar, and
time and in the manner mentioned in such requisition, t
to the Court of Probate, or to such other place as
requisition shall be specified, all records, wills, grants, p
letters of administration, administration bonds, notes
ministration, court books, calendars, deeds, processe
proceedings, writs, documents, and every other in
relating exclusively or principally to matters or cause
mentary, to be deposited and arranged in the registry
district or in the principal registry, as the case may req
as to be easy of reference, under the control and direc
the court.

Penalty for default.

XC. *No judge, registrar, or other person who shall
refuse or neglect so to transmit such records, wills, gra
bates, letters of administration, administration bonds,
administration, court books, calendars, deeds, pro
proceedings, writs, documents, or any other instrum
to matters or causes testamentary, shall be entitled a
pensation under this Act; and every judge, regist
person so refusing or neglecting shall be liable to a
of one hundred pounds, to be sued for and recover
full costs of suit, in any of her Majesty's superior court
registrars.*

Repealed by 55 & 56 Vict. c. 19 (S.L.R.).

As to depositories for safe custody of the wills of

XCI. One or more safe and convenient dep
depositories shall be provided, under the control and
of the Court of Probate, for all such wills of living p
shall be deposited therein for safe custody; and al

may deposit their wills in such depository upon payment of such fees and under such regulations as the judge shall from time to time by any order direct. Living persons.

XCII. Nothing in this Act contained shall affect the stamp duties now by law payable upon probates and administrations; and all the clauses, provisions, rules, regulations, and directions contained in any Act of Parliament relating to the said duties, and to wills, probates of wills, and letters of administration, for securing the said duties, not superseded by or inconsistent with the express provisions of this Act, shall be in full force, and shall be observed, applied, and put in execution for securing the duties payable on probates of wills and letters of administration granted under this Act as if such duties had been granted by this Act, and the said clauses, provisions, rules, and regulations relating thereto were herein repeated and specially enacted. This Act not to affect the stamp duties on probates and administrations.

XCIII. The registrars of the several probate courts shall, within such time as the judge shall direct, transmit or deliver copies of every probate of any will or letters of administration which shall have been granted, delivered or caused to be delivered out of their respective offices, and the following documents respectively; that is to say, in the case of a probate or administration with a will annexed a copy of the will and the original affidavit, and in the case of letters of administration without a will annexed such original affidavit, and in every case of letters of administration a copy or extract thereof, and in every case such other matter or note of the grant as the said commissioners may require. The registrars to deliver copies of wills, etc., to the Commissioners of Inland Revenue.

XCIV. By an Act passed in the fifty-third year of King George the Third, chapter one hundred and twenty-seven, it is enacted, that if any proctor of any ecclesiastical court shall act as such, or permit his name to be used in any suit pertaining to the office of a proctor, or in obtaining probates of wills or letters of administration, for or on account or to the profit or benefit of any person not entitled to act as a proctor, or shall permit any such person to participate in such profit or benefit, such proctor shall be subject to certain penalties therein mentioned; and it is also therein further enacted that if any person shall, in his own name, or in that of any other person, do or perform any act whatever belonging to the office of a proctor in consideration of any gain, fee or reward, or with a view to participate in the benefit to be derived from the office, functions, or practice of a proctor, without being admitted and enrolled, every such person shall be subject to certain other penalties therein mentioned: Be it Sect. 8 of 53 Geo. III. c. 127, repealed in part as to the Court of Probate.

enacted, nothing in the said Act contained shall preve
proctor of the Court of Probate from acting as agent
attorney or solicitor in relation to any matter testament
from allowing him to participate in the profits of and i
thereto.

Fees to be taken by officers of court and by officers of county courts.

XCV. *The Lord Chancellor, with such assistance as is before provided as to Rules and Orders to be made in pu of this Act, shall, as soon as conveniently may be after t ing of this Act, fix a table or tables of fees to be take officers of the Court of Probate, and the proctors, solicit attornies practising therein, including the district registr the proctors, solicitors, and attornies practising in distr tries, and of fees to be taken by the officers of the county c respect of business under this Act, and of fees to be pa respect of searches, inspection, and printed and other copie extracts from records, wills, and other documents in the or under the control of the Court of Probate, and the jud Court of Probate, with such concurrence as is hereinbe vided in respect of the amendment of Rules and Orders, empowered, from time to time after this Act shall come in tion, to add to, reduce, alter, or amend such table or tabl as he may see fit: Provided that such tables of fees a alteration of the same, except so far as respects the fees to be taken by district registrars, proctors, and others, own remuneration and to their own use, shall be subj approval of the Commissioners of her Majesty's Treas every such table of fees, and every addition, reduction, or amendment to, in, or of the same, shall be publish London Gazette; and no other fees than those spe allowed in such tables of fees shall be demanded or take officers, and proctors, solicitors, and attornies.*

Section 95 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Taxation of costs.

[*Amended by "Court of Probate Act, 1858," s.* 28.]

XCVI. *The bill of any proctor, attorney, or solicito fees, charges, or disbursements in respect of any busi acted in the Court of Probate, whether contentious or ot any matters connected therewith, shall, as well between attorney or solicitor and client as between party and subject to taxation by any one of the registrars of the and the mode in which any such bill shall be referred fo and by whom the costs of taxation shall be paid, shall b by the Rules and Orders to be made under this Act, a tificate of the registrar of the amount at which such b shall be subject to appeal to the judge of the said court.*

Section 96 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Fees not to

XCVII. *None of the fees payable to the officers of t*

Probate, or of any county court, in respect of business under this Act, except the fees of the district registrars (which are to be taken as their remuneration, and for their own use), the fees of proctors, solicitors, and attornies, and such fees as may be authorised to be taken for their own use by surrogates and commissioners for administering oaths, shall be received in money, but every such fee shall be collected and received by a stamp denoting the amount of the fee which otherwise would be payable.

be paid in money, but by stamps.

Section 97 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

XCVIII. *The fees to be collected by means of stamps under the provisions of this Act shall be deemed "stamp duties," and shall be placed under the management of the Commissioners of Inland Revenue, to be collected and paid into the exchequer under the same laws and regulations as those made in respect of the other duties of "stamps," and the provisions in the several Acts for the time being in force relating to stamps under the care or management of the Commissioners of Inland Revenue shall in all cases not hereby expressly provided for be of full force and effect with respect to the stamps to be provided under or by virtue of this Act, and to the vellum, parchment, or paper on or to which the same stamps shall be impressed or affixed, and be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting, and punishing all frauds, forgeries, and other offences relating thereto, as fully and effectually to all intents and purposes as if such provisions had been herein repeated and specially enacted with reference to the said last-mentioned stamps and sums of money respectively; but a separate and distinct account of all money received in respect of the said last-mentioned stamps for every year ending the thirty-first day of March shall be laid before both Houses of Parliament within one month after the termination of such year of accounts, or, if Parliament be not then sitting, within one month after the commencement of the next session of Parliament.*

Provisions of Acts relating to stamps to be applicable to stamps for collecting fees.

Section 98 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

XCIX. *No document which under this Act, and any table of fees for the time being in force under this Act, ought to have a stamp in respect of such fee impressed thereon or affixed thereto, shall be received or filed or be used in relation to any proceeding in the Court of Probate, or be of any validity for any purpose whatsoever, unless or until the same shall have the proper stamp impressed thereon or affixed thereto: Provided that if at any time it shall appear that any such document has through mistake or inadvertence been received, or filed, or used without having such stamp impressed thereon or affixed thereto, it shall be lawful for the judge of the Court of Probate, if he think fit, to order that*

No document to be received or used unless stamped.

such stamp shall be impressed thereon or affixed ther thereupon, when a stamp shall have been impressed document or affixed thereto in compliance with any suc such document and every proceeding in reference thereto as valid and effectual as if such stamp had been impressed or affixed thereto in the first instance.

Section 99 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Officers of the court may be dismissed for fraud or wilful neglect in relation to stamps.

C. *If any officer of the Court of Probate, or any othe employed under this Act, shall do or commit or connive fraudulent act or practice in relation to any stamp to under the provisions of this Act, or to any fee or sum of be collected, or which ought to be collected, by means of stamp, or if any such officer or person shall be guilty of a act, neglect, or omission whereby any fee or money which be collected by means of a stamp under this Act shall b the payment thereof evaded, every such officer or person ing shall be dismissed from his office or employment if of the Court of Probate shall think fit so to order.*

Section 100 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Salary of judge and compensations to be charged on consolidated fund.

CI. *The salary of the judge of the Court of Probate, retiring annuity granted to a judge of the Court of Prob this Act, and all compensations payable under this Act charged on and payable out of the consolidated fund of th Kingdom.*

Section 101 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Salaries and expenses not charged on the consolidated fund to be paid out of monies to be provided by Parliament.

CII. *It shall be lawful for the Commissioners of her Treasury, out of such monies as may be provided a priated by Parliament for the purpose, to cause to be salaries payable to the registrars, clerks, and other offic this Act, and all necessary expenses of the Court of Pr its registries, and other expenses which may be incurred ing the provisions of this Act into effect (except suc retiring annuity, and compensations as are hereinbefor on the said consolidated fund).*

Section 102 repealed by 42 & 43 Vict. c. 78, s. 29.

Compensation to registrars, etc., of existing courts.

CIII. *It shall be lawful for the Commissioners of the to grant to any archdeacons, judges, deputy judges, deputy registrars, and other persons holding office in now exercising jurisdiction in matters and causes tes who may sustain any loss of emoluments by reason of t of this Act, and who are not transferred or appointed by this Act to offices of equal value in the Court of Pro compensation as, having regard to the tenure of their*

offices and appointments, and to the provisions of the Act of the session holden in the sixth and seventh years of King William the Fourth, chapter seventy-seven, section twenty-five, and of the Act of the session holden in the tenth and eleventh years of her Majesty, chapter ninety-eight, section nine, and the several subsequent Acts continuing the provisions of the said Acts respectively, the said commissioners deem just and proper to be awarded: Provided that where persons whose claims in respect of offices, held for life or otherwise, are excluded by the said provisions, have executed in person the duties of such offices, the said provisions shall not be deemed to prevent the said commissioners from granting to such persons such compensation as the said commissioners would deem just and proper to be awarded on the abolition or reduction of the emoluments of like offices, if held at the pleasure of the Crown; and it shall be lawful for the said commissioners to grant to all managing and other clerks who have been continuously employed in the offices of registrars of the said courts for fifteen years and upwards immediately before the passing of this Act, and may sustain any loss of emoluments as aforesaid, and are not transferred or appointed as aforesaid, such compensation as the said commissioners may deem just and proper: Provided always, that if any person to whom any yearly sum is awarded for compensation as aforesaid is or shall be appointed to any office or situation under this Act, or in the public service, the payment of such compensation shall be suspended so long as he continues to receive the salary or emoluments of such office or situation, if the amount thereof be equal to or greater than the amount of emoluments in respect of the loss whereof compensation is awarded; and if the amount of such last-mentioned emoluments be greater than the salary or emoluments of such office or situation, no more of such compensation shall be paid than will, with such salary or emoluments, be equal to the emoluments in respect of the loss whereof such compensation is payable.

Section 103 repealed by 42 & 43 Vict. c. 78, s. 29.

Persons receiving compensation to continue to discharge the remaining duties of their offices.

CIV. *Any person to whom compensation is awarded under this Act in respect of the loss of emoluments of any office, and who at the passing of this Act shall have been discharging or liable to discharge in respect of such office duties other than those in matters and causes testamentary, shall, so long as he shall receive such compensation, be bound to discharge such other duties on the same terms on which, whether gratuitously or otherwise, he discharged or was liable to discharge the same before the passing of this Act.*

Section 104 repealed by 42 & 43 Vict. c. 78, s. 29.

Compensation to proctors.

CV. *Whereas the fees or emoluments of the persons no*
tising as proctors in the courts now exercising jurisdi
matters and causes testamentary may be damaged by the a
of the exclusive rights and privileges which they have
enjoyed as such proctors in such courts: Be it enacted, T
Commissioners of her Majesty's Treasury, by examina
oath or otherwise, which oath they are hereby authorised
minister, may inquire into and may, by the production
evidence as they shall think fit to require, ascertain and ab
determine the net annual amount of the profits arising
transaction of business by proctors in matters and caus
mentary, on an average of five years immediately prece
commencement of this Act, or of such proportion of five
shall have elapsed since each and every such proctor was
to practise in such courts, and shall award to each and ev
proctor a sum of money or annual payment during the
his natural life of such amount as shall be equal in valu
half of the net profits derived by such proctor in respect of
and causes testamentary upon the said average of five year
diately preceding the commencement of this Act, or of such
tion of the said five years as shall have elapsed since the a
of each and every such proctor to practise in the courts
cising jurisdiction in matters and causes testamentary.

Section 105 repealed by 42 & 43 Vict. c. 78, s. 29.

Compensation to proctors in partnership.

CVI. *And whereas divers proctors practising in the co*
exercising jurisdiction in matters and causes testament
are or may at the commencement of this Act be associated
in partnership: Be it therefore enacted, That in all such
Commissioners of her Majesty's Treasury shall inquire
ascertain the terms or conditions of such partnerships,
absolutely determine and award compensation in respect
herein before provided to each of such partnerships, in lik
as if all the emoluments thereof had been derived by
vidual, and shall apportion such compensation among the
of each such partnership, with or without benefit of surv
regard being had to the existing terms and conditions of

Section 106 repealed by 42 & 43 Vict. c. 78, s. 29.

For the protection of the interests of Viscount Canterbury.

CVII. *And whereas the most Reverend Charles l*
bishop of Canterbury, by virtue of the power given by
the ninth year of King George the Fourth, "to auth
Lord Archbishop of Canterbury for the time being to
person or persons to the office of registrar of his prerogat
out a previous surrender of the existing grant or gra
said office," did, by letters patent under his archiepisc
dated the twenty-first day of June one thousand eigh

and twenty-eight, with the confirmation of the dean and chapter of the cathedral and metropolitical Church of Christ, Canterbury, grant the said office of registrar of his prerogative to the Right Honourable Charles Manners Sutton, now Viscount Canterbury, then Charles Manners Sutton, Esquire, the eldest son and next heir male of the Right Honourable Charles Manners Sutton, late Viscount Canterbury, for his life, subject and without prejudice to the estates and interests, rights and privileges, of the Reverend George Moore and Robert Moore (who then held the said office by virtue of such grant as therein mentioned), and the survivor of them: And whereas by an Act passed in the session of Parliament held in the second and third years of the reign of his late Majesty King William the Fourth, intituled An Act for settling and securing annuities on the Right Honourable Charles Manners Sutton and on his next heir male, in consideration of the eminent services of the said Right Honourable Charles Manners Sutton, it was enacted, that an annuity of four thousand pounds should be payable out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland to the said Right Honourable Charles Manners Sutton late Viscount Canterbury during his life, and that after the decease of the said Charles late Viscount Canterbury one annuity of three thousand pounds be payable out of the said Consolidated Fund to the then heir male of the body of the said Charles late Viscount Canterbury, during the natural life of such heir male; and it was further enacted, that, in the event of the said Charles now Viscount Canterbury having succeeded to and being in the possession of the said annuity of three thousand pounds, and afterwards becoming entitled to the full possession of the said office of registrar of the prerogative of the Lord Archbishop of Canterbury, and to the fees, perquisites, profits, and emoluments thereof (provided the same should exceed the annual sum of three thousand pounds), then and in either of the cases aforesaid the said annuity of three thousand pounds should cease and determine and be no longer payable to the said Charles now Viscount Canterbury: Provided nevertheless, that if the said fees, perquisites, profits, and emoluments of the said office of registrar should not produce the net annual sum of three thousand pounds to the said Charles now Viscount Canterbury, then there should be issued and paid out of the said Consolidated Fund such a sum of money annually as, together with the said fees, perquisites, profits, and emoluments, would make a clear annual income to the said Charles now Viscount Canterbury of three thousand pounds: And whereas the said Charles now Viscount Canterbury, upon the decease of the said Charles late Viscount Canterbury, succeeded to and is now in possession of the annuity of three thousand pounds, but he is not yet in possession of the said office of registrar: There shall be awarded

2 & 3 Will. IV. c. 109.

to the said Charles now Viscount Canterbury, as a compe
for the fees, perquisites, profits, and emoluments of the sa
of registrar of the prerogative of the Lord Archbishop of
bury, an annuity to be calculated upon the average yea
receipts of the legal fees, perquisites, profits, and emolum
the said office during such period next preceding the tim
this Act shall come into operation as the Commissioners
Majesty's Treasury shall think proper; and such annui
commence from the time of this Act coming into operation
said Charles Viscount Canterbury shall then be in posses
the said office, and if not, then from the time at which
Charles Viscount Canterbury would have become entitled,
the passing of this Act, to the full possession of the said off
to the receipt of the fees, perquisites, profits, and emol
thereof, and shall be paid to the said Charles Viscount Can
thenceforth during his life; provided that if the said
by way of compensation shall exceed the annual sum
thousand pounds, then the said annuity of three thousand
payable under the last-recited Act to the said Charles V
Canterbury shall, from and after the commencement of
annuity by way of compensation, cease and determine, an
not be payable to the said Charles Viscount Canterbury;
case the annuity awarded by way of compensation shall
than the net annual sum of three thousand pounds, the p
contained in the said recited Act passed in the session of
ment held in the second and third years of his late
King William the Fourth, for the payment unto the heir
the body of the said Charles Viscount Canterbury, out of
Consolidated Fund, of such a sum of money annually as,
with the said fees, perquisites, profits, and emoluments,
make up a clear income to him of three thousand pounds
from and after the commencement of the said annuity by
compensation, be applicable to and be in force for the pu
making up, together with the said annuity so to be awa
lieu of such fees, perquisites, profits, and emoluments as af
a clear annual income of three thousand pounds to the said
now Viscount Canterbury during his life.

Section 107 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

The registry of Prerogative Court of Canterbury to vest in registrars of the court.

CVIII. *All the claim, title, and interest which at the*
the passing of this Act the Reverend Robert Moore, clerk
is entitled to in or in respect of the building at present use
public registry of the Prerogative Court, shall at the time a
for the commencement of this Act vest in the registrars for
being of the court, subject to the payment of such rents,
performance and fulfilment of such contracts in respect th

the said Robert Moore, his executors or administrators, shall be subject to at the time of such vesting.

Section 108 repealed by 38 & 39 Vict. c. 66 (S.L.R.)

Compensation to Sir John Dodson in case he be not appointed judge of the Court of Probate.

CIX. *In case Sir John Dodson, the present judge of the Prerogative Court of Canterbury and dean of the Court of Arches, be not appointed the first judge of the Court of Probate, there shall be paid to him, during his natural life, as well by way of retiring pension as of salary as dean of the Court of Arches, the net yearly sum of two thousand pounds, to commence from the time appointed for the coming into operation of this Act, and to be paid out of the fund and in manner herein provided for the payment of compensations.*

Section 109 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

Establishments in district registries.

CX. There shall be a clerk or so many clerks in each district registry, and there shall be paid to such clerk or clerks such salary or respective salaries, as the judge of the court, with the sanction of the Commissioners of her Majesty's Treasury may from time to time think fit to direct; and it shall be lawful for such judge to prescribe from time to time the qualifications which shall be possessed by persons appointed to be clerks in such district registries, and generally to regulate the establishment of such district registries with reference to the duties to be performed therein; and the clerk or clerks in each district registry shall be appointed by the district registrar, with the approval of the judge; and every such clerk may be removed by such judge, or by the district registrar with the approval of the judge.

Fees payable to district registrars.

CXI. *Each district registrar shall, out of the fees taken by him in respect of the business in his respective district registry, pay the salary or salaries of the clerk or clerks in such registry, and the residue of such fees shall be retained by such district registrar to his own use; and every district registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the Commissioners of her Majesty's Treasury, a faithful account in writing of all such fees received by him during such year: Provided that it shall be lawful for the Commissioners of her Majesty's Treasury, at any time after the commencement of this Act, to order that the district registrars under this Act, or any of them, shall be paid by salaries instead of fees, and to fix the salaries to be payable to them respectively; and thereupon all fees payable to the district registrars so ordered to be paid by salaries shall be accounted for and paid into the exchequer at such times and under such regulations as the Commissioners of her Majesty's Treasury shall direct, and shall*

District registrars may be paid by salaries instead of fees.

be carried to and form part of the Consolidated Fund United Kingdom, and the salaries of such district registr of their clerks shall be paid out of such moneys as shall vided by Parliament for that purpose, and no such distric trar shall be deemed to have any claim to compensation on of any diminution of his emoluments by reason of any suc

Section 111 repealed by 42 & 43 Vict. c. 78, s. 29.

Compensation to clerical surrogates, etc.

CXII. *It shall be lawful for the Commissioners of the T to grant to every clerical surrogate or other clerical pers at the time of the passing of this Act, shall have been a surrogate in either of the provinces of Canterbury or Yo compensation for any loss the said surrogates or perso sustain by the passing of this Act as the said commissione just and proper to be awarded; the said commissioners regard in awarding such compensation to the circumstanc said clerical surrogates not being able to follow any ot fessional employment in lieu of the said office of surrogate*

Section 112 repealed by 42 & 43 Vict. c. 78, s. 29.

Persons receiving compensation to be liable to be called upon to fill offices, etc.

CXIII. *That every person to whom any compensation granted under this Act shall at all times when called liable to fill any public office or situation in England u Crown for which his previous services in any office aboli this Act may render him eligible; and that if he shall when called upon so to do to take upon himself such situation, and execute the duties thereof satisfactorily, be competent state of health, he shall forfeit his right to a pensation or allowances which may have been granted to respect of such previous services.*

Section 113 repealed by 42 & 43 Vict. c. 78, s. 29.

Publication of accounts.

CXIV. *The Commissioners of her Majesty's Treasu cause to be prepared in each year ending December thir return of all fees and moneys levied in such year u authority of this Act; also a return of the annual salari judge of the said Court of Probate, and of the registrar registrars, clerks, and all others holding offices either in or in the country districts, with an account of all the i expenses relating to the offices aforesaid, whether such sa expenses be defrayed out of fees or out of any other m a return of all superannuations, pensions, annuities, allowances and compensations made payable under thi each year, stating the gross amount and the amount in such charges: Provided always, that all such returns shall be presented to both Houses of Parliament on or b thirty-first day of March in each year, if Parliament*

sitting, and if Parliament is not sitting, then such returns shall be presented within one month of the first meeting of Parliament after the thirty-first day of March in each year: Provided also, that every district registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the Commissioners of her Majesty's Treasury a faithful account in writing of all such fees received by him during such year.

Section 114 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

CXV. *The judge of the court if a privy councillor shall be a member of the judicial committee of the privy council.*

Judge if a privy councillor to be a member of judicial committee.

Section 115 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

CXVI. And whereas, with reference to the abolition of the jurisdiction hereby abolished and otherwise, it is expedient to give, confirm, or extend certain powers to or of "The College of Doctors of Law exercent in the Ecclesiastical and Admiralty Courts," incorporated under that style and title by letters patent, dated the twenty-second day of June, in the eighth year of his late Majesty King George the Third: Be it enacted, That it shall be lawful for the said college from time to time hereafter to let, sell, or exchange for other real or personal estate, or both, all or any part of the real and personal estate which shall for the time being belong to the said college, either directly or through the medium of any trustee or trustees, and to lay out the monies to be received on any such sale or exchange, or otherwise, belonging to the said college as aforesaid, in the purchase of other real or personal estate, or both, but so that the said college shall not at any one time hold or enjoy real estate of a yearly value exceeding one thousand pounds in the whole, and to pay, apply, and dispose of the income of all the real and personal estate which shall for the time being belong to the said college as aforesaid to or for the benefit of such body or bodies politic or corporate, or person or persons, whether being or including, or not being or including, the said college, and all or any individual members or member thereof for the time being, and generally for such purposes and in such manner as the said college think fit; and further, to alien and dispose of all or any part of such real and personal estate, and the proceeds of any sale thereof, either by way of donation, voluntary disposition, or otherwise, unto, between, or amongst any body or bodies politic or corporate, or any person or persons whatsoever, whether being or not being a member or members of the said college: Provided always, that no donation or other voluntary disposition of the corpus, or any part of the corpus, of the real and personal

College of doctors of law may let, sell, etc., their real and personal estate, and lay out monies in purchase of other estates, etc.

estate of the said college to any person or persons being a member or members thereof at the time of such donation or other voluntary disposition shall be effectual without the previous consent thereto of a majority of the members of the said college present at any meeting of the college, and the receipt of the treasurer for the time being of the said college shall be an effectual discharge for all gross annual and other sums which shall for the time being belong or be payable to the said college.

College may surrender their charter, and upon such surrender shall be dissolved.

CXVII. It shall be lawful for the said college, at any time after a resolution to that effect shall have come to at a meeting of the college, by a majority of the members present at such meeting, to surrender and yield up to her Majesty, her heirs or successors, at such time as in such resolution shall be determined, the charter of incorporation of the said college, and all franchises and privileges thereby conferred, or which shall for the time being belong to the said college; and upon and by such surrender the said corporation shall be dissolved, and shall cease to exist, for all purposes whatsoever, (except so far as its existence may be requisite for the saving of the rights of her Majesty, her heirs and successors, and of all and every person or persons, body and bodies politic or corporate, whatsoever other than the said college,) and all real and personal estate which at the time of such dissolution of the said college shall belong to the said college for its own use and benefit, either directly or through the medium of any trustee or trustees, shall thenceforth belong, for all the estate and interest therein which at the time of such dissolution belonged to the said college absolutely, to all the persons who at the time of such dissolution thereof shall be the president and fellows of the said college, in equal shares as tenants in common, to and for their own use and benefit respectively, but subject to any charges or incumbrances affecting the same at the time of such dissolution, and all real and personal estate of which the said college at the time of such dissolution thereof be seised or possessed, upon any trust or trusts, shall thereupon become vested in the four persons who at the time of such dissolution shall be the president and three senior fellows of the said college, as joint tenants, their heirs, executors, or administrators, according to the nature of the real and personal estates respectively, upon the trust or trusts affecting the same respectively.

Treasury to provide the buildings for registries, etc.

CXVIII. *It shall be lawful for the Commissioners of her Majesty's Treasury, out of such monies as may be provided and appropriated by Parliament for that purpose, to cause to be purchased, erected, hired, or otherwise provided such offices and*

buildings as may be suitable for the district registries and depository or depositories for wills, and such buildings, if any, as may be necessary for the court and principal registry, in addition to the building by this Act vested in the said registrars, or after the determination of their interest in such building.

Section 118 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Rules and Orders to be laid before Parliament.

CXIX. All Rules and Orders to be made under this Act concerning procedure and practice, [and the table of fees to be fixed under this Act,] and all alterations thereof to be from time to time made, shall be laid before both Houses of Parliament within one month after the making thereof if Parliament be then sitting, or if Parliament be not then sitting, within one month after the commencement of the then next session of Parliament.

SCHEDULE (A).

Districts and Places of District Registries throughout Eng and Wales.

Districts.	Places of Di Registrie
County of Northumberland (*a*)	Newcastle-o
County of Durham	Durham.
Counties of Cumberland and Westmoreland	Carlisle.
West Riding of the county of York	Wakefield.
North Riding ditto	
East Riding ditto (*b*), including the city of York and Ainsty	York.
County of Lancaster, except the hundred of Salford and West Derby and the city of Manchester	Lancaster.
City of Manchester and hundred of Salford	Manchester.
Hundred of West Derby in Lancashire	Liverpool.
County of Chester (*c*)	Chester.
Counties of Carnarvon and Anglesea	Bangor.
Counties of Flint, Denbigh, and Merioneth	St. Asaph.
County of Derby	Derby.
County of Nottingham (*d*)	Nottingham
Counties of Leicester and Rutland	Leicester.
County of Lincoln (*e*)	Lincoln.
Counties of Salop and Montgomery	Shrewsbury.
Northern division of Northampton, and counties of Huntingdon and Cambridge (*f*)	Peterborou
County of Norfolk (*g*)	Norwich.
Eastern division of the county of Suffolk and north division of the county of Essex	Ipswich.
Western division of the county of Suffolk	Bury St. E
County of Bedford and southern division of Northamptonshire (*h*)	Northampt
County of Warwick (*i*)	Birmingha
County of Stafford (*k*)	Lichfield.
Counties of Radnor, Brecknock, and Hereford	Hereford.
Counties of Cardigan, Carmarthen (*l*), and Pembroke (*m*), with the deaneries of East and West Gower in the county of Glamorgan	Carmarthe

(*a*) Including the towns and counties of Newcastle-on-T Berwick-upon-Tweed.
(*b*) Including the town and county of Kingston-on-Hull.
(*c*) Including the city of Chester.
(*d*) Including the town of Nottingham.
(*e*) Including the city of Lincoln.
(*f*) Including the University of Cambridge.
(*g*) Including the city of Norwich.
(*h*) Including the town of Northampton.
(*i*) Including the city of Coventry.
(*k*) Including the city of Lichfield.
(*l*) Including the town of Carmarthen.
(*m*) Including the town of Haverfordwest.

Districts.	Places of District Registries.
Counties of Glamorgan (with the exception of the deaneries of East and West Gower) and Monmouth	Llandaff.
County of Worcester (*n*)	Worcester.
County of Gloucester (*o*), except the present Bristol County Court district	Gloucester.
Bristol and Bath present County Court districts	Bristol.
Counties of Oxford (*p*), Berks, Bucks	Oxford.
Eastern division of the county of Somerset, except the present Bath County Court district, and the part in Somersetshire of the present Bristol County Court district	Wells.
Western division of the county of Somerset	Taunton.
County of Devon (*q*)	Exeter.
County of Cornwall	Bodmin.
County of Wilts	Salisbury.
County of Dorset (*r*)	Blandford.
County of Hants (*s*)	Winchester.
Eastern division of the county of Sussex (*t*)	Lewes.
Western division of the county of Sussex	Chichester.
East division of the county of Kent (*u*)	Canterbury.

The divisions of counties referred to in the schedule are the divisions of the same counties described for election purposes in the Act of the second and third years of King William the Fourth, chapter sixty-four, and the cities and towns herein referred to are to be taken to include the counties of such cities and towns as are counties of themselves.

(*n*) Including the city of Worcester.
(*o*) Including the city of Gloucester.
(*p*) Including the University of Oxford.
(*q*) Including the city of Exeter.
(*r*) Including the town of Poole.
(*s*) Including the town of Southampton and Isle of Wight.
(*t*) Including such of the Cinque Ports and their dependencies as are locally situate in the county of Sussex.
(*u*) Including the city of Canterbury and such of the Cinque Ports and their dependencies as are locally situate in the county of Kent.

SCHEDULE (B).(a)

	Annual Salary.
The Three Registrars in London, each	£1,500
The Record Keepers, each	600
The Sealer	300

(*a*) Repealed by 57 & 58 Vict. c. 56 (S.L.R.).

COURT OF PROBATE ACT, 1858.

(21 & 22 Victoriæ, c. 95.)

An Act to amend the Act of the Twentieth and Twenty-f
Victoria, Chapter Seventy-seven.

[2nd August 1

20 & 21 Vict. c. 77.

"Whereas in the las. ssion of Parliament an Act was p intituled 'An Act to amend the Law relating to Probate Letters of Administration in England,' hereinafter desig 'The Court of Probate Act': and whereas it is expedie amend the same;" be it therefore enacted as follows:

The judge of the High Court of Admiralty and the judge of the Court of Probate may sit for each other.

I. *It shall be lawful for the judge of the High Cou Admiralty to sit in open court or in chambers for the judge Majesty's Court of Probate, and it shall be lawful for the of her Majesty's Court of Probate to sit in open court chambers for the judge of the High Court of Admiralty; a orders, decrees or sentences, and other acts whatsoever, decreed, pronounced or done by either of the judges aforesaid for the other shall, in the court books, be stated to have made, decreed, pronounced or done by such judge sitting and ing on behalf of such other judge; and such orders, decrees tences and other acts so made, decreed, pronounced or done have the same force and validity in law as if they had been decreed, pronounced or done by the judge on whose behalf purport to have been so made, decreed, pronounced or done.*

Serjeants and barristers may practise in Court of Probate.

II. *All serjeants and barristers-at-law shall be entitled and after the passing of this Act to practise in all causes matters whatsoever in the Court of Probate.*

Sections 1, 2 repealed by 44 & 45 Vict. c. 59, s. 8.

The judge of the Court of Probate may sit in chambers.

III. It shall be lawful for the judge of the Court of Pro for the time being to sit in chambers for the despatch of part of the business of the said court as can in the opinio the said judge, with advantage to the suitors, be hear chambers; and the times at which such sittings shall be shall from time to time be fixed by the judge: Prov always, that no question shall be heard in chambers w either party shall require to be heard in open court.

IV. *The Commissioners of her Majesty's Treasury shall from time to time provide chambers in which the judge of the Court of Probate shall sit for the despatch of such business as aforesaid; and until such chambers are provided elsewhere the said judge shall sit in chambers in any room which he may find convenient for the purpose.* The Treasury to cause chambers to be provided.

Section 4 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

V. *The judge of the Court of Probate, when so sitting in chambers, shall have and exercise the same power and jurisdiction in respect of the business to be brought before him as if sitting in open court.* Powers of judge when sitting in chambers.

Section 5 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

VI. *Whereas there are now three registrars only of the principal registry of the said court, that is to say, Augustus Frederic Bayford, the senior registrar; Charles John Middleton, the second registrar; and Edward Francis Jenner, the third registrar: and whereas the duties of the said principal registry cannot be efficiently discharged by three registrars: Be it enacted, that it shall be lawful for the judge of the said court to appoint a fourth registrar for the principal registry of the said court, in addition to the three registrars appointed under "The Court of Probate Act"; and from and after the appointment of such fourth registrar there shall be paid to each of the said registrars the annual salary mentioned in the schedule to this Act, in lieu of the salary provided by "The Court of Probate Act," such salaries to be paid out of any monies provided by Parliament for the purposes of the said Act: Provided always, that nothing herein contained shall be construed to diminish the salary of any of the three registrars appointed before the passing of this Act.* Power to appoint an additional registrar.

Section 6 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

VII. *On the death, resignation or removal of any of the four registrars of the said principal registry, other than the junior registrar for the time being, the vacancy thereby occasioned shall be filled up by the registrar next in seniority to whom no sufficient objection shall be made to the satisfaction of the judge of the said court.* Vacancy in office of registrar, how to be filled up.

Section 7 repealed by 56 & 57 Vict. c. 54 (S.L.R.).

VIII. Clerks having served five years in the principal registry of the Court of Probate shall be eligible to be appointed registrars or district registrars of the said court. Clerks in the principal registry eligible to be registrars, etc.

IX. *It shall be lawful for the judge of the Court of Probate to admit any person who at the time of the passing of "The Court of Probate Act," was articled to a proctor in Doctors' Commons,* Certain articled

clerks to be admitted proctors of the Court of Probate.

or to a proctor belonging to any ecclesiastical court, so soon shall have served the full term for which he was articl within the period of one year therefrom, to be a proctor Majesty's Court of Probate, upon the payment of such f shall be fixed by the judge of the said court, with the sanc the Commissioners of her Majesty's Treasury.

Section 9 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

Where personalty is under £200 county court to have jurisdiction.

X. Where it appears by affidavit to the satisfactio registrar of the principal registry that the testator or in in respect of whose estate a grant or revocation of a g probate or letters of administration is applied for had time of his death his fixed place of abode in one of the d specified in Schedule (A.) to the said "Court of Probat and that the personal estate in respect of which such or letters of administration are to be or have been g exclusive of what the deceased may have been possesse entitled to as a trustee, and not beneficially, but deducting anything on account of the debts due and from the deceased, was at the time of his death un value of two hundred pounds, and that the deceased time of his death was not seised or entitled beneficial to any real estate of the value of three hundred po upwards, the judge of the county court having jurisdi the place in which the deceased had at the time of hi death a fixed place of abode shall have the contentiou diction and authority of the Court of Probate in re questions as to the grant and revocation of probate of or letters of administration of the effects of such person, in case there be any contention in relation the

Section 54 of 20 & 21 Vict. c. 77, repealed.

XI. *Section fifty-four of the said "Court of Probe shall be and the same is hereby repealed.*

Section 11 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

Section 59 of 20 & 21 Vict. c. 77, to apply to applications for revocation of grants.

XII. The said "Court of Probate Act," section fi shall, so far as the county courts or a judge thereof cerned, apply to an application for the revocation of a probate or administration as well as to an application such grant.

Power to make Rules and Orders and frame scales of fees for the county courts.

XIII. *The power and authority to make Rules and regulating the proceedings of the county court shall exte applicable to all proceedings in the county courts under and also to framing a scale of costs and charges to counsel, proctors, solicitors and attornies, in respect ings in county courts, under the said "Court of Probat this Act.*

Section 13 repealed by 55 & 56 Vict. c. 19 (S.L.R.).

Non-contentious business pending in any ecclesiastical court to be transferred.

XIV. *All non-contentious business pending in any ecclesiastical court at the time when "The Court of Probate Act" came into operation shall be deemed to have been transferred to the Court of Probate, in the same way as all pending suits were transferred to the said court under the said Act, and all acts executed under the authority of any such ecclesiastical court with reference to such business which would have been valid if the authority of such court had not been abolished shall be valid, and all oaths and bonds sworn and executed in manner required by any such ecclesiastical court in reference to such business, prior to the eleventh day of January one thousand eight hundred and fifty-eight, shall continue to have and be deemed to have had the same force and effect in law as they would have had if sworn and executed in pursuance of the provisions of the said Act or of this Act.*

Section 14 repealed by 38 & 39 Vict. c. 66 (S.L.R.).

Bonds given before Jan. 11, 1858, to remain in force.

XV. Bonds given to any archbishop, bishop, or other person exercising testamentary jurisdiction in respect of grants of letters of administration made prior to the eleventh day of January, one thousand eight hundred and fifty-eight, or in respect of grants made in pursuance of "The Court of Probate Act" or this Act, whether taken under a commission or requisition executed before or after the said eleventh day of January, shall enure to the benefit of the judge of the Court of Probate, and, if necessary, shall be put in force in the same manner and subject to the same rules (so far as the same may be applicable to them) as if they had been given to the judge of the said court subsequently to that day.

An executor not acting or not appearing to a citation to be treated as if he had renounced.

XVI. Whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate, and does not appear to such citation, the right of such person in respect of the executorship shall wholly cease; and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor.

Judge of the Court of Probate may amend grants made before Jan. 11, 1858.

XVII. The judge of the Court of Probate shall have and exercise the same power of altering and amending grants of probate and letters of administration made before the eleventh day of January, one thousand eight hundred and fifty-eight, as an ecclesiastical court had and exercised in respect of such grants.

Provisions of 38 Geo. III. c. 87, and

XVIII. The provisions of an Act passed in the thirty-eighth year of George the Third, chapter eighty-seven, and of "The

20 & 21 Vict. c. 77, extended to all cases of executors and administrators.

Court of Probate Act," shall be extended to all executo administrators residing out of the jurisdiction of her M courts of law and equity, whether it be or be not inten institute proceedings in the Court of Chancery, and grants made before and subsequently to the passing last-mentioned Act; and it shall be lawful to alter the la of the grant prescribed by the first-named statute so make it apply to grants made in the Court of Probate the said last-mentioned Act.

Between the death of the person deceased and the grant the property to vest in the judge ordinary.

XIX. From and after the decease of any person intestate, and until letters of administration shall be g in respect of his estate and effects, the personal esta effects of such deceased person shall be vested in the ju the Court of Probate for the time being, in the same and to the same extent as heretofore they vested ordinary.

Second and subsequent grants to be made where the original will or the original letters of administration are deposited.

XX. All second and subsequent grants of probate or of administration shall be made in the principal regi in the district registry where the original will is re or the original grant of letters of administration h made, or in the district registry to which the original a registered copy thereof, or the record of the origina of administration have been transmitted, by virtu requisition issued in pursuance of section eighty-nine o Court of Probate Act"; and for and in respect of such or subsequent grants of probate or letters of administra be made in a district registry it shall not be requisite should appear by affidavit that the testator or intestat fixed place of abode within the district in which the app is made.

The Court of Probate may require security from a receiver of real estate.

XXI. It shall be lawful for the Court of Probate to security by bond, in such form as by any Rules and shall from time to time be directed, with or without from any receiver of the real estate of any deceased appointed by the said court under section seventy "The Court of Probate Act"; and the court may, o cation, made on motion or in a summary way, order the registrars of the court to assign the same to some to be named in such order; and such person, his exec administrators, shall thereupon be entitled to sue on security or put the same in force in his or their own names, both at law and in equity, as if the same h originally given to him instead of to the judge of court, and shall be entitled to recover thereon, as tru all persons interested, the full amount due in virtue th

Administration pending suit deemed to apply to appeals.

XXII. All the provisions contained in "The Court of Probate Act," respecting grants of administration pending suit, shall be deemed to apply to the case of appeals to the House of Lords under the said Act.

Registrar may issue subpœnas to produce papers, etc.

XXIII. It shall be lawful for a registrar of the principal registry of the Court of Probate, and whether any suit or other proceeding shall or shall not be pending in the said court, to issue a subpœna requiring any person to produce and bring into the principal or any district registry, or otherwise, as in the said subpœna may be directed, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession, within the power, or under the control of such person; and such person, upon being duly served with the said subpœna, shall be bound to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default as if he had been a party to a suit in the said court, and had been ordered by the judge of the Court of Probate to produce and bring in such paper or writing.

The registrars to do all acts heretofore done by surrogates.

XXIV. The registrars of the principal registry shall be invested with and shall and may exercise with reference to proceedings in the Court of Probate the same power and authority which surrogates of the judge of the Prerogative Court of Canterbury could or might before the passing of "The Court of Probate Act" have exercised in chambers with reference to proceedings in the said prerogative court.

Copies of wills may be certified by a stamp.

XXV. Copies of wills required to be transmitted by a district registrar, and certified by him to be correct copies, under section fifty-one of "The Court of Probate Act," may be so certified and transmitted under a stamp provided by the district registrar for that purpose, and approved of by the judge of the Court of Probate.

Certificates from the principal registry may be stamped.

XXVI. Certificates issued from the principal registry with reference to notices of applications transmitted from the district registrars under section forty-nine of "The Court of Probate Act" need not be made under the hand of a registrar of the principal registry, as required by the said Act, but may be issued under a stamp provided for that purpose, and approved of by the judge of the Court of Probate.

Requisitions may be issued for the transmission of a single paper.

XXVII. *Whereas doubts have been entertained whether a requisition can be issued under section eighty-nine of "The Court of Probate Act" for the transmission of one or more papers only, not being all the papers and documents in the custody of the person to whom any such requisition may be*

addressed: Be it therefore enacted and declared, th
said section shall be construed to extend to all requ
whether for the transmission of one or of more record
grants, probates, letters of administration, admini
bonds, notes of administration, court books, calendars
processes, acts, proceedings, or other instruments
exclusively or principally to matters and causes testame

Power to enforce decree as to costs.

XXVIII. The judge of the Court of Probate, a
registrars of the principal registry thereof, shall respe
in any case where an ecclesiastical or other court hav
tamentary jurisdiction had previously to the eleventh
January, one thousand eight hundred and fifty-eight
any order or decree in respect of costs, have the same
of taxing such costs, and enforcing payment thereo
otherwise carrying such order or decree into effect, as
cause wherein such decree was made had been original
menced and prosecuted in the said Court of Probate: P
that in taxing any such costs, or any other costs incu
causes depending in any such courts before the time af
all fees, charges, and expenses shall be allowed which
have been legally made, charged, and enforced accor
the practice of the Prerogative Court of Canterbury.

Letters of administration granted in Ireland not to be resealed in England until sufficient bond is given.

XXIX. Letters of administration granted by the C
Probate in Ireland shall not be resealed, under section
five of the twentieth and twenty-first Victoria, chapter
nine, until a certificate has been filed under the ha
registrar of the Court of Probate in Ireland that b
been given to the judge of the Court of Probate in Ire
a sum sufficient in amount to cover the property in
as well as in Ireland in respect of which such admin
is required to be resealed.

Commissioners may be appointed in the Isle of Man, etc.

XXX. *It shall be lawful for the judge of the Court of*
to appoint, by commission under seal of the court, any
practising as solicitors in the Isle of Man, in the Channel
or any of them, to administer oaths, and to take declara
affirmations, and to exercise any other powers which
exercised by Commissioners of her Majesty's Court of
and such persons shall be entitled from time to time to ch
take such fees as any other persons performing the same
the Court of Probate may charge and take.

Section 30 repealed by 52 & 53 Vict. c. 10, s. 12.

Affidavits, before whom to be sworn when parties

XXXI. *In cases where it is necessary to obtain*
declarations or affirmations to be used in the Court of
from persons residing in foreign parts out of her

dominions, the same may be sworn, declared or affirmed before the persons empowered to administer oaths under the Act of the sixth of George the Fourth, chapter eighty-seven, or under the Act of the eighteenth and nineteenth of Victoria, chapter forty-two; provided that, in places where there are no such persons as are mentioned in the said Acts, such affidavits, declarations or affirmations may be made, declared and affirmed before any foreign local magistrate or other person having authority to administer an oath.

making them reside in foreign parts.

Section 31 repealed by 52 & 53 Vict. c. 10, s. 12.

XXXII. *Affidavits, declarations and affirmations to be used in the Court of Probate may be sworn and taken in Scotland, Ireland, the Isle of Man, the Channel Islands, or any colony, island, plantation or place out of England under the dominion of her Majesty, before any court, judge, notary public or person lawfully authorised to administer oaths in such country, colony, island, plantation or place respectively, or, so far as relates to the Isle of Man and the Channel Islands, before any commissary, ecclesiastical judge or surrogate, who, at the time of the passing of "The Court of Probate Act," was authorised to administer oaths in the Isle of Man or in the Channel Islands respectively, and all registrars and other officers of the Court of Probate shall take judicial notice of the seal or signature, as the case may be, of any such court, judge, notary public or person, which shall be attached, suspended or subscribed to any such affidavit, declaration or affirmation, or to any other document.*

Affidavits before whom to be sworn.

Section 32 repealed by 52 & 53 Vict. c. 10, s. 12.

XXXIII. *If any person shall forge any such seal or signature as last aforesaid, or any seal or signature impressed, affixed or subscribed, under the provisions of the said Act of the sixth of George the Fourth, or of the said Act of the eighteenth and nineteenth Victoria, to any affidavit, declaration or affirmation to be used in the Court of Probate, or shall tender in evidence any such document as aforesaid with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to penal servitude for the term of his life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years nor less than one year; and whenever any such document has been admitted in evidence by virtue of this Act, the court or the person who has admitted the same may, at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded, and be kept in the custody of some officer of the court or other proper person, for such period and subject to such conditions as to the said court or person shall seem meet; and*

Persons forging seal or signature guilty of felony.

every person charged with committing any felony under th
may be dealt with, indicted, tried, and, if convicted, sen
and his offence may be laid and charged to have been com
in the county, district or place in which he may be appre
or be in custody; and every accessory before or after the
any such offence may be dealt with, indicted, tried, and,
victed, sentenced, and his offence laid and charged to ha
committed in any county, district or place in which the p
offender may be tried.

Section 33 repealed by 52 & 53 Vict. c. 10, s. 12.

Persons taking a false oath before a surrogate guilty of perjury.

XXXIV. *Any person who shall wilfully give false e*
or who shall wilfully swear, affirm or declare falsely,
affidavit or deposition before any surrogate having auth
administer oaths under "The Court of Probate Act," or
any person who before the passing of the said Act was a su
authorised to administer oaths in any of the Channel Isla
before any person authorised to administer oaths under th
shall be liable to the penalties and consequences of wil
corrupt perjury.

Section 34 repealed by 52 & 53 Vict. c. 10, s. 12.

Provision for the necessary absence of officers.

XXXV. In case any officer appointed or to be appoi
virtue of "The Court of Probate Act, 1857," or of th
shall, by reason of ill-health or other infirmity, become
rarily incapable of performing the duties of his office,
be lawful for the judge to appoint some other fit and
person to discharge the duties of such office for any per
exceeding six calendar months at any one time; and the
so appointed shall, during such period, have all the pow
authority of the officer in whose place he shall be so app
and shall be paid by such officer such sum by way of s
allowance as shall be agreed upon between them respect
be fixed by the judge; and the judge may, at his dis
give leave of absence to any officer of the court for any
not exceeding two months in any year, and shall have
power of making provision for the discharge of the d
the office during such absence.

The judge to have the same powers over practitioners as judges of other courts.

XXXVI. *The judge of the Court of Probate shall ha*
exercise over proctors, solicitors and attornies practising
said court, the like authority and control as is now exer
the judges of any court of equity or common law over
practising therein as solicitors or attornies.

Section 36 repealed by 44 & 45 Vict. c. 59, s. 3.

Provision for expenses of

XXXVII. When any requisition shall issue in pursu
section eighty-nine of "The Court of Probate Act, 1

shall be lawful for the Commissioners of her Majesty's Treasury, out of such monies as may be provided and appropriated by Parliament for that purpose, to cause to be paid all such expenses attending the arranging, classification, indexing, carriage or otherwise connected with the removal of the documents or books required by such requisition to be removed, as the judge shall from time to time certify to the said commissioners to be proper and necessary.

Indexing, etc., documents required to be removed under requisition.

XXXVIII. *In citing the Act of the twentieth and twenty-first Victoria, chapter seventy-seven, in any instrument, document, or proceeding*, it shall be sufficient to use the expression "The Court of Probate Act, 1857," and in citing this Act, the expression "Court of Probate Act, 1858."

Short title of Act.

SCHEDULE.

	£
Senior registrar	1,600
Second ,,	1,400
Third ,,	1,200
Fourth ,,	1,000

Schedule repealed by 44 & 45 Vict. c. 59, s. 3.

CANADIAN ACT.]

AN ACT RESPECTING THE SURROGATE CO

R. S. O., 1897, c. 59.

Interpretation.

1. This Act may be cited as "The Surrogate C Act."

2. Where the following words and expression in this Act, they shall be construed in the r hereinafter mentioned, unless a contrary int appears:—

(1) "Will" shall include "testament" and all testamentary instruments of which probate ma be granted;

(2) "Administration" shall include all letters ministration of the effects of deceased persons, w with or without the will annexed, and w granted for general, special, or limited purposes;

(3) "Matters and causes testamentary" shall all matters and causes relating to the grant an cation of probate of wills or letters of administra

(4) "Common form business" shall mean th ness of obtaining probate or administration there is no contention as to the right thereto, inc the passing of probates and administration thr surrogate court when the contest is terminate all business of a non-contentious nature to be t a surrogate court in matters of testacy and in not being proceedings in any suit, and also th ness of lodging caveats against the grant of or administration.

Surrogate Courts.

A surrogate court to be in each county.

3. In and for every county in Ontario there a Court of Record, to be called "the Surrogate of each respective county, over which court on shall preside; and there shall also be a Registr such officers as may be necessary for the exe the jurisdiction to the said courts belonging.

Courts to have

4. Each of the surrogate courts shall be p with a suitable seal, to be approved of

Lieutenant-Governor, and the judges of the said court may respectively cause the same from time to time, with the approval of the Lieutenant-Governor, to be broken, altered, or renewed; and all probates, letters of administration, grants, orders, letters of guardianship, and other instruments and exemplifications, and copies thereof, respectively, purporting to be sealed with the seal of any surrogate court, shall, in all courts and in all parts of Ontario, be received in evidence without further proof thereof. seals; and exemplifications and copies under seal to be received in evidence.

5. The surrogate court of every county shall hold its sittings in the county town of the county. Sittings where held.

Judges.

6. The judge, or, in case there are two judges, the senior judge, of a county court who was appointed as such judge prior to the 7th day of April, 1896, shall be *ex officio* judge of the surrogate court for the county, or in case of the illness or absence, or at the request of a judge of a surrogate court, or in case the office of senior judge is vacant, the junior or acting judge, or the deputy judge (if any) of the county court, shall have all the power and privilege and perform all the duties of the judge of the surrogate court. Certain judges of county courts to be *ex officio* judges of surrogate courts.

7. Every judge of a surrogate court shall, before executing the duties of his office, take the following oath before some one authorized by law to administer the same:— Oath of judge.

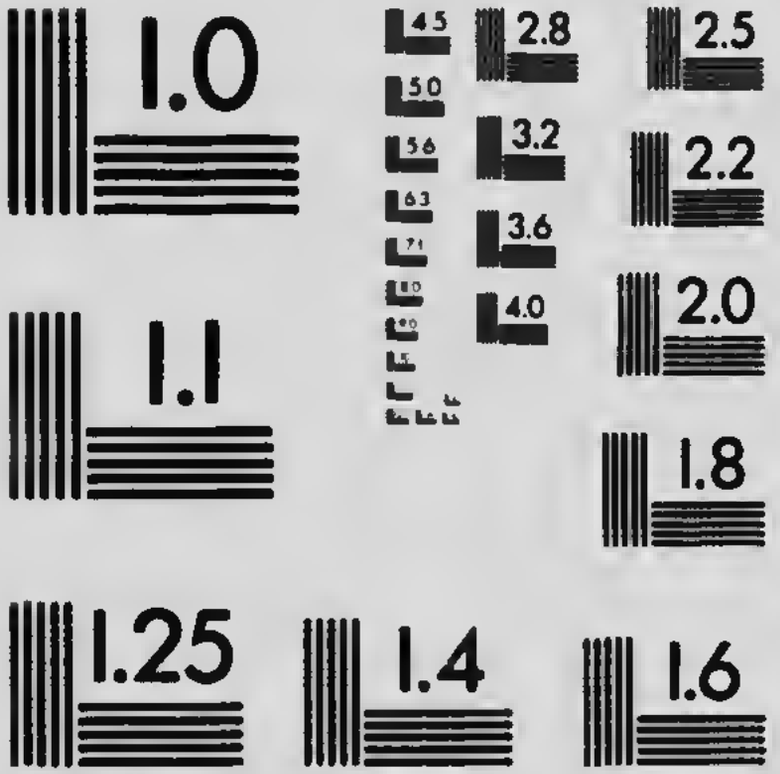
"I, , do solemnly and sincerely promise and swear that I will duly and faithfully, and according to the best of my skill and power, execute the office of judge of the surrogate court of the county (or united counties, as the case may be) of , so help me God."

Surrogate Clerk and Registrars.

8. There shall be a clerk, to be called the surrogate clerk, who shall perform the duties required of the surrogate clerk by this Act, as well as the duties that by the rules and orders heretofore in force relating to surrogate courts, or to be hereafter made under this Act, are required of such surrogate clerk, and also such other duties as may be required of him by the High Court: and the surrogate clerk shall be deemed an Surrogate clerk to be appointed, his duties.

MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



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CANADIAN ACT.]

officer of the High Court, and the Lieutenant-Go
shall from time to time appoint and, at his pl
remove such clerk.

Who to be registrar.

9.—(1) Subject to the provisions of the next
on the death, resignation, or removal of the re
of a surrogate court, the clerk of the county cou
be *ex officio* registrar of the surrogate court; b
provision shall not apply to the Registrar
Surrogate Court of the County of York, or to th
of the county court of the said county.

County of York.

(2) The Lieutenant-Governor may from time
appoint a Registrar of the Surrogate Court
County of York to hold office during pleasure, an
the death, resignation, or removal of such re
shall supply the vacancy.

When clerk of county court not to be *ex officio* registrar of the surrogate court.

10.—(1) In case the registrar of a surrogate
dies, resigns, or is removed from office, if the
fees, and allowances of the clerk of the county
and deputy clerk of the Crown, or the clerk
county court and local registrar of the High Co
the year terminating on the 31st day of Decemb
preceding the death, removal, or resignation
registrar of the surrogate court, amount to the
$1600, the clerk of the county court shall no
officio registrar of the surrogate court.

(2) The recital or statement in a commission
Lieutenant-Governor appointing a person to
office of registrar of the surrogate court of any
shall be conclusive evidence that such regist
comes within the provision of this section.

Oath of registrar.

11. Every registrar of a surrogate court shall
he shall be entitled or qualified to act as re
under this Act, take the following oath before th
of the court, or some other person authorized by
administer the same:—

"I, , do solemnly and sincerely
and swear that I will diligently and faithfully
the office of registrar of the surrogate court
county (or united counties, as the case may
, and that I will not knowingly pe
suffer any alteration, obliteration, or destructio
made or done by myself or others, on any wills o
mentary papers, or other documents or papers con
to my charge, so help me God."

Security to be given by registrars.

12.—(1) Every registrar of a surrogate court shall, before entering on the duties of his office, deliver to the treasurer of the province a bond or other security or securities in such sum and with such sufficient surety or sureties as may be approved of by the Lieutenant-Governor in Council for the due and punctual performance of the duties imposed upon such registrar by the Succession Duty Act, and that he will not receive any duty payable under the said Act, and the provisions of "the Act respecting public officers" relating to the giving of security by such officers shall, when not inconsistent with this Act, apply to such bonds or other securities.

(2) Any registrar heretofore appointed who has not heretofore delivered such bond or other security or securities shall deliver the same to the said treasurer forthwith.

Registrar's office.

13.—(1) The registrar of every surrogate court shall hold his office in the court house of the county, and a room therein shall be provided for that purpose, and, in the event of there being no room in the court house, every such registrar shall, until such room is provided, hold his office at such place as the judge of the court directs; and the office of every registrar shall be a depository for all wills of living persons given to the registrar for safe keeping, and all persons may deposit their wills in the said depository upon payment of such fees and under such regulations as may from time to time be directed by Rules or Orders in that behalf heretofore in force or hereafter made under this Act.

Office to be a depository for the wills of living persons.

Registrar of Essex.

(2) Provided, however, that the Registrar of the Surrogate Court of the County of Essex may keep an office in some convenient place in the city of Windsor, in the county of Essex, subject to such arrangements as the county council of the county of Essex may assent to, and subject also to the approval thereof by the Lieutenant-Governor in Council.

Registrars to preserve testamentary instruments, papers, etc.

14. The registrar of every surrogate court shall file and preserve all original wills and testamentary instruments of which probate or letters of administration with the will annexed are granted in such surrogate court, and all other papers used in any matter in such court, subject to such regulations as may from time to time be made by any Rules or Orders under this Act

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in relation to the due preservation thereof a convenient inspection of the same.

Registrars to transmit to surrogate clerk list of probates, etc.

15. On the third day of every month, or of required by any Rule or Order respecting su courts in force at the time of the passing of t or hereafter made under this Act, every regist surrogate court shall transmit by mail to the su clerk a list, in such form and containing such culars as may from time to time be required Rules and Orders, of the grants of probate and a tration made by such surrogate court up to t day of the preceding month, and not included previous return, and also a copy certified b registrar to be a correct copy of every will t any such probate or administration relates, a registrar shall in like manner make a return o revocation of a probate or administration.

Surrogate clerk and registrars not to take fees for drawing or advising on certain documents.

16. Neither the surrogate clerk or any regi the surrogate court shall for fee or reward c advise upon any will or other testamentary p upon any paper or document connected with th of his office for which a fee is not expressly all him by the tariff in that behalf.[147]

Jurisdiction and Powers of the Surrogate C

Testamentary jurisdiction to be exercised by the surrogate courts.

17. All jurisdiction and authority, volunta contentious, in relation to matters and cause mentary, and in relation to the granting or r probate of wills and letters of administration effects of deceased persons having estate or ef Ontario, and all matters arising out of or co with the grant or revocation of probate or adm tion, shall continue to be exercised in the nam Majesty in the several surrogate courts; but t vision shall not be construed as depriving th Court of jurisdiction in such matters.[148]

Powers and jurisdiction of surrogate courts.

18. The surrogate courts shall have full powe diction and authority:

(1) To issue process and hold cognizance of all relative to the granting of probates, and com letters of administration, and to grant probate and commit letters of administration of the p

[147] *Allen qui tam* v. *Jarvis*, 32 U. C. R. 56.

[148] *Perrin* v. *Perrin*, 19 Gr. 261, and *ante*, p. 339; *Wilson*, 13 P. R. 33.

of persons dying intestate, having property in Ontario, and to revoke such probate of wills and letters of administration.

(2) To hear and determine all questions, causes, and suits in relation to the matters aforesaid, and to all matters and causes testamentary; and

(3) Subject to the provisions herein contained, the courts shall also have the same powers, and the grants and orders of the said courts shall have the same effect throughout all Ontario, and in relation to the personal estate of deceased persons, as the former Court of Probate for Upper Canada, and its grants and orders respectively had in relation to those matters and to cause testamentary within its jurisdiction, and to those effects of deceased persons dying possessed of goods and chattels over $20 in value in two or more counties in Upper Canada; and all duties which by statute or otherwise were imposed on or exercised by the said Court of Probate or the judge thereof in respect of probate, administrations, and matters and causes testamentary, and the appointment of guardians and otherwise, shall be performed by the said several surrogate courts and the judge thereof within their respective jurisdictions; but no actions for legacies or for the distribution of remedies shall be entertained by any of the said surrogate courts.

To what particular court the grant of probate or administration shall belong.

19.—(1) The grant of probate or letters of administration shall belong to the surrogate court for the county in which the testator or intestate had, at the time of his death, his fixed place of abode.

(2) If the testator or intestate had no fixed place of abode in, or resided out of, Ontario at the time of his death, the grant may be made by the surrogate court for any county in which the testator or intestate had property at the time of his death.[149]

(3) In other cases the grant of probate or letters of administration shall belong to the surrogate court of any county.

When surrogate judge is entitled to probate, application to be made

20.—(1) When the person, or one of the persons, entitled to apply for probate of will or for letters of administration, is judge of the surrogate court having jurisdiction in the matter, and he does not renounce, application by him for such probate or letters, and

[149] A mortgage of lands held by deceased is property in the county where the lands lie so as to give the surrogate court of that county jurisdiction (*Re Thorpe*, 15 Gr. 80).

to judge in adjoining county.

any subsequent application in the matter of th by him, or any other person, may be made judge of the surrogate court for an adjoining who shall have the same authority in and ab such application, and generally in all matters co with the estate, as if he were the judge of th gate court having jurisdiction, and shall be en the same fees (to be paid in stamps in case commuted), as he would have been entitled t application had been made or proceedings h taken in the surrogate court of which he is jud

(2) All proceedings shall be carried on in th gate court having jurisdiction.

Effect of probate and administration.

21. Probate, or letters of administration, b ever court granted, shall, unless revoked, hav over the property of the deceased in all parts of subject to limitation under section 61 of this otherwise.

Power to try by Jury.

Courts may cause questions of fact to be tried by a jury.

22. Every surrogate court may cause any of fact arising in any proceeding under this A tried by a jury before the judge of the court; a order being made allowing a trial by jury, su shall take place at some ensuing sittings of th court for the county, and be conducted in t manner as other trials by jury in the county co the parties shall be entitled to their right of ch and for all purposes of or auxiliary to the questions of fact by a jury before a judge surrogate court, and in respect of new trials, surrogate courts and the judges thereof resp shall have the same jurisdiction, power, and a in all respects as belong to the county courts, judges thereof, for like purpose.

Procedure on trial.

23. When such question is ordered to be tr jury before the judge of a surrogate court, the shall be reduced into writing in such form as directs, and at the trial the jury shall be try the said question, and a true verdict given according to the evidence; and upon every s the judge of the surrogate court shall have powers, jurisdiction, and authority as belon judge of a county court sitting for the trial of fact.

Terms.

Terms prescribed.

24.—(1) In order that certain stated times may be fixed for hearing and determining matters and causes in contentious cases and business of a contentious nature in the surrogate courts, there shall be four terms or times of sitting in each year for the purposes aforesaid, which (except in the county of York) shall severally commence on the second Monday in the month of January, and the first Monday in the months of April, July, and October, and end on the Saturday of the same week.

In the county of York.

(2) The terms of the Surrogate Court of the County of York shall commence on the second Monday in January, June, and October, and the first Monday in April in each year, and shall end on the Saturday of the same week.

Giving judgment.

(3) The judges of the several courts may appoint one or more days for the giving of judgment in the same way as is provided by law in respect to county courts.

Witnesses, Evidence, etc.

Attendance of parties or witnesses.

25. Every surrogate court may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may either before or after, or with or without such examination, cause them or any of them to be examined on interrogatories, or receive their or any of their affidavits, or solemn affirmations, as the case may be; and each of the said courts may, by writ of *subpœna* or *subpœna duces tecum* (as the case may be) require such attendances and the production of any deeds, evidence, or writings, before such court or otherwise.

Production of deeds and instruments, etc.

Orders and proceedings in respect to the production of instruments purporting

26.—(1) Whether any suit or other proceeding is or is not pending in the court with respect to any probate or administration, every surrogate court may, on motion or petition, or otherwise in a summary way, order any person to produce and bring before the registrar of the court or otherwise, as the court may

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to be testamentary.

direct, any paper or writing being or purporti
testamentary, which may be shown to be in th
sion or under the control of such person.

Examination of persons touching such instruments.

(2) If it is not shown that any such paper or
is in the possession or under the control of such
but if it appear that there are reasonable gro
believing that he has knowledge of any such
writing, the court may direct such person to at
the purpose of being examined before the regi
in open court, or upon interrogatories respec
same, and such person shall be bound to answ
questions or interrogatories, and, if so ord
produce and bring in such paper or writing, a
be subject to the like process of contempt in
default in not attending or in not answeri
questions or interrogatories, or not bringing
paper or writing, as he would have been subje
case he had been a party to a suit in the court
made such default; and the costs of such
petition, or other proceeding, shall be in the d
of the court.

Administration of oaths.

27. The judges and registrars of the s
courts shall have full power to administer
matters and causes testamentary, and in a
matters in any of the said courts; and comm
for taking affidavits in the High Court, and
public, shall also have full power respectivel
minister oaths in all matters and causes testa
and in all other matters in the courts t
desirous of making affidavits or deposition bef
respectively.

Evidence in Contentious Matters.

Mode of taking evidence in contentious matters.

28. Subject to the regulations established
Rules and Orders heretofore in force respectin
gate courts, or hereafter to be made under t
the witnesses, and, where necessary, the parti
contentious matters where their attendances
had, shall be examined orally by or before the
the surrogate court in open court; and subjec
such regulations as aforesaid, the parties ma
their respective cases by affidavit; but the
in every such affidavit shall, on the applicatio
opposite party, be subject to be cross-e

by or on behalf of the opposite party orally in open court as aforesaid, and, after such cross-examination, may be re-examined orally in open court as aforesaid, by or on behalf of the party by whom such affidavit was filed.

Commissions to examine Witnesses.

Courts may issue commissions for the examination of witnesses.

29. When a witness in any such matter is without the limits of Ontario, or when by reason of his illness or otherwise, the court does not think fit to enforce the attendance of the witness in open court, the surrogate court may order a commission to issue for the examination of such witness on oath upon interrogatories or otherwise, or if the witness be within the jurisdiction of the court, may order the examination of such witness on oath upon interrogatories, or otherwise before any person to be named in such order for the purpose.

Provisions of certain Acts to apply.

30. All the powers given to the county courts by law for enabling the said courts to issue commissions, and make orders for the examination of witnesses in actions defending in such courts, and to enforce such examination, and all the provisions of law relating to county courts for enforcing examinations or otherwise applicable thereto, and to the witnesses examined, shall extend and be applicable to the surrogate courts, and to the examination of witnesses under the commissions and orders of the said courts, and to the witnesses examined, as if such courts were county courts, and the matters before them respectively were an action pending in a county court.

Rules of Evidence.

Rules of evidence in High Court to be observed.

31. The rules of evidence observed in the High Court shall be applicable to and observed in the trial of all questions of fact in the surrogate courts.

Orders and Judgments how enforced.

Power of court to enforce orders and judgments, etc.

32. Every surrogate court shall have the like powers, jurisdiction, and authority for enforcing the attendance of persons required by it as aforesaid, and for punishing persons failing, neglecting, or refusing to produce deeds, evidences, or writings, or refusing to appear, or to be sworn, or to make affirmation or to give evidence,

or guilty of contempt, and generally for enforci
orders and judgments, made or given by the
under this Act, or under any other Act giving ju
tion to surrogate courts, and otherwise in relat
the matters to be inquired into and done by or
the orders made under this Act, as are vested
county courts.

Reference or Removal to the High Court.[150]

In cases of contention the matter may, by consent, be referred for adjudication to the High Court.

33. In every case in which there is contentio
the grant of probate or administration, and the
in such case thereto agree, the contention sh
referred to and determined by the High Cour
case to be prepared, and the surrogate court
jurisdiction in the matter shall not grant prob
administration until the contention is terminat
disposed of by judgment or otherwise.

In certain cases of contention, matter may be removed into High Court.

34.—(1) Any cause or proceeding in surrogate
in which any contention arises as to the g
probate or administration, or in which any di
question may be raised (as to law or facts), rela
matters and causes testamentary, shall be rem
by any party to the cause or proceeding into th
Court by order of a judge of the said court,
obtained on a summary application suppor
affidavit, of which reasonable notice shall be g
the other parties concerned.

Terms as to costs.

Certain cases not to be so removed.

(2) The judge making the order may impo
terms as to payment or security for costs or ot
as to him seems fit; but no cause or proceeding
so removed unless it is of such a nature and
importance as to render it proper that the same
be withdrawn from the jurisdiction of the su
court and disposed of by the High Court, no
the property of the deceased exceeds $2000 in v

Power of High Court.

35. Upon any cause or proceeding being so
the High Court shall have full power to deter
same, and may cause any question of fact
therein to be tried by a jury, and otherwise
the same as with any cause or claim originally
in the said court; and the final order or ju

Transmission of final order to surrogate court.

[150] *Re Beckwith*, 5 U. C. L. J. (1859); *In re Eccles*, 1
376; *Re O'Brien*, 3 O. R. 326; *Meir v. Wilson*, 13 P.
McLeod, 14 C. L. T. O. N. 471; *In re Nixon*, 13 P. R.

made by the said court in any cause or proceeding removed as aforesaid, shall, for the guidance of the surrogate court, be transmitted by the surrogate clerk to the registrar of the surrogate court from which the cause or proceeding was removed.

Appeals to the High Court.[151]

Persons considering themselves aggrieved by any judgment, etc., may appeal to the High Court.

36. Any person considering himself aggrieved by any order, sentence, or judgment of a surrogate court, or being dissatisfied with the determination of the judge thereof in point of law, in any matter or cause under this Act, may within fifteen days next after such order, sentence, judgment, or determination, appeal therefrom to a divisional court of the High Court in the manner of and subject to the regulations provided for by the Rules and Orders respecting the surrogate courts heretofore in force, or by Rules or Orders made under this Act, and the said court shall hear and determine such appeal; but no such appeal shall be had or lie unless the value of the property, goods, chattels, rights, or credits to be affected by such order, sentence, judgment, or determination exceeds $200.

Appeal not to lie in certain cases.

Practice.

Proofs to lead grant.

Practice of the courts, general rule as to.

37. Unless otherwise provided by this Act, or by the Rules or Orders respecting surrogate courts heretofore in force or heretofore to be made under this Act, the practice of the surrogate courts shall, so far as the circumstances of the case will admit, be according to the practice in her Majesty's Courts of Probate in England, as it stood on the 5th day of December, 1859.

Proof, etc., requisite on obtaining grant of probate or administration when deceased resided in Ontario.

38. On every application to a surrogate court for probate of will or letters of administration when the testator or intestate was resident in Ontario at the time of his death, the place of abode of the testator or intestate at the time of his death shall be made to appear by affidavit of the person or some one of the persons making the application; and thereupon and upon proof of the will, or in case of intestacy upon proof that the deceased died intestate, probate of the will or letters of administration (as the case may be) may be granted under the seal of the surrogate court to which the application has been so made; and the probate or

[151] See S. C. R., *post*, p. 836.

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Effect of probate or administration.

letters of administration shall have effect ov
property of the deceased in all parts of Ontario,
to limitations under s. 61 of this Act or otherwis

When testator, etc., had no fixed place of abode in or resided out of Ontario, upon what proof probate or administration to be granted, etc.

39. On every application for probate of a
letters of administration where the testator or in
had no fixed place of abode in or resided out of
at the time of his death, the same shall be m
appear by affidavit of the person or some one
persons applying for the probate or administ
and that the deceased died leaving personal
property within the county in the surrogate c
which the application is made, or leaving no p
or real property in Ontario (as the case may b
that notice of the application has been publis
least three times successively in the *Ontario*
and thereupon and upon proof of the will, or in
intestacy upon proof that the deceased died int
probate of the will or letters of administration,
case may be, may be granted under the seal
surrogate court, and the probate or letters of a
tration shall have effect over the property
deceased in all parts of Ontario, subject to lim
under section 61 of this Act or otherwise.

Affidavit grounding application for grant to be conclusive for exercise of jurisdiction if acted on.

40. The affidavit as to the place of abo
property of a testator or intestate under th
preceding two sections for the purpose of g
particular court jurisdiction shall be conclusive
purpose of authorizing the exercise of such juris
and no grant of probate or administration shall b
to be recalled, revoked, or otherwise impeached by
that the testator or intestate had no fixed p
abode within the particular county at the time
death, or had no property therein at the time
death, and every probate and administration
by a surrogate court shall effectually dischar
protect all persons paying to or dealing wi
executor or administrator thereunder, notwiths
the want of or effect in such affidavit as is
required; but in case it is made to appear to
of a surrogate court before whom any matter i
ing under this Act, that the place of the test
intestate or the situation of his property has n
correctly stated in the affidavit, the judge may
further proceedings, and make such order as
costs of the proceeding before him as he thinks

Judge may stay proceedings in case of incorrect statement.

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Proof, etc., requisite for obtaining grant to party not next-of-kin to intestate.

41. In case application is made for letters of administration by a person not entitled to the same as next-of-kin to the deceased, the next-of-kin or others having or pretending interest in the property of the deceased resident in Ottawa, shall be cited or summoned to see the proceedings, and to show cause why the administration should not be granted to the person applying therefor; and if neither the next-of-kin nor any person of the kindred of the deceased happens to reside in Ottawa then a copy of the citation or summons shall be served in such manner as may be provided by the Rule and Orders in that behalf.

Temporary administration in certain cases.

42. If the next-of-kin usually residing in Ontario and regularly entitled to administer, happens to be absent from Ontario, the surrogate court having jurisdiction in the matter may in its discretion grant a temporary administration, and appoint the applicant, or such other person as the court thinks fit, to be administrator of the property of the deceased person for a limited time, or to be revoked upon the return of such next-of-kin as aforesaid.

Security to be given.

43. The administrator so appointed shall give such security as the court directs, and shall have all the rights and powers of a general administrator, and shall be subject to the immediate control of the court.

Notice of Application.

As to transmission of notice of applications for grants of probates, etc., to surrogate clerk by registrars.

44. In case of an application to a surrogate court for the grant of probate or administration, notice thereof shall by the registrar of the court, by letter postpaid, be transmitted to the surrogate clerk by the next post after the application, and the notice shall specify the name and description or addition, if any, of the testator or intestate, the time of his death, and the place of his abode at his decease, as stated in the affidavit or affidavits made in support of the application and the name of the person by whom the application has been made, such other particulars as may be directed by the Rules and Orders in that behalf.

Proceedings to be stayed till certificate received from surrogate clerk.

45. Unless upon special order or judgment of the surrogate court, no probate or administration shall be granted in pursuance of the application until the registrar has received a certificate, under the hand of

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the surrogate clerk, that no other application a to have been made in respect of the goods of th deceased person, which certificate the surrogat shall forward as soon as may be to the registrar.

Surrogate clerk to file notices.

46. All notices in respect of applications several surrogate courts shall be filed and kept surrogate clerk.

Duty of surrogate clerk with reference to notices.

47. The surrogate court shall, with refere every such notice, examine all notices of such a tions received from the several other surrogate registrars, so far as appears to be necessary, to tain whether or not application for probate or ad tration in respect of the property of the same de person has been made in more than one surrogate or whether the notice of an appointment by th Court has been received, and he shall commu with the surrogate court registrar as occasio require in relation to such applications, and pointments by the High Court shall be noted surrogate clerk in the application book.

Appointments by High Court to be noted.

Proceedings if application has been made to more than one surrogate court.

48. In case it appears by the certificate surrogate clerk that application for probate ministration has been made to two or more sur courts, the judge of such courts respectively sha proceedings therein, leaving the parties to apply of the judges of the High Court to give such di in the matter as to him seems necessary.

Judgment as to what court shall have jurisdiction.

49. On application made to such judge of th Court, he shall inquire into the matter in a su way, and adjudge and determine what surrogate has jurisdiction, and shall proceed in the matter.

Order as to costs.

50. The judge of the High Court may order c be paid by any of the applicants, and the orde be enforced by the High Court.

Judge's decision to be final.

51. The determination of the judge shall be fin conclusive, and the surrogate court shall without transmit a certified copy thereof to the registr the several surrogate courts wherein such applic as aforesaid have been made.

Caveats.

Practice respecting caveats.

52. Caveats against the grant of probate or administration may be lodged with the surrogate clerk or with the registrar of any surrogate court, and, subject to any Rules or Orders under this Act, the practice and procedure under such caveats shall, as nearly as may, correspond with the practice and procedure under caveats in use on the 5th day of December, 1859, in her Majesty's Court of Probate in England.

Notice of caveats to be transmitted to the proper surrogate courts.

53. Upon a caveat being lodged in a surrogate court, the registrar of the court shall without delay send a copy thereof to the surrogate clerk to be entered among the caveats lodged with him, and upon notice of an application being received from the registrar of a surrogate court under section 44, the surrogate clerk shall without delay forward to the registrar notice of any caveat that has been so lodged as aforesaid touching such application, and a notice shall accompany or be embodied with the certificate mentioned in section 45.

Proof of Wills in Solemn Form.

When a will affecting real estate is proved in solemn form, or is the subject of contentious proceedings, heirs, etc., may be cited.

54. When proceedings are taken under the Act for proving a will in solemn form, or for revoking the probate of a will on the ground of the invalidity thereof, or when in any other contentious cause or matter under this Act the validity of a will is disputed, unless the will affects only personal estate, the heir or heirs-at-law, devisees, or other persons having or pretending to have any interest in the real estate affected by the will, may, subject to the provisions of this Act and to the Rules and Orders relating to surrogate courts heretofore in force or hereafter to be made under this Act, be cited to see proceedings or be otherwise summoned in like manner as the next-of-kin or others having or pretending interest in the personal estate affected by a will should be cited or summoned, and may be permitted to become parties, subject to such Rules and Orders and to the discretion of the court; but nothing herein contained shall make it necessary to cite the heirs-at-law or other persons having or pretending interests in the real estate of a deceased person, unless the court, in reference to the circumstances of the case, directs the same to be done.

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Copies of Wills.

Official copy of the whole or part of a will may be obtained.

55. An official copy of the whole or any pa will, or an official certificate of the grant of any of administration, may be obtained from the re of the surrogate court when the will has been or the administration granted, on payment of su as may be fixed for the same by the Rules and heretofore in force or hereafter to be made und Act.

Administration Pendente Lite.

Administration *pendente lite* may be granted.

56. Pending an action touching the validity will of any deceased person, or for obtaining, re or revoking any probate or grant of administ the court in which an action is pending may a an administrator of the property of the de person; and the administrator so appointed sha all the rights and powers of a general admini other than the right of distributing the residue

Rights and powers of the administrator.

property; and every such administrator shall b ject to the immediate control of the court a under its direction; and the court may direc such administrator shall receive out of the pr of the deceased such reasonable remuneration court thinks fit.

Administration with the Will annexed.

Administration with the will annexed, practice as to, etc.

57. When administration is granted with th annexed, a bond shall (unless it is otherwise pr by law) be given to the judge of the court as in cases and with like effect, and unless otherwise pr for by this Act or by the Rules or Orders relat surrogate courts from time to time in force, the p and procedure in respect to such administratio in respect to such bonds and the assignment t shall, so far as the circumstances of the case will be according to the practice in such cases Majesty's Court of Probate in England on the fif of December, 1859.

Applicant for administration to depose to value of the realty in certain cases.

58. In every case where any person applies appointed an administrator with the will anne a person who died before the 1st day of July and a bond is by law required to be given, he s

his application state, and in his affidavit of the value of the property devolving shall depose to, the value or probable value of all the real estate over which, or over any estate in which, the executor or executors named in the will or codicil were by the said will or codicil clothed in any power or disposition, or of all the real estate which, in case of no executor being appointed, was by the will or codicil directed to be disposed of, without any person being appointed to effect such disposition; and in every such case the bond to be given by such person upon his obtaining a grant of administration with the said will annexed, shall, as respects the amount of the penalty of the bond, and the justification of the sureties, include the amount of the value or probable value so stated and deposed to, and the condition of the bond, in addition to the other provisions thereof, shall provide that the administrator shall well and truly pay over and account for, to the person or persons entitled to the same, all moneys and assets to be received by him for or in consequence of the exercise by him of any power over real estate created by the will or codicil, and which may be exercised by him.

Power on Appointment of Administrator.

General power as to appointment of administrator under special circumstances.

59. When a person has died wholly intestate as to his property, or leaving a will affecting property, but without having appointed an executor thereof willing and competent to take probate, or where the executor was at the time of the death of such person resident out of Ontario, and it appears to the court to be necessary or convenient in such case, by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the property of the deceased, or of any part of such property other than the person who if this section had not been enacted would by law have been entitled to a grant of administration to such property, it shall not be obligatory upon the court to grant administration of the property of such deceased person to the person who if this section had not been enacted would by law have been entitled to a grant thereof, but the court in its discretion may appoint such person as the court thinks fit upon his giving such security (if any) as the court directs, and every such administration may be as limited as the court thinks fit.

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After grant of administration no person to act as executor.

60. After a grant of administration no perso
have power to sue or prosecute any action, or otl
act as executor of the deceased as to the proper
fined in or affected by such grant of administ
until such administration has been recalled or r

Administration limited to personal estate.

61. A person entitled to take out letters of a
tration to the estate of a deceased person s
entitled to take out such letters limited to the p
estate of the deceased exclusive of the real estat

Revocation of Temporary Grants.

Revocation of temporary grants of administration not to prejudice actions.

62. In case, before revocation of any ten
administration, proceedings have been commen
or against the administrator so appointed, the c
which the proceedings are pending may order
suggestion be made upon the record or invoca
such administration, and of the grant of pro
administration which has been made consequent
upon, and the proceedings shall be continued
name of the new executor or administrator
manner as if the proceedings had been original
menced by or against such new executor or a
trator, but subject to such conditions and va
if any, as the court may direct.

Validity of Payments under Revoked Gra

Payments under probate or administration afterwards revoked to be valid.

63. In case any probate or administration is
under this Act, all payments *bona fide* made
executor or administrator under such prob
administration before the revocation thereof,
a legal discharge to the person making the sam
the executor or administrator who has acted und
revoked probate or administration may reta
reimburse himself in respect of payment made
which the person to whom probate or admini
may be afterwards granted might have lawfull

Persons, etc., making payment upon probate granted indemnified, etc.

64. All persons and corporations making
mitting to be made any payment or transfer b
upon any probate or letters of administration
in respect of the estate of any deceased perso
the authority of this Act, shall be indemnified a
tected in so doing, notwithstanding any d

circumstance whatsoever affecting the validity of the probate or letters of administration.

Executor renouncing.

Right of executor renouncing probate to cease absolutely.

65. When a person renounces probate of the will of which he is appointed executor (or one of the executors), his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may without any further renunciation go, devolve, and be committed in like manner as if he had not been appointed executor.

Removal of Executor or Administrator.

Power to remove executors or administrators in certain cases.

66.—(1) The surrogate court by which the grant of probate or letters of administration was made shall, when the entire estate left by the testator or intestate does not exceed $1000, have the like authority for the removal of an executor or administrator as is by section 39 of the Judicature Act conferred upon the High Court, but nothing in this section contained shall affect the jurisdiction of a surrogate court to revoke a grant of probate or of letters of administration in any case where prior to the seventh day of April, 1896, it possessed such authority.

(2) Where the executor or administrator removed is not a sole executor or administrator the Court need not, unless it sees fit, appoint any person to act in the room of the person removed, and no such appointment is made, the rights and estate of the executor or administrator removed shall pass to the remaining executor or administrator, as if the person so removed had died.

Practice.

(3) Subject to rule made under this Act, the practice in the surrogate courts under this section shall be the same as nearly as may be as the practice in force in respect of proceedings for the revocation of grants of probate.

Executor of an executor.

(4) The executor of any person appointed an executor under this section shall not by virtue of such executorship be an executor of the estate of which his testator was appointed executor under this section, whether such person acted alone or was the last survivor of several executors.

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Order for removal.

67. A certified copy of the order of removal filed with the surrogate clerk, and another copy registrar of the surrogate court by which pr administration was granted, and such officers or upon the entry of the grant in the reg their respective offices, make in red ink a sh giving the date and effect of the order, and s make a reference thereto in the index of the at the place where such grant is indexed.

Securities.

Repeal of certain provisions requiring sureties for administrators.

68. So much of the Act passed in the twe year of King Henry the Eighth and chaptere of the Act passed in the twenty-second and third year of King Charles the Second and c 10, and of the Act passed in the first year James the second and chaptered 17, as requ surety, bond, or other security to be taken person to whom administration may be co shall not extend to or be in force in Ontario.

Persons receiving grants of administration to give a bond, etc.

69. Except when otherwise provided by la person to whom a grant of administration is co shall give a bond to the judge of the surroga from which the grant is made, to enure for th of the judge of the court for the time being (o of the separation of counties, to enure for the b any judge of a surrogate court to be named by Court for that purpose), with one or more s sureties as may be required by the judge of su gate court, conditioned for the due collecting, g and administering the real and personal estat deceased, and the bond shall be in the form p by the rules and orders now in force or hereaf under this Act; and in cases not provided for rules and orders, the bond shall be in such for judge of the surrogate court may by speci direct.

Penalty in bonds, etc., and as to dividing liabilities of sureties.

70. Subject to the provisions of section 5 Act, the bond shall be in a penalty of do amount under which the real and personal es effects of the deceased have been sworn, u judge thinks fit to direct (as he may do) that shall be reduced, and the judge may also di more bonds than one may be given, so as to

liability of any surety to such amount as the judge thinks reasonable.

Power of surrogate courts as to assignment of bonds.

71. The judge, on application made on motion or petition in a summary way, and on being satisfied that the condition of the bond has been broken, may order the registrar of the court to assign the same to some person to be named in the order, and such person, his executors or administrators, shall thereupon be entitled to sue on the said bond in his own name, as if the same had originally been given to him, instead of to the judge of the court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach of the condition of the bond; and all bonds heretofore given or taken in any surrogate court, and now in force, may in like manner be assigned under the authority of the judge of a surrogate court, and the assignee shall be entitled to sue and recover thereon in his own name, and the same may be enforced in the same way and to the same extent as bonds given under this Act.

(*As to Bonds and Guarantee Companies, see Cap.* 220.)

Accounts of Executor or Administrator.

Approval of accounts by surrogate judge to be binding in High Court.

72. When an executor or administrator has filed in the proper surrogate court an account of his dealings with the estate of which he is executor or administrator, and the judge has approved thereof, in whole or in part, if the executor or administrator is subsequently required to pass his accounts in the High Court, such approval, except so far as mistake or fraud is shown, shall be pending upon any person who was notified of the proceedings taken before the surrogate judge, or who was present or represented thereat and upon every one claiming under any such person.

Passing accounts.

73.—(1) Notwithstanding anything to the contrary contained in any bond or other accounts heretofore or hereinafter made and entered into with respect to the administration of an estate, or in any letters probate or letters of administration, no executor or administrator shall be compellable to render an account of his executorship or administration to the surrogate court within eighteen months, except in cases in which a party interested in an estate takes proceedings to obtain an

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inventory and accounting, or in which infant interested in such inventory and accounting.

Condition of bond.

(2) The oaths to be taken by executors and administrators, and the bonds or other security to be given administration, and letters probate and letters administration hereafter issued, shall require executor and administrator to render a just and account of his executorship or administration when thereunto lawfully required.

Estates of Small Value.

Proceedings in surrogate court for administration.

74. When the whole estate and effects, real personal, of any testator or intestate do not exceed value the sum of $400, his widow, or one or more his children or next-of-kin or his executors, or trustee, or duly authorized solicitor or agent of widow, child, next-of-kin, or executors, may apply the judge of the surrogate court of the proper county and the registrar of the said court shall fill up usual papers required by the surrogate court to to a grant of probate of the will of the testator letters of administration of the estate and effects the said testator or intestate, and shall swear applicant and attest the execution of the administration bond according to the practice of the said and shall then transmit a notice of the application by post to the surrogate clerk at Toronto, and registrar, on obtaining the approval or order of judge of the surrogate court, shall in due course out and seal the probate of the will of the testator letters of administration of the estate and effects the testator or intestate, to be delivered to the so applying for the same without the payment of fee for the same, save as is provided by section this Act.

Proof of relationship.

Judge to be satisfied that the value of the estate is less than $400.

75. The judge of the surrogate court may require such proof as he may think sufficient to establish identity and relationship of the applicant; and if judge has reason to believe that the whole property which the testator or intestate died possessed exceeds in value the sum of $400, he shall refuse to proceed with the application under the last preceding section until he is satisfied as to the real value thereof.

76. Such fees as the Lieutenant-Governor in Co

may think proper shall be payable to the judges and registrars of the surrogate courts, on proceedings under sections 74 and 75, but the total amount for all proceedings and services to be charged to applicants shall not in any one case exceed the sum of $2. Scale of fees.

77. Where the whole estate of the testator or intestate exceeds in value the sum of $400, but does not exceed $1000, the fees payable to the registrar and to the judge on proceedings under this Act, in non-contentious cases, shall be one-half of the fees payable on the fifth day of May, 1894, in the case of any estate not exceeding in value the sum of $1000. Fees of registrar and judge when estate under $1000.

Ancillary Probates and Letters of Administration.

78. Where any probate or letters of administration or other legal document purporting to be of the same nature, granted by a court of competent jurisdiction in the United Kingdom, or in any province or territory of the Dominion, or in any other British province, is produced to, and a copy thereof deposited with, the registrar of any surrogate court of this province, and the prescribed fees are paid as on a grant of probate or administration, the probate or letters of administration or other document aforesaid, shall, under the direction of the judge, be sealed with the seal of the said surrogate court, and shall thereupon be of the like force and effect in Ontario, as respects personal estate only, as if the same had been originally granted by the said surrogate court of this Province, and shall (so far as regards the province) be subject to any order of the last mentioned court, or on appeal therefrom, as if the probate or letters of administration had been granted thereby. Manner of giving effect to grants of probate, etc., of English or Colonial courts.

79. The letters of administration shall not be sealed with the seal of the said surrogate court until a certificate has been filed under the hand of the registrars of the court which issued the letters, that security has been given in such court in a sum of sufficient amount to cover as well the assets within the jurisdiction of such court as the assets within Ontario, or in the absence of such certificate, until like security is given to the judge of the surrogate court covering the assets in Ontario, as in the case of granting original letters of administration. Security required.

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[*Proclamation bringing 51 Vict. c. 9 into full published in Gazette, 27th May, 1893. For order Majesty in Council applying "The Colonial Pr Act, 1892," to the province of Ontario, and for under that Act, see Statutes of Ontario, 1895.*]

Fees and Costs.

As to fees payable to the Crown.

80.—(1) The fees mentioned in schedule A t Act shall be payable to the Crown in stamps, s to the provisions of *the Act respecting Law Stam* proceedings under this Act.

Stamp to be attached to order for grant.

(2) The stamps for all fees payable to the Cro respect of a grant of probate or administration sh affixed to the order for the grant, and not t probate or letters of administration.

As to fees to be taken by judge, etc., to their own use.

81. Subject to the provisions of sections 74 to section 82, the judges of the several surrogate may demand and take to their own use the fees tioned in schedule B to this Act, and such fees sh collected by the registrars of the said courts before each proceeding and paid over to the j and annual returns of such fees, up to the 31st December in each year, shall be made by the regi on or before the 1st day of February in each yea

On what property fees to be charged.

82. The fees payable on proceedings under th shall be based on the amount of what, before t day of July, 1886, was personal property.

Commutation of fees of judge.

83.—(1) The Lieutenant-Governor in Council with the consent of any county court or sur court judge, commute the fees payable to him this Act for a fixed annual sum, such sum exceed the income derived from such fees in preceding year, and any sum so fixed may, as vac occur, be rescinded, or may be varied, and the a increased or diminished; provided that in no cas any Order in Council name a sum exceeding the re for fees during some preceding year.

(2) In case of commutation, the like sums an theretofore payable to the judge shall continue payable, and shall be paid in stamps, subject provisions of *the Act respecting Law Stamps.*

(3) Where there is no commutation, and th aforesaid exceed the sum of $1000 in any yea

excess shall be received by the registrar and paid over to the treasurer of the Province for the use of the Province.

(4) The preceding sub-section shall not apply so as to reduce the amount payable to the judge in any year to a sum less than the aggregate amount of the fees payable to him for such year, in respect of fees provided for by the Consolidated Statutes of Upper Canada, chapter 16, schedule "B," and exclusive of the additional fees assigned to surrogate judges by the Act passed in the fortieth year of Her Majesty's reign, chapter 7, schedule A.

Payment of part of fees to junior county judges.

84.—(1) Where the fees payable to a surrogate judge exceed the sum of $1000, a sum not exceeding $600 may, on the authority of an Order in Council, be paid out of the excess to the junior judge (if any) of the county, whether there has or has not been a commutation of fees as regards the senior judge.

(2) The Order in Council shall be laid before the Legislative Assembly, as provided by section 187 of the Judicature Act.

Fees to officers.

85. The registrars and officers of the surrogate courts, and barristers and solicitors practising therein, shall be entitled to take, for the performance of duties and services under this Act, such fees as may be fixed under the provision hereinafter contained.

Table of fees continued.

86.—(1) The table of fees and costs framed by the board and county judges mentioned in section 305 of *the Division Courts Act*, and approved by the judges of the Supreme Court of Judicature on the 6th day of February, 1892, as the fees and costs to be taken by the registrars and officers of the surrogate courts, and to be allowed to solicitors and counsel practising therein for duties and services in respect of proceedings in the said courts, and to witnesses therein, are hereby continued, until altered under the authority of this Act; and no other fees than those specified and allowed in the tables or than the altered fees (as the case may be) shall be taken or received by such registrars, officers, solicitors, and counsel.

No other fees to be taken until altered.

Registrars, Officers, Solicitors, and Counsel.

(2) The said board or the board of county judges appointed under section 306 of the said Act may from

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time to time alter and amend the said table
frame a new tariff in respect of the said n
any of them, or may frame rules for regul
practice and procedure in the surrogate court

(3) The board or any three of them shall
the judges authorized to make rules under se
or section 125 of *The Judicature Act*, any rule
so framed, or any alteration thereof, and a
authorized to make rules under the said
approve, disallow, or amend any such rules,
alterations.

(4) Any rules, tariff, or alteration so appro
amended and approved, shall have the same
effect as if it had been enacted by the legis
this Province.

Taxation of costs.

87. The bill of any solicitor for any fees, c
disbursements in respect of business transa
surrogate court, whether contentious or othe
any matter connected therewith, shall, as well
solicitor and client as between party and
subject to taxation in such surrogate court,
mode in which the bill shall be referred for
and the person by whom the costs of taxat
be paid, shall be regulated by the rules and or
in force or to be hereafter made under this
the certificate of the registrars of the amount
the bill is taxed shall be subject to appeal to t
of the court.

Rules of Court.

Surrogate court rules.

88. The judges of the Supreme Court of Ju
and of the High Court respectively shall have
authority to make rules of court with respe
surrogate courts as, by section 122 of *The Ju*
Act, they have with respect to the High Co
may prescribe forms for carrying into effec
tention of *The Devolution of Estates Act*, an
Act so far as the said Acts may affect the pr
in the surrogate courts; and the judges auth
mentioned in section 125 of *The Judicature*
with respect to the surrogate courts have
authority.

Construction of Act.

89. If any of the provisions of this Act shall be found to be inconsistent with the provisions of *The Devolution of Estates Act*, this Act shall be construed so as to conform in all respects with the true intent and meaning of *The Devolution of Estates Act*. Construction of this Act.

Probate of wills and grants of administration are among the instruments referred to in "The Registry Act, 1893," 56 Vict. c. 21, s. 2, and may be registered upon the production of the probate or letters, or an exemplification thereof under the seal of any court in the province or in Great Britain and Ireland, or in any British province, colony, or possession, or in any foreign country having jurisdiction therein, and by the deposit of a copy of such probate, letters of administration or exemplification, with an affidavit verifying such copy, s. 70; and wills or probates registered within twelve months after the death shall be as valid against subsequent purchasers and mortgagees as if registered immediately after such death, further time being allowed in case of impediment referred to in s. 86.

Letters probate and letters of administration are *primâ facie* evidence of a will (*Stewart* v. *Lees*, 24 Gr. 433; and see *De Hart* v. *De Hart*, 26 C.P. 489).

Letters probate are evidence of the testator's death as well as of the will itself (*Davis* v. *Van Norman*, 30 N.C.R. 237). A copy of the probate will not be admitted in evidence (*Barber* v. *McKay*, 17 O.R. 562).

Apart from the administration of estates under the direction of the High Court, letters of administration constitute the sole authority for the administration of property of a person who has died intestate.

Letters probate or letters of administration with the will annexed have been held to be the indispensable and only recognizable evidence of his title or right to deal with the personalty (*Stump* v. *Bradley*, 15 Gr. 30).

SCHEDULE A.

SECTION 80.

Fees payable to the Crown.
On Proceedings in the Offices of Registrars.

On every application for probate or administration or for guardianship (including notice thereof to surrogate clerk, but not postage) $5.00

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On certificate of surrogate clerk upon such applica
(including transmission to registrar, but not postage) . .
On every instrument or process with seal of court . .
Entry and notification of caveat, not including postage .
On every grant of probate or administration as follows, viz.
When the property devolving is under $1000 . .
For every additional $1000 . . . . . .
On every final judgment in contentious or disputed cases
On deposit of wills for safe custody, each . . . . .

On Proceedings in the Office of the Surrogate Clerk

On every search for grant of probate, administration, guard
ship, or other matter in clerk's office (other than searches
application of registrars) . . . . . .
On every certificate of search or extract . . . . .
(If exceeding 3 folios, 10 cents for each additional folio
On every other certificate issued by the surrogate clerk .
On every order made on application to a judge in the H
Court, and transmission of same, exclusive of postage . .
On entry of every appeal . . . . . .
On every judgment on appeal and transmission, exclusiv
postage . . . . . .
On entry of caveat . . . . . .
On every judgment or order on appeal . . . . .

SCHEDULE B.

SECTION 81.

Fees allowed to Judge.

On every grant of probate or administration—
When the property devolving is under $1200 . .
When the property devolving is from $1200 to $3000
When the property devolving is from $3000 to $4000
And for every additional $1000, the additional sum of
On every appointment of a guardian . . . . .
On every order . . . . . .
On every special attendance, or attendance for purpose of a
For every day's sittings in contentious or disputed cases .

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THE WILLS ACT OF ONTARIO, R.S.O., 1897, c. 128.[152]

1. This Act may be cited as "The Wills Act of Ontario."

Wills before 1st January, 1874.

2. In the next succeeding three sections of this Act the word "land" shall extend to messuages and all other hereditaments, whether corporeal or incorporeal, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties or any of them, and to any estate of inheritance, or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right or title of entry or action, and to any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles and interests, or any of them, are in possession, reversion, remainder, or contingency.

3. Where a will made before and not re-executed, re-published, or revived after the 1st day of January, 1874, by any person dying after the 6th day of March, 1834, contains a devise in any form of words of all such real estate as the testator dies seized or possessed of, or of any part or proportion thereof, such will shall be valid and effectual to pass any land acquired by the devisor after the making of such will, in the same manner as if the title thereto had been acquired before the making thereof.

4. Where land is devised in any such will as aforesaid, it shall be considered that the devisor intended to devise all such estate as he was seized of in the same land, whether in fee simple or otherwise, unless it appears upon the face of such will that he intended to devise only an estate for life, or other estate less than he was seized of at the time of making the will containing such devise.

[152] See Canadian cases cited, *ante*, p. 601, *et seq.*

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5. Any will affecting land executed after day of March, 1834, and before the 1st day of J 1874, in the presence of and attested by two witnesses, shall have the same validity and eff executed in the presence of and attended b witnesses; and it shall be sufficient if the w subscribed their names in presence of eac although their names were not subscribed presence of the testator.

Wills by married women between 4th May, 1859, and 1st January, 1874.

6. After the 4th day of May, 1859, and be 1st day of January, 1874, every married woma by devise or bequest executed in the presence o more witnesses neither of whom was her h make any devise or bequest of her separate p real or personal, or of any rights therein, whet property was acquired before or after marriag among her child or children issue of any marri failing there being any issue, then to her hus as she might see fit, in the same manner as if s sole and unmarried.

Wills after 1st January, 1874.

7. Unless herein otherwise expressly provi subsequent sections of this Act shall not ex any will made before the 1st day of Januar but every will re-executed, or re-published, or by any codicil, shall, for the purposes of t sections, be deemed to have been made at the which the same was so re-executed, re-publi revived.

8. Sections 21, 22, 25, and 26 of this Act sh apply to the will of any person who was dead the 1st day of January, 1869, but shall apply will of every person who has died since t day of December, 1868, or who dies after the of this Act.

9. In the construction of the sections numbere inclusive in this Act—

Definitions.

(1) "Will,"

(2) "Real estate,"

(3) "Personal estate" follow the definitions Wills Act (Imp.), 1 Vict. c. 26, s. 1.

(4) "Mortgage" shall include any lien for

purchase money, and any charge, incumbrance, or obligation of any nature whatever upon the lands or tenements of a testator or intestate.

(5) "Person" and "testator" shall include a married woman.

10.	Imperial Act, 1 Vict. c. 26, s. 3.	Power to dispose of all property.
11.	" " " " 7.	Wills by infants invalid.
12.—(1)	" " " " 9.	Execution.
(2)	" " " " 1.	Signature.
13.	" " " " 10.	Appointments by will, how to be exercised.
14.	" " " " 11.	Wills and personalty of soldiers and sailors.
15.	" " " " 13.	Publication unnecessary.
16.	" " " " 14.	Will not invalid if witness incompetent.
17.	" " " " 15.	Gifts, etc., to witness invalid.
18.	" " " " 16.	Creditors competent witnesses.
19.	" " " " 17.	Executor competent witness.

Revocation by marriage.

20.—(1) Every will made by any person dying on or after the 13th day of April, 1897, shall be revoked by the marriage of the testator, except in the following cases, namely:—

(*a*) Where it is declared in the will that the same is made in contemplation of such marriage.

(*b*) Where the wife or husband of the testator elects to take under the will, by an instrument in writing signed by the wife or husband and filed within one year after the testator's death in the office of the surrogate clerk at Toronto.

(*c*) Where the will is made in the exercise of a power of appointment, and the real or personal estate thereby appointed would not, in default of such

CANADIAN ACT.]

appointment, pass to the testator's l
cutor or administrator, or the person
as the testator's next-of-kin under the
of Distribution.

(2) The will of any testator who died betw
31st day of December, 1868, and the 13th day
1897, shall be held to have been revoked by h
quent marriage, unless such will was made u
circumstances set forth in clause (*c*).

No revocation by change in circumstances. **21.** Imperial Act, 1 Vict. c. 26, s. 19.

How only will can be revoked. **22.** „ „ „ „ 20.

Obliterations, iuterlinca-tions, etc. **23.** „ „ „ „ 21.

Revival. **24.** „ „ „ „ 22.

No act as to property named in the will to pre-vent opera-tion of the will as to any interest left in testator. **25.** „ „ „ „ 23.

Will to speak from death. **26.**—(1) „ „ „ „ 24.

(2) This section shall apply to the will of a
woman made during coverture, whether she
not possessed of or entitled to any separate
at the time of making it, and such will shall no
to be re-executed or re-published after the dea
husband.

Lapsed devise to sink into residuary devise. **27.** Imperial Act, 1 Vict. c. 26, s. 25.

Leaseholds, when may pass under a general devise. **28.** „ „ „ „ 26.

A general devise of realty or personalty to include pro- **29.** „ „ „ „ 27.

perty over which testator has a general power of appointment.

30. Imperial Act, 1 Vict. c. 26, s. 28. General devise to pass whole estate in the land devised.

31. Where any real estate is devised by any testator, dying on or after the 5th day of March, 1880, to the heir or heirs of such testator, or of any other person, and no contrary or other intention is signified by the will, the words "heir" and "heirs" shall be construed to mean the person or persons to whom such real estate would descend under the law of Ontario in case of an intestacy. Meaning of "heir" in a devise of real estate.

32. Imperial Act, 1 Vict. c. 26, s. 29. Import of words "die without issue" or to that effect.

33. „ „ „ „ 30. When devise to trustee or executor shall pass whole estate of testator.

34. „ „ „ „ 31. When devise to a trustee shall pass the whole estate beyond what is requisite for the trust.

35. „ „ „ „ 32. When devise of estates tail shall not lapse.

36. „ „ „ „ 33. Gifts to issue who leave issue on testator's death shall not lapse.

37.—(1) Where any person has died since the 31st day of December, 1865, or hereafter dies seized of or entitled to any estate or interest in any real estate, which, at the time of his death, was or is charged with the payment of any sum or sums of money by way of mortgage, and such person has not, by his will or deed or other Mortgage debts to be primarily chargeable on the land.

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document, signified any contrary or other in
the heir or devisee to whom such real estate
or is devised shall not be entitled to have the
debt discharged or satisfied out of the persona
or any other real estate of such person, but
estate so charged shall, as between the different
claiming through or under the deceased pe
primarily liable to the payment of all mortga
with which the same is charged, every part
according to its value bearing a proportionate
the mortgage debts charged on the whole there

(2) Nothing herein contained shall affect or
any right of the mortgagee on such real e
obtain full payment or satisfaction of his
debt, either out of the personal estate of the p
dying as aforesaid, or otherwise; and nothing
contained shall effect the rights of any person
under or by virtue of any will, deed, or do
made before the 1st day of January, 1874.

Also liens for unpaid purchase money.

(3) When any person dies on or after the 13t
April, 1897, seized of or entitled to any es
interest in any real estate, which at the time
death is charged with the payment of any sum o
by way of equitable charge, including any
unpaid purchase money, the provisions of this
shall apply to such charge in the same manner
would be applicable if such charge were a mort

Consequence of direction that testator's debts be paid out of personalty.

38. In the construction of any will or deed
document to which the next preceding section
Act relates, a general direction that the debts
all the debts of the testator shall be paid ou
personal estate shall not be deemed to be a dec
of an intention contrary to or other than the
the said section contained, unless such contrary
intention is further declared by words expressl
necessary implication referring to all or some
testator's debts or debt charged by way of m
on any part of the real estate.

THE SAVINGS BANK ACT, 1861.

(24 VICT. s. 14.)

See note to Savings Bank Act, 1887, p. 739.

WILLS ACT, 1861.

(24 & 25 VICTORIÆ, C. 114.)
(Lord Kingsdown's Act.)

An Act to amend the Law with respect to Wills of Estate made by British Subjects. [6th Augu

Wills made out of the kingdom to be admitted if made according to the law of the place where made.

1. Every will and other testamentary instrument of the United Kingdom by a British subject (whatev the domicile of such person at the time of making or at the time of his or her death) shall as regards estate be held to be well executed for the purpose admitted in England and Ireland to probate, and in to confirmation, if the same be made according to required either by the law of the place where the made, or by the law of the place where such person eiled when the same was made, or by the laws then i that part of her Majesty's dominions where he had hi of origin.

Wills made in the kingdom to be admitted if made according to local usage.

2. Every will and other testamentary instrum within the United Kingdom by any British subject may be the domicile of such person at the time of m same or at the time of his or her death) shall personal estate be held to be well executed, and admitted in England and Ireland to probate, and in to confirmation, if the same be executed according to required by the laws for the time being in force in th the United Kingdom where the same is made.

Change of domicile not to invalidate will.

3. No will or other testamentary instrument shall be revoked or to have become invalid, nor shall the co thereof be altered, by reason of any subsequent domicile of the person making the same.

Nothing in this Act to invalidate wills otherwise made.

4. Nothing in this Act contained shall invalidat or other testamentary instrument as regards perso which would have been valid if this Act had not be except as such will or other testamentary instrume revoked or altered by any subsequent will or tes instrument made valid by this Act.

Extent of Act.

5. This Act shall extend only to wills and other tes instruments made by persons who die after the passi Act.

ARMY PRIZE (SHARES OF DECEASED) ACT, 1864.

(27 & 28 Vict. c. 36, s. 3.)

The commissioners of the Royal Hospital at *Chelsea* may in any case, if they think fit, authorise their treasurer or secretary to pay the share of prize money, not exceeding fifty pounds, belonging to any deceased officer, soldier, or other person, to or among any person or persons showing himself, herself, or themselves, to the satisfaction of the said commissioners, to be entitled thereto or to shares thereof (as the case may be), without probate of the will or letters of administration to the estate of any deceased person being obtained or taken out.

AN ACT TO AMEND THE ACT NINT
TENTH VICTORIA, CHAPTER NINETY
FOR COMPENSATING THE FAMI
PERSONS KILLED BY ACCIDENT: 1

(27 & 28 Vict. c. 95.)

9 & 10 Vict. c. 93.

Whereas by an Act passed in the session of holden in the ninth and tenth years of her Majesty's tituled "An Act for compensating the Families of Pe by Accident," it is amongst other things provided, such action as therein mentioned shall be for the the wife, husband, parent, and child of the person w shall have been so caused as therein mentioned, a brought by and in the name of the executor or ad of the person deceased: And whereas it may happe of the inability or default of any person to obtain the will or letters of administration of the personal effects of the person deceased, or by reason of the un or neglect of the executor or administrator of deceased to bring such action as aforesaid, that th persons entitled to the benefit of the said Act may thereof; and it is expedient to amend and extend t as herein-after mentioned: Be it therefore enac Queen's most Excellent Majesty, by and with the consent of the Lords spiritual and temporal, and C this present Parliament assembled, and by the auth same, as follows:

Where no action brought within six months by executor of person killed, then action may be brought by persons beneficially interested in result of action.

1. If and so often as it shall happen at any ti hereafter in any of the cases intended and provided said Act that there shall be no executor or admi the person deceased, or that there being such administrator no such action as in the said Act shall within six calendar months after the dea deceased person as therein mentioned have been and in the name of his or her executor or adminis and in every such case such action may be brought the name or names of all or any of the persons (if one) for whose benefit such action would have bee been brought by and in the name of such executor trator; and every action so to be brought shall

benefit of the same person or persons, and shall be subject to the same regulations and procedure as nearly as may be, as if it were brought by and in the name of such executor or administrator.

Money paid into court may be paid in one sum, without regard to its division into shares.

2. And whereas by the second section of the said Act it is provided that the jury may give such damages as they may think proportioned to the injury resulting from such death to the parties respectively for whom and whose benefit such action shall be brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided between the before-mentioned parties in such shares as the jury shall by their verdict direct: Be it enacted and declared, that it shall be sufficient, if the defendant is advised to pay money into court, that he pay it as a compensation in one sum to all persons entitled under the said Act for his wrongful act, neglect, or default, without specifying the shares into which it is to be divided by the jury; and if the said sum be not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the jury shall think the same sufficient, the defendant shall be entitled to the verdict upon that issue.

If not accepted, defendant entitled to verdict on the issue.

This and recited Act to be read as one.

3. This Act and the said Act shall be read together as one Act.

THE NAVY AND MARINES (WILLS) AC

(28 & 29 Vict. c. 72.)

Be it enacted by the Queen's most Excellent M and with the advice and consent of the Lords sp temporal, and Commons, in this present Parliament and by the authority of the same, as follows :

Short title.

1. This Act may be cited as The Navy and Mari Act, 1865.

Interpretation of terms.

2. In this Act—

The term "the Admiralty" means the Lord Hig of the United Kingdom, or the commissioners ing the office of Lord High Admiral :

The term "seaman or marine" means a petty seaman, non-commissioned officer of marines or other person forming part in any capacity o plement of any of her Majesty's vessels, or belonging to her Majesty's naval or marine fo sive of commissioned, warrant, and subordina and assistant engineers, and of kroomen.

Will made before entry ineffectual as to wages, etc.

3. A will made after the commencement of this person at any time previously to his entering into seaman or marine shall not be valid to pass any w money, bounty money, grant, or other allowance in thereof, or other money payable by the Admiral effects or money in charge of the Admiralty.

Will invalid if combined with power of attorney.

4. A will made after the commencement of this person while serving as a seaman or marine shall n for any purpose if it is written or contained on or i paper, parchment, or instrument with a power of att

Regulations for wills of seamen, etc., as to wages, etc.

5. A will made after the commencement of this person while serving as a seaman or marine, or wh ceased so to serve (*a*), shall not be valid to pass a prize money, bounty money, grant, or other allowa nature thereof, or other money payable by the Ad

(*a*) The words "or when he has ceased so to serve" are the Navy and Marines (Wills) Act, 1897 (60 Vict. c. 15) to a person dying after June 3rd, 1897. (See p. 782.)

any effects or money in charge of the Admiralty, unless it is made in conformity with the following provisions:—

(1.) Every such will shall be in writing and be executed with the formalities required by the law of *England* in the case of persons not being soldiers in actual military service or mariners or seamen at sea:

(2.) Where the will is made on board one of her Majesty's ships, one of the two requisite attesting witnesses shall be a commissioned officer, chaplain, or warrant or subordinate officer belonging to her Majesty's naval or marine or military force:

(3.) Where the will is made elsewhere than on board one of her Majesty's ships, one of the two requisite attesting witnesses shall be such a commissioned officer or chaplain or warrant or subordinate officer as aforesaid, or the governor, agent, physician, surgeon, assistant surgeon, or chaplain of a naval hospital at home or abroad, or a justice of the peace, or the incumbent, curate, or minister of a church or place of worship in the parish where the will is executed, or a *British* consular officer, or an officer of customs, or a notary public (*b*):

A will made in conformity with the foregoing provisions shall, as regards such wages, money, or effects, be deemed to be well made for the purpose of being admitted to probate in *England*; and the person taking out representation to the testator under such will shall exclusively be deemed the testator's representative with respect to such wages, money, or effects.

As to wills made by prisoners of war.

6. Notwithstanding anything in this or any other Act, a will made after the commencement of this Act by a seaman or marine while he is a prisoner of war shall (as far as regards the form thereof) be valid for all purposes if it is made in conformity with the following provisions:—

(1.) If it is in writing and is signed by him, and his signature thereto is made or acknowledged by him in the presence of and is in his presence attested by one witness, being either a commissioned officer or chaplain belonging to her Majesty's naval or marine or military force, or a warrant or subordinate officer of her Majesty's navy, or the agent of a naval hospital, or a notary public:

(2.) If the will is made according to the forms required by the law of the place where it is made:

(*b*) By the same Act (see note on preceding page), and referring to the same period of death, the words "or a solicitor or in Scotland a law agent" are inserted here.

(3.) If the will is in writing and executed with th
lities required by the law of *England* in th
persons not being soldiers in actual milita
or mariners or seamen at sea.

Payment under will not in conformity with Act.

7. Notwithstanding anything in this Act, in case made after the commencement of this Act by any pe serving as a marine or seaman, and being either military service or a mariner or seaman at sea, the may pay or deliver any wages, prize money, boun grant or other allowance in the nature thereof, or ot payable by the Admiralty or any effects or money in the Admiralty, to any person claiming to be entitl under such will, though not made in conformity provisions of this Act, if, having regard to the speci stances of the death of the testator, the Admira opinion that compliance with the requirements of may be properly dispensed with.

Commencement of Act.

8. This Act shall commence on such day, not late first day of *January* one thousand eight hundred and as her Majesty in Council thinks fit to direct; a her Majesty in Council may, if it seems fit, with re any places out of the United Kingdom, direct that t not commence there, respectively, until a time after and with respect to every such place the time so shall be deemed the time of commencement of this

Publication of Orders in Council.

9. Every Order in Council under this Act shall be in the *London Gazette*, and shall be laid before both Parliament within thirty days after the making Parliament is then sitting, and if not, then within after the next meeting of Parliament.

NAVY AND MARINES (PROPERTY OF DECEASED) ACT, 1865 (*a*).

(28 & 29 VICT. c. 111, ss. 3–16.)

Residue belonging to deceased officers, seamen or marines.

3. On the death of any person being or having been an officer, seaman, or marine (*b*), the amount (if any) to the credit of the deceased in the books of the Admiralty, in respect of sale of effects, arrears of pay, wages, prize money, bounty money, grants, or other allowances in the nature thereof, or other money payable by the Admiralty (which amount is hereafter in this Act, with reference to every such case, called the residue), shall be disposed of according to the provisions of this Act.

Residue belonging to deceased person in Civil Service or Navy.

4. On the death of any person being or having been employed in any of Her Majesty's dockyards or other naval establishment, or in any of the civil departments of the navy, or entitled to an allowance from the compassionate fund, or of any widow entitled to a pension on the establishment of the navy, the amount (if any) due by the Admiralty (which amount is hereafter in this Act, with reference to every such case, called the residue) shall be disposed of according to the provisions of this Act.

Residue exceeding £100.

5. Where the residue exceeds one hundred pounds, the Admiralty shall dispose thereof by paying it to the representative of the deceased.

Residue not exceeding £100.

6. Where the residue does not exceed one hundred pounds it shall not be necessary for any purpose that representation to the deceased be taken out; but in any case the Admiralty may,

(*a*) See p. 597 for Order in Council made pursuant to this Act, providing for a repository at the Admiralty for wills of seamen and marines.

(*b*) By s. 2, the term "officer" means a commissioned, warrant, or subordinate officer, or assistant engineer in Her Majesty's naval or marine force. The term "seaman or marine" means a petty officer or seaman, non-commissioned officer of marines or marine, or other person forming part, in any capacity, of the complement of any of Her Majesty's vessels, or otherwise belonging to Her Majesty's naval or marine force (not being an officer within the meaning of this Act), or a petty officer or man of the royal naval reserve or naval coast volunteers.

if they think fit, require representation to be taken out on that requisition or otherwise, representation is tak then the Admiralty shall dispose of the residue by payi the representative.

Power to require certificate, otc., before representation.

7. In the case, nevertheless, of a seaman or mar Admiralty shall not be bound to pay the residue (wha its amount) to the representative of the deceased, sentation has been taken out either by a creditor as by any person without such certificate respecting the representation having been first obtained from the Ad or such other regulations or conditions having be observed or performed, as is or are prescribed by Council; and in any such case the Admiralty shall di the residue in pursuance of this Act as if representat not been taken out.

Residue not exceeding £100, and no representative power to pay it to widow, etc.

8. Where the residue does not exceed one hundred and representation is not taken out, then, subject to th provisions of this Act, the Admiralty shall, as soon as dispose of the residne as follows:—

(1.) They shall, if they think fit, pay the residue person showing herself or himself to the faction to be entitled to take out represent the deceased (otherwise than as a creditor) end that the residue may be applied by th to whom it is so paid in a due course of tration; and the same shall be so applied ingly (for which application the Admira require such security as they think fit):

(2.) Or else the Admiralty shall, if they think fit the persons (if any) beneficially interested residue their respective shares thereof:

(3.) And in cases where the foregoing provisions present section do not apply, and the an the residue appears to the Admiralty insuf cover the expense of representation, the A shall dispose of the residue in manner presc Order in Council.

Admiralty not bound to pay to nominee of representative.

9. In the case of a seaman or marine, the Admira not pay the residue or any part thereof to any nomine representative of a deceased, or of a person entitled to representation to the deceased, whether such nom appointed by power of attorney or otherwise, unless i circumstances it appears to the Admiralty safe and p make such payment to any such nominee.

Admiralty not

10. Notwithstanding anything in this Act the A

shall not in any case dispose of the residue or any part thereof otherwise than by paying the same to the representative of the deceased, until after the expiration of three months from the receipt by the Admiralty of notice of the death, unless in special circumstances it appears to the Admiralty safe and proper to dispose of the residue or any part thereof at an earlier time. to dispose of residue for three months.

11. In the case of a seaman or marine, where representation is not taken out, the Admiralty shall before disposing of the residue or any part thereof satisfy out of the residue (as far as the same will extend) any debt of the deceased of which they have notice, subject to the following conditions: Provision for payment of debts out of residue.

First.—That the debt accrued due within three years before the death:

Second.—That payment of it is claimed within two years after the death:

Third.—That the claimant proves the debt to the satisfaction of the Admiralty:

Fourth.—That six months have elapsed from the receipt by the Admiralty of notice of the death, and no person has shown herself or himself to the satisfaction of the Admiralty to be entitled to take out representation to the deceased.

In any such case, any person claiming to be a creditor of the deceased shall not be entitled to obtain payment of his debt out of any money being under this Act in the hands of the Admiralty by any means or proceeding whatever, except by means of a claim lodged with the Admiralty, and proceedings thereon under and according to this Act.

12. *Nothing in this Act shall prejudicially affect the claim of any creditor in respect of a debt incurred before the commencement of this Act.*

Repealed by 56 & 57 Vict. c. 14 (S. L. R.).

13. The provisions of this Act relative to the residue, in the case of a deceased officer, seaman, or marine, shall extend and apply, *mutatis mutandis*, to unsold effects and money (if any) in charge of the Admiralty. Provision as to unsold effects.

14. Medals and decorations belonging to an officer, seaman, or marine dying on service shall not be considered as comprised in the personal estate of the deceased with reference to the claims of creditors, or for any of the purposes of administration under this Act or otherwise; and, notwithstanding anything in this or any other Act, the same shall be held and Disposal of medals and decorations.

disposed of according to regulations prescribed by C
Council.

Exemptions from duty.

15. Where the ...ue does not exceed one
pounds, and is a... ...ered and disposed of under t
without represent... ...on being taken out, it shall not b
to the payment of any duty ; and if in any case the Ad
under this Act require security by bond for the applic
a residue in due course of administration, the bond
exempt from stamp duty where an ordinary admini
bond relative to the same residue would be so exem
this provision shall not affect any exemption from duty
independently hereof.

Validity of payments, etc., under this Act.

16. Every payment or application of money, an
sale or other disposition of property, made by the Adm
pursuance of this Act, or of any Order in Council for
this Act into effect, shall be good and valid as aga
persons whomsoever ; and the Admiralty shall be by v
this Act absolutely discharged from all liability in re
the money or other property so paid, applied, or dispos

ORDER IN COUNCIL, Dec. 28, 1865.

Made in pursuance of the Navy and Marines (Property of Deceased) Act (28 & 29 *Vict. c.* 111).

At the Court at Osborne House, Isle of Wight, the 28th day of December, 1865. Present the Queen's most Excellent Majesty in Council.

"Whereas by the Navy and Marines (Property of Deceased) Act, 1865, it is enacted (among other things), that her Majesty in Council may from time to time make such Orders in Council as seem meet for the better execution of any of the purposes of that Act, and that the said Act shall commence on such day not later than the first day of January, one thousand eight hundred and sixty-six, as her Majesty in Council thinks fit to direct:"

Now, therefore, her Majesty, by virtue of the powers in this behalf by the said Act or otherwise in her vested, is pleased, by and with the advice of her Privy Council, to order, and it is hereby ordered as follows:—

Preliminary.

I. The said Act and this Order shall commence from and immediately after the thirty-first day of December, one thousand eight hundred and sixty-five.

II. In this Order—

The term "naval assets" includes all property affected by the Navy and Marines (Property of Deceased) Act, 1865:

The term "will" includes codicil:

The term "probate" includes letters of administration with will annexed:

Other terms have the same respective meanings as in the said Act.

I.—Wills of Seamen and Marines.

Deposit of Will in Testator's Lifetime.

III. In the office of the inspector of seamen's wills (hereafter in this order called the inspector) there shall be a repository for wills of seamen and marines.

IV. The will of a seaman or marine intended to
assets, may, as soon as practicable after its executio
to the secretary of the admiralty to be examine
inspector.

V. On receipt of any instrument purporting to
will the inspector shall register it in books kept in hi
the purpose, specifying the date and place of exec
name and description of the testator, the name, deser
address of the person appointed executor, and the
attesting witnesses.

VI. If the instrument appears to the inspector in
will on account of any informality or of non-accorda
respect with the Navy and Marines (Wills) Act, 1865
wise, he shall, as soon as may be, return it to the
testator, with a statement in writing of the object
validity and of the mode in which the objectio
removed.

VII. If the instrument does not appear to the
invalid as a will, he shall cause it to be stamped
official stamp of the admiralty, and to be placed in t
tory for wills of seamen and marines, under official
shall issue a receipt for it to the testator, specifying th
required to be registered as aforesaid.

VIII. With reference to every such will the inspe
also proceed as follows:

(1.) He shall, with all convenient speed, issue to t
appointed executor, if any, a cheque of the
giving any information respecting the testa
position of his property, but containing dir
to the steps to be taken on the testator's dea

(2.) If there is not any person appointed execut
with the assent of the testator, either implie
mode of transmission of the will to the A
Office or expressed, but not otherwise, he sh
all convenient speed, issue to the residuar
universal legatee, or other person most be
interested under the will, a cheque in lie
will, containing directions as to the steps to
on the testator's death.

(3.) If in any such last-mentioned case, by reaso
absence of such assent, a cheque is not issue
testator's lifetime, then he shall, with all co
speed, after the testator's death, issue to the
or the universal legatee, or other person mo
ficially interested under the will, a cheque in

the will, containing directions as to the steps to be taken in consequence of the testator's death.

Deposit of Will after Testator's Death.

IX. On the death of a seaman or marine leaving a will, if the will is not already deposited with the inspector, it shall be forthwith sent to the secretary of the admiralty by the executor or other person having possession of it, to be examined by the inspector.

X. On receipt of any instrument purporting to be such a will, the inspector shall register it in books kept in his office for the purpose, specifying the date and place of execution, the name and description of the testator, and the name, description and address of the person appointed executor, and those of the attesting witnesses.

XI. If the inspector doubts the authenticity of the alleged will, or if the instrument appears to him invalid as a will on account of any informality or of non-accordance in any respect with the Navy and Marine (Wills) Act, 1865, or otherwise, he shall, as soon as may be, give notice in writing to the person appointed executor, or, if none, to the residuary or the universal legatee or other person most beneficially interested under the alleged will, informing him that the alleged will is stopped, and stating the reason thereof.

XII. If the inspector does not doubt the authenticity of the will, and the instrument does not appear to him invalid as a will, he shall cause it to be stamped with the official stamp of the admiralty, and shall issue to the person appointed executor, or, if none, to the residuary or the universal legatee or other person most beneficially interested under the will, a cheque in lieu of the will, containing directions as to the steps to be taken in consequence of the testator's death.

Proceedings on Testator's Death.

XIII. Where a seaman or marine dies leaving a will, and a cheque has been issued in pursuance of the foregoing provisions, the following steps shall be taken (in cases where this course of proceeding is applicable) by and with respect to the holder of the cheque :—

(1.) The officiating minister of the parish or district parish wherein the holder of the cheque resides shall on his request examine him and two inhabitant householders of the parish produced by him for the purpose.

(2.) In the presence of the minister, the holder of the

cheque shall sign the application, and t
holders shall sign the certificate, subjoi
cheque (all blanks being first filled up ac
truth, and the minister having first read
holder of the cheque and householders t
printed on the cheque), for which purpose
of the cheque and householders shall atte
time and place as the minister appoints.

(3.) The minister being, on the examination of th
the cheque and householders, satisfied of t
their statements, and of the holder of t
being the executor, or other person therei
as qualified to act, and of the persons certif
inhabitant householders of the parish, a
seen the parties sign the application and
respectively, shall add a description of t
complexion, colour of eyes and hair, and
holder of the cheque, and of any observabl
ties of person about him, and shall cer
several particulars by subscribing his
thereto.

(4.) The holder of the cheque shall, before si
application, pay to the minister a fee of
his trouble in the matter.

(5.) The application and certificates being com
minister shall return them with the chequ
as directed.

XIV. If the inspector, on the return of the ch
cation, and certificates, is satisfied of the right of t
he shall proceed as follows :—

(1.) In case representation is required or inter
taken out, he shall endorse on the orig
certificate (in such form and to such e
thinks fit) to enable the claimant to take
sentation, and shall deliver the will to th
and probate, obtained in accordance witl
ficate, being produced to the inspector and
and being indorsed by him as available fo
naval assets, shall be so available.

(2.) In case representation is not required or int
taken out, the inspector shall issue to the
certificate, which shall be available for rece
assets, without probate.

XV. If the inspector, on the return of the cheq
tion, and certificates, is not satisfied of the right
the claimant, he may (by indorsement on the o

certify to that effect, and that he declines to interfere; or, if he thinks fit, he may (by indorsement on the original will) certify his objections for the information of the court out of which representation would be taken, and if the court thinks fit to grant probate to the claimant, the same, being produced to the inspector and registered, shall be indorsed by him as available for receipt of naval assets, and shall be so available accordingly.

XVI. If in any case the minister is not satisfied that the holder of the cheque is the person qualified to act according to the instructions therein, he shall forthwith advise the admiralty of his reasons by letter addressed as directed.

XVII. Notwithstanding anything in the foregoing provisions, where probate, or in Scotland, confirmation of executor, in case of testacy, is obtained without the inspector's certificate, and naval assets form part of the effects, the inspector, if satisfied on subsequent investigation, from official or other information, that there is no reason to doubt that representation has been obtained by the proper person, may admit the probate or confirmation of executor as authority for receipt of naval assets by indorsement thereon, and the same shall be available accordingly.

II.—INTESTACIES OF SEAMEN AND MARINES.

XVIII. Where a seaman or marine dies intestate leaving naval assets, the following proceedings shall be taken:—

(1.) On receipt by the inspector of a letter from a person claiming the naval assets (as widow or next-of-kin) of the deceased, the inspector shall, if, after the requisite preliminary inquiries, there appear sufficient grounds for entertaining the claim, send by post, under cover to the officiating minister of the parish or district parish wherein the claimant resides, a form of application to be filled up, and a letter of instructions for the minister's guidance.

(2.) The inspector shall at the same time send to the claimant a letter advising her or him of the transmission to the minister of the form of application and pointing out the steps to be taken by the claimant for substantiating the claim.

(3.) After the minister's receipt of the form, he shall, on the request of the claimant, examine her or him and two inhabitant householders of the parish produced by her or him for the purpose.

(4.) In the presence of the minister the claimant shall sign

the application and the householders sha
certificate subjoined thereto (all blanks
filled up according to truth, and the mini
first read over to the claimant and house
caution printed on the form of application
purpose the claimant and householders sha
such time and place as the minister appoi

(5.) The minister being, on examination of th
and householders, satisfied of the truth of
ments, and of the persons certifying being
householders of the parish, and having see
sign the application and certificate respec
add a description of the height, complex
of eyes and hair, and age of the claimant,
observable peculiarities of person about
and shall certify to the several particul
scribing his signature thereto.

(6.) The claimant shall, before signing the appl
to the minister a fee of 2*s*. 6*d*. for his tro
matter.

(7.) The application and certificates being con
minister shall return them addressed as di

XIX. If the inspector, on the return of the app
certificates, is satisfied of the right of the claima
proceed as follows:—

(1.) In case representation is required or inte
taken out, he shall issue to the claimant
(in such form and to such effect as th
thinks fit) to enable the claimant to take
sentation; and letters of administration
accordance with the certificate being prod
inspector and registered, and being indo
as available for receipt of naval assets,
available.

(2.) In case representation is not required or int
taken out, the inspector shall issue to the
certificate, which shall be available for rece
assets, without administration.

XX. If the inspector, on the return of the appl
certificates, is not satisfied of the right or fitness of t
he may certify to that effect, and that he declines t
or if he thinks fit he may certify his objection for t
tion of the court out of which letters of admin
confirmation of executor dative would be taken,
court thinks fit to grant such letters or confirma
claimant, the same, being produced to the ins

registered, shall be indorsed by him as available for receipt of naval assets, and shall be so available accordingly.

XXI. If in any case within two calendar months from the minister's receipt of the form a request for examination is not made to him by the claimant, or effectual steps are not taken by the claimant to complete the application, the minister shall, at the expiration of those two months, return the form, addressed as directed, with his reason for doing so noted thereon.

XXII. If in any case the minister rejects any claim for want of satisfactory proof he shall state his reason for such rejection on the form, and forthwith return it addressed as directed.

XXIII. Notwithstanding anything in the foregoing provisions, where letters of administration have, or in Scotland confirmation of executor (on intestacy) has, been obtained without the inspector's certificate, and naval assets form part of the effects, the inspector, if satisfied on subsequent investigation, from official or other information, that there is no reason to doubt that representation has been obtained by the proper person, may admit the letters of administration or confirmation of executor as authority for receipt of naval assets by indorsement thereon, and the same shall be available accordingly.

III.—OFFICERS, PENSIONERS, CIVIL SERVANTS, AND OTHERS.

XXIV. Where an officer or any person described in section 4 of the Navy and Marines (Property of Deceased) Act, 1865, dies, testate or intestate, leaving naval assets not exceeding £100, and representation is not required or intended to be taken out in England, the inspector after making such preliminary inquiries as seem to him requisite, shall proceed as follows:—

(1.) He may (if he thinks fit) require the form of application to be certified by an officiating minister and two householders, as prescribed in this order in the case of a seaman or marine; or else—

(2.) He may (if he thinks fit) require a statutory declaration by the claimant, suited to the circumstances of the case, and a certificate from two householders, certifying to the claimant's identity, and to their belief in the truth of the statement declared to; or—

(3.) He may, in any case where the foregoing provisions do not apply, accept such other evidence in support of the claim as seems to him sufficient.

XXV. On the return to the inspector of the ap
statutory declaration (as the case may be), and th
of the householders, or after such other investig
thinks fit under the authority of the last foregoi
of this order to substitute, and, where there is a
production to him thereof, then if he is satisfied
of the claimant, he shall issue to the claimant
which shall be available for receipt of naval ass
probate or administration.

XXVI. Where, however, representation is taken
court other than the Court of Probate in Engla
spector may, instead of issuing any certificate, admi
of administration, probate, or other equivalent in
authority for receipt of naval assets by indorseme
and the same shall be available accordingly withou
the Court of Probate in England.

XXVII. In every such case the provisions of th
Marines (Property of Deceased) Act, 1865, wit
payment of debts out of the residue, shall apply *mu*
except that on the claim of a cre or not being en
allowed the creditor may take out representation.

IV.—INTESTACY, GENERALLY.

XXVIII. Notwithstanding anything in this o
spector shall not in any case of intestacy (exc
exempted by a general order of the Admiralt
operation of the present clause) issue a certific
for receipt of naval assets without administration
the expiration of three calendar months from the re
Admiralty of notice of the intestate's death, unle
circumstances it appears to the inspector safe an
issue his certificate at an earlier time.

V.—SPECIAL DISPOSAL OF RESIDUE BY ADM

XXIX. With respect to any case provided for
(3) of section 8 of the Navy and Marines (Property
Act, 1865, the ground of the non-applicability o
(1) and (2) of that section being the absence of
death of some person, proof of whose death is
make those paragraphs applicable, then and in eve
if it appears to the inspector that those paragraph
been applicable but for the desertion or miscon
person, proof of whose death is wanting, the in
proceed as if the death of that person were proved

VI.—BASTARDS.

XXX. Where a person, subject to the Navy and Marines (Property of Deceased) Act, 1865, dies intestate, being a bastard, and not leaving a widow or children or descendants, and leaving naval assets, the following provisions shall have effect:—

(1.) Where the naval assets exceed £10 no petition to her Majesty for a grant shall be entertained by the Lords Commissioners of her Majesty's Treasury, unless and until the inspector has investigated the facts of the case in such manner as seems to him expedient, and has certified for the information of the said Lords Commissioners the result of his investigation.

(2.) Where the naval assets do not exceed £10, it shall not be necessary that a grant from her Majesty be obtained, but the inspector may issue a certificate authorising payment of the naval assets to the person who would (in the judgment of the inspector), according to the practice observed by the Lords Commissioners of her Majesty's Treasury, obtain a grant if the naval assets exceeded £10.

VII.—GENERAL PROVISIONS.

XXXI. Notwithstanding anything in this Order, the inspector may make such investigations as seem to him expedient into any statements submitted to him and into the facts and circumstances of the case,—in any case whatever, in addition to the investigations prescribed by this Order,—and in any case where the provisions of this Order are not applicable, or the naval assets do not exceed 10*s*., in substitution for the investigations prescribed by this Order, or any of them.

XXXII. The provisions of this Order shall have effect without prejudice to the rules and practice for the time being in force and observed under the Navy and Marines (Property of Deceased) Act, 1865, with respect to the discharge of the claims of creditors.

VIII.—MEDALS AND DECORATIONS.

XXXIII. Any medal or decoration to which an officer, seaman or marine is entitled, but which is not issued at the time of his death, shall be issued in favour of his—

(1.) Wife;

(2.) Father or mother;

(3.) Son or daughter } according to seniority;
(4.) Brother or sister }

and not in favour of any other person, except under th
directions of the Admiralty.

XXXIV. Any medal or decoration belonging to a
seaman or marine, issued before his death shall, on
into the custody of the Admiralty, be delivered to h
sentative, unless representation has been taken out by
as such, in which case it shall be disposed of as if it
been issued.

And the Lords Commissioners of her Majesty's
and the Lords Commissioners of the Admiralty are
the necessary directions herein as to them may res
appertain.

ARTHUR

INTESTATES' WIDOWS AND CHILDREN ACT.

(36 & 37 VICT. c. 52.)

An Act for the Relief of Widows and Children of Intestates where the Personal Estate is of small value (a).

[28th July 1873.]

Whereas many poor persons die intestate, possessed of property of small amount, and it is desirable to increase the facilities for taking out letters of administration to their estates and effects, and to reduce the expenses attending the same:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

For purposes of Act application may be made to a registrar of a county court.

1. Where the whole estate and effects of an intestate shall not exceed in value the sum of one hundred pounds, his widow or any one or more of his children, provided such widow or children respectively shall reside at a distance exceeding three miles from the registry of the Court of Probate having jurisdiction in the matter, may apply to the registrar of the county court within the district of which the intestate had his fixed place of abode at the time of his death, and the said registrar shall fill up the usual papers required by the Court of Probate to lead to a grant of letters of administration of the estate and effects of the said intestate, and shall swear the applicant and attest the execution of the administration bond according to the practice of the Court of Probate, and shall then transmit the said papers by post to the registrar of the Court of Probate having jurisdiction in the matter, who shall in due course make out and seal the letters of administration of the estate and effects of the said intestate, and transmit them by post to the said registrar of the county court, to be by him delivered to the party so applying for the same, without the payment of any fee for the same save as is provided by this Act.

Identity of person may be required.

2. The registrar of the county court may require such

(a) It is considered that the provisions of this Act and those of the amending Act of 1875 apply only to the children of an intestate who are of full age and competent to take letters of administration, and that they do not apply to grandchildren (Circular, August, 1878).

proof as he may think sufficient to establish the iden relationship of the applicant.

Registrar may refuse to take affidavit.

3. If the registrar of the county court has reason t that the whole estate and effects of which the intes possessed exceeds in value one hundred pounds, he sh to proceed with the application until he is satisfied real valne thereof.

Registrars may exercise powers of commissioners of Court of Probate.

4. All registrars of county courts shall for the pu this Act have power and are hereby authorised to a oaths, and to take declarations and affirmations, and t any other powers which can be exercised by commiss the Court of Probate. In the necessary absenc registrar of the county court, applicants may be s execute any necessary documents at the office of registrar before any commissioner of the Court of Pr

Power to frame Rules, Orders, etc.

5. Any Rules and Orders and tables of fees req carrying this Act into operation shall be framed and time to time be altered by the judge of the Court of subject as regards the tables of fees to the approv Commissioners of her Majesty's Treasury; and suc tions of the said fees as the said judge, with such a aforesaid, shall think proper, may be made payab registrars of the county courts acting in the said m the total amount to be charged to applicants shall one case exceed the sums mentioned in the schedu Act.

Not to affect duty on administration.

6. Provided always that nothing herein conta be construed to affect any duty now payable on administration.

Application of Act to Ireland.

7. The provisions of this Act shall apply to Irela to the modifications follo[illegible] (that is to say,)

The term the "re[illegible] the county court construed to me[illegible] "registrar of the court":

The term "Court of [illegible]obate" shall be construe the "Court of Probate in Dublin."

SCHEDULE.

Where the whole estate and effects of the intestate sha in value twenty pounds, the sum of five shillings; and wh estate and effects shall exceed in value twenty pounds, th shillings, and the further sum of one shilling for every t fraction of ten pounds by which the value shall exceed tw

THE BUILDING SOCIETIES ACT, 1874.

(37 & 38 VICT. c. 42, s. 29.)

Payment of sums not exceeding £50 without administration.

If any member of or depositor with a society under this Act having in the funds thereof a sum of money not exceeding fifty pounds shall die intestate, then the amount due may be paid to the person who shall appear to the directors or committee of management of the society to be entitled under the Statute of Distributions to receive the same, without taking out letters of administration, upon the society receiving satisfactory evidence of death and a statutory declaration that the member or depositor died intestate, and that the person so claiming is entitled as aforesaid: Provided that whenever the society after the decease of any member or depositor has paid any such sum of money to the person who at the time appeared to be entitled to the effects of the deceased under the belief that he had died intestate the payment shall be valid and effectual with respect to any demand from any other person as next-of-kin, or as the lawful representative of such deceased member or depositor against the funds of the society, but nevertheless such next-of-kin or representative shall have his lawful remedy for the amount of such payment as aforesaid against the person who has received the same.

INTESTATE'S WIDOW AND CHILD
AMENDMENT ACT.

(38 & 39 Vict. c. 27.)

An Act to extend to the surviving children of poor W benefits of the Act Thirty-six and Thirty-seven Chapter fifty-two, intituled "An Act for the Relief and Children of Intestates where the Personal E small value." [29th J

Whereas it is desirable that the provisions of the Act o and thirty-seven Victoria, chapter fifty-two, intituled " the Relief of Widows and Children of Intestates whe sonal Estate is of Small Value," should be made appl surviving children of a poor widow who dies intes therefore enacted by the Queen's most Excellent Maje with the advice and consent of the Lords Spiritual and and Commons, in this present Parliament assembled, authority of the same as follows:

Extension of Act of 36 & 37 Vict. c. 52, to children of poor intestate widows.

1. Where the whole estate and effects of an inte shall not exceed in value the sum of one hundred p one or more of her children, if they shall reside a exceeding three miles from the registry of the Court having jurisdiction in the matter, may apply to t of the county court within the district in which t had her fixed place of abode at the time of her de compliance with the regulations prescribed in the thirty-six and thirty-seven Victoria shall be enti benefits in that case made and provided by the s the schedule thereunto annexed.

Construction of the Act.

2. This Act shall be read and construed along part of the recited Act.

THE INTESTATES' WIDOWS AND CHILDREN (SCOTLAND) ACT, 1875.

(38 & 39 VICT. c. 41, ss. 3–6.)

Where estate does not exceed £150 widow or children may apply to commissary clerk to fill up inventory and expede confirmation. [See Executors (Scotland) Act, 1900, 63 & 64 Vict. c. 55, p. 791.]

3. Where the whole personal estate and effects of an intestate dying domiciled in Scotland shall not exceed in value the sum of one hundred and fifty pounds, his widow or any one or more of his children, or in the case of an intestate widow any one or more of her children, may apply to the commissary clerk of the county within which the intestate was domiciled at the time of death; and the said commissary clerk shall prepare and fill up an inventory and relative oath, as nearly as may be in the form of Schedule A. appended to this Act, and shall take the oath of the applicant thereto, and on caution being found by the applicant according to the practice of the commissary court shall proceed to record said inventory and expede confirmation in the form as nearly as may be of Schedule B. annexed to this Act, and shall deliver the same to the applicant without the payment of any fee therefor save as is provided in Schedule C. annexed to this Act: Provided always, that where the value of the said estate and effects exceeds the sum of one hundred pounds the said inventory shall be duly stamped before being recorded; and such confirmation shall have the same force and effect as that prescribed in Schedule D. annexed to the Act of the twenty-first and twenty-second Victoria, chapter fifty-six; and where such confirmation shall contain English or Irish estate the registrar of any Probate Court in England or Ireland shall affix the seal of the said court thereto on the confirmation being sent to him by the commissary clerk for that purpose, enclosing a fee of two shillings and sixpence.

Proof of identity and relationship may be required.

4. The commissary clerk of the county may require such proof as he may think sufficient to establish the identity and relationship of the applicant.

Commissary clerk may refuse to proceed if not satisfied that whole estate not more than £150.

5. If the commissary clerk of the county has reason to believe that the whole personal estate and effects of which the intestate died possessed exceeds in value one hundred and fifty pounds, he shall refuse to proceed with the application until he is satisfied as to the real value thereof.

Commissary clerk may administer oath. "Commissary clerk" to include "commissary clerk depute."

6. All commissary clerks shall for the purpose o have power and are hereby authorised to administer to take declarations and affirmations. The term "c clerk" shall throughout this Act include "commis depute."

SCHEDULE C.

Where the whole estate and effects of the intestate shall in value twenty pounds, the sum of five shillings, and whe estate and effects shall exceed in value twenty pounds, the shillings, and the further sum of one shilling for every te fraction of ten pounds by which the value shall exceed twe

SMALL TESTATE ESTATES (SCOTLAND) ACT, 1876.

(39 & 40 Vict. c. 24.)

Whereas many poor persons die testate in Scotland possessed of personal estate of small amount, and it is desirable to increase the facilities for expeding confirmation to such estate and effects, and to reduce the expense attending the same:

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

1. This Act may be cited for all purposes as "The Small Testate Estates (Scotland) Act, 1876." Short title.

2. This Act shall extend to Scotland only. Extent of Act.

Where estate does not exceed £150, executor may apply to commissary clerk to fill up inventory and expede confirmation. [See Executors (Scotland) Act, 1900, 63 & 64 Vict. c. 55, p. 791.]

3. Where the whole real and personal estate and effects of a testate dying domiciled in Scotland shall not exceed in value the sum of (*a*) one hundred and fifty pounds, the executor of such testate may apply to the commissary clerk of the county within which such testate was domiciled at the time of death; and the said commissary clerk, on production of the will or other writing of the testate containing the nomination of an executor, shall prepare and fill up an inventory and relative oath, as nearly as may be in the form of Schedule A. appended to this Act, and, upon such inventory being duly sworn to by the executor, shall proceed to record the said will or other writing and inventory and expede confirmation in the form as nearly as may be of Schedule B. annexed to this Act, and shall deliver the same to the executor without the payment of any fee therefor save as is provided in Schedule C. annexed to this Act; and such confirmation shall have the same force and effect as that prescribed in Schedule E. annexed to the Act of the twenty-first and twenty-second Victoria, chapter fifty-six; and where such confirmation shall contain English or Irish estate the registrar of any Probate Court in England or Ireland shall

(*a*) Extended to £300 by 44 & 45 Vict. c. 12, s. 34, but see terms. See also further extension to £500, 57 & 58 Vict. c. 30, s. 23 (7).

affix the seal of the said court thereto on the con
being sent to him by the commissary clerk for that
enclosing a fee of two shillings and sixpence.

SCHEDULE C.

TABLE OF FEES.

Where the whole personal estate and effects of the testat
exceed in value twenty pounds, the sum of five shillings, and
whole estate and effects shall exceed in value twenty pound
of five shillings, and the further sum of one shilling for
pounds or fraction of ten pounds by which the value sh
twenty pounds; together with the ordinary fees exigible fo
the will or other writing of the testate.

SHERIFF COURTS (SCOTLAND) ACT, 1876.

(39 & 40 VICT. c. 70, ss. 41–44.)

VIII.—*Amendment of Law as to Confirmation of Executors.*

Note in confirmation by sheriff clerk or commissary clerk that deceased died domiciled in Scotland substituted for certified copy interlocutor by the sheriff commissary and to have like effect.

41. Where, under the provisions of the ninth and subsequent sections of the *Act passed in the twenty-first and twenty-second years of the reign of her present Majesty, chapter fifty-six, intituled "An Act to amend the law relating to the confirmation of executors in Scotland, and to extend over all parts of the United Kingdom the effect of such confirmation and of grants of probate and administration"* (*a*), it shall be desired to include in the inventory of the personal estate of any person dying domiciled in Scotland personal estate situated in England or Ireland, it shall not be necessary to have a special proceeding before the sheriff with the view to his pronouncing therein an interlocutor finding that the deceased died domiciled in Scotland. That fact shall be set forth in the affidavit to the inventory, and it being so set forth therein shall be sufficient warrant for the sheriff clerk to insert in the confirmation or to note thereon and sign a statement that the deceased died domiciled in Scotland; and such statement shall have the same effect as a certified copy interlocutor finding that the deceased person died domiciled in Scotland; *and sections twelve and thirteen of the said Act so far as they make it a condition of the sealing of a confirmation in the principal Court of Probate in England or in the Court of Probate in Dublin, that the copy of the confirmation provided to be deposited with the registrar shall be accompanied by such a certified copy interlocutor, are hereby repealed.*

Extension of the provisions of ss. 12 and 13 of 21 & 22 Vict. c. 56.

42. When an additional inventory has been given in and recorded and confirmation granted in a sheriff court in Scotland of estate situated in England or Ireland of a person who died domiciled in Scotland, and the additional confirmation shall be produced in the principal Court of Probate in England, or in the Court of Probate in Dublin, as the case may be, and a copy thereof deposited with the registrar of the court, such additional confirmation shall be sealed with the seal of the court and returned to the person producing the same, and that whether the original confirmation shall have been sealed with

(*a*) Confirmation of Executors (Scotland) Act, 1858.

the seal of the court or not, and although the add
ventory confirmed shall not contain any estate of t
situated in Scotland; and such additional confirm
so sealed shall thereafter have the same force and
probate or letters of administration, as the case m
been granted by the Court of Probate in which i
sealed.

Confirmation of Scotch estate with note of trust funds in England or Ireland to be sealed in Probate Courts as if it contained English or Irish estate of the deceased.

43. When any confirmation or additional confi
personal estate situated in Scotland, which shall
have appended thereto and signed by the sheriff
or statement of funds in England or Ireland, or
by the deceased in trust, shall be prodnced in th
Court of Probate in England or in the Court of
Dublin, as the case may be, such confirmation shal
with the seal of such court in the same manner as
by sections twelve and thirteen of the Act pa
twenty-first and twenty-second years of the reign of
Majesty, chapter fifty-six, as amended by this Act,
to sealing confirmations which include personal est
in England or Ireland respectively; and such c
shall thereafter have the like force and effect in E
Ireland with respect to such funds as if probate
administration, as the case may be, had been gra
Court of Probate in which it had been sealed; and
or statement may be inserted or appended as afor
sheriff clerk, provided the same shall have been
any inventory which has been recorded in the b
court of which he is clerk.

Schedule C. of 21 & 22 Vict. c. 56, hereby repealed, and new form of intimation, etc.

44. The sheriff clerk shall, after a petition for t
ment of an executor has been intimated by him
by section four of the Act passed in the twen
twenty-second years of the reign of her prese
chapter fifty-six, and after receiving the certified
printed and published particulars therein set fort
certify these facts on the petition in the followin
terms: "Intimated and published in terms of t
which certificate [(in lieu of the certificate in t
schedule C. annexed to the said Act, which sch
hereby repealed),] shall be dated and signed b
shall be sufficient evidence of the facts therein
Provided always, that special intimation shall
all executors already decerned or confirmed to
person of any subsequent petition for the appoin
executor which may be presented with reference to
estate of the same deceased person.

CUSTOMS AND INLAND REVENUE ACT, 1881.

(44 VICT. c. 12, ss. 26–43.)

STAMPS.

As to Probate and Legacy Duties, and Duties on Accounts.

Stamp duties to be under the care and management of the Commissioners of Inland Revenue.

26.—(1.) The stamp duties hereinafter imposed shall be under the care and management of the Commissioners of Inland Revenue, who by themselves and their officers shall have the same powers and authorities for the collection, recovery, and management thereof as are by law vested in them for the collection, recovery, and management of any stamp duties, and shall have all other powers and authorities requisite for carrying into effect the provisions of this Act in relation to such stamp duties.

(2.) Such stamp duties may be denoted by impressed or adhesive stamps, or partly by impressed stamps and partly by adhesive stamps, as the said commissioners may think proper.

(3.) As respects the duties imposed on affidavits in substitution for the duties on probates or letters of administration, the several provisions now in force in relation to the last-mentioned duties shall, so far as the same are consistent with the provisions of this Act, be deemed to be applicable to the said duties hereby imposed, and in the application thereof a probate or letters of administration having thereon such a certificate as is hereinafter mentioned shall for all purposes be deemed to have been duly stamped in respect of the value stated in the certificate.

Grant of duties in respect of probate and letters of administration and on inventories.

27. The duties imposed by the Customs and Inland Revenue Act, 1880, upon probates of wills and letters of administration in England and Ireland shall not be payable upon probates or letters of administration granted on and after the first day of June one thousand eight hundred and eighty-one; and on and after that day in substitution for such duties, and in lieu of the duties imposed by the said Act upon inventories in Scotland, there shall, save as is hereinafter expressly provided, be charged and paid on the affidavit to be required and received from the person applying for the probate or letters of administration in England or Ireland, or on the inventory to be

exhibited and recorded in Scotland, the stamp duties after specified; (that is to say,)

Where the estate and effects for or in respect of which the probate or letters of administration is or are to be granted, or whereof the inventory is to be exhibited and recorded, exclusive of what the deceased shall have been possessed of or entitled to as trustee, and not beneficially, shall be above the value of £100, and not above the value of £500 . .	Duty. At the rate of £ for every full £50, and for the final part of any multiple
Where such estate and effects shall be above the value of £500, and not above the value of £1,000 . . .	At the rate of £ five hundred full sum for any sum of £50, over tiple of £50;
Where such estate and effects shall be above the value of £1,000 (*a*) . . .	At the rate for every £100 any fractional £100, over tiple of £100

Provided that additional inventory, to be exhibited recorded in Scotland, of effects of a deceased where a former inventory of the estate and effects of person has been exhibited and recorded prior to the of June one thousand eight hundred and eighty-one chargeable with the amount of stamp duty with which have been chargeable if this Act had not been passed.

Power to deduct debts and funeral

28. On and after the first day of June one thousand hundred and eighty-one, in the case of a person dying

(*a*) Estate over £100 See Customs and Inland Revenue s. 5, p. 741.

in any part of the United Kingdom, it shall be lawful for the person applying for the probate or letters of administration in England or Ireland, or exhibiting the inventory in Scotland, to state in his affidavit the fact of such domicile, and to deliver therewith or annex thereto a schedule of the debts due from the deceased to persons resident in the United Kingdom, and the funeral expenses, and in that case, for the purpose of the charge of duty on the affidavit or inventory, the aggregate amount of the debts and funeral expenses appearing in the schedule shall be deducted from the value of the estate and effects as specified in the account delivered with or annexed to the affidavit, or whereof the inventory shall be exhibited. expenses where deceased died domiciled in the United Kingdom.

Debts to be deducted under the power hereby given shall be debts due and owing from the deceased and payable by law out of any part of the estate and effects comprised in the affidavit or inventory, and are not to include voluntary debts expressed to be payable after the death of the deceased, or payable under any instrument which shall not have been bonâ fide delivered to the donee thereof three months before the death of the deceased, or debts in respect whereof any real estate may be primarily liable or a reimbursement may be capable of being claimed from any real estate of the deceased or from any other estate or person.

Funeral expenses to be deducted under the power hereby given shall include only such expenses as are allowable as reasonable funeral expenses according to law.

29. The affidavit required or received from any person applying for probate or letters of administration in England or Ireland shall extend the verification of the account of the estate and effects, to the verification of such account and the schedule of debts and funeral expenses, as the case may be, and shall be in accordance with such form as may be prescribed by the Commissioners of her Majesty's Treasury; and the Commissioners of Inland Revenue shall provide forms of affidavit stamped to denote the duties payable under this Act. As to forms of affidavit.

30. No probate or letters of administration shall be granted by the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, or by the Probate and Matrimonial Division of the High Court of Justice in Ireland, unless the same bear a certificate in writing under the hand of the proper officer of the court, showing that the affidavit for the Commissioners of Inland Revenue has been delivered, and that such affidavit, if liable to stamp duty, was duly stamped, and stating the amount of the gross value of the estate and effects as shown by the account. Probate or letters of administration to bear a certificate in lieu of stamp duty.

Provision for return of duty overpaid.

31. If at any time after the grant of probate or letter administration, and during the administration of the est the value mentioned in the certificate of the officer of court shall be found to exceed the true value of the pers estate and effects of the deceased, or if at any time wit three years after the grant, or within such further period the Commissioners of Inland Revenue may allow, it s appear that no amount or an insufficient amount was deduc on account of debts and funeral expenses, it shall be lawful the said commissioners, upon proof of the facts to t satisfaction, to return the amount of stamp duty which s have been overpaid, and to cause a certificate to be written an authorised officer on the probate or letters of administrat setting forth such true value, or, as the case may be, amount, or corrected amount of deduction, and such certifi shall be substituted for, and have the same force and effect the certificate of the officer of the court.

Provision for payment of further duty.

32. If at any time it shall be discovered that the pers estate and effects of the deceased were at the time of the gr of probate or letters of administration of greater value t the value mentioned in the certificate, or that any deduct for debts or funeral expenses was made erroneously, the pe acting in the administration of such estate and effects s within six months after the discovery, deliver a further affid with an account to the Commissioners of Inland Reve duly stamped for the amount which, with the duty (if a previously paid on an affidavit in respect of such estate effects, shall be sufficient to cover the duty chargeable acc ing to the true value thereof, and shall at the same time pa the said commissioners interest upon such amount at the of five pounds per centum per annum from the date of grant, or from such subsequent date as the said commissio may in the circumstances think proper.

The Commissioners of Inland Revenue, upon the receip such affidavit duly stamped as aforesaid, shall cause a certifi to be written by an authorised officer on the probate or le of administration setting forth the true value of the estate effects as then ascertained, or, as the case may be, the corre amount of deduction, and such certificate shall be substit for, and have the same force and effect as, the certificat the officer of the court.

Provisions as to obtaining probate, etc., where gross value of estate does

33.—(1.) Where the whole personal estate and effect any person dying on or after the first day of June one thou eight hundred and eighty-one (inclusive of property by made such personal estate and effects for the purpose of charge of duty, and any personal estate and effects situate

of the United Kingdom), without any deduction for debts or funeral expenses, shall not exceed the value of three hundred pounds, it shall be lawful for the person intending to apply for probate or letters of administration in England or Ireland, to deliver to the proper officer of the court or to any officer of Inland Revenue duly appointed for the purpose, a notice in writing in the prescribed form, setting forth the particulars of such estate and effects, and such further particulars as may be required to be stated therein, and to deposit with him the sum of fifteen shillings for fees of court and expenses, and also, in case the estate and effects shall exceed the value of one hundred pounds, the further sum of thirty shillings for stamp duty. not exceed £300.

(2.) If the officer has good reason to believe that the whole personal estate and effects of the deceased exceeds the value of three hundred pounds, he shall refuse to accept the notice and deposit until he is satisfied of the true value thereof.

(3.) The principal registrars of the Probate, Divorce, and Admiralty Division of the High Court of Justice in England, and of the Probate and Matrimonial Division of the High Court of Justice in Ireland, in communication with the Commissioners of Inland Revenue, shall prescribe the form of notice, and make such regulations as may be necessary with respect to the transmission of notices by officers of Inland Revenue, the steps to be taken for the preparation and filling up of forms and documents, and generally all matters which may be necessary, so as to authorise the grant of probate or letters of administration.

(4.) Officers of Inland Revenue are hereby empowered to administer all necessary oaths or affirmations, and in the case of letters of administration, to attest the bond and accept the same on behalf of the president or judge of the Division.

(5.) Where the estate and effects shall exceed the value of one hundred pounds, the stamp duty payable on the affidavit for the Commissioners of Inland Revenue shall be the fixed duty of thirty shillings, and no more (*b*).

Provisions as to inventories where gross value of estate does not exceed £300.

34.—(1.) The Intestates' Widows and Children (Scotland) Act, 1875, and the Small Testate Estates (Scotland) Act, 1876, as amended by the Sheriff Courts (Scotland) Act, 1876, shall be extended so as to apply to any case where the whole personal estate and effects of a person dying on or after the first day of June one thousand eight hundred and eighty-one, without any deduction for debts or funeral expenses, shall not exceed the value of three hundred pounds, whoever may be the applicant

39 & 40 Vict. c. 24.

39 & 40 Vict. c. 70.

(*b*) The provisions of s. 33 extended, see Finance Act, 1894, s. 16, p. 762.

for representation, and wheresoever the deceased may
been domiciled at the time of death, and the fees pa
nnder schednle C. of each of the two first-mentioned
shall not exceed thc sum of fifteen shillings, inclusive o
fcc of two shillings and sixpencc, to be paid to the comm
clerk, or sheriff clerk.

(2.) In any such case where thc estatc and effects
exceed the value of one hundred pounds, the stamp
payable on thc inventory shall be the fixed duty of
shillings, and no more.

Provision in case of subsequent discovery that the value of estate exceeded £300.

[But see Revenue Act, 1903, s. 14, p. 794.]

35. Where representation has been obtained in confo
with either of the two preceding sections, and it shall
any timc afterwards discovered that the whole personal
and effects of thc deceased were of a value exceeding
hundred pounds, then a snm cqual to the stamp duty pa
on an affidavit or inventory in respect of the true val
such estate and effects shall be a debt duc to her Majesty
the person acting in the administration of such estat
effects, and no allowance shall be made in respect of the
deposited or paid by him, nor shall the relief afforded b
next snceeding section be claimed or allowed by reas
the deposit or payment of any sum.

Relief from legacy duty in cases under £300.

36. The payment of the sum of thirty shillings for the
duty on thc affidavit or inventory in confomity with thi
shall be deemed to be in full satisfaction of any claim to l
duty or succession duty in respect of the estate or effec
which such affidavit or inventory relates.

Power to commissioners to require explanations and proof in support of affidavit or inventory.

37. It shall be lawfnl for thc Commissioners of I
Revenue at any time and from time to time within three
after the grant of probate or letters of administrati
recording of inventory, as they may think necessary, to r
the person acting in the administration of the estat
effects of any deceased person, to furnish such explana
and to produce such docnmentary or other evidence resp
the contents of, or particulars verified by, the affida
invcntory as the case may seem to them to reqnire.

Grant of duties on accounts of certain property.

[*Amended by* 52 & 53 *Vict.* c. 7, s. 11.]

38.—(1.) Stamp dutics at the like rates as are by th
charged on affidavits and inventories shall be charged an
on accounts delivered of the personal or moveable prope
be included therein accordiug to the value thereof.

(2.) The personal or moveable property to be includ
an account shall be property of the following descrip
viz. :—

(*a*) Any property taken as a donatio mortis causâ ma

any person dying on or after the first day of June one thousand eight hundred and eighty-one, or taken under a voluntary disposition, made by any person so dying, purporting to operate as an immediate gift inter vivos whether by way of transfer, delivery, declaration of trust or otherwise, which shall not have been bonâ fide made three months before the death of the deceased.

(*b*) Any property which a person dying on or after such day having been absolutely entitled thereto, has voluntarily caused or may voluntarily cause to be transferred to or vested in himself and any other person jointly whether by disposition or otherwise, so that the beneficial interest therein or in some part thereof passes or accrues by survivorship on his death to such other person.

(*c*) Any property passing under any past or future voluntary settlement made by any person dying on or after such day by deed or any other instrument not taking effect as a will, whereby an interest in such property for life or any other period determinable by reference to death is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself the right, by the exercise of any power, to restore to himself, or to reclaim the absolute interest in such property.

(3.) Where an account delivered duly stamped comprises property passing under a voluntary settlement, and, upon the production of the settlement, it shall appear that the stamp duty of five shillings per centum has been paid thereon according to the amount or value of the property so passing, or any part thereof, the amount of such stamp duty shall be returned to the person delivering the account.

Delivery of accounts on oath.

39. Every person who as beneficiary, trustee, or otherwise, acquires possession, or assumes the management, of any personal or moveable property of a description to be included in an account according to the preceding section shall upon retaining the same for his own use, or distributing or disposing thereof, and in any case within six calendar months after the death of the deceased deliver to the Commissioners of Inland Revenue a full and true account, verified by oath, of such property duly stamped as required by this Act. Any officer authorised by the Commissioners for the purpose may administer the oath.

Double duty payable in

40. If any person who ought to obtain probate or letters of administration or deliver a further affidavit or to exhibit

case of default.

an inventory or who is required to deliver sneh a aforesaid shall neglect to do so within the period pre law for the purpose, he shall be liable to pay to he double the amount of duty chargeable, and the sam a debt due from him to the Crown, and be recovera of the ways or means now in force for the recovery o legacy, or succession duties.

Cesser of legacy and succession duties at the rate of one per cent. in certain cases.

41. In respect of any legacy, residue, or share payable out of, or consisting of any estate or effects to the value whereof duty shall have been paid on th or inventory or account, in conformity with this Ac at the rate of one pound per centum imposed by the fifty-fifth year of king George the Third, c hundred and eighty-four shall not be payable;

And in respect of any succession to property ac the value whereof duty shall have been paid on th or inventory or account in conformity with this duty at the rate of one pound per centum impos Succession Duty Act, 1853, shall not be payable.

16 & 17 Vict. c. 51.

Charge of legacy duty on legacies not amounting to £20.

42. Subject to the relief from legacy duty given thirteen of the Customs and Inland Revenue Act, 1 pecuniary legacy or residue or share of residue und or the intestacy of a person dying on or after the f June one thousand eight hundred and eighty-one not of an amount or value of twenty pounds, shall able to the duties imposed by the said Act of the year of king George the Third, chapter one hu eighty-four, as modified by this Act.

Power to commissioners to accept composition for legacy duty under a will.

43. It shall be lawful for the Commissioners Revenue, upon the application of the person acting cution of the will of any deceased person, and delivery to them of an account showing the amo estate and effects in respect whereof legacy duty together with the names or description of class of entitled thereto and every part thereof, in pos expectancy, and their degrees of consanguinity to th to assess the duty upon the amount shown by the s at such a sum by way of composition as, having re circumstances, shall appear to be proper, and to acce of the duty so assessed in full discharge of all claims duty under such will.

If the commissioners are of opinion that an should receive the assent of any person, they shal entertain the application until such assent shall given.

THE SAVINGS BANK ACT, 1887.

(50 & 51 Vict. c. 40, s. 3.)

Regulations as to deposits of deceased depositor.

(1.) The regulations made in pursuance of this Act may also provide (a.) for the nomination by a depositor not being under sixteen years of age of any person or persons to whom any sum or sums not exceeding in the aggregate one hundred pounds payable to such depositor at his decease (including any portion of any annuity or accrued interest payable to the representatives of such depositor) is or are to be paid at such decease, and (b.) for the revocation of such nomination and for the payment of the specified amount to any nominee so nominated, and (c.) for the effect and construction of such nomination in the event of the sums due to the depositor exceeding one hundred pounds, and may provide for it taking effect as respects an amount or amounts not exceeding one hundred pounds in like manner as if it were a will of the deceased duly executed, and that notwithstanding want of due execution, minority, or marriage. (2.) Where the sum in a savings bank which forms part of the personal estate of a person appearing to be deceased does not exceed one hundred pounds, then if the regulations under this Act so provide, and subject to such regulations, probate, or other proof of the title of the personal representative of the deceased person may be dispensed with, and such sum may be paid or distributed to or among the persons appearing in manner provided by the said regulations to be beneficially entitled to the personal estate of such deceased person, whether under such nomination of the deceased person as is allowed by the regulations, or by law, or as next-of-kin, or as creditors, or otherwise, or to or among any one or more of such persons, exclusively of the others, or in case of any illegitimacy of the deceased person or his children, to or among such person or persons as may be directed by the said regulations, and the person making such payment shall be discharged from all liability in respect of the sum paid in accordance with the said regulations.

Note.—By the 14th section of the 24 & 25 Vict. c. 14, the regulations of the 7 & 8 Vict. c. 83, s. 10, though otherwise repealed, are to apply also to deposits of savings at the General Post Office, made by virtue of that Act.

"14. All the provisions of the Acts now in force relating to savings banks as to matters for which no other provision is made by this Act shall be deemed applicable to this Act, so far as the same are not repugnant thereto."

THE SUPERANNUATION ACT, 188

(50 & 51 VICT. c. 67, s. 8.)

Sums payable to civil servants not exceeding £100 without grant.

On the death of a person to whom any sum not e
£100 is due from a public department in respect of
pay, superannuation, or other allowance, annuity or
then, if the prescribed public department so direct, bu
to the regulations (if any) made by the Treasury, p
other proof of the title of the personal representati
deceased person may be dispensed with, and the said
be paid or distributed to or among the persons appe
the public department to be beneficially entitled to the
estate of the deceased person, or to or among any one
of those persons, or in case of the illegitimacy of the
person or his children, or to or among such perso
department may think fit, and the department
discharged from all liability in respect of any such
or distribution.

CUSTOMS AND INLAND REVENUE ACT, 1889.

(52 VICT. c. 7, AND 11.)

PART II.

THE ESTATE DUTY.

On Personal Property passing by Will or on Intestacy.

5.—(1.) Where, in the case of any person applying for probate or letters of administration granted in England or Ireland on or after the first day of June one thousand eight hundred and eighty-nine, or in the case of any person exhibiting an inventory in Scotland on or after that day, the value of the estate and effects in respect whereof duty is charged on the affidavit or inventory by section twenty-seven of the Customs and Inland Revenue Act, 1881, exceeds ten thousand pounds, he is together with such affidavit or inventory to deliver a statement of the value of such estate and effects. The statement is to be transmitted with the affidavit or inventory to the Commissioners of Inland Revenue by the proper officer of the High Court of Justice in England or Ireland, or of the proper court in Scotland, and the certificate required under section thirty of the said Act is to extend to and include the fact of the delivery of the statement.

(2.) Where the value of the personal or moveable property included in an account delivered according to section thirty-eight of the Customs and Inland Revenue Act, 1881, on or after the first day of June one thousand eight hundred and eighty-nine, exceeds ten thousand pounds, the person delivering the account is also to deliver together therewith a statement of the value of such property.

(3.) Where, pursuant to the provisions of section thirty-two of the Customs and Inland Revenue Act, 1881, a further affidavit is required to be delivered by any person, and where any person intromitting with, or entering upon the possession or management of, any personal or moveable estate or effects in Scotland of any person dying, is required by law to exhibit an additional inventory, the following provisions are to apply:

(*a.*) If the value of the estate and effects in respect whereof duty was charged on the former affidavit or inventory under section twenty-seven of the Customs and

Inland Revenue Act, 1881, exceeded ten
pounds, the person delivering the further a
exhibiting the additional inventory is t
together therewith a statement of the val
estate and effects included therein or of th
of value of the estate and effects includ
former affidavit or inventory, as the case ma

(*b.*) If the value of the estate and effects in respe
duty has been charged under the Customs a
Revenue Act, 1881, did not exceed ten
pounds, and such value together with the va
estate and effects included in the further a
additional inventory delivered or exhibite
increased value, as the case may be, ex
thousand pounds, such person delivering th
affidavit or exhibiting the additional inve
deliver together therewith a statement of th
the estate and effects included therein, a
former affidavit or inventory, or of the
increased of the estate and effects includ
former affidavit or inventory, as the case ma

(4.) There is to be charged and paid on every sta
be delivered in conformity with the above enactme
of one pound for every full sum of one hundred po
for any fraction of one hundred pounds over any n
one hundred pounds of the value of the estate and ef
the personal or moveable property, as the case may b

(7.) Where a further affidavit or additional in
delivered or exhibited of any estate or effects of a
person after a former affidavit or inventory of the
effects of the same person has been delivered or exh
recorded prior to the first day of June one thous
hundred and eighty-nine, it will not be necessary to d
statement of the value of the estate and effects of su
under the Act.

Amendment of 44 & 45 Vict. c. 12, c. 38.

11.—(1.) Sub-section two of section thirty-eig
Customs and Inland Revenue Act, 1881, is hereby a
follows :—

The description of property marked (*a*) shall b
if the word "twelve" were substituted for
"three" therein, and the said description of
shall include property taken under any gift,
made, of which property bonâ fide posse
enjoyment shall not have been assumed by
immediately upon the gift and thenceforward
to the entire exclusion of the donor, or of any
him by contract or otherwise :

The description of property marked (*b*) shall be construed as if the expression "to be transferred to or vested in himself and any other person" included also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement, with any other person:

The description of property marked (*c*) shall be construed as if the expression "voluntary settlement" included any trust, whether expressed in writing or otherwise, in favour of a volunteer, and, if contained in a deed or other instrument effecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, and as if the expression "such property," wherever the same occurs, included the proceeds of sale thereof:

The charge under the said section shall extend to money received under a policy of assurance effected by any person dying on or after the first day of June one thousand eight hundred and eighty-nine, on his life, where the policy is wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of such money in proportion to the premiums paid by him, where the policy is partially kept up by him for such benefit.

(2.) A return of stamp duty shall not be made under subsection three of the said section thirty-eight by reason of, or in relation to, any account delivered on or after the first day of June one thousand eight hundred and eighty-nine.

COLONIAL PROBATES ACT, 1892 (

(55 VICT. c. 6.)

An Act to provide for the Recognition in the United K
Probates and Letters of Administration granted
Possessions. [20th M

Application of Act by Order in Council.

1. Her Majesty the Queen may, on being satisfied legislature of any British possession has made provision for the recognition in that possession o and letters of administration granted by the cou United Kingdom, direct by Order in Council that shall, subject to any exceptions and modifications in the Order, apply to that possession, and thereu the Order is in force, this Act shall apply accordingl

Sealing in United Kingdom of colonial probates and letters of administration.

2.—(1.) Where a court of probate in a British to which this Act applies has granted probate or administration in respect of the estate of a deceas the probate or letters so granted may, on being pr and a copy thereof deposited with, a court of prob United Kingdom, be sealed with the seal of that thereupon, shall be of the like force and effect, and same operation in the United Kingdom, as if grant court.

(2.) Provided that the court shall, before sealing or letters of administration under this section, be sat

(*a*) that probate duty has been paid in respect o (if any) of the estate as is liable to proba the United Kingdom ; and

(*b*) in the case of letters of administration, that s been given in a sum sufficient in amoun the property (if any) in the United Ki which letters of administration relate ;

and may require such evidence, if any, as it think the domicile of the deceased person.

(3.) The court may also, if it thinks fit, on the of any creditor, require, before sealing, that adequa be given for the payment of debts due from the creditors residing in the United Kingdom.

(*a*) For a list of possessions to which this Act has been p. 194.

(4.) For the purposes of this section, a duplicate of any probate or letters of administration sealed with the seal of the court granting the same, or a copy thereof certified as correct by or under the authority of the court granting the same, shall have the same effect as the original.

(5.) Rules of court may be made for regulating the procedure and practice, including fees and costs, in courts of the United Kingdom, on and incidental to an application for sealing a probate or letters of administration granted in a British possession to which this Act applies. Such rules shall, so far as they relate to probate duty, be made with the consent of the Treasury, and subject to any exceptions and modifications made by such rules, the enactments for the time being in force in relation to probate duty (including the penal provisions thereof) shall apply as if the person who applies for sealing under this section were a person applying for probate or letters of administration.

Application of Act to British courts in foreign countries.

3. This Act shall extend to authorise the sealing in the United Kingdom of any probate or letters of administration granted by a British court in a foreign country, in like manner as it authorises the sealing of a probate or letters of administration granted in a British possession to which this Act applies, and the provisions of this Act shall apply accordingly with the necessary modifications.

Orders in Council.

4.—(1.) Every Order in Council made under this Act shall be laid before both Houses of Parliament as soon as may be after it is made, and shall be published under the authority of her Majesty's Stationery Office.

(2.) Her Majesty the Queen in Council may revoke or alter any Order in Council previously made under this Act.

(3.) Where it appears to her Majesty in Council that the legislature of part of a British possession has power to make the provision requisite for bringing this Act into operation in that part, it shall be lawful for her Majesty to direct by Order in Council that this Act shall apply to that part as if it were a separate British possession, and thereupon, while the Order is in force, this Act shall apply accordingly.

Application of Act to probates, etc., already granted.

5. This Act when applied by an Order in Council to a British possession shall, subject to the provisions of the Order, apply to probates and letters of administration granted in that possession either before or after the passing of this Act.

Definitions.

6. In this Act—

The expression "Court of Probate" means any court or

authority, by whatever name designated, l
diction in matters of probate, and in Sco
the sheriff court of the county of Edinburg
The expressions "probate" and "letters
tration" include confirmation in Scotlan
instrument having in a British possessio
effect which under English law is given
and letters of administration respectively:
The expression "probate duty" includes any
on the value of the estate and effects
probate or letters of administration is or
The expression "British court in a foreig
means any British court having jurisdi
the Queen's dominions in pursuance o
in Council, whether made under any Act o

Short title. 7. This Act may be cited as the Colonial P
1892.

INDUSTRIAL AND PROVIDENT SOCIETIES ACT, 1893.

(56 & 57 VICT. c. 39, ss. 25, 26, 27, and 30.)

Share in industrial or provident society not exceeding £100.

25.—(1.) A member of a registered society, not being under the age of sixteen years, may, by a writing under his hand, delivered at or sent to the registered office of the society during the lifetime of such member, or made in any book kept thereat nominate any person or persons other than an officer or servant of the society (unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew, or niece of the nominator) to or among whom his property in the society, whether in shares, loans, or deposits, or so much thereof as is specified in such nomination, if the nomination does not comprise the whole, shall be transferred at his decease, provided the amount credited to him in the books of the society does not then exceed one hundred pounds sterling.

26.—(1.) On receiving satisfactory proof of the death of a nominator, the committee of the society shall either transfer the property comprised in the nomination in manner directed by it, or pay to every person entitled thereunder the full value of the property given to him, unless the shares comprised therein, if transferred as directed by the nominator, would raise the share capital of any nominee to a sum exceeding two hundred pounds, in which case they shall pay him the value of such shares. (2.) If the total property of the nominator in the society at his death exceeds eighty pounds the committee shall, before making any payment, require production of a duly stamped receipt for the succession or legacy duty payable thereon, or a letter or certificate stating that no such duty is payable from the Commissioners of Inland Revenue, who shall give such receipt, letter, or certificate, on payment of the duty, or satisfactory proof of no duty being payable, as the case may be.

27.—(1.) If any member of a registered society entitled to property therein in respect of shares, loans, or deposits, not exceeding in the whole, at his death, one hundred pounds, dies intestate, without having made any nomination thereof then subsisting, the committee may, without letters of administration, distribute the same among such persons as appear to

them, on such evidence as they deem satisfactory, t
by law to receive the same, subject, if such prop
eighty pounds, to the obtaining from the Comm
Inland Revenue a receipt for the succession or
payable thereon, or a letter or certificate stating
duty is payable. (2.) If any such member is ille
leaves no widow, widower, or issue, the committe
with his property in the society as the Treasury sh

30. All payments or transfers made by the co
registered society, under the provisions of this Act
to payments or transfers to or on behalf of deceas
members, to any person who at the time appears
mittee to be entitled thereunder, shall be valid a
against any demand made upon the committee o
any other person.

FINANCE ACT, 1894.

(57 & 58 VICT. c. 30.)

PART I.

ESTATE DUTY.

Grant of Estate Duty.

Grant of estate duty.

1. In the case of every person dying after the commencement of this Part of this Act, there shall, save as hereinafter expressly provided, be levied and paid, upon the principal value ascertained as hereinafter provided of all property, real or personal, settled or not settled, which passes on the death of such person a duty, called "estate duty," at the graduated rates hereinafter mentioned, and the existing duties mentioned in the First Schedule to this Act shall not be levied in respect of property chargeable with such estate duty.

What property is deemed to pass.

2.—(1.) Property passing on the death of the deceased shall be deemed to include the property following, that is to say :—

(*a*) Property of which the deceased was at the time of his death competent to dispose;

(*b*) Property in which the deceased or any other person had an interest ceasing on the death of the deceased, to the extent to which a benefit accrues or arises by the cesser of such interest; but exclusive of property the interest in which of the deceased or other person was only an interest as holder of an office, or recipient of the benefits of a charity, or as a corporation sole;

[*See also Finance Act*, 1896, *ss.* 14, 15, *and Finance Act*, 1900, *s.* 2.]

(*c*) Property which would be required on the death of the deceased to be included in an account under section thirty-eight of the Customs and Inland Revenue Act, 1881, as amended by section eleven of the Customs and Inland Revenue Act, 1889, if those sections were herein enacted and extended to real property as well as personal property, and the words "voluntary" and "voluntarily" and a reference to a "volunteer" were omitted therefrom; and

44 & 45 Vict. c. 12.
52 & 53 Vict. c. 7.

(*d*) Any annuity or other interest purchased or provided by the deceased, either by himself alone or in concert or

by arrangement with any other person, t
of the beneficial interest accruing or ar
vivorship or otherwise on the death of th

(2.) Property passing on the death of the de
situate out of the United Kingdom shall be inclu
under the law in force before the passing of thi
or succession duty is payable in respect thereof,
so payable but for the relationship of the perso
passes.

(3.) Property passing on the death of the decea
be deemed to include property held by the decease
for another person, under a disposition not mad
ceased, or under a disposition made by the decease
twelve months before his death where possession
ment of the property was bonâ fide assumed by th
immediately upon the creation of the trust and th
retained to the entire exclusion of the deceased
benefit to him by contract or otherwise.

Exception for transactions for money considera-tion.

3.—(1.) Estate duty shall not be payable in
property passing on the death of the deceased by
of a bonâ fide purchase from the person under wi
tion the property passes, nor in respect of the
possession of the reversion on any lease for lives, n
of the determination of any annuity for lives,
purchase was made, or such lease or annuity gra
consideration in money or money's worth paid t
or grantor for his own use or benefit, or in the ca
for the use or benefit of any person for whom the
a trustee.

(2.) Where any such purchase was made, or leas
granted, for partial consideration in money or m
paid to the vendor or grantor for his own use or
the case of a lease for the use or benefit of a
whom the grantor was a trustee, the value of the
shall be allowed as a deduction from the value of
for the purpose of estate duty.

Aggregation of property to form one estate for purpose of duty. [*Amended by Finance Act*, 1900, *s.* 12.]

4. For determining the rate of estate duty to be
property passing on the death of the deceased, all
passing in respect of which estate duty is levia
aggregated so as to form one estate, and the
levied at the proper graduated rate on the pri
thereof:

Provided that any property so passing, in which
never had an interest, or which under a dispositi
by the deceased passes immediately on the death of
to some person other than the wife or husband

ancestor or lineal descendant of the deceased, shall not be aggregated with any other property, but shall be an estate by itself, and the estate duty shall be levied at the proper graduated rate on the principal value thereof; but if any benefit under a disposition not made by the deceased is reserved or given to the wife or husband or a lineal ancestor or lineal descendant of the deceased, such benefit shall be aggregated with property of the deceased for the purpose of determining the rate of estate duty.

Settled property.

[*See also Finance Act*, 1896, *ss.* 14, 15, 19.]

5.—(1.) Where property in respect of which estate duty is leviable, is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not competent to dispose of the property,—

(*a*) a further estate duty (called settlement estate duty) on the principal value of the settled property shall be levied at the rate hereinafter specified, except where the only life interest in the property after the death of the deceased is that of a wife or husband of the deceased; but

(*b*) during the continuance of the settlement the settlement estate duty shall not be payable more than once.

[*Amended by Finance Act*, 1898, *s.* 13.]

(2.) If estate duty has already been paid in respect of any settled property since the date of the settlement, the estate duty shall not, nor shall any of the duties mentioned in the fifth paragraph of the First Schedule to this Act, be payable in respect thereof, until the death of a person who was at the time of his death or had been at any time during the continuance of the settlement competent to dispose of such property.

[*See also Finance Act*, 1898, *s.* 14.]

(3.) In the case of settled property, where the interest of any person under the settlement fails or determines by reason of his death before it becomes an interest in possession, and subsequent limitations under the settlement continue to subsist, the property shall not be deemed to pass on his death.

(4.) Any person paying the settlement estate duty payable under this section upon property comprised in a settlement, may deduct the amount of the ad valorem stamp duty (if any), charged on the settlement in respect of that property.

(5.) Where any lands or chattels are so settled, whether by Act of Parliament or royal grant, that no one of the persons successively in possession thereof is capable of alienating the same, whether his interest is in law a tenancy for life or a tenancy in tail, the provisions of this Act with respect to settled property shall not apply, and the property passing on the death of any person in possession of the lands and chattels

shall be the interest of his successor in the lands a
and such interest shall be valued, for the purpo
duty, in like manner as for the purpose of successi

Collection and Recovery of Duty and Value of P

Collection and recovery of estate duty.

[*See also Finance Act*, 1896, *s.* 16.]

6.—(1.) Estate duty shall be a stamp duty, co recovered as hereinafter mentioned.

(2.) The executor of the deceased shall pay the in respect of all personal property (wheresoever which the deceased was competent to dispose at h delivering the Inland Revenue affidavit, and may manner the estate duty in respect of any other prop on such death, which by virtue of any testamentary of the deceased is under the control of the executo case of property not under his control, if the perso able for the duty in respect thereof request him to payment.

(3.) Where the executor does not know the amo of any property which has passed on the death, h in the Inland Revenue affidavit that such property he does not know the amount or value thereof, undertakes, as soon as the amount and value are to bring in an account thereof, and to pay both t which he is or may be liable, and any further duty reason thereof for which he is or may be liable i the other property mentioned in the affidavit.

(4.) Estate duty, so far as not paid by the execu collected upon an account setting forth the partic property, and delivered to the commissioners within after the death by the person accountable for th within such further time as the commissioners may

(5.) Every estate shall include all income accrue property included therein down to and outstanding of the death of the deceased.

[*Amended by Finance Act*, 1896, *ss.* 18, 40.]

(6.) Interest at the rate of three per cent. per the estate duty shall be paid from the date of the the date of the delivery of the Inland Revenue account, or the expiration of six months after whichever first happens, and shall form part of duty.

(7.) The duty which is to be collected upon Revenue affidavit or account shall be due on t thereof, or on the expiration of six months from whichever first happens.

[*Amended by Finance Act*, 1896, *s.* 18.]

(8.) Provided that the duty due upon an acco property may, at the option of the person del

account, be paid by eight equal yearly instalments, or sixteen half-yearly instalments, with interest at the rate of three per cent. per annum from the date at which the first instalment is due, less income tax, and the first instalment shall be due at the expiration of twelve months from the death, and the interest on the unpaid portion of the duty shall be added to each instalment and paid accordingly; but the duty for the time being unpaid, with such interest to the date of payment, may be paid at any time, and in case the property is sold, shall be paid on completion of the sale, and if not so paid shall be duty in arrear.

Value of property.

7.—(1.) In determining the value of an estate for the purpose of estate duty allowance shall be made for reasonable funeral expenses and for debts and incumbrances; but an allowance shall not be made—

(*a*) for debts incurred by the deceased, or incumbrances created by a disposition made by the deceased, unless such debts or incumbrances were incurred or created bonâ fide for full consideration in money or money's worth wholly for the deceased's own use and benefit and take effect out of his interest, nor

(*b*) for any debt in respect whereof there is a right to reimbursement from any other estate or person, unless such reimbursement cannot be obtained, nor

(*c*) more than once for the same debt or incumbrance charged upon different portions of the estate;

and any debt or incumbrance for which an allowance is made shall be deducted from the value of the land or other subjects of property liable thereto.

(2.) An allowance shall not be made in the first instance for debts due from the deceased to persons resident out of the United Kingdom (unless contracted to be paid in the United Kingdom, or charged on property situate within the United Kingdom), except out of the value of any personal property of the deceased situate out of the United Kingdom in respect of which duty is paid; and there shall be no repayment of estate duty in respect of any such debts, except to the extent to which it is shown to the satisfaction of the commissioners, that the personal property of the deceased situate in the foreign country or British possession in which the person to whom such debts are due resides, is insufficient for their payment.

(3.) Where the commissioners are satisfied that any additional expense in administering or in realising property has been incurred by reason of the property being situate out of the United Kingdom, they may make an allowance from the value of the property on account of such expense not exceeding in any case five per cent. on the value of the property.

(4.) Where any property passing on the death of
is situate in a foreign country, and the commi
satisfied that by reason of such death any duty is
that foreign country in respect of that property
make an allowance of the amount of that duty fro
of the property.

(5.) The principal value of any property shall b
to be the price which, in the opinion of the con
such property would fetch if sold in the open ma
time of the death of the deceased;

Provided that, in the case of any agricultura
where no part of the principal value is due to the
of an increased income from such property, the pri
shall not exceed twenty-five times the annual value
under Schedule A. of the Income Tax Acts, after n
deductions as have not been allowed in that asse
16 & 17 Vict. c. 51. are allowed under the Succession Duty Act, 1853,
a deduction for expenses of management not exc
per cent. of the annual value so assessed.

(6.) Where an estate includes an interest in
estate duty in respect of that interest shall be p
option of the person accountable for the duty, eith
duty in respect of the rest of the estate or when t
falls into possession, and if the duty is not paid
estate duty in respect of the rest of the estate, then-

(*a*) for the purpose of determining the rate of
in respect of the rest of the estate the v
interest shall be its value at the date of t
the deceased; and

(*b*) the rate of estate duty in respect of the int
it falls into possession shall be calculated
to its value when it falls into possession
with the value of the rest of the estate as
ascertained.

(7.) The value of the benefit accruing or arising
cesser of an interest ceasing on the death of th
shall—

(*a*) if the interest extended to the whole inco
property, be the principal value of that
and

(*b*) if the interest extended to less than the whc
of the property, be the principal value of a
to the property equal to the income to
interest extended.

(8.) Subject to the provisions of this Act, the val
property for the purpose of estate duty shall be asce
the commissioners in such manner and by such mea

think fit, and, if they authorise a person to inspect any property and report to them the value thereof for the purposes of this Act, the person having the custody or possession of that property shall permit the person so authorised to inspect it at such reasonable times as the commissioners consider necessary.

(9.) Where the commissioners require a valuation to be made by a person named by them, the reasonable costs of such valuation shall be defrayed by the commissioners.

(10.) Property passing on any death shall not be aggregated more than once, nor shall estate duty in respect thereof be more than once levied on the same death.

Supplemental provisions as to collection, recovery, and repayment of and exemption from estate duty.

8.—(1.) The existing law and practice relating to any of the duties now leviable on or with reference to death shall, subject to the provisions of this Act and so far as the same are applicable, apply for the purposes of the collection, recovery, and repayment of estate duty, and for the exemption of the property of common seamen marines or soldiers who are slain or die in the service of her Majesty, and for the purpose of payment of sums under one hundred pounds without requiring representation, as if such law and practice were in terms made applicable to this part of this Act.

52 & 53 Vict. c. 7. 54 & 55 Vict. c. 66.

(2.) Sections twelve to fourteen of the Customs and Inland Revenue Act, 1889, and section forty-seven of the Local Registration of Title (Ireland) Act, 1891, shall apply as if estate duty were therein mentioned as well as succession duty, and as if an account were not settled within the meaning of any of the above sections until the time for the payment of the duty on such account has arrived.

(3.) The executor of the deceased shall, to the best of his knowledge and belief, specify in appropriate accounts annexed to the Inland Revenue affidavit all the property in respect of which estate duty is payable upon the death of the deceased, and shall be accountable for the estate duty in respect of all personal property wheresoever situate of which the deceased was competent to dispose at his death, but shall not be liable for any duty in excess of the assets which he has received as executor, or might but for his own neglect or default have received.

(4.) Where property passes on the death of the deceased, and his executor is not accountable for the estate duty in respect of such property, every person to whom any property so passes for any beneficial interest in possession, and also, to the extent of the property actually received or disposed of by him, every trustee, guardian, committee, or other person in whom any interest in the property so passing or the management thereof is at any time vested, and every person in whom

the same is vested in possession by alienation or
tive title shall be accountable for the estate
property, and shall, within the time required by
such later time as the commissioners allow, deliver
missioners and verify an account, to the best of hi
and belief, of the property: Provided that noth
section contained shall render a person accountal
who acts merely as agent or bailiff for another pe
management of property.

(5.) Every person accountable for estate duty
person whom the commissioners believe to have t
sion of or administered any part of the estate i
which duty is leviable on the death of the decease
income of any part of such estate, shall, to the
knowledge and belief, if required by the commissio
to them and verify a statement of such particul
with such evidence as they require relating to a
which they have reason to believe to form part of
respect of which estate duty is leviable on the d
deceased.

(6.) A person who wilfully fails to comply with
foregoing provisions of this section shall be liabl
hundred pounds, or a sum equal to double the am
estate duty, if any, remaining unpaid for which he
able, according as the commissioners elect: Provi
commissioners, or in any proceeding for the recov
penalty the court, shall have power to reduce any s

(7.) Estate duty shall, in the first instance, be c
the appropriate rate according to the value of the
forth in the Inland Revenue affidavit or account d
if afterwards it appears that for any reason too lit
been paid, the additional duty shall, unless a certif
charge has been delivered under this Act, be paya
treated as duty in arrear.

(8.) The commissioners on application from a
countable for the duty on any property forming
estate shall, where they consider that it can con
done, certify the amount of the valuation accept
for any class or description of property forming
estate.

(9.) Where the commissioners are satisfied tha
duty leviable in respect of any property cannot wi
sive sacrifice be raised at once, they may allow pay
postponed for such period, to such extent, and on
such interest not exceeding four per cent. or any hi
yielded by the property, and on such terms, as t
sioners think fit.

(10.) Interest on arrears of estate duty shall be paid as if they were arrears of legacy duty. [*Repealed by Finance Act, 1896, Sched., Pt. III.*]

(11.) If after the expiration of twenty years from a death upon which estate duty became leviable any such duty remains unpaid, the commissioners may, if they think fit, on the application of any person accountable or liable for such duty or interested in the property, remit the payment of such duty or any part thereof or any interest thereon.

(12.) Where it is proved to the satisfaction of the commissioners that too much estate duty has been paid, the excess shall be repaid by them, and in cases where the over-payment was due to over-valuation by the commissioners, with interest at three per cent. per annum.

(13.) Where any proceeding for the recovery of estate duty in respect of any property is instituted, the High Court shall have jurisdiction to appoint a receiver of the property and the rents and profits thereof, and to order a sale of the property.

(14.) All affidavits, accounts, certificates, statements, and forms used for the purpose of this part of this Act shall be in such form, and contain such particulars, as may be prescribed, and if so required by the commissioners shall be in duplicate, and accounts and statements shall be delivered and verified on oath and by production of books and documents in the manner prescribed, and any person who wilfully fails to comply with the provisions of this enactment shall be liable to the penalty above in this section mentioned.

(15.) No charge shall be made for any certificate given by the commissioners under this Act.

(16.) The estate duty may be collected by means of stamps or such other means as the commissioners prescribe.

(17.) The form of certificate required to be given by the proper officer of the court under section thirty of the Customs and Inland Revenue Act, 1881, may be varied by a rule of court in such manner as may appear necessary for carrying into effect this Act. 44 & 45 Vict. c. 12.

(18.) Nothing in this section shall render liable to or accountable for duty a bonâ fide purchaser for valuable consideration without notice.

Charge of estate duty on property, and facilities for raising it.

9.—(1.) A rateable part of the estate duty on an estate, in proportion to the value of any property which does not pass to the executor as such, shall be a first charge on the property in respect of which duty is leviable; provided that the property shall not be so chargeable as against a bonâ fide purchaser thereof for valuable consideration without notice.

(2.) On an application submitting in the prescribed form the description of the lands or other subjects of property

(whether hereditaments, stocks, funds, shares, o
and of the debts and incumbrances allowed by
sioners in assessing the value of the property for
of estate duty the commissioners shall grant a
the estate duty paid in respect of the property, an
debts and incumbrances so allowed, as well as t
other subjects of property.

(3.) Subject to any repayment of estate duty
want of title to the land or other subjects of prope
the existence of any debt or incumbrance thereo
under this Act an allowance ought to have been
been made, or from any other cause, the certif
commissioners shall be conclusive evidence that th
duty named therein is a first charge on the lan
subjects of property after the debts and incumbra
as aforesaid: Provided that any such repayment
the commissioners shall be made to the person p
them the said certificate.

(4.) If the rateable part of the estate duty in re
property is paid by the executor, it shall where
quires be repaid to him by the trustees or ow
property, but if the duty is in respect of real
may, unless otherwise agreed upon, be repaid b
instalments and with the same interest as are i
mentioned.

(5.) A person authorised or required to pay the
in respect of any property shall, for the purpose of
duty, or raising the amount of the duty when al
have power, whether the property is or is not vest
to raise the amount of such duty and any interest a
properly paid or incurred by him in respect there
sale or mortgage of or a terminable charge on that
any part thereof.

(6.) A person having a limited interest in any
who pays the estate duty in respect of that propert
entitled to the like charge, as if the estate duty in
that property had been raised by means of a mortga

(7.) Any money arising from the sale of property
in a settlement, or held upon trust to lay out upon
of a settlement, and capital money arising under t
45 & 46 Vict. c. 38. Land Act, 1882, may be expended in paying any
in respect of property comprised in the settlement
upon the same trusts.

Appeal from commissioners.

10.—(1.) Any person aggrieved by the decision o
missioners, with respect to the repayment of any exce
paid, or by the amount of duty claimed by the comm
whether on the ground of the value of any property

charged or otherwise, may, on payment of, or giving security as hereinafter mentioned for, the duty claimed by the commissioners or such portion of it as is then payable by him, appeal to the High Court within the time and in the manner and on the conditions directed by rules of court, and the amount of duty shall be determined by the High Court, and if the duty as determined is less than that paid to the commissioners the excess shall be repaid. [*Amended by Finance Act, 1896, s. 22.*]

(2.) No appeal shall be allowed from any order, direction, determination, or decision of the High Court in any appeal under this section except with the leave of the High Court or Court of Appeal.

(3.) The costs of the appeal shall be in the discretion of the court, and the court, where it appears to the court just, may order the commissioners to pay on any excess of duty repaid by them interest at the rate of three per cent. per annum for such period as appears to the court just.

(4.) Provided that the High Court, if satisfied that it would impose hardship to require the appellant, as a condition of an appeal, to pay the whole or, as the case may be, any part of the duty claimed by the commissioners or of such portion of it as is then payable by him, may allow an appeal to be brought on payment of no duty, or of such part only of the duty as to the court seems reasonable, and on security to the satisfaction of the court being given for the duty, or so much of the duty as is not so paid, but in such case the court may order interest at the rate of three per cent. per annum to be paid on the unpaid duty so far as it becomes payable under the decision of the court.

(5.) Where the value as alleged by the commissioners of the property in respect of which the dispute arises does not exceed ten thousand pounds, the appeal under this section may be to the county court for the county or place in which the appellant resides or the property is situate, and this section shall for the purpose of the appeal apply as if such county court were the High Court.

(6.) The county council of every county or county borough in Great Britain, shall within twelve months after the commencement of this Act, and may thereafter from time to time, appoint a sufficient number of qualified persons to act as valuers for the purposes of this Act in their respective counties, and shall fix a scale of charges for the remuneration of such persons, and the court may refer any question of disputed value under this section to the arbitration of any person so appointed for the county in which the appellant resides or the property is situate; and the costs of any such arbitration shall be part of the costs of the appeal.

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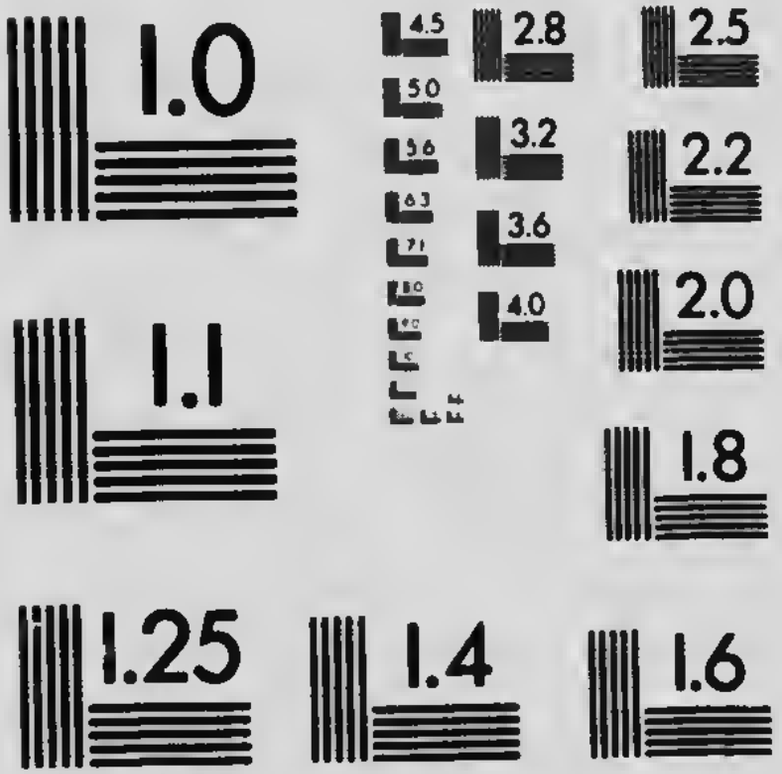

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Discharge from and Apportionment of Duty.

Release of persons paying estate duty.

11.—(1.) The commissioners on being satisfied tha estate duty has been or will be paid in respect of an any part thereof shall, if required by the person a for the duty, give a certificate to that effect, which charge from any further claim for estate duty the shown by the certificate to form the estate or part t the case may be.

(2.) Where a person accountable for the estate respect of any property passing on a death applies lapse of two years from such death to the commissio delivers to them and verifies a full statement to the b knowledge and belief of all property passing on su and the several persons entitled thereto, the comm may determine the rate of the estate duty in respe property for which the applicant is accountable, and ment of the duty at that rate, that property and the so far as regards that property shall be discharged further claim for estate duty, and the commissioners a certificate of such discharge.

(3.) A certificate of the commissioners under thi shall not discharge any person or property from estat case of fraud or failure to disclose material facts, and affect the rate of duty payable in respect of any prope wards shown to have passed on the death, and the d spect of such property shall be at such rate as would b if the value thereof were added to the value of the in respect of which duty has been already accounted f

(4.) Provided nevertheless that a certificate purp be a discharge of the whole estate duty payable in r any property included in the certificate shall exonera fide purchaser for valuable consideration without no the duty notwithstanding any such fraud or failure.

Commutation of duty on interest in expectancy.

12. The commissioners in their discretion, upon ap by a person entitled to an interest in expectancy, may the estate duty which would or might, but for the c tion, become payable in respect of such interest for sum to be presently paid, and for determining that s cause a present value to be set upon such duty, rega had to the contingencies affecting the liability to and amount of such duty, and interest being reckoned at cent.; and on the receipt of such sum they shall give a of discharge accordingly.

Powers to

13.—(1.) Where, by reason of the number of d

which property has passed or of the complicated nature of the interests of different persons in property which has passed on death, or from any other cause, it is difficult to ascertain exactly the amount of death duties or any of them payable in respect of any property or any interest therein, or so to ascertain the same without undue expense in proportion to the value of the property or interest, the commissioners on the application of any person accountable for any duty thereon, and upon his giving to them all the information in his power respecting the amount of the property and the several interests therein, and other circumstances of the case, may by way of composition for all or any of the death duties payable in respect of the property, or interest, and the various interests therein, or any of them, assess such sum on the value of the property, or interest, as having regard to the circumstances appears proper, and may accept payment of the sum so assessed, in full discharge of all claims for death duties in respect of such property or interest, and shall give a certificate of discharge accordingly; accept composition for death duties.

(2.) Provided that the certificate shall not discharge any person from any duty in case of fraud or failure to disclose material facts.

(3.) In this section the expression "death duties" means the estate duty under this Act, the duties mentioned in the First Schedule to this Act and the legacy and succession duties, and the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881. 44 & 45 Vict. c. 12.

14.—(1.) In the case of property which does not pass to the executor as such, an amount equal to the proper rateable part of the estate duty may be recovered by the person, who being authorised or required to pay the estate duty in respect of any property has paid such duty, from the person entitled to any sum charged on such property (whether as capital or as an annuity or otherwise,) under a disposition not containing any express provision to the contrary. Apportionment of duty.

(2.) Any dispute as to the proportion of estate duty to be borne by any property or person, may be determined upon application by any person interested in manner directed by rules of court, either by the high court, or, where the amount in dispute is less than fifty pounds, by a county court for the county or place in which the person recovering the same resides, or the property in respect of which the duty is paid is situate.

(3.) Any person from whom a rateable part of estate duty can be recovered under this section shall be bound by the accounts and valuations as settled between the person entitled to recover the same and the commissioners.

Exemptions from estate duty.

[*See also Finance Act*, 1896, *ss.* 14, 15.]

15.—(1.) Estate duty shall not be payable in res
single annuity not exceeding twenty-five pounds pur
provided by the deceased, either by himself alone or i
or arrangement with any other person, for the life o
and of some other person and the survivor of them, o
on his own death in favour of some other person ;
any case there is more than one such annuity, the ann
granted shall be alone entitled to the exemption u
section.

(2.) It shall be lawful for the Treasnry to remit t
duty, or any other duty leviable on or with reference
in respect of any such pictures, prints, books, mar
works of art or scientific collections, as appear to the
to be of national, scientific, or historic interest, an
given or bequeathed for national purposes, or to any u
or to any county council or municipal corporation,
property the duty in respect of which is so remitted
aggregated with any other property for the purpose
the rate of estate duty.

(3.) Estate dnty shall not be payable in respect
pension or annuity payable by the Government of
India to the widow or child of any deceased officer
Government, notwithstanding that the deceased con
during his lifetime to any fnnd out of which snch pe
annnity is paid.

(4.) Estate dnty shall not be payable in respect
advowson or church patronage which would have b
16 & 17 Vict. c. 51. from succession duty under section twenty-four of t
cession Duty Act, 1853.

Small Estates.

Provision for estates not exceeding £1,000.

44 & 45 Vict. c. 12.

16.—(1.) The provisions of sections thirty-three,
five, and thirty-six of the Customs and Inland Rever
1881 (relating to the obtaining of representation to
ceased where the gross value of his personal estate d
exceed three hundred pounds), shall apply with the n
modifications to the case where the gross valne of the p
real and personal in respect of which estate duty is
on the death of the deceased, exclusive of property
otherwise than by the will of the deceased, does not
five hundred ponnds, and where the gross valuc do
exceed three hnndred pounds the fixed dnty shall be
shillings, and where the gross value exceeds three h
ponnds and does not exceed five hundred pounds th
duty shall be fifty shillings.

[See Revenue Act, 1903, s. 14, p. 794, annulling forfeiture or fixed duty paid.]

(2.) All such property may be comprised in the notic
the said section thirty-three.

(3.) Where the net value of the property, real and personal, in respect of which estate duty is payable on the death of the deceased, exclusive of property settled otherwise than by the will of the deceased, does not exceed one thousand pounds, such property, for the purpose of estate duty, shall not be aggregated with any other property, but shall form an estate by itself; and where the fixed duty or estate duty has been paid upon the principal value of that estate, the settlement estate duty and the legacy and succession duties shall not be payable under the will or intestacy of the deceased in respect of that estate.

(4.) Where representation granted under this section if granted in England extends to property in Ireland, and if granted in Ireland extends to property in England, the principal registrar of the Probate Division of the High Court in England or Ireland, as the case may be, shall affix the seal of the court thereto on the same being sent to him for that purpose, with the fee of two shillings and sixpence.

(5.) Where the fixed duty of thirty or fifty shillings is paid within twelve months after the death of the deceased, interest on such duty shall not be payable.

Rates of Estate Duty.

17. The rates of estate duty shall be according to the following scale:— Scale of rates of estate duty.

Where the Principal Value of the Estate						Estate Duty shall be payable at the Rate per Cent. of
	£				£	
Exceeds	100	and does not exceed			500	One pound.
,,	500	,,	,,		1,000	Two pounds.
,,	1,000	,,	,,		10,000	Three pounds.
,,	10,000	,,	,,		25,000	Four pounds.
,,	25,000	,,	,,		50,000	Four pounds ten shillings.
,,	50,000	,,	,,		75,000	Five pounds.
,,	75,000	,,	,,		100,000	Five pounds ten shillings.
,,	100,000	,,	,,		150,000	Six pounds.
,,	150,000	,,	,,		250,000	Six pounds ten shillings.
,,	250,000	,,	,,		500,000	Seven pounds.
,,	500,000	,,	,,		1,000,000	Seven pounds ten shillings.
,,	1,000,000	. .	. .	. .	. .	Eight pounds.

The rate of the settlement estate duty where the property is settled shall be one per cent.

Provided that for any fractional part of ten pounds over ten pounds or any multiple thereof, the estate duty and the [*Amended by Finance Act*, 1896, *s.* 17,

and Sched., Pt. III., in respect to a person dying after July 1st, 1896. See also Finance Act, 1900, s. 13.]

settlement estate duty shall be payable at the rate for the full sum of ten pounds.

Succession Duty.

Valuo of real successions for succession duty.

18.—(1.) The value for the purpose of succession succession to real property arising on the death of person shall, where the successor is competent to the property, be the principal value of the prop deducting the estate duty payable in respect there said death and the expenses if any properly incurred and paying the same; and the duty shall be a cha property, and shall be payable by the same instalme authorised by this Act for estate duty on real prop interest at the rate of three per cent. per annum; an instalment shall be payable and the interest shall be at the expiration of twelve months after the date on successor became entitled in possession to his succes the receipt of the income and profit thereof; and expiration of the said twelve months the provisions w to discount shall not apply.

(2.) The principal value of real property for the succession duty shall be ascertained in the same ma would be ascertained under the provisions of this A purpose of estate duty; and in the case of any ag property where no part of the principal value is d expectation of an increased income from such pro annual value for the purpose of succession duty shall at in the same manner as under the provisions of th this Act for the purpose of estate duty.

British Possessions.

Exception as to property in British possessions.

20.—(1.) Where the commissioners are satisfied, British possession to which this section applies, duty by reason of a death in respect of any property situat possession and passing on such death, they shall all equal to the amount of that duty to be deducted estate duty payable in respect of that property on death.

(2.) Nothing in this Act shall be held to create for estate duty on any property situate in a British p while so situate, or to authorise the commissioners to proceedings in a British possession for the recover estate duty.

(3.) Her Majesty the Queen may, by Order in apply this section to any British possession, where her is satisfied that, by the law of such possession, either

is leviable in respect of property situate in the United Kingdom when passing on death, or that the law of such possession as respects any duty so leviable is to the like effect as the foregoing provisions of this section (*a*).

(4.) Her Majesty in Council may revoke any such order, where it appears that the law of the British possession has been so altered that it would not authorise the making of an order under this section.

Savings and Definitions.

Savings.

[*See also Finance Act*, 1896, *ss.* 14, 15.]

21.—(1.) Estate duty shall not be payable on the death of a deceased person in respect of personal property settled by a will or disposition made by a person dying before the commencement of this Part of this Act, in respect of which property and duty mentioned in paragraphs one and two of the First Schedule to this Act, or the duty payable on any representation or inventory under any Act in force before the Customs and Inland Revenue Act, 1881, has been paid or is payable, unless in either case the deceased was at the time of his death, or at any time since the will or disposition took effect had been, competent to dispose of the property.

44 & 45 Vict. c. 12.

(2.) Where a person died before the commencement of this Part of this Act, the duties mentioned in the First Schedule to this Act shall continue to be payable in like manner in all respects as if this Act had not passed.

(3.) Where an interest in expectancy in any property has, before the commencement of this Part of this Act, been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession, than would have been payable if this Act had not passed; and in the case of a mortgage, any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(4.) The settlement estate duty of one per cent. shall not be payable in respect of property settled by a disposition which has taken effect before the commencement of this Part of this Act.

(5.) Where a husband or wife is entitled, either solely or jointly with the other, to the income of any property settled by the other under a disposition which has taken effect before the commencement of this Part of this Act, and on his or her death the survivor becomes entitled to the income of the property settled by such survivor, estate duty shall not be

(*a*) For list of possessions to which this section has been applied, see p. 927.

payable in respect of that property until the de
snrvivor.

Definitions. 22.—(1.) In this Part of this Act, unless the co
wise requires:—

(*a.*) The expressions "deceased person" and "th
mean a person dying after the comme
this Part of this Act:

(*b.*) The expression "will" includes any t
instrnment:

(*c.*) The expression "representation" means p
will or letters of administration:

(*d.*) The expression "executor" means the e
administrator of a deceased person, and
regards any obligation under this Part o
any person who takes possession of or in
with the personal property of a deceased p

(*e.*) The expression "estate dnty" means estate
this Act:

(*f.*) The expression "property" includes real p
personal property and the proceeds of s
respectively and any moncy or investme
time being representing the proceeds of sa

(*g.*) The expression "agricnltnral property" m
cultural land pasture and woodland, an
cludes such cottages, farm buildings, fa
and mansion honses (togcther with the lan
thcrewith) as are of a character appropri
property:

(*h.*) The expression "settled property" means
comprised in a settlement:

(*i.*) The expression "settlement" means any i
whcther relating to real property or persona
which is a settlement within the meaning
two of the Settled Land Act, 1882, or if it
real property would be a settlement within
ing of that section, and includes a settleme
by a parol trust:

45 & 46 Vict. c. 38.

(*j.*) The expression "interest in expectancy" in
estate in remainder or reversion and ev
futnre interest whether vested or contin
does not include reversions expectant upon
mination of leases:

(*k.*) The expression "incumbrances" inclndes
and terminable charges:

(*l.*) The expression "property passing on the d
clndes property passing either immediatel
death or after any interval, either cer

contingently, and either originally or by way of substitutive limitation, and the expression "on the death" includes "at a period ascertainable only by reference to the death":

(*m.*) The expression "the commissioners" means the Commissioners of Inland Revenue:

(*n.*) The expression "Inland Revenue affidavit" means an affidavit made under the enactments specified in the Second Schedule to this Act with the account and schedule annexed thereto:

(*o.*) The expression "prescribed" means prescribed by the commissioners.

(2.) For the purposes of this Part of this Act—

(*a.*) A person shall be deemed competent to dispose of property if he has such an estate or interest therein or such general power as would, if he were sui juris, enable him to dispose of the property, including a tenant in tail whether in possession or not; and the expression "general power" includes every power or authority enabling the donee or other holder thereof to appoint or dispose of property as he thinks fit, whether exercisable by instrument inter vivos or by will, or both, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself, or exercisable as tenant for life under the Settled Land Act, 1882, or as mortgagee: 45 & 46 Vict. c. 38.

(*b.*) A disposition taking effect out of the interest of the deceased person shall be deemed to have been made by him, whether the concurrence of any other person was or was not required:

(*c.*) Money which a person has a general power to charge on property shall be deemed to be property of which he has power to dispose.

(3.) This Part of this Act shall apply to property in which the wife or husband of the deceased takes an estate in dower or by the curtesy or any other like estate, in like manner as it applies to property settled by the will of the deceased.

Application to Scotland.

Application of Part of Act to Scotland.

23. In the application of this Part of this Act to Scotland unless the context otherwise requires:—

(1.) The Court of Session shall be substituted for the High Court:

(2.) "Sheriff court" shall be substituted for "county court":

(3.) "Confirmation" shall be substituted for tation":

(4.) The expression "receiver of the property rents and profits thereof" means a juc upon the property:

(5.) The expression "Inland Revenue affida the inventory of the personal estate of now required by law, and includes a inventory:

(6.) The expression "on delivering the Inlar affidavit" means on exhibiting and recor stamped inventory as provided by sec eight of the Act of the forty-eighth y reign of king George the Third, chapter c and forty-nine:

44 & 45 Vict. c. 12.

(7.) Section thirty-four of the Customs and Inla Act, 1881, shall be substituted for sec three of that Act, and the Acts referred section thirty-four shall extend to an estat value not exceeding five hundred poun application under the said Acts may be n commissary clerk, and any commissary affix the seal of the court to any rep granted in England or Ireland upon being sent to him for that purpose, encl of two shillings and sixpence:

(8.) The expression "personal property" mean property:

(9.) The expression "real property" includes property:

(10.) The expression "incumbrance" includes an security, or other debt or payment sec heritage:

(11.) The expression "executor" means every as executor, nearest of kin, or creditor, or intromits with or enters upon the pos management of any personal property of person:

(12.) The property comprised in any special a or disposition taking effect on death deemed to pass on death within the m this Act:

(13.) The expression "trustee" includes a tuto and judicial factor:

(14.) The expression "settled property" shall n property held under entail.

Commencement.

24. This part of this Act shall come into operation on the expiration of the first day of August one thousand eight hundred and ninety-four, in this Part of this Act referred to as the commencement of this Part of this Act. Commencement of Part of Act.

Short Title.

42. This Act may be cited as the Finance Act, 1894. Short title.

SCHEDULES.

FIRST SCHEDULE.

EXISTING DUTIES REFERRED TO.

1. The stamp duties imposed by the Customs and Inland Revenue Act, 1881, on the affidavit to be required and received from the person applying for probate or letters of administration in England or Ireland, or on the inventory to be exhibited and recorded in Scotland. Sections 1, 5, 18, 21. 44 & 45 Vict. c. 12.

2. The stamp duties imposed by section 38 of the Customs and Inland Revenue Act, 1881, as amended and extended by section 11 of the Customs and Inland Revenue Act, 1889, on the value of personal or moveable property to be included in accounts thereby directed to be delivered. 52 & 53 Vict. c. 7.

3. The additional succession duties imposed by section 21 of the Customs and Inland Revenue Act, 1888. 51 & 52 Vict. c. 8.

4. The temporary estate duties imposed by sections 5 and 6 of the Customs and Inland Revenue Act, 1889.

5. The duty at the rate of one pound per cent. which would by virtue of the Acts in force relating to legacy duty or succession duty have been payable under the will or intestacy of the deceased, or under his disposition or any devolution from him under which respectively estate duty has been paid, or under any other disposition under which estate duty has been paid.

SECOND SCHEDULE.

ACTS REFERRED TO.

Session and Chapter.	Title or Short Title.	Section referred to.
55 Geo. III. c. 184	The Stamp Act, 1815 . .	Section thirty-eight.
56 Geo. III. c. 56	An Act the title of which begins with the words "An Act to repeal the several stamp duties" and ends with the words "managing the said duties."	Section one hundred and seventeen.
43 Vict. c. 14 . .	The Customs and Inland Revenue Act, 1880.	Section ten.
44 & 45 Vict. c. 12	The Customs and Inland Revenue Act, 1881.	Sections twenty-nine and thirty-two.

Section 22(*n*).

MERCHANT SHIPPING ACT,

(57 & 58 VICT. c. 60, ss. 150, 176, 177, 255, 2

Application of deposits of deceased depositor.

150. All sums due from the Board of Trade t any deceased person on account of any deposit savings bank shall be paid and applied by the B as if they were the property of a deceased seama the Board under this Act, and the provisions respecting that property shall apply accordingly.

Payment over of property of deceased seamen by Board of Trade.

176.—(1.) Where any property of a decease apprentice comes into the hands of the Board of agent of that Board, the Board of Trade, after expenses incurred in respect of that seaman or of his property such sum as they think proper t subject to the provisions of this Act, deal with follows :

(*a.*) If the property exceeds in value one hun they shall pay and deliver the residue personal representative of the deceased :

(*b.*) If the property do not exceed in value pounds, the Board may as they think or deliver the residue to any claimant w to their satisfaction to be the widow o the deceased, or to be entitled to the the deceased either under his will (if statute of distribution or otherwise, person entitled to take out representati no such representation has been taken o be thereby discharged from all further respect of the residue so paid or delivered

(*c.*) They may, if they think fit, require repre be taken out, and pay and deliver the re legal personal representative of the decea

(2.) Every person to whom any such residue i delivered shall apply the same in due course of adm

Dealing with deceased seaman's

177.—(1.) Where a deceased seaman or apprent a will the Board of Trade may refuse to pay or above-mentioned residue ;

(*a.*) If the will was made on board ship, to any person claiming under the will, unless the will is in writing, and is signed or acknowledged by the testator in the presence of, and is attested by, the master or first or only mate of the ship, and

(*b.*) If the will was not made on board ship, to any person claiming under the will, and not being related to the testator by blood or marriage, unless the will is in writing, and is signed or acknowledged by the testator in the presence of, and is attested by, two witnesses, one of whom is a superintendent, or is a minister of religion officiating in the place in which the will is made, or, where there are no such persons, a justice, British consular officer, or an officer of customs.

property when he leaves a will.

(2.) Where after the Board of Trade refuse under this section to pay or deliver the residue to a person claiming under a will the residue shall be dealt with as if no will had been made.

255.—(1.) Where by reason of the transfer of ownership or change of employment of a ship the list of the crew ceases to be required in respect of the ship, or to be required at the same date, the master or owner of the ship shall, if the ship is then in the United Kingdom, within one month, and, if she is elsewhere, within six months, after that cessation deliver or transmit to the superintendent at the port to which the ship belonged the list of the crew, duly made up to the time of the cessation.

Return in case of transfer or loss of ship.

(2.) If a ship is lost or abandoned, the master or owner thereof shall, if practicable, and as soon as possible, deliver or transmit to the superintendent at the port to which the ship belonged the list of the crew, duly made out to the time of the loss or abandonment.

(3.) If the master or owner of a ship fails, without reasonable cause, to comply with this section, he shall for each offence be liable to a fine not exceeding ten pounds.

256.—(1.) All superintendents and all officers of customs shall take charge of all documents which are delivered or transmitted to or retained by them in pursuance of this Act, and shall keep them for such time (if any) as may be necessary for the purpose of settling any business arising at the place where the documents come into their hands, or for any other proper purpose, and shall, if required, produce them for any of those purposes, and shall then transmit them to the Registrar General of Shipping and Seamen, and he shall

Transmission of documents to registrar by superintendents and other officers.

record and preserve them, and they shall be adm
evidence in manner provided by this Act, and they
payment of a moderate fee fixed by the Board of
without payment if the Board so direct, be ope
inspection of any person.

1 & 2 Vict. c. 94. 40 & 41 Vict. c. 55.

(2.) The documents aforesaid shall be public rec
documents within the meaning of the Public Reco
Acts, 1838 and 1877, and those Acts shall, where a
apply to those documents in all respects, as if sp
referred to therein.

Admissibility of documents in evidence.

695.—(1.) Where a document is by this Act decla
admissible in evidence, such document shall, on its p
from the proper custody, be admissible in evidenc
court or before any person having by law or consent
authority to receive evidence, and, subject to all ju
tions, shall be evidence of the matters stated th
pursuance of this Act or by any officer in pursuan
duties as such officer.

(2.) A copy of any such document or extract t
shall also be so admissible in evidence if proved
examined copy or extract, or if it purports to be sig
certified as a true copy or extract by the officer
custody the original document was entrusted, and th
shall furnish such certified copy or extract to an
applying at a reasonable time for the same, upon pa
a reasonable sum for the same, not exceeding fourp
every folio of ninety words, but a person shall be en
have—

(*a*) a certified copy of the particulars entered by the
in the register book on the registry of t
together with a certified statement show
ownership of the ship at the time being ; and

(*b*) a certified copy of any declaration, or document
of which is made evidence by this Act,

on payment of one shilling for each copy.

(3.) If any such officer wilfully certifies any docu
being a true copy or extract knowing the same not
true copy or extract, he shall for each offence be gu
misdemeanour, and be liable on conviction to impri
for any term not exceeding eighteen months.

(4.) If any person forges the seal, stamp, or sign
any document to which this section applies, or te
evidence any such document with a false or counter
stamp, or signature thereto, knowing the same to be
counterfeit, he shall for each offence be guilty of fel
be liable to penal servitude for a term not exceedi
years, or to imprisonment for a term not exceeding tw

with or without hard labour, and whenever any such document has been admitted in evidence, the court or the person who admitted the same may on request direct that the same shall be impounded, and be kept in the custody of some officer of the court or other proper person, for such period or subject to such conditions as the court or person thinks fit.

FRIENDLY SOCIETIES ACT, 1896.

(59 & 60 VICT. c. 25, ss. 56–61.)

Power of member to dispose of sums payable on his death by nomination.

56.—(1.) A member of a registered society (othe benevolent society or working-men's club) or branch not being under the age of sixteen years, may, by under his hand delivered at or sent to the registered the society or branch, or made in a book kept at th nominate a person to whom any sum of money payab society or branch on the death of that member, not e one hundred pounds, shall be paid at his decease. sum of money payable by the society or branch on t of a member, shall include sums of money contribut deposited in the separate loan account and the sums c accumulated for the use of the member under the prov this Act with interest thereon. (3.) The person so n must not be an officer or servant of the society or unless that officer or servant is the husband, wife mother, child brother, sister, nephew, or niece of th nator. (4.) A nomination so made may be revoked an by any similar document under the hand of the no delivered, sent, or made as aforesaid. (5.) The marri member of a society or branch shall operate as a revo any nomination theretofore made by that member un section.

Proceedings on death of a nominator.

57.—(1.) On receiving satisfactory proof of the de nominator, the society or branch shall pay to the nom amount due to the deceased member, not exceeding the of one hundred pounds. (2.) The receipt of a nomi sixteen years of age for any amount so paid shall b (3.) If the total sum in respect to which a nom tion made under this Act by a member, after deducting a of money payable under the rules of the society or or otherwise, for the purpose of defraying funeral e exceeds at the time of the death of that member pounds, the society or branch shall before making any require the production of a duly stamped receipt succession or legacy duty payable thereon, or a l certificate from the Commissioners of Inland Revenue that no such duty is payable. (4.) The commission give such receipt, letter, or certificate on the paymen

duty or satisfactory proof of no duty being payable, as the case may be.

Intestacy.

58.—(1.) If any member of a registered society or branch, entitled from the funds thereof to a sum not exceeding one hundred pounds, dies intestate and without having made any nomination thereof then subsisting, the society or branch may, without letters of administration, distribute the sum among such persons as appear to a majority of the trustees, upon such evidence as they may deem satisfactory, to be entitled by law to receive that sum, subject, if that sum, after making such deductions as aforesaid, exceeds eighty pounds, to the obtaining from the Commissioners of Inland Revenue a receipt for the succession or legacy duty payable thereon, or a letter or certificate stating that no such duty is payable. (2.) If any such member is illegitimate, the trustees may pay the sum of money which that member might have nominated to or among the persons who, in the opinion of a majority of them, would have been entitled thereto if that member had been legitimate, or if there are no such persons, the society or branch shall deal with the money as the Treasury may direct.

Estate duty to be paid when the whole estate exceeds £100.

59. When the principal value of the estate in respect of which estate duty is payable of any person entitled to make a nomination under this Act exceeds one hundred pounds, any sum paid under this Act without probate or letters of administration shall, notwithstanding such nomination or payment, be liable to estate duty as part of the amount on which that duty is charged, and the trustees of the society or branch may before making any such payment require a statutory declaration by the claimant, or by one of the claimants, that the principal value of that estate, including the sum in question, does not after deduction of debts and funeral expenses exceed the value of one hundred pounds.

Validity of payments.

60.—(1.) A payment made by a registered society or branch, under the foregoing provisions of this Act with respect to payments on death generally to the person who at the time appears to a majority of the trustees to be entitled thereunder, shall be valid and effectual against any demand made upon the trustees or the society or branch by any other person, but the next-of-kin or lawful representative of the deceased member shall have remedy for recovery of the money, so paid as aforesaid, against the person who has received that money. (2.) Where the society or branch has paid money to a nominee in ignorance of a marriage subsequent to the nomination, the receipt of the nominee shall be a valid discharge to the society or branch

Certificates of death.

61.—(1.) A registered society or branch shall
sum of money upon the death of a member or o
whose death is or ought to be entered in any registe
except upon the production of a certificate of that
the hand of the registrar of deaths or other person
of the register of deaths in which that death is or
entered. (2.) This section shall not apply to de
nor to a death by colliery explosion or other acci
the body cannot be found, nor to any death cer
coroner or procurator fiscal to be the subject of
inquest or inquiry.

FINANCE ACT, 1896.

(59 & 60 VICT. c. 28, ss. 14–21, 39–41.)

PART IV.

DEATH DUTIES.

Estate Duty.

Exception to passing of property on enlargement of interest of settlor.

14. Where property is settled by a person on himself for life, and after his death on any other persons with an ultimate reversion of an absolute interest or absolute power of disposition to the settlor, the property shall not be deemed for the purpose of the principal Act to pass to the settlor on the death of any such other person after the commencement of this Part of this Act, by reason only that the settlor, being then in possession of the property as tenant for life, becomes, in consequence of such death, entitled to the immediate reversion, or acquires an absolute power to dispose of the whole property.

Reverter of property to disponer.

15.—(1.) Where, by a disposition of any property an interest is conferred on any person other than the disponer for the life of such person or determinable on his death, and such person enters into possession of the interest and thenceforward retains possession thereof to the entire exclusion of the disponer or of any benefit to him by contract or otherwise, and the only benefit which the disponer retains in the said property is subject to such life or determinable interest, and no other interest is created by the said disposition, then, on the death of such person after the commencement of this Part of this Act, the property shall not be deemed for the purpose of the principal Act to pass by reason only of its reverter to the disponer in his lifetime.

(2.) Where by a disposition of any property any such interest as above in this section mentioned is conferred on two or more persons, either severally or jointly, or in succession, this section shall apply in like manner as where the interest is conferred on one person.

(3.) Provided that the foregoing sub-sections shall not apply where such person or persons taking the said life or determinable interest had at any time prior to the disposition been himself or themselves competent to dispose of the said property.

(4.) Where the deceased person was entitled by la
rents and profits of real property (as defined by sectio
16 & 17 Vict. c. 51. the Succession Duty Act, 1853) of his wife, and has di
lifetime, such property shall not be deemed for the p
the principal Act to pass on his death by reason of
becoming entitled to the property in virtue of he
interest.

Estate duty on annuities.

16. The estate duty due in respect of any annuity
definite annual sum, whether terminable or perpetual,
to in section two (1) (*d*) of the principal Act, may
option of the person delivering the account, be paid
equal yearly instalments, the first of which shall be d
end of twelve months from the date of the death, a
the end of those twelve months interest on the unpaid
of the duty shall be added to each instalment and paid
ingly, but the duty for the time being unpaid, with in
the date of payment, may be paid at any time.

Estate duty on fractions of one hundred pounds.

[*Amended by Finance Act*, 1900, *s.* 13.]

17. Section seventeen of the principal Act shall ha
as if there were added at the end thereof the following
in substitution for the existing proviso as to fractional
ten pounds :—

Provided that where the principal value of an esta
prises a fraction of one hundred pounds in excess
hundred pounds, or of any multiple of one hundred
such fraction shall be excluded from the value of the es
the purpose of determining both the rate and the am
duty, except that where the principal value of the
exceeds one hundred pounds and does not exceed two l
pounds the duty shall be one pound.

Interest upon estate duty and other death duties.

18.—(1.) Simple interest at the rate of three per c
annum without deduction for income tax shall be payab
all estate duty from the date of the death of the decea
where the duty is payable by instalments, or becomes
any date later than six months after the death, from t
at which the first instalment or the duty becomes d
shall be recoverable in the same manner as if it were
the duty.

(2.) The foregoing provision shall apply to the inte
all death duties as defined by section thirteen of the pr
Act in like manner as if it were herein re-enacted and
applicable to those duties.

(3.) The Commissioners of Inland Revenue may re
interest on any of such death duties where the amount
to them to be so small as not to repay the expense and
of calculation and account.

Incidence of settlement estate duty.

19.—(1.) The settlement estate duty leviable in respect of a legacy or other personal property settled by the will of the deceased shall (unless the will contains an express provision to the contrary) be payable out of the settled legacy or property in exoneration of the rest of the deceased's estate.

(2.) The settlement estate duty leviable in respect of any such legacy or property shall be collected upon an account setting forth the particulars of the legacy or property, and delivered to the commissioners by the executor within six months after the death, or within such further time as the commissioners may allow.

Objects of national, scientific, or historic interest.

20.—(1.) Where any property passing on the death of a deceased person consists of such pictures, prints, books, manuscripts, works of art, scientific collections, or other things not yielding income as appear to the Treasury to be of national, scientific, or historic interest, and is settled so as to be enjoyed in kind in succession by different persons, such property shall not, on the death of such deceased person, be aggregated with other property, but shall form an estate by itself, and, while enjoyed in kind by a person not competent to dispose of the same, be exempt from estate duty, but if it is sold or is in the possession of some person who is then competent to dispose of the same, shall become liable to estate duty.

(2.) The person selling the same, or for whose benefit the same is sold, and also the person being in possession and competent to dispose of the same, shall be accountable for the duty, and shall deliver an account, in accordance with section eight of the principal Act, in the case of a sale within one month after the sale, and in the case of a person coming into possession, or if in possession becoming competent to dispose, within six months after he so comes into possession, or becomes competent to dispose.

Allowance of succession duty, etc., paid out of capital before commencement of 57 & 58 Vict. c. 30.

21. Where on the death of a deceased person estate duty becomes payable by a person in respect of any property passing under a settlement made by a will or disposition which took effect before the commencement of the principal Act, and before that commencement any duty mentioned in paragraphs three to five of the First Schedule to the principal Act has been paid or is payable under the same will or disposition on the capital value of the property, the Commissioners of Inland Revenue shall allow the duty so paid or payable as a deduction from the estate duty to the extent to which it has been paid or is payable in respect of the property on which estate duty is payable.

Appeal from

22. There shall be added to sub-section five of section ten of

county court under 57 & 58 Vict. c. 30, s. 10.

the principal Act the following proviso: Provided that in eve such case any party shall have a right of appeal to her Majest Court of Appeal.

Amendment of 57 & 58 Vict. c. 30, as to certain heirs of entail in Scotland.

23. The Finance Act, 1894, shall be construed as if the were added in section twenty-three thereof, after sub-secti fifteen, the following enactment:

Provided that for the purposes of section eighteen of th Act such institute or heir of entail shall not be deemed to be person competent to dispose of such estate, unless he is entitl to disentail it without obtaining the consent of any subsequ heir of entail, or having the consent of any subsequent h valued and dispensed with.

Commencement and construction of Part of Act.

24.—(1.) Unless the context otherwise requires—

(*a*) This Part of this Act shall come into operation on t first day of July one thousand eight hundred a ninety-six, which day is in this Part of this A referred to as the commencement of this Part this Act; and

(*b*) The expression "deceased person" means a pers dying after the commencement of this Part of th Act.

(2.) Part I. of the Finance Act, 1894, is in this Act referr to as "the principal Act."

PART VII.

MISCELLANEOUS.

57 & 58 Vict. c. 30.

39. Part Four of this Act shall be construed together wi Part One of the Finance Act, 1894.

Repeal of Acts.

40. The Acts mentioned in the Schedule to this Act a hereby repealed to the extent in the third column of th Schedule mentioned.

Short title.

41. This Act may be cited as the Finance Act, 1896.

SCHEDULE.

PART III.

DEATH DUTIES.

Session and Chapter.	Short Title.	Extent of Repeal.
31 & 32 Vict. c. 124.	An Act to amend the laws relating to the Inland Revenue.	In section nine, from "at the rate of four pounds," to "as part thereof."
57 & 58 Vict. c. 30.	The Finance Act, 1894.	Section six, in sub-section six, the words "at the rate of three per cent. per annum," and the words "and shall form part of the estate duty," and in sub-section eight, the words "less income tax."
		Section eight, sub-section ten.
		Section seventeen, from "provided that," to the end of the section.

NAVY AND MARINES (WILLS) ACT,

(60 Vict. c. 15.)

Be it enacted by the Queen's most Excellent Majest
with the advice and consent of the Lords Spiritual a
poral, and Commons, in this present Parliament assem
by the authority of the same, as follows:

Amendment of 28 & 29 Vict. c. 72, as to wills of seamen, etc.

1. Section five of the Navy and Marines (Wills) A
(which contains regulations as to the wills of persons
having been seamen or marines with respect to wag
ances, and other like payments) shall, in its applicatio
will of any person who dies after the passing of this
amended as follows:—

(1.) The words "or when he has ceased so to serv
be repealed:

(2.) After the words "or a notary public" shall be
the words "or a solicitor, or in Scotland a law

Short title.

2. This Act may be cited as the Navy and Marines
Act, 1897, and the Navy and Marines (Wills) Act, 1
this Act may be cited together as the Navy and
(Wills) Acts, 1865 and 1897.

WORKMEN'S COMPENSATION ACT, 18

(60 & 61 Vict. c. 37.)

The scale of compensation in Schedule I. provide
where death results from injury, compensation shall
under the following scales:—

(1.) Where the workman leaves dependants who
pendent upon him.

(2.) Where he leaves persons partly dependent upon

(3.) Where he leaves no dependants.

"The Commissioners of Inland Revenue are of opini
estate duty is not chargeable in respect of moneys
under the Act as compensation for the death of a wo
and the amount should not be included in the estate
out in the Inland Revenue affidavit" (Circular 4/89).

LAND TRANSFER ACT, 1897.

(60 & 61 VICT. c. 65, ss. 1-5, 24-26.)

An Act to establish a Real Representative and to amend the Land Transfer Act, 1875. [6th August 1897.]

PART I.

ESTABLISHMENT OF A REAL REPRESENTATIVE.

Devolution of legal interest in real estate on death.

1.—(1.) Where real estate is vested in any person without a right in any other person to take by survivorship it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his personal representatives or representative from time to time as if it were a chattel real vesting in them or him.

(2.) This section shall apply to any real estate over which a person exercises by will a general power of appointment, as if it were real estate vested in him.

(3.) Probate and letters of administration may be granted in respect of real estate only, although there is no personal estate.

(4.) The expression "real estate," in this Part of this Act, shall not be deemed to include land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant.

(5.) This section applies only in cases of death after the commencement of this Act.

Provisions as to administration.

2.—(1.) Subject to the powers, rights, duties, and liabilities hereinafter mentioned, the personal representatives of a deceased person shall hold the real estate as trustees for the persons by law beneficially entitled thereto, and those persons shall have the same power of requiring a transfer of real estate as persons beneficially entitled to personal estate have of requiring a transfer of such personal estate.

(2.) All enactments and rules of law relating to the effect of probate or letters of administration as respects chattels real, and as respects the dealing with chattels real before probate or administration, and as respects the payment of costs of administration and other matters in relation to the

administration of personal estate, and the powers, r
duties, and liabilities of personal representatives in r
of personal estate, shall apply to real estate so far a
same are applicable, as if that real estate were a c
real vesting in them or him, save that it shall not b
for some or one only of several joint personal represen
without the authority of the court, to sell or trans
estate.

(3.) In the administration of the assets of a person
after the commencement of this Act, his real estate sh
administered in the same manner, subject to the
liabilities for debt, costs, and expenses, and with the
incidents, as if it were personal estate; provided that no
herein contained shall alter or affect the order in whic
and personal assets respectively are now applicable
towards the payment of funeral and testamentary exp
debts, or legacies, or the liability of real estate to be ch
with the payment of legacies.

(4.) Where a person dies possessed of real estate, the
shall, in granting letters of administration, have regard t
rights and interests of persons interested in his real estate
his heir-at-law, if not one of the next-of-kin, shall be eq
entitled to the grant with the next-of-kin, and provision
be made by rules of court for adapting the procedure
practice in the grant of letters of administration to the c
real estate.

Provision for transfer to heir or devisee.

3.—(1.) At any time after the death of the owner of
land, his personal representatives may assent to any d
contained in his will, or may convey the land to any p
entitled thereto as heir, devisee, or otherwise, and may
the assent or conveyance, either subject to a charge fo
payment of any money which the personal representative
liable to pay, or without any such charge; and on such a
or conveyance, subject to a charge for all moneys (if
which the personal representatives are liable to pay
liabilities of the personal representatives in respect of the
shall cease, except as to any acts done or contracts en
into by them before such assent or conveyance.

(2.) At any time after the expiration of one year from
death of the owner of any land, if his personal representa
have failed on the request of the person entitled to
land to convey the land to that person, the court may,
thinks fit, on the application of that person, and after n
to the personal representatives, order that the conveyanc
made, or, in the case of registered land, that the perso
entitled be registered as proprietor of the land, either sole
jointly with the personal representatives.

(3.) Where the personal representatives of a deceased person are registered as proprietors of land on his death, a fee shall not be chargeable on any transfer of the land by them unless the transfer is for valuable consideration.

(4.) The production of an assent in the prescribed form by the personal representatives of a deceased proprietor of registered land shall authorise the registrar to register the person named in the assent as proprietor of the land.

Appropriation of land in satisfaction of legacy or share in estate.

4.—(1.) The personal representatives of a deceased person may, in the absence of any express provision to the contrary contained in the will of such deceased person, with the consent of the person entitled to any legacy given by the deceased person or to a share in his residuary estate, or, if the person entitled is a lunatic or an infant, with the consent of his committee, trustee, or guardian, appropriate any part of the residuary estate of the deceased in or towards satisfaction of that legacy or share, and may for that purpose value in accordance with the prescribed provisions the whole or any part of the property of the deceased person in such manner as they think fit. Provided that before any such appropriation is effectual, notice of such intended appropriation shall be given to all persons interested in the residuary estate, any of whom may thereupon within the prescribed time apply to the court, and such valuation and appropriation shall be conclusive save as otherwise directed by the court.

(2.) Where any property is so appropriated a conveyance thereof by the personal representatives to the person to whom it is appropriated shall not, by reason only that the property so conveyed is accepted by the person to whom it is conveyed in or towards the satisfaction of a legacy or a share in residuary estate, be liable to any higher stamp duty than that payable on a transfer of personal property for a like purpose.

(3.) In the case of registered land, the production of the prescribed evidence of an appropriation under this section shall authorise the registrar to register the person to whom the property is appropriated as proprietor of the land.

Liability for duty.

5. Nothing in this Part of this Act shall affect any duty payable in respect of real estate or impose on real estate any other duty than is now payable in respect thereof.

PART IV.

MISCELLANEOUS.

24.—(2.) In this Act the expression "personal representative" means an executor or administrator.

Commencement of Act.

25. This Act shall come into operation on the fi
January one thousand eight hundred and ninety-eigh

Short title and construction.

26. This Act may be cited as the Land Transfer A
and shall be construed as one with the principal Act,
Act and this Act may be cited together as the Land
Acts, 1875 and 1897.

FINANCE ACT, 1898.

(61 & 62 VICT. c. 10, ss. 13, 14, and 17.)

PART V.

ESTATE DUTIES.

Persons not sui juris not to be deemed competent to dispose for the purpose of breaking settlements.

13. Section five, sub-section two, of the Finance Act, 1894, shall be read and have effect as if the following words had been inserted at the end thereof, "and who if on his death "subsequent limitations under the settlement take effect in "respect of such property was sui juris at the time of his death "or had been sui juris at any time while so competent to "dispose of the property."

Settlement estate duty repayment.

14. Where in the case of a death occurring after the commencement of this Act settlement estate duty is paid in respect of any property contingently settled, and it is thereafter shown that the contingency has not arisen, and cannot arise, the said duty paid in respect of such property shall be repaid.

PART VI.

MISCELLANEOUS.

Short title.

17. This Act may be cited as the Finance Act, 1898.

FINANCE ACT, 1900.

(63 VICT. c. 7, ss. 11–14, 18, and 19

An Act to grant certain duties of Customs and Inlan
to alter other duties, and to amend the Law
Customs and Inland Revenue and the National
make other provision for the financial arrangements
[9th A

PART III.

DEATH DUTIES.

Amendment of 57 & 58 Vict. c. 30, as to property passing on death.

11.—(1.) In the case of every person dying after first day of March nineteen hundred, property whe personal in which the deceased person or any other an estate or interest limited to cease on the d deceased shall, for the purpose of the Finance Act the Acts amending that Act, be deemed to pass o of the deceased, notwithstanding that that estate has been surrendered, assured, divested, or otherw of, whether for value or not, to or for the ben person entitled to an estate or interest in remai version in such property, unless that surrender divesting, or disposition was bonâ fide made or eff months before the death of the deceased, and bonâ sion and enjoyment of the property was assumed immediately upon the surrender, assurance, divest position, and thenceforward retained to the entire the person who had the estate or interest limited aforesaid, and of any benefit to him by contract or

(2.) This section shall inter alia apply in Scot conveyance or discharge of any life rent in favour or to the propulsion of the fee under any simpl destination.

Amendment of 57 & 58 Vict. c. 30, s. 4, as to aggregation.

12.—(1.) The exclusion enacted by the provis four of the Finance Act, 1894, of property from shall in the case of every person dying after th this Act cease to have effect, except as regards which the deceased never had an interest.

Provided that where an interest in expectancy

meaning of Part I. of the Finance Act, 1894) in any property has before the passing of this Act been bonâ fide sold or mortgaged for full consideration in money or money's worth, then no other duty on such property shall be payable by the purchaser or mortgagee when the interest falls into possession than would have been payable if this section had not passed; and in the case of a mortgage any higher duty payable by the mortgagor shall rank as a charge subsequent to that of the mortgagee.

(2.) Where settled property passes, or is deemed to pass, on the death of a person dying after the passing of this Act under a disposition made by a person dying before the commencement of Part I. of the Finance Act, 1894, and such property would, if the disponer had died after the commencement of the said Part, have been liable to estate duty upon his death, the aggregation of such property, with other property passing upon the first-mentioned death, shall not operate to enhance the rate of duty payable either upon the settled property or upon any other property so passing by more than one half per cent. in excess of the rate at which duty would have been payable if such settled property had been treated as an estate by itself.

Amendment of 59 & 60 Vict. c. 28, s. 17, as to exclusion of fractions from value.

13.—(1.) For the purpose of determining the rate and the amount of duty, the exclusion under section seventeen of the Finance Act, 1896, of any fraction from the principal value of the estate shall in the case of every person dying after the passing of this Act cease to have effect.

(2.) The Commissioners of Inland Revenue may, if they think fit, accept a statement by or on behalf of any accountable person as a correction of any Inland Revenue affidavit or account within the meaning of Part I. of the Finance Act, 1894, for the purposes of that Act and the Acts amending that Act, without requiring that statement to be verified on oath.

Remission of death duties in case of persons killed in war.

14.—(1.) Where any person dies from wounds inflicted, accident occurring, or disease contracted, within twelve months before death, while on active service against an enemy, whether on sea or land, and was, when the wounds were inflicted, the accident occurred, or the disease was contracted, either subject to the Naval Discipline Act or subject to military law, whether as an officer, non-commissioned officer, or soldier, under Part V. of the Army Act, the Treasury may, if they think fit, on the recommendation of the Secretary of State or of the Admiralty, as the case requires, remit, or in the case of duty already paid repay, up to an amount not exceeding one hundred and fifty pounds in any one case, the whole or any part of the death duties (within the meaning of sub-section three of section

57 & 58 Vict. c. 30.

thirteen of the Finance Act, 1894), leviable in
property passing upon the death of the deceased to
or lineal descendants if the total value for the
estate duty of the property so passing does not
thousand pounds.

(2.) This section shall take effect in the case of
dying since the eleventh day of October one thou
hundred and ninety-one.

PART VI.

GENERAL.

Repeal.

18. The Acts specified in the Second Schedule
are hereby repealed to the extent mentioned in
column of that Schedule.

Short title.

19. This Act may be cited as the Finance Act, 19

SECOND SCHEDULE.

REPEALS.

Session and Chapter.	Short Title.	Extent of Repe
57 & 58 Vict. c. 30.	The Finance Act, 1894	Section four, from under a dispos "descendant of and from "but of a to the end of sect
		As respects persons the passing of thi
59 & 60 Vict. c. 28.	The Finance Act, 1896	Section seventeen, persons dying afte ing of this Act.

EXECUTORS (SCOTLAND) ACT, 1900.

(63 & 64 VICT. c. 55.)

An Act to amend the Law relating to Executors in Scotland.

[8th August 1900.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Short title.

1. This Act may be cited as the Executors (Scotland) Act, 1900.

Executors nominate to have the powers and privileges of trustees.

2. All executors nominate shall, unless the contrary be expressly provided in the trust deed, have the whole powers, privileges, and immunities, and be subject to all the limitations and restrictions, which from time to time gratuitous trustees have, or are subject to, under the Trusts (Scotland) Acts, 1861 to 1898, or this Act, or any Act amending the same, and otherwise under the statute and common law of Scotland.

Who may be confirmed executors nominate.

3. Where a testator has not appointed any person to act as his executor, or failing any person so appointed, the testamentary trustees of such testator, original or assumed, or appointed by the Supreme Court (if any), failing whom any general disponee or universal legatory or residuary legatee appointed by such testator, shall be held to be his executor nominate, and entitled to confirmation in that character.

Powers, etc., of executors dative where more than one.

4. In all cases where confirmation is, or has been, granted in favour of more executors dative than one, the powers conferred by it shall accrue to the survivors or survivor, and while more than two survive a majority shall be a quorum, and each shall be liable only for his own acts and intromissions.

Confirmation to contain inventory.

5. All confirmations of personal estate shall have embodied therein, or appended thereto, the inventory of estate confirmed, and the forms of confirmation prescribed by the Confirmation of Executors (Scotland) Act, 1858, section ten, Schedules D. and E., shall be amended accordingly, by the insertion of words referring to the inventory as being embodied therein or appended thereto, or words to that effect.

Transmission of trust funds by executors of sole or last surviving trustee.

6. When any sole or last surviving trustee o nominate has died with any funds in Scotland s invested in his name as trustee or executor, confi his executors nominate (if any) to the proper pers of such trustee or executor nominate, or the proba in England or Ireland to his executors, and pro certified by the commissary clerk of Edinburgh sha granted before or after the passing of this Act, be available to such executors for recovering such fun assigning and transferring the same to such person as may be legally authorised to continue the adm thereof, or, where no other act of administration ren performed, directly to the beneficiaries entitled the any person or persons whom the beneficiaries may receive and discharge, realise and distribute the same always that a note or statement of such funds shall appended to any inventory or additional invento personal estate of such deceased trustee or executor given up by his executors nominate in Scotland, and firmed; and provided further that nothing herein shall bind executors of a deceased trustee or executor to make up title to such funds, nor prejudice or e right of any other person to complete a title to such any proceedings otherwise competent.

Where confirmation ad non executa may be granted.

7. Where any confirmation has become inoperati death or incapacity of all the executors in whose fav been granted, no title to intromit with the estate therein shall, otherwise than in the circumstances extent authorised by the preceding section, transmit presentatives of any such executors whatever may be of their beneficial interest therein, but it shall be com grant confirmation ad non executa to any estate co the original confirmation which may remain unuplift transferred to the persons entitled thereto, and such tion ad non executa shall be granted to the same pe according to the same rules as confirmations ad omi present granted, and shall be a sufficient title to con complete the administration of the estate contained provided always that nothing herein contained shal to affect the rights and preferences at present con confirmation on executors' creditors.

Before whom oaths may be taken.

8. Oaths and affirmations to inventories of perso given up to be recorded in any sheriff court and to statements appended thereto may be taken before t or sheriff-substitute, or any commissioner appointe sheriff, or before any commissary clerk or his depute,

the office of commissary clerk has been abolished before any sheriff clerk or his depute, or before any notary public, magistrate, or justice of the peace, in the United Kingdom, and also if taken in England or Ireland before any commissioner for oaths appointed by the courts of these countries, or if taken at any place out of the United Kingdom, before any British consul, or local magistrate, or any notary public practising in such foreign country, or admitted and practising in Great Britain or Ireland.

Amendment of Small Estates Acts. 38 & 39 Vict. c. 41. 39 & 40 Vict. c. 24. 47 & 48 Vict. c. 62.

9.—(1.) It shall be competent for any person entitled to apply for confirmation under the Intestates Widows and Children (Scotland) Act, 1875, and the Small Testate Estates (Scotland) Act, 1876, as extended by the Customs and Inland Revenue Act, 1881, section thirty-four, and the Finance Act, 1894, section sixteen, to apply to any officer of inland revenue duly appointed for the purpose, and the said officer shall prepare and fill up the necessary form of inventory and oath or affirmation and revenue statement appended thereto, and shall take the oath of the applicant thereto, and such evidence as he may think sufficient to establish the identity and relationship or title of the applicant and the value of the estate, and where caution is required shall also prepare and fill up the bond of caution, and on the same being signed, and such attestation of the sufficiency of the cautioner as he may consider necessary being obtained, and the said inventory and bond (if any) being duly stamped, where stamps are required, the said officer shall transmit the same, along with any testamentary writings that may be exhibited, and the prescribed ad valorem fee chargeable on the confirmation, to the clerk of the court, where confirmation falls to be issued. And the said clerk, if satisfied that the applicant for confirmation is entitled thereto, shall record the inventory and relative writs (if any), and expede confirmation, and transmit the same, with any writs which may fall to be returned, to the officer for delivery to the applicant.

(2.) Such appointments and regulations as may be necessary to give effect to the foregoing provision shall be made by or under the authority of the Commissioners of Inland Revenue.

REVENUE ACT, 1903.

(3 EDW. VII. c. 46, s. 14.)

Provision as to fixed duty on small estates.
57 & 58 Vict. c. 30.

14. Where, in the case of a person dying after the
mencement of this Act, the fixed duty of thirty shilling
fifty shillings has been deposited or paid under section six
of the Finance Act, 1894 (which relates to the estate dut
small estates), and it is afterwards found that the gross v
of the property on which estate duty is payable exceeds t
hundred or five hundred pounds, as the case may be, the C
missioners of Inland Revenue, if they are satisfied that t
were reasonable grounds for the original estimate of the v
of the property, may (notwithstanding anything in sec
44 & 45 Vict. c. 12.
thirty-five of the Customs and Inland Revenue Act, 18
allow an amonnt equal to the fixed duty deposited or paid
be deducted from the estate duty payable in respect of
property.

APPENDIX II.

RULES AND FEES
IN NON-CONTENTIOUS BUSINESS.

RULES AND ORDERS OF 1862.

RULES, Orders and Instructions for the Registrars of the PRINCIPAL REGISTRY of her Majesty's Court of Probate, made under the provisions of the Statutes 20 & 21 *Vict. c.* 77, *and* 21 & 22 *Vict. c.* 95, *in respect of*

NON-CONTENTIOUS BUSINESS.

Dated the 30*th day of July*, 1862.

All Rules, Orders, and Instructions heretofore made and issued for the registrars of the Principal Registry of her Majesty's Court of Probate in respect of non-contentious business shall be repealed, on and after the first day of September, 1862, except so far as concerns any matters or things done in accordance with them prior to the said day.

The following Rules, Orders, and Instructions in respect of non-contentious business shall take effect on and after the first day of September, 1862.

NON-CONTENTIOUS BUSINESS shall include all common form business as defined by the "Court of Probate Act, 1857," and the warning of caveats.

1. Application for probate or letters of administration may be made at the principal registry in all cases.

2. Such applications may be made through a proctor, solicitor, or attorney, or in person by executors and parties entitled to grants of administration; but these latter applications will not be received by letter, nor through the medium of any agent.

Non-contentious Business.

3. The registrars are not to allow probate or letters administration to issue until all the inquiries which they m see fit to institute have been answered to their satisfactio The registrars are, notwithstanding, to afford as great facili for the obtaining grants of probate or administration as consistent with a due regard to the prevention of error fraud.

As to Probate of Wills and Codicils and Letters of Admini tration, with the Will [or Will and Codicils] annexe where the Wills and Codicils are dated after 31 *December,* 1837.

Execution of a Will.

See Amended Rules, Nos. 4 and 4A, *post*, at p. 816.

4. If there be no attestation clause to a will or codicil pre sented for probate, or if the attestation clause thereto b insufficient, the registrars must require an affidavit from a least one of the subscribing witnesses, if they or either of ther be living, to prove that the provisions of 1 Vict. c. 26, s. 9 and 15 Vict. c. 24, in reference to the execution were in fac complied with ; and such affidavit must be engrossed and form part of the probate.

5. If on perusing the affidavits of both the subscribing wit nesses it appear that the requirements of the statute were no complied wi the registrars must refuse probate.

6. If on perusing the affidavit or affidavits setting forth the facts of the case, it appear doubtful whether the will or codici has been duly executed, the registrars may require the parties to bring the matter before the judge on motion.

7. If both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will or codicil; but if no affidavit of any such other person can be obtained, evidence on affidavit must be procured of that fact and of the hand-writing of the deceased and the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution.

Interlineations and Alterations.

8. Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or, if mad afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered

valid by the re-execution of the will, or by the subsequent execution of a codicil thereto. Non-contentious Business.

9. When interlineations or alterations appear in the will (unless duly executed, or recited in, or otherwise identified by, the attestation clause) an affidavit or affidavits in proof of their having existed in the will before its execution must be filed, except when the alterations are merely verbal, or when they are of but small importance and are evidenced by the initials of the attesting witnesses.

Erasures and Obliterations.

10. Erasures and obliterations are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of a codicil thereto. If no satisfactory evidence can be adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely effaced, but can upon inspection of the paper be ascertained, they must form part of the probate.

11. In every case of words having been erased or obliterated which might have been of importance, an affidavit must be required.

Deeds, etc., referred to in a Will or Codicil.

12. If a will contain a reference to any deed, paper, memorandum, or other document, of such a nature as to raise a question whether it ought or ought not to form a constituent part of the will, the production of such deed, paper, memorandum, or other document must be required, with a view to ascertain whether it be entitled to probate; and, if not produced, its non-production must be accounted for.

13. No deed, paper, memorandum, or other document can form part of a will unless it was in existence at the time when the will was executed.

Appearance of the Paper.

14. If there are any vestiges of sealing-wax or wafers or other marks upon the testamentary papers, leading to the inference that a paper, memorandum, or other document has been annexed or attached to the same, they must be satisfactorily accounted for, or the production of such paper, memorandum, or other document must be required; and, if not produced, its non-production must be accounted for.

Non-contentious business.

[N.B.—This rule repealed and new rule 15 made. See *post*, p. 818.]

Married Woman's Will.

15. In granting probate of a married woman's will virtue of a power, or administration with such will the power under which the will purports to have be must be specified in the grant.

Codicils.

16. The above Rules and Orders respecting will equally to codicils.

As to Probate of Wills, Codicils, and Testamentary relating to Personalty, and dated before the January, 1838.

Execution of a Will.

17. It is not necessary that a will, codicil, or testa paper dated before January 1st, 1838, should be signed testator or attested by witnesses to constitute it a va position of a testator's personal property. Although signed by the testator nor attested by witnesses, it may theless be valid; but in such cases the testator's intenti it should operate as his will, codicil, or testamentary disp must be clearly proved by circumstances.

18. A will, codicil, or testamentary paper, signed at t of it by the testator, and attested by two disinterested wi (although there be no clause of attestation) is *prim* entitled to probate.

19. In cases where a will, codicil, or testamentary p attested by two witnesses, such witnesses are not requi have been present with the testator at the same time. sufficient if the testator subscribed his name or made his to the paper in the presence of one attesting witness, o duced it with his name already subscribed, or his mark a made, to one attesting witness, and afterwards produced the other attesting witness, provided that on each occas declared it to be his will, codicil, or testamentary dispo or otherwise notified his intention that it should oper such.

20. If the will, codicil, or testamentary paper is sign the end of it by the testator but is unattested, and th nothing to show an intention that it should be attest witnesses, the affidavit of two disinterested persons to

the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

21. If the will, codicil, or testamentary paper is signed at the end of it by the testator, and attested by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

22. The circumstances of a person being named as an executor in the will, codicil, or testamentary paper, or being interested as a legatee or as the husband or wife of a legatee under such will, codicil, or testamentary paper, rendered him or her incompetent to become an attesting witness to it, so that if the name of a person so interested appears as that of a subscribing witness to the will, codicil, or testamentary paper, the same, so far as regards his or her attestation, must be considered as unattested, and his or her evidence in support thereof will be inadmissible, unless he or she shall first release his or her interest thereunder.

23. If an attestation clause, or the word "witnesses," appear written at the foot of the paper, the same being unattested, or if the paper purport on the face of it to be a draft of a will, the copy of a will, or instructions for a will, it must *primâ facie* be considered as an incomplete paper, and not, save under special circumstances, entitled to probate.

Appearance of Paper.

24. Any appearance of an attempted cancellation of a paper by burning, tearing, obliteration, or otherwise, and every circumstance leading to a presumption of abandonment or revocation of a paper on the part of the testator must be accounted for.

Alterations and Interlineations.

25. Alterations and interlineations made by the testator, if unattested, are to be proved by the affidavits of two persons as to his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that such alterations and interlineations were known to and approved of by the testator. Proof by affidavit that they existed in the paper at the time it was found in the repositories of the testator recently after his death, may, under circumstances, suffice. Alterations and interlineations made since the 31st of December, 1837, are subject to the provisions of 1 Vict. c. 26.

Non-contentious Business.

Deeds, etc., referred to in a Will or annexed to

26. With respect to deeds, papers, memoranda documents mentioned in a testamentary paper, or to have been annexed or attached thereto, the forego Orders, and Instructions as to wills bearing date 31st December, 1837, will apply.

Republication by Codicil.

27. A will made before the 1st of January, 18 published by a subsequent codicil thereto duly execut

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As to Letters of Administration.

Notice to other Next-of-kin.

28. Where an administration is applied for by on of the next-of-kin only, there being another or othe kin equally entitled thereto, the registrars may requ by affidavit or statutory declaration that notice of such tion has been given to such other next-of-kin.

Limited Administrations.

29. Limited administrations are not to be grant every person entitled to the general grant has cons renounced, or has been cited and failed to appear, exc the direction of the judge.

30. No person entitled to a general grant of admi of the personal estate and effects of the deceased wil mitted to take a limited grant, except under the dir the judge.

Administrations under Section 73.

31. Whenever the court under section 73 app administrator other than the person who, prior to "T of Probate Act, 1857," would have been entitled to th the same is to be made plainly to appear in the oath administrator, in the letters of administration, and administration bond.

Grants to an Attorney.

32. In the case of a person residing out of E

administration, or administration with the will annexed, may be granted to his attorney, acting under a power of attorney. Non-contentious Business.

Grants of Administration to Guardians.

33. Grants of administration may be made to guardians of minors and infants for their use and benefit, and elections by minors of their next-of-kin or next friend, as the case may be, will be required; but proxies accepting such guardianships and assignments of guardians to minors will be dispensed with.

34. In cases of infants (*i.e.*, under the age of seven years) not having a testamentary guardian, or a guardian appointed by the High Court of Chancery, a guardian must be assigned by order of the judge or of one of the registrars; the registrar's order is to be founded on an affidavit showing that the proposed guardian is either *de facto* next-of-kin of the infants, or that their next-of-kin *de facto* has renounced his or her right to the guardianship, and is consenting to the assignment of the proposed guardian, and that such proposed guardian is really to undertake the guardianship. [No election or assignment of guardians is required, where the mother or her appointee under the Guardianship of Infants Act, 1886, takes the grant.]

35. Where there are both minors and infants, the guardian elected by the minors may act for the infants without being specially assigned to them by order of the judge or a registrar, provided that the object in view is to take a grant. If the object be to renounce a grant, the guardian must be specially assigned to the infants by order of the judge or of a registrar.

36. In all cases where grants of administration are to be made for the use and benefit of minors or infants, the administrators are to exhibit a declaration on oath of the personal estate and effects of the deceased, except when the effects are sworn under the value of twenty pounds, or when the administrators are the guardians appointed by the High Court of Chancery, or other competent court, or are the testamentary guardians of the minors or infants.

Administrator's Oath.

37. The oath of administrators, and of administrators with the will, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off, and the oath is to set forth, when the fact is so, that the party applying is the only next-of-kin, or one of the next-of-kin, of the deceased. In all administrations of a special character the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

Non-contentious Business.

Administration Bonds.

38. Administration bonds are to be attested by an the principal registry, by a district registrar, or missioner or other person now or hereafter to be aut administer oaths under 20 & 21 Viet. c. 77 and Viet. c. 95, but in no case are they to be attest proctor, solicitor, attorney, or agent of the party wh them. The signature of the administrator or adm to such bonds, if not taken in the principal registr attested by the same person who administers the oa administrator or administratrix.

[One surety only required when the estate is under £50. District Registry Rule 45.]

39. In all cases of limited or special administr sureties are to be required to the administration bo the administrator be the husband of the deceased or sentative, in which case but one surety will be requ the bond is to be given in double the amount of th to be placed in the possession of or dealt wit administrator by means of the grant (*a*). The alleg such property is to be verified by affidavit if required

40. The administration bond is, in all cases of special administrations, to be prepared in the registr

41. The registrars are to take care (as far as pos the sureties to administration bonds are responsible

Justification of Sureties.

42. When any person takes letters of adminis default of the appearance of persons cited, but not served, with the citation, and when any person take administration for the use and benefit of a lunatic or unsound mind, unless he be a committee appoint Court of Chancery, a declaration of the personal effects of the deceased must be filed in the registr sureties to the administration bond must justify (*b*).

(*a*) If the deceased died on or since the 1st day of Januar penalty must be given in double the gross annual value estate in addition to double the gross personalty (Direc President, February, 1898).

(*b*) In cases where the court makes an order for a grant the *presumption* of a person's death, a declaration on oath c of the deceased and justification of the sureties to th required.

Non-contentious Business.

General Rules and Orders for the Registrars of the Principal Registry.

Time of Issuing Grant.

43. No probate, or letters of administration, with the will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the judge, or by order of two of the registrars.

44. No letters of administration shall issue until after the lapse of fourteen days from the death of the deceased unless under the direction of the judge, or by order of two of the registrars.

45. In every case where probate or administration is, for the first time, applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the registrars. Should the certificate be unsatisfactory, the registrars are to require such proof of the alleged cause of delay as they may see fit.

Filling up Grants.

46. All probates or letters of administration issued from the principal registry are to be filled up there.

Oath of Executors and Administrators.

47. The usual oath of administrators, as well as that of executors and administrators with the will, is to be subscribed and sworn by them as an affidavit, and then filed in the registry.

Identity of Parties.

48. The registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant.

Testamentary Papers to be marked.

49. Every will, copy of a will, or other testamentary paper, to which an executor or administrator with the will is sworn, must be marked by such executor or administrator and by the person before whom he is sworn.

Non-contentious Business.

Renunciations.

50. No person who renounces probate of a ... or administration of the personal estate and eff... a person in one character is to be allowed to take a ... tation to the same deceased in another character.

Affidavits.

51. Every affidavit is to be drawn in the first pe... the addition and true place of abode of every deponer... it is to be inserted therein.

[For amended Rules 52 and 53, see *post*, at p. 819.]

52. In every affidavit made by two or more pe... names of the several persons making it are to be ... the jurat.

53. No affidavit will be admitted in any matt... Court of Probate of which any material part is w... an erasure, or in the jurat of which there is any inte... or erasure.

54. Where an affidavit is made by any person who... or who, from his or her signature or otherwise, appe... illiterate, the registrar, commissioner, or other author... whom such affidavit is made is to state in the jurat... affidavit was read in the presence of the person m... same, and that such person seemed perfectly to u... the same, and also made his or her mark, or wrote ... signature, in the presence of the registrar, commis... other authority before whom the affidavit was made.

55. No affidavit is to be deemed sufficient which... sworn before the party on whose behalf the same is ... before his proctor, solicitor, or attorney, or before ... or clerk of his proctor, solicitor, or attorney.

56. Proctors, solicitors, and attorneys, and th... respectively, if acting for any other proctor, so... attorney, shall be subject to the rules in respect ... affidavits which are applicable to those in whose ... are acting.

57. In every case where an affidavit is made by a s... witness to a will or codicil, such subscribing wi... depose as to the mode in which the said will or ... executed and attested.

58. The registrars are not to allow any affidavit ... (unless by leave of the judge) which is not fairly a... written, or in which there is any interlineation, the... which at the time when the affidavit was sworn is ... shown by the initials of the commissioner, or oth... before whom it was sworn.

Caveats.

59. Any person intending to oppose the issuing of a grant of probate or letters of administration must, either personally or by his proctor, solicitor, or attorney, enter a caveat in the principal registry, or in a district registry; if in the principal registry, the person entering the caveat must also insert the name of the deceased in the index to the caveat book.

60. A caveat shall bear date on the day it is entered, and shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time.

61. The registrars shall, immediately upon a caveat being entered, send notice thereof to the district registrar of any district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

62. No caveat shall affect any grant made on the day on which the caveat is entered, or on the day on which notice is received of a caveat having been entered in a district registry.

63. All caveats shall be warned from the principal registry. The warning is to be left at the place mentioned in the caveat as the address of the person who entered it.

64. It shall be sufficient for the warning of a caveat that a registrar send by the public post a warning signed by himself, and directed to the person who entered the caveat, at the address mentioned in it.

65. The warning to a caveat is to state the name and interest of the party on whose behalf the same is issued, and if such person claims under a will or codicil, is also to state the date of such will or codicil, and is to contain an address within three miles of the General Post Office, at which any notice requiring service may be left. The form of warning will be supplied in the registry.

66. Before any citation is signed by a registrar, a caveat shall be entered against any grant being made in respect of the estate and effects of the deceased to which such citation relates, and notice thereof shall be sent to the district registrar of any district in which the deceased appears to have resided at the time of his death.

67. In order to clear off a caveat when no appearance has been entered to a warning duly served, an affidavit of the service of the warning, stating the manner of service and an affidavit of search for appearance and of non-appearance, must be filed.

Citations.

68. No citation is to issue under seal of the court until an

Non contentious Business.

affidavit, in verification of the averments it contains filed in the registry.

69. Citations are to be served personally when th done. Personal service shall be effected by leavi copy of the citation with the party cited, and showin original, if required by him so to do.

70. Citations and other instruments which cann sonally served are to be served by the insertion of or of an abstract thereof, settled and signed by registrars as an advertisement in such morning an London newspapers, and such local newspapers, an intervals as the judge or one of the registrars may d

Blind and Illiterate Testators.

71. The registrars are not to allow probate of t administration with the will annexed, of any blind or illiterate or ignorant person, to issue, unless they viously satisfied themselves that the said will was rea the testator before its execution, or that the testat such time knowledge of its contents (*c*).

Alterations in Grants, etc.

[This Rule (72) altered, see *post*, p. 819.]

72. Whenever the value of the personal estate a of a deceased person is re-sworn under a different a any alteration is made in a grant, or a grant is rev the volume of the printed calendar containing the such grant has been forwarded to the district registr of such re-swearing, alteration or revocation is with to be forwarded by the registrars of the principal r all the district registrars.

Irish Grants.

[See additional Rules as to re-sealing English grant in Ireland, and Irish grants in England, pp. 826, 875, 876.]

73. The seal is not to be affixed to any probate of administration granted in Ireland, so as to give thereto as if the grant had been made by the Court o in England, unless it appear from a certificate of missioners of Inland Revenue, or their proper officer, probate or letter of administration is duly stamped of the personal estate and effects of which the dec possessed in England. In respect to letters of admi

(*c*) In all cases under Rule 71 it should be shown to the of the registrars that the testator at the time of the exe knowledge of the contents of the will. This applies also which the will is signed by some other person by direct testator (Registrar's decision, December 2nd, 1895).

the provisions of statute 21 & 22 Vict. c. 95, s. 29, must also be complied with. Non-contentious Business.

Grants for Property in the United Kingdom.

74. Whenever a grant of probate or of letters of administration is made under statute 21 & 22 Vict. c. 56, for the whole personal estate and effects of a deceased within the United Kingdom, it must appear by the affidavit made for the Inland Revenue Office, that the testator or intestate died domiciled in England, and that he was possessed of personal estate in Scotland, other than that excluded by 22 & 23 Vict. c. 80 (*d*), and the value of such personal estate must be separately stated in such affidavit. In case any portion of the personal estate be in Ireland, a separate affidavit and schedule must also be filed.* Upon all such grants a note or memorandum must also be written and signed by one of the registrars to the effect that the testator or intestate died domiciled in England.

* The present form of Inland Revenue affidavit obviates the necessity of delivering a separate affidavit and schedule.

Notices to Queen's Proctor.

75. In all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying a bachelor or a spinster, or a widower or widow without issue, or of a person dying without known relation, notice of such application is to be given to her Majesty's Procurator-General (or, in case the deceased died domiciled within the duchy of Lancaster, to the solicitor for the duchy in London), in order that he may determine whether he will interfere on the part of the Crown; and no grant is to be issued until the officer of the Crown has signified the course which he thinks proper to take.

76. In the case of persons dying intestate without any known relation, a citation must be issued against the next-of-kin, if any, and all persons having or pretending to have any interest in the personal estate of the deceased, and the service thereof upon them shall be effected as required by Rule 70. Such citation must also be served upon the Queen's Proctor, or upon the solicitor for the duchy of Lancaster, as the case may require.

Transmission of Papers.

77. After motions have been made before the judge in court, the registrars are, on the application of the parties (unless the judge shall otherwise direct), to transmit to a

(*d*) Apparently a mistake for 23 & 24 Vict. c. 80.

Non-contentious Business.

district registrar the original papers and documents that the grant of probate or administration may be in a district registry.

78. Papers and other documents may be tra ·mitt registrars of the principal registry to the district through the post-office. Such letters or packets superscribed with the words, "On Her Majesty's Ser may be registered, if thought necessary.

Probate Copies of Wills.

[See amended Rule 79, *post*, p. 815.]

79. The registrars are to take care that the copie and affidavits to be annexed to the probate or administration are fairly and properly written in the e hand heretofore in use in the Prerogative Court, a reject those which are otherwise.

Office Copies.

80. Office copies of wills, and other documents, fu the principal registry, will not be collated with th will or other document, unless specially required. E so required to be examined shall be certified under th one of the registrars of the principal registry, examined copy.

81. The seal of the court is not to be affixed to copy of a will, or other document, unless the same certified to be an examined copy.

Attendances with Documents.

82. If a will or other document filed in the r required to be produced at any place within three mil principal registry, application must be made for that not later than the day previously to that named production.

83. If a will or other document filed in the re required to be produced at any place beyond the above application must be made for that purpose in sufficien allow for making and examining a copy of such will document to be deposited in its place, and in every notice must be given (except by special leave of the registrars) at least 24 hours before the clerk in whos the will or other document is to be placed will be req set off.

Non-contentious Business.

Subpœnas to bring in Testamentary Papers.

84. Any person bringing in a will or testamentary paper in obedience to a subpœna, is to take it in the first instance to the clerk of the papers, who will prepare a minute to be signed by the registrar to whom the will or paper brought in is to be delivered, and the registrar will sign the minute recording the delivery thereof. [The testamentary papers are now taken to the Record Keeper's Department.]

85. The minute is to be entered in the book of registrar's minutes in the usual manner; and the fee for the entry, and a further fee for filing each testamentary paper, will then be payable. If these fees should not be paid by the person bringing in the will or paper, the same are to be charged to the person who may first apply to the clerk of the papers to make use of the will or paper so brought in. In case the person bringing in a will or testamentary paper may desire to have a voucher for its delivery into the registry, he may take an office copy of the minute on paying the usual fee for the same.

86. Any person served with a subpœna to bring in a testamentary paper is at liberty to enter an appearance on payment of the usual fees, if he thinks fit to do so.

Time allowed for appearing to a Warning, Citation, or Subpœna.

87. The time fixed by a warning or citation for entering an appearance, or by a subpœna, to bring in a testamentary paper, shall, in all cases, be exclusive of Sundays, Christmas Day, and Good Friday.

Taxing Bills of Costs.

88. Any bill of costs may be referred to the registrars of the principal registry for taxation, and no special order shall hereafter be required for the purpose.

89. The bill of costs of any proctor, solicitor, or attorney will be taxed on his application, after sufficient notice given to the person or persons liable for the payment thereof, or on the application of such person or persons, after sufficient notice given to the practitioner, and the registrar shall decide in each case what may be a sufficient notice.

90. When an appointment has been made by a registrar to tax a bill, the registrar may proceed to tax the same after the expiration of a quarter of an hour, notwithstanding the absence of either party, or his agent, provided he be satisfied

Non-contentious Business.

that the absent party has had due notice of the ap
for taxation.

91. If more than one-sixth is deducted from a
costs taxed as between practitioner and client
incurred in the taxation thereof shall be allowed
such bill.

FORMS of Instruments to be adopted in the Principal Registry of the Court of Probate, as nearly as the Circumstances of each Case will allow.

[N.B.—These forms are omitted because they are inapplicable to the present practice. For all necessary precedents now used in the Division in Common Form, the practitioner is referred to Appendix V.]

FORMS OF AFFIRMATIONS.

The affirmation should begin :—

For a Quaker.

"I, A. B., of , etc., being one of the people called Quakers, do solemnly, sincerely, and truly declare and affirm that," etc.

For a Moravian.

"I, A. B., of , etc., being one of the United Brethren called Moravians, do solemnly, sincerely, and truly declare and affirm that," etc.

For a person objecting to being sworn.

(Oaths Act, 1888.)

"I, A. B. of , etc., do solemnly and sincerely affirm that," etc.

FORMS OF JURATS AND CERTIFICATES OF AFFIRMATIONS.

1.—*One deponent.*

Sworn at on the day of 19 ,
Before me,

Non-contentious Business.

2.—*Two or more deponents sworn togeth*

Sworn by both (or all) of the above-named depon
on the day of 19 ,

Before m

3.—*Two or more deponents sworn separat*

NOTE.—A Jurat must be written for each deponer

Sworn by the said at on the day o
Before m

4.—*Deponent blind, illiterate, or a marksm*

Sworn by the said A. B. at on the da
19 , this Affidavit having been first read ov
who seemed perfectly to understand the
made his mark thereto (or signed the sar
presence,

Before me

5.—*Quaker, Moravian, or person objecting to bein*

Affirmed at this day of 19 ,
Before me

NOTE.—Where there are two or more such deponer
and 3 should be used, substituting the word
for "sworn."

6.—*A foreigner unacquainted with the English la*

Sworn (or affirmed) by the said A. B. at this
of 19 , by interpretation into the
by C. D., who had previously sworn (or affir
he was well acquainted with both languages,
he would faithfully interpret,

Before me

NOTE.—The interpreter should sign his name on t
or Affirmation, for the purpose of identification

RULES, ORDERS, AND INSTRUCTIONS

AS TO

PERSONAL APPLICATIONS

For Grants of Probate or Letters of Administration.

1. Persons wishing to obtain grants of probate or letters of administration without the intervention of a proctor, solicitor, or attorney must apply in person at the department for personal applications, and not by letter.

2. No such application will be received through an agent of any kind (whether paid or unpaid).

3. The applications of parties who are attended by a person acting or appearing to act as their adviser in the matter will not be entertained.

4. All fees are to be paid in advance in Probate Court stamps.

5. Applications which have in the first instance been made through a proctor, solicitor, or attorney at the principal registry or at a district registry, cannot be transferred to this department.

6. Applications for grants of probate or administration in cases which have already been before the court (on motion or otherwise) will not be entertained at this department, but must be made through a proctor, solicitor, or attorney.

7. Whenever it becomes necessary, in the course of proceeding with an application which has been entertained at this department, to obtain the directions of the court, the application will not be proceeded with, but must be placed in the hands of a proctor, solicitor, or attorney.

8. The papers necessary to lead the grant applied for will be prepared in this department. An applicant is, however, at liberty to bring such papers, or any of them, filled up, *but not sworn to*, and the same, if correct, may be received (the usual fee for perusal being charged). All further papers which may be required will be drawn in this department. Testamentary papers once deposited in this department will not be given out unless under special circumstances, and by permission of one of the registrars.

Non-contentious Business.

9. When it is necessary to administer an oath or take affirmation the party shall be sworn or affirmed before s proper authority of the principal registry, or of a dist registry, unless otherwise permitted by one of the registrar

10. Every applicant for a first grant of probate or let of administration must produce a certificate of the death burial of the deceased, or give a reason to the satisfactio one of the registrars for the non-production thereof.

11. Every applicant must be prepared with a reference some person of position or character, to establish his or identity.

12. The engrossments of wills and testamentary papers be made in the registry.

13. Every applicant for a grant of probate or letters administration shall give under his or her hand a schedul the property to be effected by the grant in the form here annexed, marked A. (The necessary forms will be provi in the registry.)

14. Legal advice is not to be given to applicants, eit with respect to the property to be included in the abo mentioned schedule, or upon any other matter connected w the application, and the clerks in this department are o to be held responsible for embodying in a proper form instructions given to them, but they will, as far as practica assist applicants by giving them information and directi as to the course which they must pursue.

15. A receipt or acknowledgment of each application be handed to the applicant, and the production of such rece will be required of the person who attends to obtain the gr when completed.

16. No clerk or officer of this department is to beco surety to any administration bond.

17. All administration bonds in cases of personal applicati are to be executed in this department, or in a district regist if executed in this department the bond must be attested the chief clerk or senior clerk in attendance.

(A.) *An Account of the Personal Estate and Effects of , deceased.*

(This form is obsolete. The one now in use is similar to the Acco annexed to the Inland Revenue Affidavit.)

AMENDED RULE AND ORDER

for her Majesty's Court of Probate

IN NON-CONTENTIOUS BUSINESS,

to take effect on and after the 11th January, 1866.

Dated the 29th day of December, 1865.

In place of Rule 79 of the Rules and Orders in Non-Contentious Business, it is ordered that—

79. The registrars are to take care that the copies of wills and affidavits to be annexed to the probates or letters of administration are fairly and properly written, and are to reject those which are otherwise; but it shall not be necessary that such copies be written in the engrossing hand heretofore in use.

Non-contentious Business.

AMENDED RULES AND ORDERS

for the Registrars of the Principal Registry of her Maj
Court of Probate

IN NON-CONTENTIOUS BUSINESS,

to take effect on and after the 1st February, 1871.

Dated the 14th day of January, 1871.

In place of Rule 4 of the Rules, Orders, and Instruct for the Registrars of the Principal Registry in Non-Con tious Business, it is ordered that—

4. If there be no attestation clause to a will or co presented for probate, or if the attestation clause thereto insufficient, the registrars must require an affidavit from least one of the subscribing witnesses, if they or either them be living, to prove that the provisions of 1 Vict. c. s. 9, and 15 Vict. c. 24, in reference to the execution, were fact complied with.

4A. The practice of registering affidavits shall be disc tinued, and, in lieu thereof, a note signed by a registrar s be inserted on the engrossed copy, will, or codicil anne to the probate or letters of administration, and register to the effect that affidavits of due execution, of domicil, as the case may be, have been filed: Provided, that in ca presenting difficulty the affidavits themselves may still registered by direction of a registrar.

Forms of Notes to be used in the Principal Regist applicable.

Affidavits of due execution filed.
A. B., Registrar.

Affidavits of identity of will (*or* codicil *or* memorandum) filed.
A. B., Registrar.

Affidavits of domicil and law filed.
A. B., Registrar.

RULES AND ORDERS

framed in pursuance of the provisions of the Act of 36 & 37 *Vict. c.* 52.

I, the Right Honourable Sir James Hannen, Knight, Judge of the Court of Probate, do hereby order and direct that the fees mentioned and set forth in the Table of Fees (*a*) hereunto annexed, shall, on approval of the Commissioners of Her Majesty's Treasury, be taken for and in respect of all grants of Letters of Administration made by the Court of Probate by authority of the Act of 36 & 37 Vict. c. 52.

And I further order and direct that a moiety of the said fees shall be paid to or retained by the Registrar of the County Court acting in the matter, and the remaining moiety shall be paid to or retained by the Registrars of the Principal Registry or the District Registrars of the Court of Probate, by whom the Letters of Administration are made ont and sealed.

And I further order and direct that the moiety of the fees paid to or retained by the Registrars or District Registrars of the Court of Probate, shall be applied to the purchase of fee stamps denoting the amount, and snch fee stamps shall be cancelled and deposited in or transmitted to the Principal Registry in the same manner as other fee stamps taken in the Principal and other Registries of the Court.

(Signed) JAMES HANNEN.

Dated this 8th day of August, 1873.

(*a*) This is the table of fees inserted at p. 909.

Non-contentious Business.

AMENDED RULES, ORDERS, AND INSTRUCTIONS

for the Registrars of the Principal Probate Registry, and the District Probate Registrars

IN NON-CONTENTIOUS BUSINESS,

to take effect on and after the 19th April, 1887.

Rule 15 of the Rules, Orders, and Instructions for Registrars of the Principal Probate Registry in Non-tentious Business, dated 30th July, 1862, and Rule 18 o Rules, etc., for the District Probate Registrars in such busi are hereby repealed, save so far as concerns anything do proceeding taken in accordance with them, and in pla the said Rules it is ordered that the following Rules shall effect:—

Rules 15 and 18. In a grant of probate of the will married woman, or of the will of a widow made during e ture, or letters of administration with such wills annex shall not be necessary to recite in the grant or in the oa lead the same the separate personal estate of the testat the power or authority under which the will has bee purports to have been made. The probate, or lette administration with will annexed, in such cases shall tak form of ordinary grants of probate or letters of administr with will annexed without any exception or limitation issue to an executor or other person authorised in usual c of representation to take the same; a surviving hus however, being entitled to the same in preference to the of-kin in case of a partial intestacy.

The forms of instruments annexed to the before-ment Rules, Orders, and Instructions for the Registrars o Principal Probate Registry, numbered 12, 13, and 14 in the Rules, Orders, and Instructions for the District Pr Registrars, numbered 13, 14, and 15, and thereby direct be adopted as nearly as the circumstances of the case will in respect of the wills of married women, shall cease adopted in respect of such wills, except so far as the sam be applicable to oaths sworn before these Rules and O take effect, and also except so far as the same may be appl to any second or subsequent grants required to complet representation in cases where limited or special grants already issued.

AMENDED RULES AND ORDERS,

to take effect on and after the 26th May, 1882.

Rules 52, 53, and 72 of the Rules, Orders, and Instructions for the Registrars of the Principal Registry in respect of Non-Contentious Business, dated 30th July, 1862, and Rules 65 and 66 of those for the District Probate Registrars, dated 27th January, 1863, are respectively repealed, save so far as concerns anything done or proceeding taken in accordance with them, and in place of the said Rules it is ordered that the following Rules shall take effect :—

In the Principal Probate Registry.

52. In every affidavit made by two or more deponents, the names of the several persons making the affidavits shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

53. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall, without leave of the court or one of the registrars, be filed or made use of in any matter depending in the Probate Court or registry, unless the interlineation or alteration other than by erasure is authenticated by the initials of the officer taking the affidavit; nor in the case of an erasure unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.

72. When any alteration is made in a grant of probate or letters of administration which has issued from a District Probate Registry, or when any such a grant is revoked and the volume of the printed calendar containing the entry of the grant has been forwarded to the district registrars, notice of such alteration or revocation is without delay to be forwarded by the registrars of the Principal Registry to the District Probate Registrar from whose registry the altered or revoked grant issued.

Non-contentious Business.

In the District Probate Registries.

65. (This Rule is in the same words as the Rule 52 fo
Principal Registry, quoted above.)

66. (This Rule is to the same effect as the Rule 53 f
Principal Registry, quoted above.)

ADDITIONAL RULES AND ORDERS

or the Registrars of the Principal Probate Registry in respect of

NON-CONTENTIOUS BUSINESS.

Dated the 7th Day of December, 1892.

ADDITIONAL RULES AND ORDERS *for the Registrars of the Principal Probate Registry in Non-Contentious Business for carrying out the provisions of the Colonial Probates Act*, 1892.

92. Application to seal a grant of probate or letters of administration or copy thereof under the Colonial Probates Act, 1892, may be made in the principal probate registry by the executor or administrator or the attorney [lawfully authorised for the purpose] of such executor or administrator, either in person or through a solicitor.

93. Such application must be accompanied by an oath of the executor, administrator, or attorney in the form in the Appendix, or as nearly thereto as the circumstances of the case will allow.

94. The registrars are to be satisfied that notice of such application has been duly advertised. (Form of advertisement in Appendix.)

95. On application to seal letters of administration the administrator or his attorney shall give bond (in the form set out in the Appendix) to cover the personal estate of the deceased within the jurisdiction of the court. The same practice as to sureties and amount of penalty in bond is to be observed as on application for letters of administration.

96. Application by a creditor under section 2, sub-section 3, of the Colonial Probates Act is to be made by summons before one of the registrars, supported by an affidavit setting out particulars of the claim.

97. In every case, and especially when the domicile of the deceased at the time of death as sworn to in the affidavit differs from that suggested by the description in the grant, the registrars may require further evidence as to domicile.

98. If it should appear that the deceased was not at the time of death domiciled within the jurisdiction of the court from which the grant issued, the seal is not to be affixed unless

Non-contentious Business.

the grant is such as would have been made by the
of Justice in England.

99. The grant [*or* copy grant] to be sealed a
to be deposited in the registry must include co
testamentary papers admitted to probate.

100. When application to seal a probate or letters
tration is made after the lapse of three years fro
of the deceased the reason of the delay is to be
the registrars. Should the certificate be unsatisf
registrars are to require such proof of the allege
delay as they may think fit.

101. Special or limited or temporary grants are
sealed without an order of one of the registrars.

102. Notice of the sealing in England of a gra
sent to the court from which the grant issued.

103. When intimation has been received of th
of an English grant, notice of the revocation
alteration in such grant is to be sent to the court
authority such grant was resealed.

104. The affidavit for Inland Revenue pursua
Customs and Inland Revenue Acts, 1880 and 188
transmitted to the Commissioners of Inland Revenu
person who applied for sealing under the Colonia
Act, 1892, were a person applying for probate or
administration.

105. The affidavit for Inland Revenue and acc
schedules forming part thereof shall be in such
may be prescribed by the Commissioners of her
Treasury.

NOTE.—The affidavit to be used will in fact be Form A
few modifications to suit the circumstances.

This note is not applicable where the deceased died after
1894, *owing to the form of affidavit having been varied.*

APPENDIX.

FORMS (COLONIAL PROBATES ACT, 1892).

[NOTE.—*The following forms are printed* verbatim *as*
originally prescribed. They should be altered as to dates, th
of real estate, etc., as the particular case may require.]

Oath.

In the High Court of Justice, Probate, Divorce and Admiralty
(Probate.)

In the goods of A. B., deceased.

I, C. D. (*or* E. F.), of , make oath and say:—
1. That a grant of probate of the will (*or* letters of admini

the personal estate) of A. B., late of , deceased, was granted to me (*or* C. D.) by the Court at on the day of . Non-contentious Business.

2. That the said deceased was at the time of his death domiciled at , [*the following words to be struck out if inapplicable*] within the jurisdiction of the said Court.

3. That the notice hereunto annexed was inserted in the "Times" newspaper on the day of .

4. That I am the attorney lawfully appointed of C. D. under his hand and seal, and am duly authorised to apply to this Court for the sealing of the said grant. [*This paragraph to be struck out if inapplicable.*]

5. That the value of the personal estate in England amounts in value to the sum of and no more, to the best of my knowledge, information, and belief.

Sworn, etc.

Advertisement.

A. B., deceased.

Notice is hereby given that after the expiration of eight days application will be made in the principal probate-registry of the High Court of Justice for the sealing of the probate of the will (*or* letters of administration of the personal estate) of A. B., late of , deceased, granted by the Court at on the day of 18 .

Solicitors for .

(*To be advertised once in the "Times" newspaper unless otherwise directed by one of the registrars.*)

Administration Bond (with or without Will).

Know all men by these presents, that we, A. B., of , C. D., of , and E. F., of , are jointly and severally bound unto G. H., the President of the Probate, Divorce, and Admiralty Division of [her] Majesty's High Court of Justice, in the sum of pounds, of good and lawful money of Great Britain, to be paid to the said G. H. or to the President of the said Division for the time being, for which payment well and truly to be made we bind ourselves and each of us, for the whole, our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals.

Dated the day of in the year of our Lord one thousand eight hundred and ninety .

The condition of this obligation is such, that if the above-named A. B., the administrator (with the will dated the day of , annexed) by authority of the Court at , acting under letters of administration granted to on the day of , and now about to be sealed in England under the Colonial Probates Act, 1892, of the personal estate of K. L., late of deceased, who died on the day of 18 , do, when lawfully called on in that behalf, make, or cause to be made, true and perfect inventory of the personal estate of the said deceased in England which has or shall come to hands, possession, or knowledge, or into the hands and possession of any other person for , and the same so made do exhibit, or cause to be exhibited, into the principal probate registry of [her] Majesty's High Court of Justice, whenever required by law so to do, and the same personal estate do well and truly administer according to law;

Non-contentious Business.

and further do make, or cause to be made, a true and just acc
said administration, whenever required by law so to do, th
obligation to be void and of none effect, or else to remain in ful
and virtue.

Signed, sealed, and delivered by
the within-named
in the presence of
A Commissioner for Oaths.

Administration Bond (with or without Will) on applicat by Attorney.

Know all men by these presents, that we, A. B., of , C.
, and E. F., of , are jointly and severally
unto G. H., the President of the Probate, Divorce, an
miralty Division of [her] Majesty's High Court of Just
the sum of pounds, of good and lawful money of
Britain, to be paid to the said G. H., or to the President
said Division for the time being, for which payment we
truly to be made we bind ourselves and each of us, fo
whole, our heirs, executors, and administrators, firmly by
presents.

Sealed with our seals.

Dated the day of in the year of our Lor
thousand eight hundred and ninety .

The condition of this obligation is such, that if K. L., of
administrator (with the will dated the day of annexe
authority of the Court at , acting under letters of adm
tration granted to on the day of , and now about
sealed in England under the Colonial Probate Act 1892, of the per
estate of M. N., late of , deceased, who died on the d
18 , do, when lawfully called on in that behalf, make, or
to be made, a true and perfect inventory of the personal estate o
said deceased in England which has or shall come to hands,
session, or knowledge, or into the hands and possession of any
person for , and the same so made do exhibit, or cause
exhibited, into the principal probate registry of [her] Majesty's
Court of Justice whenever required by law s to do, and the
personal estate do well and truly administer according to law;
further do make, or cause to be made, a true and just account of
said administration, whenever required by law so to do, then
obligation to be void and of none effect, or else to remain in full
and virtue.

Signed, sealed, and delivered by
the within-named
in the presence of
A Commissioner for Oaths.

ADDITIONAL RULE AND ORDER

for the Registrars of the Principal and District Probate Registries with regard to

NON-CONTENTIOUS BUSINESS.

Dated the 1st day of August, 1894.

ADDITIONAL RULE AND ORDER *for the Registrars of the Principal and District Probate Registries with regard to Non-Contentious Business.*

The Number of the Rule for the Principal Probate Registry is 106; *and for the District Registries*, 101.

The certificate required to be given by the proper officer of the court under section 30 of the Customs and Inland Revenue Act, 1881, shall for the purposes of the Finance Act, 1894, and subject to any necessary variations and modifications, which the officer of the court is hereby authorised at his discretion to make, be in the form following:—

And it is hereby certified that an affidavit for Inland Revenue has been delivered, wherein it is shown that the gross value of the personal (*a*) estate of the said deceased within the United Kingdom (exclusive of what the deceased may have been possessed of or entitled to as a trustee and not beneficially) amounts to £ , and that it appears by a receipt signed by an Inland Revenue officer on the said affidavit that £ for estate duty and interest thereon has been paid, the duty being charged at the rate of £ per cent.

(*a*) The form of certificate on the grant where the deceased died on or since 1st January, 1898, is as follows:—

And it is hereby certified that an affidavit for Inland Revenue has been delivered wherein it is shown that the gross value of the said estate [*i.e. all the estate which by law devolves to and vests in the personal representative of the deceased*] within the United Kingdom (exclusive of what the said deceased may have been possessed of or entitled to as a trustee and not beneficially) amounts to £ .

And it is further certified that it appears by a receipt signed by an Inland Revenue officer on the said affidavit that £ for estate duty and interest on such duty has been paid, the duty being charged at the rate of £ per cent.

Non-contentious Business.

ADDITIONAL RULES AND ORDE

for the Registrars of the Principal and District Probate
with regard to

NON-CONTENTIOUS BUSINESS.

Dated the 11th day of December, 1896.

ADDITIONAL RULE AND ORDER *for the Registrar*
Principal and District Probate Registries.

In any case in which it is intended to apply for the
in Ireland of any grant of probate or letters of admi
made in the Probate Division of the High Court of J
England, the executor or administrator may depos
principal or district probate registry where the grant
made a copy of such grant of probate or letters of ad
tion, together with the original and any certificate or c
that may be required, and the fees payable in Ireland i
of such resealing, and the registrar shall transmit by
documents so deposited, together with such fees to the
of the principal probate registry in Ireland, for the p
such grant being resealed under the provisions of
Vict. c. 79. s. 94.

The Number of this Rule for the Principal Registry is
for the District Registries is 102.

FURTHER ADDITIONAL RULE AND ORDER *for the Regi*
the Principal Probate Registry.

The registrar of the principal probate re in
shall, upon receiving by post from a probate registry in
any grant of probate or letters of administration made
Probate and Matrimonial Division of the High Court
in Ireland, together with a copy thereof, and any cert
certificates that may be required, and the fees pay
England in respect of the resealing of an Irish gran
such grant to be resealed in conformity with the provi
20 & 21 Vict. c. 79, s. 95, and shall transmit the gran
sealed to the registrar of the probate registry in Irela
whom it was received.

The Number of this Rule is 10

THE SURROGATE COURTS, ONTARIO.

RULES.

The [illegible] the Supreme Court of Judicature for Ontario [illegible] pursuance of the powers conferred by the [illegible] Ontario, cap. 50, sec. 78, and 53 Vic., cap. [illegible] order and direct that the rules, orders, and regulations hereinafter set forth shall henceforth be the General Rules and Orders in non-contentious business and contentious business, respectively.

For regulating the procedure and practice of the surrogate courts;

For regulating the duties of the registrars of the several surrogate courts and the duties of the surrogate clerk; and

For fixing the fees to be taken by the registrars and other officers of the said courts, and solicitors practising therein; and also

In relation to the provisions of the Surrogate Courts Act, and the Devolution of Estates Act.

All rules and orders heretofore passed and not included in these rules are rescinded, and these rules shall take effect on and after the 1st day of April, 1892. All practice inconsistent therewith is superseded. As to matters not provided for in these rules, the practice is, as far as may be, to be regulated by analogy thereto (see Rule 3, Con. Rules of Practice). In any matter not so provided for in which the practice cannot be regulated by such analogy such practice shall be regulated by analogy to the Consolidated Rules of Practice of the Supreme Court of Judicature for Ontario.

Subject to Rules of Court, the judge of the surrogate court shall have power to sit and act at any time for the transaction of any part of the business of such court, or for the discharge of any duty which by any Statute or otherwise was formerly required to be discharged out of or during term. (See Rule 1255, Con. Rules of Practice.)

CANADIAN RULES.]

PROCEDURE.

1. Non-contentions business shall include all commo
form business as defined by the Surrogate Courts Act, an
the warning of caveats.

2. Application for probate or administration may b
made by a solicitor or in person.

3. No probate, or letters of administration with the wi
annexed, shall issue until after the lapse of seven days fro
the death of the deceased, unless under the direction of th
judge.

4. No administration shall issue until after the lapse o
fourteen days from the death of the deceased, unless unde
the direction of the judge.

5. Every application to a surrogate court for grant o
probate or administration must be by petition prepared
signed and presented by the applicant or his solicitor.

Such petition shall in every case show the value of th
whole property of the deceased, and also the separate valu
of the personal and real estate, and full particulars and a
appraisement of all said property shall be exhibited wit
such application and shall be verified upon oath.

6. Upon every application for grant of administration, i
must be shown that search for will or testamentary pape
has been made in all places where the deceased usually kep
his papers, and in his depositories. The affidavit should b
made by the applicant, but the proof may, with the judge'
consent, be made otherwise. It must also be shown tha
search has been made in the office of the registrar of th
proper surrogate court, and the certificate of such registra
shall be sufficient proof of such search having been made.

7. Unless the judge shall otherwise order, the registra
shall with the application for grant of administration submi
the bond proposed to be given, with the necessary affidavit
of justification and of execution, and in every case such
bond shall be without material erasure or interlineation.

8. The necessary affidavits to lead grant, and the usua
oath of executors and administrators, may be taken at the
time the application for grant is signed, or afterwards at
any time before the application is submitted to the judge
for his order and direction. The proofs to lead grant may
be embodied in one affidavit.

9. If there should appear to be any material variance between the application and affidavits made in support thereof, the judge may direct such application to be amended according to the fact, and a new notice of such amended application to be sent to the surrogate clerk.

10. The due execution of the will or codicil shall be proved by one of the witnesses, or the absence of the witnesses accounted for; in which last case such will or codicil must be established by other proof, to the satisfaction of the judge.

11. The oath of administrators, and of administrators with the will annexed, is to be so worded as to clear off all persons having a prior right to the grant. In these cases the grant should show on the face of it how the prior interests have been cleared off.

12. The usual oath of administration is to be reduced to writing, and to be subscribed and sworn to by the executors or administrators as an affidavit.

13. Under the statute the several surrogate courts have power to appoint an administrator other than the person who, prior to the Act, would have been entitled to the grant (s. 56). Whenever the judge sees fit to exercise such a power, the fact should be made plainly to appear in the oath of the administrator, in the letters of administration, and in the administration bond.

14. Where limited administrations are applied for, it must be made to appear that every person entitled in distribution to the property has consented, or renounced, or has been cited and failed to appear, except when the judge sees fit otherwise specially to direct.

15. No person entitled to a grant of administration of the property of the deceased generally shall be permitted to take a limited grant, except grants for personal estate only under section 58 of the Surrogate Courts Act.

16. In administration of a special character the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

17. Grants of administration may be made to the guardians of infants and minors, for the use and benefit of such infants and minors during their minority; and elections by minors of their next-of-kin, or next friend, as the case may be, to

CANADIAN RULES.]

such guardianship, shall be required when the infant fourteen years of age and over. (See c. 137, R. S. O., se 4, 10, 18.)

18. Every will or copy of a will, to which an executor administrator with the will annexed is sworn, should marked by such executor or administrator and by the pers before whom he is sworn.

19. Executors and administrators shall within a period eighteen months after grant made, and sooner if the jud shall so direct, exhibit under oath a true and perfect inventor of the property of the testator or intestate (as the case ma be), and render a just and full account of their executorshi or administration. The judge shall, upon application mad to him for that purpose, have power to extend the said perio of eighteen months. If the executor, or administrator wit the will annexed, is the sole legatee or devisee of the propert devolving, the judge may direct that he shall be relieve from the operation of this rule, provided there are n creditors of the estate.

(*a*) The general rules which govern in the Master's offic of the Supreme Court of Judicature under a judgment, o order of reference, and the rules of practice and procedur thereof for the time being, so far as the same can be mad to apply, shall be adopted in the case of the auditing a executor's and administrator's account by the judge, sub stituting the word "judge" for the word "master" and also for the word "examiner" wherever it occurs in any such rule. (See Con. Rules of Practice, 57 *et seq.* to Rule No 59 inclusive.)

20. A will deposited for safe keeping in the office of the registrar of the surrogate court shall not be removed therefrom, except by the testator in person, unless the order of the judge permitting such removal shall have been first obtained.

21. In all cases in which it has been heretofore necessary to issue a citation to accept or refuse probate of a will, or to accept or refuse letters of administration, or to issue a subpœna to bring in a testamentary paper, and in all similar cases, the judge's order shall be made, and shall have the like effect as such citation or subpœna formerly had. (See Rules 1045 and 1098 Con. Rules of Practice, and see new form 30.)

22. The party entering a caveat must declare therein the

nature of his interest in the property of the deceased, and state generally the grounds upon which he enters such caveat, and the same shall be signed by the party, or by his solicitor on his behalf, and the proper place mentioned as the address of the party or of his solicitor entering the caveat; and no caveat shall have any force or effect unless the requirements of this rule be in substance complied with.

23. A caveat shall remain in force for the space of three months only, and then expire and be of no effect; but caveats may, subject to the judge's order, be renewed from time to time. (See Coote, 271 and 272.)

24. In order to clear off a caveat when no appearance has been entered to a warning duly served, an affidavit of the service of the warning, stating the manner of service, and an affidavit of search for appearance and of non-appearance must be filed.

25. No caveat shall affect any grant made on the day on which the caveat is entered, unless notice of such caveat has been received prior to the grant passing the seal.

26. A caveat shall be warned at the place mentioned in it as the address of the person who entered it or of his solicitor.

27. It shall be sufficient for the warning of a caveat, that the registrar of the court in which application for grant is made send by public post, prepaid and registered, a warning signed by himself bearing the seal of the court, and directed to the person who entered it, or to his solicitor, if signed by a solicitor, at the address mentioned in it.

28. Any person intending to oppose a grant of probate or administration, for which application has been made to a surrogate court, must within ten days after service appear, either personally or by a solicitor, and enter an appearance in such court in which appearance the address of the party, or of his solicitor, shall be given. This rule is to apply whether the person intending to oppose the grant has or has not been previously warned to a caveat, or served with a citation. (See Coote 361, Rule 67 English Rules of 1862. See Rules in Contentious Business, *post*.)

29. When a party intending to oppose a grant has filed an appearance with a registrar, no further steps in respect to such grant shall be taken, except under the special

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direction of the judge. (See Rules in Contentions Business *post.*)

30. Citations against all persons in general and other instruments heretofore required to be served by affixing them in some public place, are in future to be served by the insertion of the same as advertisements in such newspapers, local, British, or foreign, as the judge may, from time to time, direct. Such citations can only be allowed to issue in cases where there is an affidavit to lead them and a judge's order. (See Rule 21, *ante.*)

31. Citations under the 38th section of the Act may be served by inserting the same as advertisements in such one of the Toronto morning papers, or such other papers, local, British, or foreign, as the judge of the court may, by special order, direct.

32. The bond to be given upon any grant of administration shall be according to the forms subjoined, or in a form as near thereto as the circumstances of the case admit (See s. 55 of the Surrogate Courts Act, and 53 Vict. c. 17, s. 14.)

33. The sureties in such bond are required in all cases to justify (see s. 65 of the Surrogate Courts Act). And such justification shall be to an amount or amounts which in the aggregate shall equal the amount of the penalty of the bond. No surrogate clerk or registrar shall become surety to any administration bond.

34. In ordinary cases where property is *bonâ fide* under the value of two hundred dollars, one surety only may be taken to the administration bond.

35. In all other cases, unless the judge shall otherwise direct, two sureties are always to be required to the administrator bond, and the bond is to be given in double the amount of the fund to be dealt with under the administration.

36. Whenever any renunciation is filed subsequent to notice of application to the surrogate clerk, or any alteration is subsequently made in the grant, notice of such renunciation or alteration is to be immediately forwarded by the registrar of the court to the surrogate clerk.

37. Every affidavit shall be drawn up in the first person, stating the name of the deponent at the commencement in full, and his description and true place of abode, and shall be signed by him. (See Rule 605, Con. Rules of Practice).

38. In every affidavit made by two or more deponents, the names of the several persons making it are to be written in the jurat. Except that if the affidavit of all the deponents is taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all), of the "above-named" deponents. (See Rule 606, Con. Rules of Practice.)

39. There shall be appended to or indorsed upon every affidavit, a note signed by the solicitor or the party in person, showing on whose behalf it is filed. (See Rule 608, Con. Rules of Practice.)

40. Where an affidavit is made by any person who is blind, or who, from his or her signature, or otherwise, appears to be illiterate, the registrar or other officer before whom such affidavit is made, is to state in the jurat that the affidavit was read in his presence to the deponent, and that such deponent seemed perfectly to understand the same; and also that the said deponent made his or her mark, or wrote his or her signature, in the presence of the registrar or other officer, before whom the same was taken. No such affidavit shall be used in evidence in the absence of this statement unless the court or a judge is otherwise satisfied that the affidavit was read over to and apparently perfectly understood by the deponent. (See latter clause of Rule 612, Con. Rules of Practice.)

41. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure shall, without the leave of the judge, be read or made use of in any matter pending in any surrogate court, unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit; nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialed in the margin of the affidavit by the officer taking it. (See Con. Jud. Rule 611.)

42. No affidavit which has been sworn before the party on whose behalf the same is offered, or before his solicitor, or before the clerk, or partner of such solicitor is to be admitted, unless the judge shall otherwise direct.

Registrars.

43. Every registrar of a surrogate court shall keep his office open on such days and during such hours as the office

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of the clerk of the county court is required to be kept o
and every registrar shall keep his office at the county to

44. Every registrar of a surrogate court shall keep b
as nearly as may be in the manner shown in the forms.
shall keep such books duly indexed from time to time,
shall also keep an index of the names of testator
intestates and of executors and administrators, which
be arranged alphabetically. The non-contentious busi
book shall contain columns for the entry of the sworn v
of the personal property and of the real property.

45. Every registrar shall duly endorse and file all pa
received by him, and enter a note thereof, and of e
proceeding in the court, in the books to be kept.

46. When it is so desired by any applicant for gra
probate or administration where the value of the prop
devolving does not exceed $400, the registrar of the c
in which application is to be made may prepare the a
cation and all other forms necessary in non-content
business, without the intervention of a solicitor; but i
other case shall he prepare the papers for grant. And i
other case shall any person other than the applicant o
solicitor, either directly or indirectly, prepare the app
tion or other papers to be used in any application or ma
in the surrogate court, nor shall any person other th
solicitor be permitted to practise in the surrogate co
(See ss. 67 and 15 of the Surrogate Courts Act.)

47. The registrar shall properly number and endorse
date of receipt of all applications for the grant of pro
or administration received by him in the order in w
they are received, and an entry thereof shall be made in
book to be kept for that purpose, with a number prefixe
correspond with the number on the application.

48. Notices of applications to be transmitted to "
surrogate clerk" under the 41st section of the Act, ar
contain the Christian and surname, residence and addi
of the deceased, the time of his death, Christian and surna
residence and addition of applicant, nature of applicat
and court in which made. [Forms are subjoined, to be va
according to the circumstances.]

49. All papers and communications from registrars to
surrogate clerk shall be transmitted through the post o
the letter or packet to be registered and prepaid.

50. Every registrar, upon receipt of a certificate from the surrogate clerk touching an application made to the court of which he is registrar, shall forthwith enter a note thereof in the book to be kept for that purpose; and shall, as soon as may be thereafter, lay such application, and all papers in relation to the same, before the judge, for order and direction thereupon.

51. Every order made by the judge upon or in reference to any application, shall be noted by the registrar in the books to be kept for that purpose.

52. When the judge makes an order for the grant of probate or administration, the registrar shall record such grant in the "register book," and in case of the grant of probate or letters of administration with the will annexed, an exact copy of the will, and codicil if any, to which such probate or administration relates, shall be underwritten. If a grant be afterwards revoked, a note of such revocation shall be entered across the record of grant in the register book.

53. The administration bond and affidavits of justification and of execution shall be recorded by the registrar in the proper registry book. (See R. S. O., c. 137, s. 12, last clause.)

54. All probates and letters of administration shall be signed by the registrar, and sealed with the seal of the court from which they are issued, and the copy of the will and codicil, if any, annexed to a probate or to letters of administration, shall be authenticated by the signature of the registrar.

55. The list of grants of probates and administration, and of revocation thereof, required under the 14th section of the Act, to be sent by registrars to the surrogate clerk are to contain in each case the Christian and surname, residence and addition of the deceased, the time of his death, date of the grant, name, residence, and addition of executor or administrator, nature of grant, and in what surrogate court.

56. Every registrar of a surrogate court shall number, endorse and enter all caveats lodged with him, in the same manner as provided in respect to applications for grants; and notice thereof (see form, *post*) shall be sent to the surrogate clerk by the next post after such caveat has been lodged.

CANADIAN RULES.]

Appeals to the Court of Appeal.[153]

57. Appeals under the 33rd section of the Act sh
subject to the following regulations:—

In case any person desires to appeal from any
sentence, judgment or decree of a surrogate court, or
the determination of the judge thereof on any poi
law—

1. He (or in case of his absence, some one on his b
shall, with two sufficient sureties, execute a bond t
respondent in the sum of two hundred dollars, to the
that the appellant will effectually prosecute his appea
pay such costs, charges, and expenses as shall be award
case the order, sentence, judgment, determination or
(as the case may be) shall be affirmed or in part affirme

2. The sureties to such bond shall make affidavit
their sufficiency.

3. An affidavit of the execution of the said bond sh
made by the subscribing witnesses thereto.

4. An affidavit shall be made by the appellant, his so
or agent, that the property to be affected by such ord
decree, or as the case may be) are over the value o
hundred dollars.

5. The said bond and affidavits shall be filed wit
registrar of the surrogate court.

6. A notice of such appeal shall be served by the app
on the opposite party, his solicitor or agent.

7. If such bonds and affidavits be made and filed, and
notice be served within fifteen days next after the
sentence, judgment, decree, or determination app
against, the appeal shall be held by such surrogate cou
be duly lodged.

8. In lieu of giving the above-mentioned bond, the app
shall be at liberty to pay into the proper surrogate cou
security, a sum of money not less than $100.

58. When an appeal is so lodged the judge of the surr
court shall, upon the application of the appellant, ord
proceedings in the matter to be stay

59. Upon certificate from the registrar of the Cou
Appeal, that the appeal has been filed in his office, the
of the surrogate court shall, upon the application o
appellant, order the registrar of the court forthwi

[153] S. C. Act, s. 36, *ante*, p. 675; and *Dickson* v. *Monteith*, 14 O. R
Beam v. *Kaulbach*, 3 S. C. R. 704; *Russell* v. *Le Francois*, 8 S. C. R
Re West, 14 C. L. T. O. N. 422; *McDonald* v. *Davidson*, 6 O. A. R.

transmit (at the expense of the appellant) to the registrar of the Court of Appeal the documents, instruments, affidavits, and papers in the matter appealed, deposited, or filed in such surrogate court, together with the judgment or decisions of the judge.

Removal of Causes.

60. When a cause or proceeding is removed into the High Court, under the 31st section of the Act, the judge of the surrogate court shall, upon the application of the party who has obtained the order for removal, in like manner as mentioned in Rule 59, direct the papers in the matter to be transmitted to the surrogate clerk, to be by him transmitted to the proper officer of the High Court.

The Surrogate Clerk.

61. The surrogate clerk shall keep an office at such place in the city of Toronto as the judges of the Supreme Court of Judicature for Ontario may direct, and such office shall be kept open daily, except on the appointed holidays of the court, for and during such hours as the said judges shall prescribe.

62. The surrogate clerk shall keep books as nearly as may be in the manner shown in the forms hereinafter set forth, which books he shall keep duly indexed from time to time.

63. The surrogate clerk shall properly number and endorse the date and receipt of all notices of application to any surrogate court for the grant of probate or administration received by him, in the order in which they are received; and an entry thereof shall be made in the book to be kept for that purpose, with a number prefixed to correspond with the number on the notice of application; and all caveats and copies of caveats lodged with and received by the surrogate clerk, shall in like manner be numbered, endorsed, and entry thereof be made in the book to be kept for that purpose.

64. The surrogate clerk, upon receiving a notice of application for probate or administration, if seven days in cases of testacy and fourteen days in cases of intestacy, have elapsed after the death of the deceased (as shown in the notice), shall forthwith make the necessary search and examination in the books required to be kept by him, and

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amongst the original papers on file in his office; and on t
next office day after the receipt of such notice shall mai
certificate as to such search according to the form numbe
9, or as near thereto as the circumstances of the case v
admit. If at the time of receiving a notice of applicati
the periods aforesaid shall not have expired, the surrog
clerk shall not make such search and examination, nor sh
such certificate be sent until the eighth day after the dec
of the testator, and the fifteenth day after the death of t
intestate, according to the time of the decease, as shown
the notice of application for probate or administration.

65. The surrogate clerk shall extract from the lists f
nished to him under the 14th section of the Act the p
ticulars of each grant, and shall enter a note of the sa
placing it in its alphabetical order under the first letter
the surname of the testator or intestate, in the book to
kept by him for that purpose, and shall also note in su
book every revocation of a probate or administration notif
to him; and all lists, copies of will, returns of revocatio
and papers received by the surrogate clerk, shall be fi
and endorsed in like manner as is provided in respect
notices of applications for grants.

66. If it shall appear from the entries required to be k
by the surrogate clerk, or from inspection of the origi
papers on file in his office, that the name of the deceas
person, as given in any application for probate or admi
tration, although not identical in the mode of spelling,
it is, or appears to be, *idem sonans* with the name of t
testator or intestate, as given in any other application or
any lists of grants on file, or if in such examination
inspection it shall for any other cause appear doubt
whether another application or an actual grant has
been made in the property of the same deceased person, t
surrogate clerk shall certify the special matter as disclo
in such search and inspection by him.

67. All communications from the surrogate clerk
registrars of surrogate courts shall be by registered letter

68. The surrogate clerk as an officer of the High Co
shall perform such other duties as shall be prescribed by
rules or by the judges of the said court.

Fees.

69. Registrars and officers of surrogate courts shall
entitled to take and receive to their own use the fees

forth in the tables of fees subjoined for the performance of duties and services under the Act.

70. The fees payable to the Crown in stamps and to the judge and registrar on business and proceedings in the surrogate courts, as well as postage when necessary, shall be paid to the registrars, in the first instance, by the party on whose behalf such proceeding is to be had, on or before such proceeding. In case the judge's fees are commuted the stamps in lieu thereof shall be produced by the registrar to the judge for cancellation. (See the Surrogate Courts Act, sec. 73, sub-sec. 2.)

71. Solicitors and counsel practising in said courts shall be entitled to take for the performance of business and services under the Act, the fees set forth in the subjoined table.

72. The registrar shall tax costs, subject to appeal to the judge. (See R. S. O., [1897] cap. 55, sec. 10.)

Forms.

73. The subjoined forms are to be adopted and followed in the several surrogate courts as nearly as the circumstances of each case will allow.

In case the application be limited to administration of personal estate the forms may be modified accordingly.

74. In the construction of these rules the provisions contained in the second section of the Act shall apply.

CONTENTIOUS BUSINESS.

1. A proceeding shall be adjudged contentious when an appearance has been entered by any person in opposition to the party proceeding, or when a citation or Judge's order has been obtained against a party supposed to be interested in a proceeding, or when an application for grant is made on motion and the right to such grant is opposed, or when application is made to revoke a grant, or when there is contention as to the right to obtain probate or administration, and before contest terminated.

2. The practice as to appearance shall, in so far as shall be practicable, be that prescribed by the Consolidated Rules of Practice of the Supreme Court of Judicature for Ontario.

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3. In contentious proceedings the practice and procedu shall, as nearly as may be, correspond with the practice a procedure in the High Court after appearance entered.

4. If the party who has entered an appearance shall n use due diligence in the prosecuting of the proceedings t applicant may obtain a summons calling upon him to sho cause why he should not file a plea within a limited time, in default thereof why grant should not be made.

5. Any person not named in the petition or in the order the judge may intervene and appear thereto on filing a affidavit showing that he is interested in the estate of t deceased.

6. The party opposing a will may, with his statement defence, give notice to the party setting up the same that h merely insists upon the will being proved in solemn form law, and only intends to cross-examine the witnesses pr duced in support of the will, and he shall thereupon be liberty to do so, and shall be subject to liability in respect costs in the discretion of the judge.

7. If any defendant make default in filing and deliverin a defence, the action may proceed notwithstanding suc default; or the plaintiff may obtain a summons calling upo the defendant to show cause why grant should not be mad without further proceedings.

8. In any case not provided for and in which there is n analogous practice in the High Court the party desiring t pursue a claim, remedy or right, may apply to the judge fo direction and order as to the course to be pursued.

9. The forms subjoined to these rules and numbered 1 to respectively are given as examples of statements of clai and of defence respectively.

NON-CONTENTIOUS BUSINESS.

FORMS.

1. Application for Probate in Common Form by a Sole Executor.

Unto the Surrogate Court of the County (*or* United Counties) of

The petition of A. B., of the of , in the County of , Esquire

Humbly sheweth,

That C. D., late of the of , in the County of , *surgeon* deceased, died on or about the day of , A.D. 18 , at , in

etc., and that the said deceased at the time of *his* death, had *his* fixed place of abode at , in the said County of , ["*or* had no fixed place of abode in Ontario" (*or* "resided out of Ontario") "but had at such time property in the said County of "]. That the said deceased in his lifetime duly made his last will and testament, bearing date the day of , 18 , [and codicil (*or* codicils) bearing date the day of , A.D. 18]. That your petitioner is the executor named in the said will (*or* codicil). That the value of the whole property of the said deceased, which *he* in any way died possessed of or entitled to, and for and in respect to which a probate of the said will (and codicil) is to be granted, is under dollars. That the value of the personal estate and effects is under dollars, and of the real estate is under dollars, and that full particulars and an appraisement of all said property are exhibited herewith and verified upon oath.

Wherefore your petitioner prays that probate of the said will (and codicil) of the said deceased may be granted to *him* by this Honourable Court.

Dated the day of , 18 .

A. B.

Or if signed by a solicitor of applicant,

A. B.

By *his* solicitor E. F.

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2. Application for Grant of Administration with the Will annexed in Common Form, where no Executors appointed.

Unto the Surrogate Court of the County (*or* United Counties) of

The petition of A. B., of the of , in the County of , Esquire,

Humbly sheweth,

That C. D., late of the of , in the County of , *spinster*, deceased, died on or about the day of , A.D. 18 , at , in, etc., and that the said deceased at the time of *her* death had *her* fixed place of abode at in the said County of , [*or* "had no fixed place of abode in Ontario" (*or* "resided out of Ontario") "but had at such time property in the said County of ,"] that the said deceased in *her* lifetime duly made *her* last will and testament, bearing date the day of , A.D. 18 , [and codicil (*or* codicils) bearing date the day of , A.D. 18].

That no executor is named in the said will (*or* codicil). That your petitioner is the residuary legatee (*or as the case may be*) named in the said will (*or* codicil). That the value of the whole property of the said deceased, which *she* in any way died possessed of, or entitled to, and for and in respect to which a probate of the said will (and codicil) is to be granted, is under dollars. That the value of the personal estate and effects is under dollars, and of the real estate is under dollars, and that full particulars and an appraisement of all said property are exhibited herewith and verified upon oath.

Wherefore your petitioner prays that administration with the said will (and codicil) annexed, of the property of the said deceased may be granted and committed to *him* by this Honourable Court.

Dated the day of , A.D. 18 .

A. B.

Or if signed by solicitor of applicant,

A. B.

By *his* Solicitor,

E. F.

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3. Application for Grant where Executor has renounced or Residuary Legatee has renounced Administration w annexed.

Unto the Surrogate Court of the County (*or* United Counties) of

The petition of A. B., of the of , in the County Esquire,

Humbly sheweth,

That C. D., late of the of , in the County of deceased, died on or about the day of , A.D. 18 , at and that the said deceased at the time of *his* death, had *his* fixe abode at , in the County of , [*or* "had no fixed place o Ontario," (*or* "resided out of Ontario") "but had at such time prope said County of ."]

That the said deceased in *his* lifetime duly made *his* last will and t bearing date the day of , A.D. 18 , [and codicil (*or* codicil date the day of , A.D. 18 .]

That E. F., of , the executor (or residuary legatee, etc.) nam said will, has by *deed* hereunto annexed, duly renounced all right a the probate and execution of the said will (and codicil, *if any*) (*or* administration to the personal estate and effects of deceased).

That your petitioner is (*state character in which applicant claims*).

That the value of the whole property devolving under the said codicil) is under dollars, and that the value of the personal effects of the said deceased, which *he* in any way died possessed of, o to, is under dollars, and of the real estate is under dollars full particulars and an appraisement of all said property are exhibited and verified upon oath.

Wherefore your petitioner prays that administration with the said codicil) of the said deceased annexed, may be granted to *him* by this H Court.

Dated the day of , A.D. 18 .

A. B.

Or if signed by solicitor or appli

A. B.

By *his* solicitor,

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4. Application for Grant of Administration.

Unto the Surrogate Court of the County (*or* United Counties) of

The petition of A. B., of the of , in the County of ,

Humbly sheweth,

That C. D., late of the of , in the County of , deceased, died on or about the day of , A.D. 18 , at and that the said deceased at the time of *his* death, had *his* fixe abode at , in the said County of , [*or* "had no fixed plac in Ontario," (*or* "resided out of Ontario,") "but had at such time p the said County of ."] That the said deceased died a bachelo parent, brother or sister, uncle or aunt, nephew or niece (*to be varied to the circumstances of the case*), and without having left any will, testamentary paper whatever, and that your petitioner is the lawf german and next-of-kin of the said deceased (*to be varied accord circumstances of the case*).

That the value of the whole property of the said deceased, which *he* in any way died possessed of or entitled to, is under dollars. That the value of the personal estate and effects is under dollars, and of the real estate is under dollars, and that full particulars and an appraisement of all said property are exhibited herewith and verified upon oath. Wherefore your petitioner prays that administration of the property (*or* of the personal estate and effects, *as the case may be*) of the said deceased may be granted and committed to *her* by this Honourable Court.

Dated this day of , 18 ,

A. B.
Or if signed by solicitor of applicant,
A. B.
By *her* solicitor, E. F.

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5. Notice to be transmitted by Registrar of a Surrogate Court to the Surrogate Clerk of application made to such Court for a Grant of Probate to Executor.

In the Surrogate Court of the County of

To the Surrogate Clerk:

Take notice, that application has been made to the Surrogate Court of the County of , for a grant of probate of the will bearing date the day of , A.D. 18 , [and codicil (*or* codicils) bearing date the day of , A.D. 18 ,] of , late of , in the County of , deceased, *surgeon*, who died on or about the day of , A.D. 18 , having at the time of *his* death, a fixed place of abode at , in the said County of , [*or* "no fixed place of abode in Ontario," (*or* "resided out of Ontario,") "but having at such *time* property in the said County of ,] by A. B., of , in the County of , the executor (*or* by J. P., the solicitor of A. B., the executor) named in the said will (*or* codicil).

Application received the day of , 18 .

Registrar of the said Court.

This notice mailed the day of , 18 .

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6. Notice to be transmitted by Registrar of a Surrogate Court to the Surrogate Clerk, for Grant of Administration with the Will annexed where no Executor appointed.

In the Surrogate Court of the County of

To the Surrogate Clerk:

Take notice, that application has been made to the Surrogate Court of the County of , for a grant of letters of administration with the will and codicil (*or* codicils) annexed, the said will bearing date the day of , A.D. 18 , [and the said codicil (*or* codicils) bearing date the day of , A.D. 18 ,] of , late of , in the County of , deceased, who died on or about the day of , A.D. 18 , having at the time of *his* death, a fixed place of abode at , in the said County of , [*or* "no fixed place of abode in Ontario," (*or* "resided out of Ontario,") "but having at such time property in the said County of ,"] by A. B., of the

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, of , in the County of , , the residuary lega
the case may be) named in the said will (*or* codicil) (or by J. P., the s
A. B., the residuary legatee named in the said will or codicil) no
having been named in said will (*or* codicil).

Application received this }
day of , 18 . } *Registrar of the said*
This notice mailed the day of , 18 .

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7. Notice to be transmitted by Registrar of a Surrogat to the Surrogate Clerk, of Application for Grant where E has renounced Probate or Residuary Legatee has re Administration with Will annexed.

In the Surrogate Court of the County of

To the Surrogate Clerk:

Take notice that application has been made to the Surrogate Cou
County of , for a grant of letters of administration with the
codicil (*or* codicils) annexed, the said will bearing date the day
A.D. 18 , [and the said codicil (*or* codicils) bearing date the
, A.D. 18 .] of , late of , in the County of
deceased, who died on or about the day of , A.D. 18 , h
the time of *his* death a fixed place of abode at , in the said C
, [*or* "no fixed place of abode in Ontario," (*or* "resided out of O
"but having at such time property in the said County of ,"] by
the of , in the County of , , the residuary lega
the case may be) named in the said will (*or* codicil) (or by J. P., the
of A. B., the residuary legatee named in the will (*or* codicil), E. F
, of , in the County of , , the executor (*or* r
legatee, etc.) named in the said will, having renounced all right to
bate and execution of the said will, and codicil (if any) *or* to letters of
tration to the property of the said deceased.

Application received the }
day of , 18 . } *Registrar of the said*
This notice mailed the day of , 18 .

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8. Notice of Application for Grant of Administration.

In the Surrogate Court of the County of

To the Surrogate Clerk:

Take notice that application has been made to the Surrogate C
the County of , for a grant of letters of administration of the
of , late of the of , in the County of , deceas
died intestate on or about the day of , A.D. 18 , having
time of *his* death a fixed place of abode at , in the said County o
[*or* "no fixed place of abode in Ontario," (*or* "resided out of Ontario,
having at such time property in the said County of ,] and w
unmarried, without child or parent, brother or sister, nephew or niec
or aunt (*to be varied according to circumstances of the case*) *him* survi

A. B., of the of , in the County of , , one of the lawful cousins-german (*or as the case may be*) and next-of-kin of the deceased (*or* by J. P., the solicitor of A. B.).

Application received the day of , 18 .
This notice mailed the day of , 18 .

Registrar of the said Court.

9. Certificate by the Surrogate Clerk upon Notice of Application for Grant.

OFFICE OF THE SURROGATE CLERK.

In the estate of , deceased, named in a certain notice of application to the Surrogate Court of the County of for grant of probate (*or* administration, *as the case may be*), dated the of , 18 , and described therein as , late of, , etc. (*copy from notice of application*).

I, , the Surrogate Clerk, do hereby certify that no notice of application, in respect to the property of the said deceased, has been received by me from any of the Registrars of the Surrogate Courts in Ontario, save the above [*or if another notice has been received, add* " and a certain other notice of application from the Registrar of the Surrogate Court of the County of ," dated the day of , etc., for a grant of the probate of the will bearing date, etc. (*or as in the notice of application*)].

And I further certify that no caveat or copy of caveat against the grant of probate or administration in the property of the said deceased, has been lodged with or received by me [*or if caveat or notice of caveat has been lodged or received, instead of the above, say,* " and I further certify that a caveat (*or* copy of a caveat), in the property of the said deceased, has been lodged with (*or* received by) me on the day of , etc., a copy of which is hereunto annexed].

Surrogate Clerk.

Dated

No. 10. Affidavit of Time of Death, and Place of Abode of Testator or Intestate.

In the Surrogate Court of the County of

In the estate of W. A., deceased.

I, A. B., of the of , in the County of , , make oath and say, that I am [one of the executors (*or* the executor) named in the last will and testament (*or* codicil) of the said W. A., deceased (*or* the party applying for administration of the will and codicil (if any), annexed, or administration of the property of the said W. A , deceased.)] That said deceased died on or about the day of , A.D. 18 , at , and that the said deceased, at the time of *his* death, had *his* fixed place of abode at , in the said County of , [*or* " had no fixed place of abode in Ontario." (*or* "resided out of Ontario,") " but had at such time property in the said County of ."]

Sworn at , in the County of , the day of , A.D. 18 , before me

A. B.

Person authorized to administer oaths under the Act.

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11. Affidavit of Value of Property devolving.

In the Surrogate Court of the County of

In the estate of W. A., deceased.

I, A. B., of the of , in the County of , , make o
and say, that I am [one of the executors (*or* the executor) named in the
will and testament (*or* codicil) of the said W. A., deceased, (*or* the party ap
ing for administration, with the will and codicil (*if any*) annexed, *or* admi
tration of the property of the said W. A., deceased).]

That the value of the whole property of the said deceased, which *h*
any way died possessed of or entitled to, and for and in respect to wh
("probate of the said will is," *or* "letters of administration are,") to
granted, is under dollars. That the value of the personal estate
effects is under dollars, and of the real est. is under dollars,
that full particulars and a true appraisement of all said property are exhibi
herewith.

Sworn at , in the County of ,
the day of , A.D. 18 ,
before me } A. B

Person authorized to administer oaths under the Ac

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12. Affidavit of Search for Will.

In the Surrogate Court of the County of

In the estate of J. T., deceased.

I, A. B., of the of , in the County of , make oath and s
that I am the party applying for administration of the property of the s
J. T., late of , in the County of , deceased. That I made dilig
and careful search in all places where the deceased usually kept *his* pape
and in *his* depositories, and in the office of the Registrar of this Court, in or
to ascertain whether the deceased had or had not left any will; but tha
have been unable to discover any will, codicil, or testamentary paper, and
verily believe that the deceased died without having left any will, codicil,
testamentary paper whatsoever.

Sworn at , in the County of ,
the day of , A.D. 18 ,
before me } A. B.

Person authorized to administer oaths under the Act.

NOTE.—*Where the search in the office of the Registrar has not been made
the deponent personally, omit the words* "and in the office of the Registrar
this Court."

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13. Affidavit of Execution of Will by Subscribing Witness to a Will executed after 31st December, 1873.

In the Surrogate Court of the County of

In the estate of A. B., deceased.

I, C. B., of the Township of , in the County of , , ma
oath and say

1. That I knew A. B., late of the , of , in the County of , deceased.

2. That on or about the day of [in the year of Our Lord one thousand eight hundred and , I was personally present and did see the paper writing hereto annexed marked A., signed by the said A. B., as the same now appears as and for *his* last will and testament, and that the same was so signed by the said A. B., in the presence of me and of E. F., of the of , in the County of , who were both present at the same time; whereupon the said E. F. and I did at the request of the said A. B. and in *his* presence attest and subscribe the said will.

Sworn before me at the of , in the County of , the day of 18 . } C. D.

Person authorized to administer oaths under the Act.

No. 14. Affidavit of Execution of Will by Subscribing Witness to Will executed before 1st January, 1784.

In the Surrogate Court of the County of

In the estate of A. B., deceased.

I, C. D., , of the Township of , in the County of , make oath and say, that I knew A. B., late of , deceased; that on or about the day of , in the year of our Lord one thousand eight hundred and , I was present and did see the said A. B., sign and declare the paper writing hereunto annexed as, and for, the last will and testament of the said A. B.; that I, deponent [and E. F., of etc., (if there be a second subscribing witness),] did subscribe my name as witness (*or* our names as witnesses) to the execution of the said will, at the request of the said *testator*, and in the presence of each other (*or as the case may be*); and lastly, that the name (*or* several names) subscribed as witnesses to the execution of the said will are of the proper handwriting of this deponent (and the said E. F., respectively).

Sworn before me at , in the County of this day of , A.D. 18 . } C. D.

Person authorized to administer oaths under the Act.

---

15. Oath of Executor.

In the Surrogate Court in the County of

In the estate of , deceased.

I, , of the of , in the county of , , make oath and say, that I believe this paper writing (*or* these paper writings) hereto annexed to contain the true and original last will and testament [and codicil (*or* codicils)] of , late of the of , in the County of ; that I am the sole executor (*or* one of the executors) therein named (*or* executor according to the tenor thereof—executor during life—executrix during widowhood (*or as the case may be*), and that I will faithfully administer the property of the said *testator*, by paying *his* just debts and the legacies contained in *his* will (*or* will and codicils), so far as the same will thereunto extend and the law bind me, and by distributing the residue (if

CANADIAN FORMS.]

any) of the estate according to law; and that I will exhibit under o
and perfect inventory of all and singular the property of the *te*
render a just and full account of my executorship within eighteen
sooner if thereunto required.

Sworn at , in the County of ,
the day of , A.D. 18 ,
before me

Person authorized to administer oaths under

---

16. Oath of Administrator with Will.

In the Surrogate Court of the County of

In the estate of , deceased.

I, , of the , in the County of , make oath and
I believe this paper writing (*or* these paper writings) hereto annexed
the true and original last will and testament [and codicil (*or* codicils
late of the of , in the County of , , and that th
therein named (is dead, not having taken out probate, *or* has renc
right and title to the probate and execution of the said will, *or*
may be), and that I am the residuary legatee in trust named therein
fact may be), and that I will faithfully administer the property o
deceased, according to the tenor of *his* will (*or* will and codicils),
his just debts and the legacies contained in *his* will (*or* will and ec
far as the same shall thereto extend and the law hind me, and distril
residue (if any) of the estate according to law, and that I will exhi
oath a true and perfect inventory of all and singular the property o
testator, and render a just and true account of my administrati
eighteen months, or sooner if thereunto required.

Sworn at , in the County of ,
the day of , A.D. 19 ,
before me

Person authorized to administer oaths under

---

17. Oath for Administrators.

In the Surrogate Court of the County of

In the estate of , deceased.

I, , of the of , in the County of , ,
and say, that , late of the of , in the , ,
died a *bachelor*, without leaving parent, brother or sister, unele
nephew or niece (*as the case may be*), and intestate; that I am t
cousin-german and one of the next-of-kin of the deceased (*alter in*
with the circumstances of the case); that I will faithfully admi
property of the deceased by paying *his* just debts and distributing t
(if any) of *his* estate according to law, and that I will exhibit und
true and perfect inventory of all and singular the property of the said
and render a just and true account of my administration within
months or sooner if thereunto required.

Sworn at , in the County of ,
the day of , A.D. 19 ,
before me

Person authorized to administer oaths under

18. Administration Bond.

Know all men by these presents: That we A. B., of the of , in the County of , C. D., of the etc., and E. F., of the etc., are jointly and severally bound unto G. H., the Judge of the Surrogate Court of the County of , in the sum of dollars, to be paid to the said G. H., or the Judge of the said Court for the time being; for which payment, well and truly to be made, we hind ourselves and of us for the whole, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of , in the year of our Lord 18 .

The condition of this obligation is such, that if the above named A. B., the administrator of all the property (*or as the case may be*), of , late of the , in the County of , deceased (who died on or about the day of , 18), do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all the property of the said deceased, which has or shall come into the hands, possession, or knowledge of the said A. B., or into the hands and possession of any other person or persons for *him*, and the same so made, do exhibit or cause to be exhibited into the Registry of the Surrogate Court of the County of , whenever required by law so to do, and the same property, and all other property of the said deceased at the time of *his* death, which at any time after shall come into the hands or possession of the said A. B., or into the hands or possession of any other person or persons for *him*, do well and truly administer according to law: (that is to say) do pay the debts which the said deceased did owe at *his* decease, and further, do make, or cause to be made, a true and just account of *his* said administration, within eighteen months or sooner if thereunto required, and all the rest and residue of the said property do deliver and pay unto such person or persons respectively, as shall be entitled thereto under the provisions of any Act of the Legislature now in force, or that may hereafter be in force in Ontario; and if it shall hereafter appear that any last will or testament was made by the deceased, and the executor or executors therein named do exhibit the same unto the said Court, making request to have it allowed and approved accordingly, if the said A. B., being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said Court; then this obligation to be void and of no effect, or else to remain in full force and virtue.

Signed, sealed, and delivered in presence of } [L.S.] [L.S.] [L.S.]

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19. Administration Bond for Administrators, with Will annexed.

Know all men by these presents: That we, A. B., of the of , in the County of , , C. D., of the, etc., and E. F., of the, etc., are jointly and severally bound unto G. H., the Judge of the Surrogate Court of the County of , in the sum of dollars, to be paid to the said G. H., or the Judge of the said Court for the time being, for which payment, well and truly to be made, we hind ourselves and of us for the whole, our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of , in the year of our Lord 18 .

The condition of this obligation is such, that if the above-named A. B., the administrator of the property (*or as the case may be*) of , late of the of , in the County of , , deceased, who died on or about the day of , A.D. 18 , do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and

CANADIAN FORMS.]

singular the property which has or shall come into the hands, po knowledge of the said A. B., or into the hands and possession c person or persons for *him*, and the same so made, do exhibit or exhibited into the Registry of the Surrogate Court of the Coun whenever required by law so to do, and the same property and a property of the said deceased at the time of *his* death, which at an shall come into the hands or possession of the said A. B., or into t possession of any other person or persons for *him*, do well and truly according to law; that is to say, do pay the debts which the said owe at *his* decease, and then the legacies contained in the said w to the said letters of administration to the said A. B. committe such property will thereunto extend and the law bind him; (*a*) and make, or cause to be made, a full, true, and just account of his said tion within eighteen months or sooner if thereunto required, and and residue of the property, shall deliver and pay unto such perso as shall be by law entitled thereto, then this obligation to be voi effect, or else to remain in full force and virtue.

Signed, sealed, and delivered in the presence of }

(*a*) *Here insert, if necessary, a clause under section 55 of the*

20. Affidavit of Justification by Sureties.

In the Surrogate Court of the County of

In the estate of , deceased.

We, C. D., of the of , in the County of , Yeoman of the of , in the County of , Esquire, severally and say that we are the proposed sureties on behalf of the intend trater of the property (*or as the case may be*) of , decea within bond named, for the faithful administration of the said pro *the case may be*) of the said deceased; and I, the said C. D., for m oath and say that I reside at the of , in the County of am worth property to the amount of dollars over and above brances, and over and above what will pay my just debts and every for which I am now bail, or for which I am liable as surety or otherwise; and I, the said E. F., for myself make oath and say t at the of , in the County of , and am worth pro amount of dollars over and above all encumbrances, and ove what will pay my just debts and every other sum for which I am for which I am liable as surety or endorser or otherwise.

The above-named deponents, C. D. and E. F., were severally sworn before me the day of , A.D. 18 , at the of , in the County of . }

Person authorized to administer oaths under the Act.

21. Probate.

CANADA: }
Province of Ontario. }

In Her Majesty's Surrogate Court of the County of

Be it known, that on the day of , A.D. 18 , the la testament (*or* the last will and testament with codicils) of

the of , in the County of , who died on or about the day of , A.D. 18 , at , and who at the time of *his* death had a fixed place of abode at , in the said County of [*or* "had no fixed place of abode in Ontario," (*or* "resided out of Ontario,") "but had at such time property in the said County of ,"], was proved and registered in the said Surrogate Court, a true copy of which said last will and testament is hereunder written (*or* true copies of which said last will and testament, and codicil, are hereunto annexed), and that the administration of all and singular the property of the said deceased, and any way concerning *his* will, was granted by the aforesaid Court to , of the of , in the County of , the sole executor (*or as the case may be*) named in the said will (*or* codicil), *he* having been first sworn well and faithfully to administer the same by paying the just debts of the deceased, and the legacies contained in *his* will (*or* will and codiciis), so far as *he* is thereunto bound by law, and by distributing the residue (if any) of the property according to law, and to exhibit under oath a true and perfect inventory of all and singular the said property, and to render a just and true account of *his* executorship within eighteen months or sooner if thereunto required.

[L.S.]

Registrar of the Surrogate Court of the County of .

22. Letters of Administration with Will annexed.

CANADA:
Province of Ontario.

In Her Majesty's Surrogate Court of the County of

Be it known, that , late of the of , in the County of , deceased, who died on or about the day of , 18 , at , and who at the time of *his* death had a fixed place of abode at the of , in the said County of [*or* "had no fixed place of abode in Ontario." (*or* "resided out of Ontario,") "but had at such time property in the said County of ,"], made and duly executed *his* last will and testament (with codicils), and did therein name of the of , in, etc., , executor thereof [*or* named no executor therein], a true copy of which said last will and testament is hereunder written (*or* true copies of which said last will and testament, and codiciis, are hereunder written); and be it further known that on the day of , A.D. 18 , letters of administration, with the said will (and codicils) annexed, of all and singular the property (*or as the case may be if grant limited*), of the said deceased, were granted by Her Majesty's Surrogate Court of the County of , to of the of in the County of , (*insert the character in which the grant is taken, and if executor has renounced, state it*), *he* the said having previously been sworn well and faithfully to administer the same according to the tenor of the said will, by paying the just debts of the deceased, and the legacies contained in *his* will (*or* will and codicil), so far as the same shall thereunto extend and the law bind *him*, and by distributing the residue (if any) of the property according to law, and to exhibit under oath a true and perfect inventory of all and singular the property of the said deceased and to render a true and just account of *his* administration within eighteen months or sooner if thereunto required.

[L.S.]

Registrar of the Surrogate Court of the County of

23. Letters of Administration.

CANADA:
Province of Ontario.

In Her Majesty's Surrogate Court of the County of

Be it known, that on the day of , A.D. 18 , letters of tion of all and singular the property (*or as the case may be if gr* of , late of the of , in the County of , on or about the day of , 18 , at , intestate, and time of *his* death a fixed place of abode at the of County of [*or* "had no fixed place of abode in Ontario," out of Ontario,") "but had at such time property in the Count were granted by Her Majesty's Surrogate Court of the County , of the of , in the County of , the wido *case may be*) of the said intestate, *she* having been first sworn administer the same by paying *his* just debts, and distributing (if any) of *his* property according to law, and to exhibit under oat perfect inventory of all and singular the said property, and to and true account of *her* administration within eighteen months thereunto required.

[L.S.]

Registrar of the Surrogate Court of the County of

24. Double Probate.

CANADA:
Province of Ontario.

In Her Majesty's Surrogate Court of the County of

Whereas on the day of , A.D. 18 , the last will a (*or* the last will and testament with codicils) of , late o , in the County of , , who died on or about of , A.D. 18 , at , and who at the time of *his* death place of abode at , in the said County of [*or* "had no abode in Ontario," (*or* "resided out of Ontario,") "but had property in the said County of ,"] was proved and registere Surrogate Court, a true copy of which said last will and testamen annexed (*or* true copies of which said last will and testament a hereunto annexed), and that the administration of all and singula of the said deceased, and any way concerning *his* will, was g aforesaid Court to , of the of , in the County of one of the executors named in the said will (or codicil). Power h of making the like grant to , of the of , in t , , the other executor named in the said will, wh apply for the same. Be it therefore known, that on the A.D. 18 , the said will of the said deceased was also proved, and administration of all and singular the property of the said dece way concerning *his* will, was granted to the said , *he* hav duly sworn well and faithfully to administer the same by pa debts of the deceased and the legacies contained in *his* will (*or* wil so far as he is thereunto bound by law, and by distributing any) of the property according to law, and to exhibit under oa perfect inventory of all and singular the said property and to and true account of *his* executorship within eighteen months thereunto required.

[L.S.]

Registrar of the Surrogate Court of the County of

25. Exemplification of Probate or Letters of Administration with Will annexed.

CANADA:
Province of Ontario.

In Her Majesty's Surrogate Court of the County of

Be it known, that upon search being this day made in Her Majesty's Surrogate Court of the County of , it plainly appears that on the day of , A.D. 18 , the last will and testament (with codicils) of late of the , of , in the County of , at , on or about the day of , 18 , deceased, who died death a fixed place of abode at the of , in the said County of (*or as the case may be*), was proved by of the of , in the County of , the executor therein named [*or* that on the day of , A.D. 18 , letters of administration with the last will and testament (and codicils) annexed of the property of , late of, etc., were granted to of the of , in the County of], and which said probate (*or* letters of administration) now remains of record in the said Surrogate Court. The true tenor of the said probate (*or* letters of administration with the will annexed) is in the words following, to wit: (*here let grant be recited verbatim*).

In faith whereof these letters testimonial are issued.

Given at the of , in the County of , this day of, etc.

[L.S.]

Registrar of the Surrogate Court of the County of

26. Exemplification of Letters of Administration.

CANADA:
Province of Ontario.

In Her Majesty's Surrogate Court of the County of

Be it known, that upon search being this day made in Her Majesty's Surrogate Court of the County of , it plainly appears that on the day of , A.D. 18 , letters of administration of all and singular the property of , late of the of , in the of , , on or about the day of , 18 , and had at the time of *his* death a fixed place of abode at , in the said County of , were granted to , of the of , in the County of , and which said letters of administration now remain of record in the said Surrogate Court. The true tenor of the said letters of administration is in the words following, to wit: [*here the letters of administration are to be recited verbatim*].

In faith whereof these letters testimonial are issued.

Given at the of , in the County of , this day of, etc.

[L.S.]

Registrar of, &c.

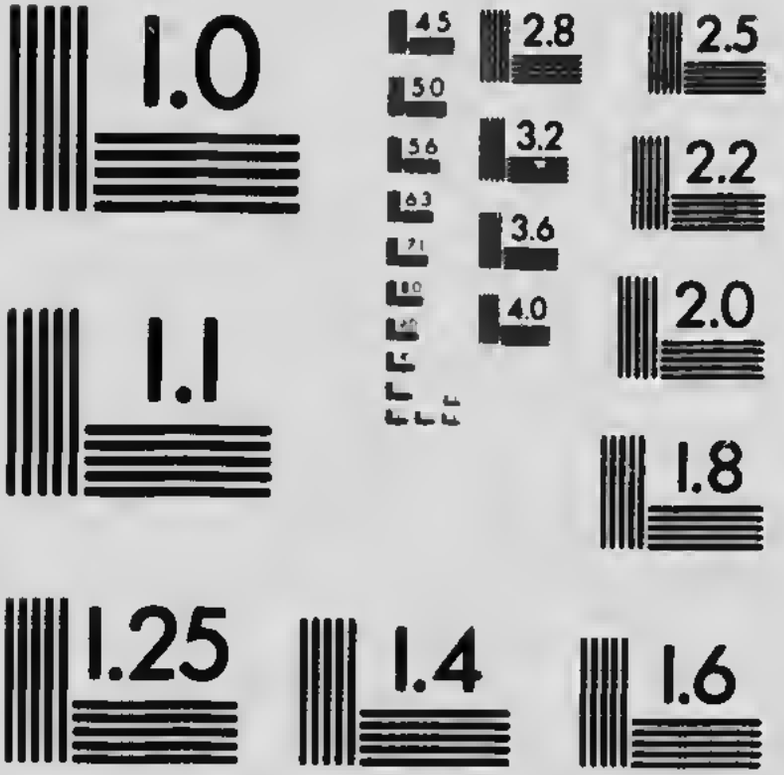
27. Renunciation of Probate or of Administration with the Will annexed.

In the Surrogate Court of the County of

Whereas A. B., late of , in the County of , , deceased, died on or about the day of , 18 , and had at the time of *his* death a

MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



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CANADIAN FORMS.]

fixed place of abode at , in the said County of , and wh
made and duly executed *his* last will and testament, bearing date t
day of , 18 , and thereof appointed C. D. executor [*or as the*
be], as I am informed and believe.

Now I, the said C. D., do hereby expressly renounce all my right
to the probate and execution of the said will [*and* codicils, *if any*,] of
deceased.

In witness whereof I have hereunto set my hand and seal, this
, 18 .

Signed, sealed, and delivered in the presence of E. H. } C. D.

NOTE.—*The above form may be varied when the renunciation is by t*
or other person entitled to administration with the will annexed. In
there must be an affidavit of execution.

---

28. Renunciation of Administration.

In the Surrogate Court of the County of

Whereas A. B., late of the of , in the County of
deceased, died on or about the day of , 18 , intestate (*a*
and had at the time of *his* death a fixed place of abode at the
in the said County of , and *whereas* I, C. D., of the of
the County of , , am *his* lawful and *his* only next-
be varied according to the facts].

Now I, the said C. D., do hereby expressly renounce all my right
to letters of administration of the property of the said deceased.

In witness whereof I have hereunto set my hand and seal, this
of , 18 .

Signed, sealed, and delivered in the presence of E. H. } C. D.

---

29. Election by Minors of a Guardian.

(*Ante Rule* 15.)

In the Surrogate Court of the County of

Whereas A. B., late of the of , in the County of
deceased, died on or about the day of , 18 , at
intestato, a widower (*or* widow), leaving C. D., E. F., and G. H., *h*
children, and only next-of-kin, the said C. D. being a minor of th
twenty years only, and the said E. F. being also a minor of the age of
years only, and the said G. H. being an infant of the age of *six* years

Now we, the said C. D. and E. F., do hereby make choice of and ele
of the of , in the County of , , our lawful
uncle, and one of our next-of-kin (*or as the case may be*), to be our
for the purpose of his obtaining letters of administration of the pr
the said A. B., deceased, to be granted to *him* until one of us obtai
of twenty-one years [*or* for the purpose of renouncing for us, and on ou
all right, title, and interest to and in letters of administration, etc
case may be].

In witness whereof we have hereunto set our hands and seals, thi
day of , A.D. 18 .

Signed, sealed, and delivered in the presence of } [1
[1

NOTE.—*An affidavit of execution required.*

30. Judge's Order to bring in a Testamentary Paper.

In the Surrogate Court of the County of

Upon the application of A. B., of the of , in the County of , and upon reading the affidavit of C. D., of the of , in the County of , , this day filed in the said Court, showing that a certain original paper or script being or purporting to be testamentary (*here describe the paper*), is now in the possession or under the control of E. F., of the of , in the County of , , I do order that the said E. F. shall within ten days (*or the time prescribed by the Judge*) after the service hereof on *him*, bring into and leave in the office of the Registrar of the said Court the said original paper now in *his* possession or under *his* control; or in case the said original paper be not in *his* possession or under *his* control, that *he* shall within days after the service hereof upon *him*, file in the said office an affidavit to that effect, and therein set forth what knowledge, if any, *he* has of and respecting the said original paper or script.

Dated at the day of , 18 .

Judge.

---

31. Affidavit of Plight and Condition and Finding.

In the Surrogate Court of the County of

In the estate of , deceased.

I, A. B., etc., make oath and say, that I am the sole executor named in the paper-writing now hereunto annexed, purporting to be and contain the last will and testament of C. D., late of, etc., deceased, who died on or about the day of , at , and had at the time of *his* death a fixed place of abode at , in the said County (*or as the case may be*), the said will bearing date the day of , beginning thus ending thus and being ascribed thus "C. D.," and having viewed and perused the said will, and particularly observed that [*here recite the finding of the said will and the various alterations, erasures, and interlineations (if any), and the general plight and condition of the will, or any other matter requiring to be accounted for, and clearly trace the will, from the possession of the deceased in his lifetime, up to the time of making the affidavit;*] I, lastly make oath that the same is now in all respects in the same state, plight, and condition as when (*as the case may be*).

Sworn at , in the County of , the day of , A.D. 18 , before me

A. B.

NOTE.—*The above form may be varied to suit the case of a codicil.*

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32. Caveat.

In the Surrogate Court of the County of

Let nothing be done in the estate of A. B., late of the of , in the County of , , deceased, who died on or about the day of , 18 , at , and had at the time of *his* death a fixed place of abode at , in the County of [or "who had no fixed place of abode in Ontario," (*or* "who resided out of Ontario,") "but had at such time property

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in the County of ," *or* in the several Counties of ,] unk
C. D., of the , etc. [*or* to E. F., of , the solicitor of
, etc.]. The said C. D. is the lawful child and the only nex
(*or as the case may be*) of the said deceased. The grounds on which thi
is entered are, that a paper-writing, alleged to be the will of the d
was not executed by *him* (*or as the case may be*).

C. D., of (P. O. Add
Or E. F., solicitor for C. D., of (P. O. Add

---

33. Warning to Caveat.

In the Surrogate Court of the County of

To C. D., of , etc. (or to E. F., of , etc., the solicitor of
, etc.)

At the instance of R. S., of , etc., you are hereby warned, that
ton days after the service of this warning upon you, inclusive of the
such service, you cause an appearance to be entered for you in the
the Surrogate Court of the County of , to the caveat entered by
the estate of , late of , etc., who died on or about the
, 19 , at , and had at the time of *his* death a fixed place
at (*as stated in the caveat*), and to set forth your (*or* your clie
terest, and take notice that in default of you so doing, the said Co
proceed to do such acts, matters, and things as shall be needful and n
to be done in and about the premises.

Dated at the day of , 19 .

Regis

34.—Notice of Caveat being lodged with Registrar of Surrogate Court.

In the Surrogate Court of the County of

To the Surrogate Clerk:

In the estate of , deceased.

A caveat, of which the following is a copy, has this day been lodg
me: "Let nothing," etc. (*here copy caveat at length and verbatim*).

Dated at the day of , 18 .

Regi

---

35. Bond of Appeal to Court of Appeal.

KNOW ALL MEN BY THESE PRESENTS:

That we, A. B., of, etc., C. D., of, etc., and E. F., of, etc., are join
severally held and firmly bound unto G. H., of, etc. (*the respondent*),
penal sum of two hundred dollars, for which payment to be well an
made, we bind ourselves, and each of us by *himself*, our heirs, execut
administrators, firmly by these presents. Sealed with our seals. Da
day of , 18 .

Whereas, (*the appellant*) considers *himself* aggrieved by a

order (*or as the case may be*) made by the Surrogate Court of the County of (*or* by the Judge of, etc.), on or about the day of , last, in a certain (*mention matter or cause in which order made*), and whereas the value of the goods and chattels affected by the said order (*or as the case may be*) exceeds $200, and the said (*the appellant*) desires to appeal therefrom to the Court of Appeal.

Now the condition of this obligation is such that if the said (*the appellant*) shall effectually prosecute *his* appeal and pay such costs, charges and expenses as shall be awarded in case the said order (*or as the case may be*) shall be affirmed or in part affirmed, then this obligation to be void, otherwise to remain in full force.

Signed and sealed in presence of _____

A. B., [L.S.]
C. D., [L.S.]
E. F., [L.S.]

CONTENTIOUS BUSINESS.

FORMS.

1. STATEMENT OF CLAIM.

In the Surrogate Court of the County of
In the estate of A. B., deceased,
Between R. S., Plaintiff, and C. D., Defendant.

1. Statement of Claim.

The plaintiff is cousin-german and one of the next-of-kin of A. B., late of the of , in the County of , , who died on or about the day of , A.D. 18 , a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece.

The plaintiff claims a grant to *him* of letters of administration of the property of said deceased.

Delivered this day of , A.D. 18 , by E. F., of , plaintiff's solicitor.

2. Formal commencement as above.

The plaintiff is the executor appointed under the will of A. B., deceased, late of the of , in the County of , , who died on or about the day of , A.D. 18 .

The said will bears date the day of , A.D. 18 , and a codicil thereto bears date the day of , A.D. 18 .

The plaintiff claims that the Court shall decree probate of the said will and codicil in solemn form of law.

(*Formal conclusion as above.*)

3. Formal commencement as above.

The plaintiff claims to be executor, etc. (*as before*) and to have the probate of a pretended will of the said deceased, dated the day of , granted by this Court, revoked.

R. L.
Plaintiff's solicitor.

4. Formal commencement as above.

The plaintiff claims to be executor, etc., *as before.*

The plaintiff claims that the grant of letters of administratio property of the said deceased, obtained by M. N., the defendant, s revoked and probate of the said will granted to him.

R. L.
Plaintiff's so

5. Statement of Defence.

1. (*Formal commencement as in statement of claim.*)

The defendant is nephew and next-of-kin of the deceased, being th W. B., the brother of the deceased, who died in his lifetime.

The defendant claims that the Court pronounce that he is the nep next-of-kin of the deceased and entitled to a grant of letters of admin of the property of the deceased.

(*Formal conclusion as in statement of claim above.*)

6. Formal commencement as above.

(*a*) The said alleged will and codicils of the deceased were not either of them duly executed in accordance with the provisions of "T Act of Ontario."

(*b*) The deceased at the time the said alleged will and codicil resp purport to have been executed was not of sound mind, memory, and standing.

(*c*) The execution of the said alleged will and codicil was obtained undue influence of the plaintiff, [and others acting with him whose na at present unknown to the defendant (*or as the case may be.*)]

(*d*) The execution of the said alleged will and codicil was obtained fraud of the plaintiff, such fraud, so far as is within the defendant's knowledge, being (*here state the nature of the fraud*).

(*e*) The deceased at the time of the execution of the said alleged w codicil did not know and approve of the contents thereof, *or* of the c of the residuary clause of the said will (*or as the case may be*).

(*f*) The deceased made his true last will and testament dated th day of , A.D. 18 , and thereby appointed the defendant sole e thereof

(*Here add any other grounds of defence.*)

And the defendant claims:

1. That the Court will pronounce against the said alleged will and propounded by the plaintiff.

2. That the Court will decree probate of the said will of the deceased the day of , A.D. 18 (*the will put forward by defendant*), in form of law.

(*Formal conclusion as above.*)

GUARDIANS AND INFANTS.

RULES, ETC.

The judges of the Supreme Court of Judicature for Ontario, do in pursuance of the powers conferred upon them by the Revised Statutes of Ontario, chapter 137, section 20, and chapter 50, section 78, order and direct that the rules, orders, and directions hereinafter set forth shall be the general rules for regulating the practice and procedure under the several Acts of the Legislature of Ontario, in force respecting the persons and estates of infants and the appointment of guardians.

1. In all matters and applications touching or relating to the appointment, control or removal of guardians of infants, and the security to be given by such guardians, the custody or control of or right of access to infants, the maintenance of infants or otherwise, the practice and procedure in the surrogate courts shall conform as nearly as the circumstances of the case will admit to the practice and procedure of the said courts, in respect to applications for, and grants of probate and administration, and the forms following, or forms to the like effect shall be used.

2. Upon application for guardianship there shall be furnished proof of the time of death, and place of abode of the deceased parent or parents, of the value of the whole property devolving, of the value of the personal property and of the real estate respectively, of the annual value of the same, of the names, ages, and places of abode of the infants, of the relationship of the applicant to such infants, and such other proof as the judge may require. All such proof may be included in one or several affidavits of the petitioner, or of some other person or persons having knowledge of the facts.

3. Unless under special order or decree of the judge, letters of guardianship shall not be granted until the registrar shall have received the certificate of the surrogate clerk touching the same.

4. Parties may lodge a caveat against the grant of letters of guardianship in like manner as other caveats are lodged, and the practice in respect to the same shall conform as

nearly as may be to the p. .ice in the case of caveats
the grant of administration.

5. When the security given by guardians is a bond
be as prescribed in form 4, *post*. And the sureties i
bond are required in all cases to justify to an amo
amounts, which in the aggregate shall equal the am
the penalty of the bond.

6. The several registrars and the surrogate clerk
keep books in tabular form, and the same shall b
indexed.

7. Registrars and officers of the sur gate courts sh
the performance of duties and servi n said guardi
matters, be entitled to take and rec to their own u
fees prescribed in the tariff.

8. Before proceedings are taken, the fees payable
judges and to registrars, and in stamps for the fe
(and postage when necessary), shall be paid to the re
in the first instance by the party on whose behalf pr
ings are to be taken.

9. Solicitors and counsel in the said courts shall be e
to take for the performance of duties and services i
guardianship matters, the fees and costs prescribed
tariff.

10. The duties required of the surrogate clerk in r
to matters and causes testamentary, so far as m
applicable, shall be performed by him in respect to ap
tions for letters of guardianship, and in relation to gua
ship business.

FORMS IN GUARDIANSHIP MATTERS.

1. Application for Letters of Guardianship by one of t
Next-of-kin of Infant Children of a Deceased Widower.

Unto the Surrogate Court of the County of

The petition of A. B., of the of , in the County of ,

Humbly sheweth,

That C. F., late of the of , in the County of ,
on or about the day of , A.D. 18 , at the of ,

County of , and had at the time of his death his fixed place of abode at the of , in the County of . That the said deceased died a widower, leaving E. F. and G. F., his natural and lawful children, who both reside at the of , in the County of . That the said E. F. is an infant of years of age, and the said G. F. is an infant of years of age. That the said C. F. died intestate (*or as the case may be*), and without having appointed a guardian of the said infants. That the value of the property of the said deceased, which he in any way died possessed of or entitled to, and to which the said infants are entitled, is about dollars and under dollars; that the value of the personal estate to which the said infants are so entitled is about dollars and under dollars, and of the real estate to which they are so entitled is about dollars and under dollars, and that the annual value of the said real estate is about dollars and under dollars, and that full particulars of both said personal estate and of said real estate and an appraisement thereof are exhibited herewith and are verified upon oath.

That due notice has been given of your petitioner's intention to apply to be appointed guardian, and that the petitioner is the *natural uncle* and one of the next-of-kin of the said infants.

Therefore your petitioner prays that *he* may be appointed guardian of the persons and estates of the said infants, E. F. and G. F., and that the letters of guardianship may be granted to *him* by this Honourable Court, pursuant to the Statute in that behalf.

Dated at, etc., the day of , A.D. 18 .

A. B.

(Or if signed by solicitor, A. B., by his solicitor, J.P.)

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2. Affidavit verifying Facts set forth in Petition for Letters of Guardianship.

In the Surrogate Court of the County of

In the matter of the guardianship of the infant children of C. F.

I, A. B., of the of , in the County of , , make oath and say:

(1) That I am the petitioner named and described in the said petition.

(2) That the various facts, matters and things in the said petition contained are true in substance and in fact to the best of my knowledge so far as I have been enabled to ascertain them.

me the day of , 18 ,
of , in the County of

A. B.

Persons authorized to administer oaths under the Act.

NOTE.—*Besides the foregoing affidavit there must be furnished the proof required by Rule* 2.

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3. Oath for Guardian.

In the Surrogate Court of the County of

In the matter of the guardianship of the infant child (*or* children) of C. F., deceased.

I, A. B., of the of , in the County of , , make oath and say:

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That I am the person applying to be appointed the guardian of E
infant child (*or as the case may be*) of C. F., deceased, in his lifetim
of , in the County of , , who died on or a
day of , 18 ; that I will, if I am appointed such guardia
fully perform the trust of guardianship, and that I will, when my s
becomes of the full age of twenty-one years, or whenever the said g
ship is determined, or sooner if thereto required by the said Surroga
or by the Judge thereof, render to my said ward, or to *his* executors or
trators, a true and just account of all goods, moneys, interest, rents
property or other estate of my said ward—which shall have come
hands, or possession or under my control, and will thereupon witho
deliver and pay over to my said ward—or to *his* executors or admini
the estate or the sum or balance of money, which may be in my h
possession or under my control, belonging to my ward—deducting th
and retaining such reasonable sum for my expenses and charges as sh
an audit of my accounts be allowed by the Court or the Judge.

Sworn before me at the of ,
in the County of , the day
of , 189 .

Persons authorized to administer oaths under

(*See R. S. O., Cap.* 137, *Sec.* 12.)

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4. Bond to be given by Guardians.

Know all men by these presents, that we, A. B., of the of
County of , , K. L., of the of , in the County of
, and M. N., of the of , in the County of ,
held and firmly bound unto E. F. and G. F., of the of ,
County of , the infant children of C. F., late of the of
County of , , deceased, and to each and every of them in t
of dollars, to be paid to the said E. F. and G. F., their and each
executors, administrators and assigns, for which payment to be well an
made, we do bind ourselves and each and every of us, our and every
executors and administrators firmly by these presents; Sealed with ou
Dated the day of in the year of Our Lord 189

Whereas, the said A. B. being appointed guardian of the persons and
of the said infants by the Surrogate Court of the County of accor
the Statute in that behalf, is required to give security for the perform
the said trust.

Now the condition of this obligation is such, that if the above b
A. B. shall faithfully perform the said trust, and that *he* or *his* execu
administrators will, when the said wards respectively become of the
of twenty-one years, or whenever the said guardianship shall be or is
mined, or sooner if thereunto required by the said Surrogate Court, re
each of the said wards or to their respective executors or adminlstr
true and just account of all goods, moneys, interest, rents, profits, prop
other estate of such wards, which shall have come into the hands or pos
or under the control of the said A. B., and will thereupon exhibit unde
and render in to the said Court for audit and allowance, a just and full a
of *his* guardians.. p, and will thereupon, without delay, deliver and pa
to each and every of the said wards or to *his* or their executors or ad
trators, the estate or the sum or balance of money which may be in the

or possession or under the control of *him* the said A. B., belonging to the said ward or wards, deducting therefrom and retaining such reasonable sum for the expenses and charges of *him*, the said A. B., as such guardian as by the said Court or by the Judge thereof shall have been allowed, then this obligation to be void, or else to remain in full force and virtue.

Signed, sealed and delivered, in the presence of

A. B., [L.S.]
K. L., [L.S.]
M. N., [L.S.]

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5. Affidavit of Justification by Sureties.

In the Surrogate Court of the County of

In the matter of the guardianship of the infant child (*or* children) of A. B., deceased.

We, K. L., of the of , in the County of , , and M. N., of the of , in the County of , severally make oath and say; that we are the proposed sureties on behalf of the intended guardian of the infant child (*or* children) of A. B., deceased, in the within (*or* annexed) bond named, for the faithful performance of the trust of guardianship to *him* to be committed; and I, the said K.L., for myself, make oath and say: that I reside at , in the County of , and am worth property to the amount of dollars, over and above all encumbrances and over and above what will pay my just debts and every other sum for which I am now bail or for which I am liable as surety, or endorser, or otherwise; and I, the said M. N., for myself, make oath and say: that I reside at , in the County of , and am worth property to the amount of dollars, over and above all encumbrances and over and above what will pay my just debts and every other sum for which I am now bail or for which I am liable as surety, or endorser, or otherwise.

The above named K. L. and M. N. were severally sworn before me the day of , 189 , at the of in the County of

K. L.
M. N.

Person authorized to administer oaths under the Act.

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6. Notice to be transmitted by the Registrar of a Surrogate Court to the Surrogate Clerk, of Application for Letters of Guardianship by one of the Next-of-kin of Infant Children of Deceased Widower, or as the case may be.

In the Surrogate Court in the County of

To the Surrogate Clerk:

Take notice that application has been made to the Surrogate Court of the County of , by A. B., of, etc., to be appointed guardian to E. F. and G. F., who reside at the of , in the County of , infant children

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of C. F., late of, etc., who died a widower (*or as the case may be*), a
appointing any guardian of the said infants, the said A. B. being th
uncle (*or as the case may be*) of the said infants.

Application received the day of , 18 .
This notice mailed the day of , 18 . }

Registrar of the sa

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7. Letters of Guardianship.

CANADA: }
Province of Ontario. }

In Her Majesty's Surrogate Court of the County of

Whereas A. B., of, etc., by petition to the said Court, did set f
late of, etc. (*recite as in petition*), and prayed that *he* might be
guardian of the persons and estates of the said infants, pursuant to t
in that behalf, and that Letters of Guardianship might be granted
the said Court.

Be it known that on the day of , A.D. 18 , the said
appointed guardian of the persons and estate of them the said E. F.
and these Letters of Guardianship are accordingly granted by the
to the said A. B., with power and authority to *him* to do all such ac
and things as a guardian may or ought to do, under and by virtue
of the Legislature of Ontario, relating to minors and their prope
said A. B. having been first bound as required by law to perfor
trust, and having been duly sworn to faithfully perform the trust o
ship, and that *he* will when *his* said wards respectively become of t
of twenty-one years, or whenever the said guardianship is dete
sooner if thereto required by the said Surrogate Court or by the Jud
render to *his* said wards, or to their executors or administrators,
just account of all goods, moneys, interest, rents, profits, propert
estate of *his* said wards, which shall have come into *his* hands or po
under *his* control, and will thereupon without delay deliver and
his said wards or to their executors or administrators the estate or
balance of money which may be in *his* possession or under *his* cont
ing to *his* wards, deducting therefrom and retaining such reasonab
his expenses and charges as shall upon an audit of *his* accounts be
the Court or the Judge.

[L.S.]

I

I.

REGISTRARS' FEES—NON-CONTENTIOUS BUSINESS.

The following shall be the tariff of fees to be taken by the registrars of the surrogate court for duties and services in respect of non-contentious business in the said court: —

	$	c.
1. For services rendered under sections 64 and 68 of the Act (see Rule 40), where the value of the property does not exceed $400	1	50
2. Receiving and examining papers and entering application	1	00
3. Every necessary notice to surrogate clerk		25
4. Receiving and entering certificate		25
5. Recording every bond with affidavits of justification and execution	1	00
6. (*a*) On every grant or letters of administration where the property devolving is under $1000	1	00
(*b*) $1000 and under $4000	2	00
(*c*) $4000 and under $10,000	3	00
(*d*) $10,000 and under $20,000	4	00
(*e*) $20,000 and upwards	5	00
7. Submitting papers with registrar's report thereon to judge to lead grant		50
8. Recording grant or other instruments under Rule 46 or letters of guardianship, per folio		10
9. For preparing probate or letters of administration or of guardianship issued under seal of the court, each instrument		75
10. Ditto—If grant is special	1	00
11. Transcript of will, per folio		10
12. Certified copy of will in addition, per folio		10
13. Drawing special orders or other papers directed by judge, per folio		10
14. Taking every affidavit or administering oath to a witness		20
15. Attending and entering every order or minute		50
16. Every summons or order, and every instrument or other process under seal, not otherwise provided for if prepared by the registrar, per folio, including fee for sealing		20
17. For looking up original will or instrument and inspection, or for general search into proceedings		30
18. Every other search		20
19. Every necessary certificate granted by registrar		50

CANADIAN RULES.]

		$
20.	Exemplification under seal	1
	If exceeding 5 folios, per folio on the excess	
21.	For depositing every will of a living person for safe custody, including a deposit receipt . .	
22.	Issuing every subpœna	
23.	Writing every necessary letter	
24.	Filing every necessary paper	
25.	Attending audit, including filing necessary papers thereat	
26.	For taxing costs and granting certificate . .	
27.	Receiving, entering and filing caveat . . .	
28.	Warning to caveat and entering the same . .	
29.	Postage and stamps and all other necessary disbursements to be added in all cases. (No fee allowed for filing papers in non-contenti business before probate or letters granted.)	

On proof of will in solemn form, and in proceedings revoking probate, or letters of administration, or for removal of a guardian.

1. If the proceedings are disputed or contentious, the sa fees may be charged by the registrar as in contenti proceedings.
2. If the proceedings are undisputed, the same charges n be made by him as in non-contentious proceedings.

II.

REGISTRARS' FEES—CONTENTIOUS BUSINESS.

1.	Receiving, entering, and filing caveat, and transmitting notice thereof to the surrogate clerk .	
2.	Warning to caveat, and entering same . . .	
3.	Receiving, entering, and filing bond on appeal .	
4.	Searching for, making up and transmitting papers to Court of Appeal or High Court of Justice .	
5.	Every certificate for which no other fee is payable	
6.	On every citation, summons or judge's order .	
7.	Search in registrar's books or files	
8.	Looking up original will or instrument, and inspection, or for general search into proceedings	
9.	Filing every necessary paper	
10.	Filing and entering every paper required to be minuted	

		$ c.
11.	Entering every record or issue deposited for trial	50
12.	Every subpœna	50
13.	Administering oath or taking an affidavit	20
14.	Entering decree, or order in pursuance of judgment, if under five folios	50
15.	If over five folios, per folio	10
16.	Entering every order or decree requiring to be entered in the court book, not otherwise specified, per folio	10
17.	Issuing every writ under seal of the court, except subpœna	50
18.	For every office copy or extract of a minute, order, decree, or other document filed or deposited in the office of the registrar, per folio	10
19.	For the seal, in addition to the fee for the copy, and collating, if required	25
20.	Every necessary letter	25
21.	Taxing every bill of costs, and granting certificate.	

DISBURSEMENTS.

22. All outlays for postages and stamps as disbursed to be added in all cases.
23. After contentious proceedings are closed and a decree for probate granted, or letters of administration have been decreed to either party, the registrar, in addition to the foregoing fees, shall be entitled to receive for business done the like fees as in non-contentious cases.

On proof of will in solemn form and in proceedings for revoking probate, or letters of administration, or for the removal of a guardian.

1. If the proceedings are disputed or contentious, the same fees may be charged by the registrar as in contentious proceedings.
2. If the proceedings are undisputed, the same fees may be charged by him as in non-contentious proceedings.

III.

FEES AND COSTS TO SOLICITORS AND COUNSEL.

The following shall be the tariff of fees and costs to be allowed in respect of proceedings in the surrogate courts, in

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non-contentious cases, to solicitors and counsel pr
therein, viz.:—

1. Drawing all necessary papers and proofs to lead grant and obtaining order for probate, or letters of administration, in ordinary cases, and taking out same—
   (*a*) When the value of the property devolving is under $1000 . . . . . .
   (*b*) $1000 and under $4000 . . . . . .
   (*c*) $4000 and under $10,000 . . . . . .
   (*d*) $10,000 and under $20,000 . . . . . .
   (*e*) $20,000 and upwards . . . . . .
2. In cases of temporary administration, or administration granted pending any suit touching the validity of a will, or for obtaining, recalling or revoking any probate or grant of administration . . . . . .
   (May be increased, in discretion of judge, in cases of a special or important nature, to a sum not exceeding $20.00.)
3. For obtaining letters of guardianship a fee of ten dollars ($10.00) in addition to all necessary disbursements may be allowed, to be increased, in the discretion of the judge, in cases of a special or important nature, to a sum not exceeding twenty dollars ($20.00).

AUDIT AND PASSING ACCOUNTS OF EXECUTOR O ADMINISTRATOR.

Where the inventory and accounts are brought in tarily, and the next-of-kin or legatees, or devisees, or e do not appear, or appearing, there are no contentio ceedings or dispute about accounts.

4. Taking instructions . . . . . .
5. Preparing and bringing in accounts if less than ten folios . . . . . .
6. If exceeding ten folios, per folio above 10 . .
7. Each necessary copy, per folio . . . . .
8. Affidavit verifying same . . . . . .
9. Attending to get sworn to . . . . . .
10. Attending to file same, and petition . . . .
11. Petition and taking out appointment for consideration thereof . . . . . .

	$ c.
12. Each necessary copy of petition and of appointment, per folio	10
13. Attending to serve such persons as the judge shall direct, each	25
14. Affidavit of service, including attendance and paid commissioner	50
15. Attending the audit, and exhibiting accounts and vouchers, and numbering same	5 00
16. If engaged more than two hours, for each subsequent hour necessarily engaged	2 00
17. Drawing up order for allowance to executor or administrator, and order for the passing of the accounts and engrossing, including copies	1 00
18. Bill of costs and copy	50
19. Attending taxation	50

Where the accounts are brought in by citation, or judge's order, and the proceedings are compulsory, or contentious, or where there are disputed accounts.

20. For citation or order and serving same, and subsequent proceedings taken thereupon by the solicitor and counsel, where counsel properly attend, the same fees may be charged and allowed in taxation in all respects as in case of contentious proceedings.

21. To the solicitor of the executor, or administrator cited and to his counsel, where counsel properly attend, the same fees may be charged and allowed in taxation, as in the case of contentious proceedings.

22. For preparing accounts and bringing in the same and all subsequent proceedings up to passing accounts and order granting allowance to executor, or administrator (when taken or made), the same fees may be charged and allowed in taxation as the foregoing items 4 to 19 inclusive, respectively, when applicable.

23. For taking out subpœna, and making copies, and getting the same served (when necessary) the same fees may be charged and allowed at taxation as for similar services rendered in contentious proceedings.

For proof of will in solemn form and attending the same on behalf of those interested, or cited to appear; in proceedings for revoking probate, or letters of administration, or for the removal of a guardian; and for intervening in behalf of an heir-at-law or other interested party.

24. If the proceedings are disputed, the same or similar fees and costs may be charged and allowed on taxation

as in contentious cases, according to their s importance.

For allowance to sheriffs and witnesses and othe bursements, see *post*.

IV.

IN CONTENTIOUS BUSINESS.

The following shall be the tariff of fees and costs allowed in respect of proceedings in the surrogate co contentious cases to solicitors and counsel practising th viz. :—

INSTRUCTIONS.

1. For caveat, or warning of caveat, for revoking probate or letters of administration, or for the removal of a guardian . . . . . .
2. For new letters of guardianship . . . . .
3. For proof of will in solemn form . . . . .
4. For statement of claim or other pleading . .
5. For citation, summons, or judge's order . .
6. For interrogatories . . . . . .
7. For special affidavits, in discretion of judge . .
8. For inventories, or bringing in accounts . .
9. To defend suit, or to appear on behalf of any interested party . . . . . .
10. For brief, or case for hearing . . . . . .

DRAWING INSTRUMENTS, INTERROGATORIES, ETC

11. Preparing caveat, or warning to caveat, and attending and entering either . . . . .
12. Interrogatories, per folio . . . . . .
13. Renunciation of probate; attending and filing .
14. Any instrument or necessary paper, for which a fee is not otherwise allowed, per folio . .
15. Preparing every citation, summons or order, including præcipe and attendance, if drafted by solicitor . . . . . .
16. Preparing and entering appearance to citation, or to the warning of caveat. . . . . .
17. Other common appearance, and filing when necessary . . . . . .
18. Drawing and engrossing statement of claim, or other pleading, 10 folios or under . . . .
19. If exceeding 10 folios, for every additional folio .

ATTENDANCES.

	$ c.
20. Every special attendance in Chambers in the course of a cause	1 00
(To be increased in the discretion of the judge, not to exceed)	3 00
21. Common and necessary attendances when not included in some other provision or fee	25

NOTICES.

22. All necessary notices, if five dollars or under, inclusive of copy	50
23. If necessarily exceeding five folios, for every additional folio	10

DECREE, ETC.

24. Drawing decree or order for probate, or grant of letters of administration, or of guardianship, or for recalling or revoking probate, or grant of letters, or for removal of a guardian, or other special decree or order, if prepared by the solicitor, per folio	20

DRAWING AFFIDAVITS, ETC.

25. Of service or other common affidavit including attendance, and paid commissioner	75
26. Necessary special affidavits, not exceeding five folios	1 00
27. If necessarily above five folios, per folio	20
28. For copy of caveat, warning, citation, statement of claim, or other pleading, or necessary paper or document, when not otherwise provided for, per folio	10
29. Fee on every subpœna	75
30. For every copy of subpœna	20
31. Drawing issue or copy of pleadings, if 10 folios or under	1 00
32. If exceeding 10 folios, per folio	10
33. For perusing testamentary papers, and other documents, including attendance when necessary, in the opinion of the registrar, per folio 3 cts. (not to exceed $1)	3

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34. Fee on every decree, order or judgment signed by the judge . . . . . .

COUNSEL FEES.

35. On motion of course, or motion for order nisi, or motion to make absolute, in matters not special
36. On special motion, and on special application to the court or judge (only one counsel fee to be taxed) . . . . . .
    To be increased in the discretion of the judge to a sum not to exceed . . . . . .
37. On argument in supporting or opposing application to the court or judge, argument of demurrer, or special case . . . . . .
    To be increased in the discretion of the judge to a sum not exceeding . . . . . .
38. Fee with brief at trial . . . . . .
    To be increased by the judge at his discretion in cases of special or important nature, and on notice to the opposite party, to a sum not exceeding $25 (no charge to be made by either party in connection with such application).
39. Fee to counsel (when counsel attend) on argument or on examination in chambers, where, in the opinion of the judge, the attendance of counsel is required . . . . . .
    To be increased (in the discretion of the judge) to a sum not exceeding . . . . . .
40. On settling pleadings, interrogatories, special case or petition, or advising on evidence, in the discretion of the judge, not exceeding . . . .

JUDGMENTS OR DECREES.

41. Drawing minute of judgment, order or decree, per folio, when prepared by solicitor under direction of the judge . . . . . .
42. For every hour's attendance before judge on settling minutes . . . . . .

LETTERS.

43. Common letters necessary in the course of the cause, including agency letters . . . . .

BILL OF COSTS.

	$ c.
44. Drawing bill of costs for taxation, including engrossing and copy for registrar, per folio .	20

MISCELLANEOUS.

45. At the close of the contentions proceedings, and on decree for probate or grant, the fees to the solicitor for taking out probate, or letters of administration, or of guardianship shall be the same as if provided for by the tariff for non-contentious business.

46. Where it has been proved to the satisfaction of the judge that proceedings have been taken by solicitors out of court to expedite proceedings, save costs, or compromise actions or disputes, an allowance is to be made therefor in the discretion of the judge. This shall apply whether the proceedings are contentious or non-contentious. (See item 145 of Tariff Con. Rules of Prac.)

DISBURSEMENTS.

47. The fees paid to the registrar or other officer of the court, together with court fees, stamps and postage to be added to the solicitor's bill in all cases, whether contentious or non-contentious.

48. In cases in which the person to be cited or served cannot be served in Ontario, or in which he shall avoid service, or the service shall necessarily be effected beyond the jurisdiction, or by publication, such a sum is to be allowed for service as the judge may consider reasonable under the circumstances, together with disbursements for publication of citation, etc., when necessary.

SHERIFFS.

Sheriffs shall be entitled to receive the same fees as are allowed for like services in the county court.

WITNESSES.

There shall be allowed to witnesses the same fees and conduct money or travelling expenses as are taxable in the county courts.

CANADIAN RULES.]

NOTE.—These tariffs are provided in lieu of, and addition to, any previously existing tariff app to and heretofore allowed to solicitors and c in respect of proceedings in the said su courts for contentious and non-contentious bu

Framed and approved under the Acts of the Legi of Ontario, 53 Vict. c. 17, sec. 13, and sec. 78 of the Su Courts Act (now sec. 88, R. S. O., 1807, *ante*, p. 690).

(Signed) JOHN H. HAGARTY, C.J.C
J. A. BOYD, C.
THOMAS GAULT, C.J., C.
F. OSLER, J.A.
JAMES MACLENNAN, J.A.
THOMAS FERGUSON, J.
JOHN E. ROSE, J.
THOMAS ROBERTSON, J.
W. G. FALCONBRIDGE, J
HUGH MACMAHON, J.

The following are the corresponding Irish Rules dated December 17th, 1896 :—

SUPREME COURT OF JUDICATURE (IRELAND).

PROBATE AND MATRIMONIAL DIVISION, IRELAND.

Principal Registry.

Order LXXIX.

Resealing Irish Grants.

75A. In any case in which it is intended to apply for the resealing in England of any grant of probate or letters of administration made in the Probate and Matrimonial Division of the High Court of Justice in Ireland, the executor or administrator may deposit in the principal registry in Ireland a copy of such grant of probate or letters of administration, together with the original, and any certificate or certificates that may be required, and the fees payable in England in respect of such resealing, and the registrar shall transmit by post the documents so deposited, together with such fees, to the registrar of the principal registry in England, for the purpose of such grant being resealed under the provisions of 20 & 21 Vict. c. 79, s. 95.

Resealing English Grants.

75B. The registrar of the principal registry in Ireland shall, upon receiving by post from a probate registry in England any probate or letters of administration granted in England, together with a copy thereof and any certificate or certificates that may be required, and the fees payable in Ireland in respect of the resealing of an English grant, cause such grant to be resealed in conformity with the provisions of the statute 20 & 21 Vict. c. 79, s. 94, and shall transmit the grant so resealed to the registrar of the probate registry in England, from whom it was received.

Non-contentious Business.

PROBATE AND MATRIMONIAL DIVISION IRELAND.

DISTRICT REGISTRIES.

ORDER LXXX.

Resealing Irish Grants in England.

70A. In any case in which it is intended to apply for rescaling in England of any grant of probate or letters administration made in the Probate and Matrimonial Divis of the High Court of Justice in Ireland, the executor administrator may deposit in the district registry in Irel where the grant has been made, a copy of such grant of p bate or letters of administration, together with the origi and any certificate or certificates that may be required, a the fees payable in England in respect of such resealing, a the district registrar shall transmit by post the documents deposited, together with such fees, to the registrar of principal registry in England, for the purpose of such gr being resealed under the provisions of 20 & 21 Vict. c. s. 95.

SUPREME COURT OF JUDICATURE (ENGLAND).

PROCEDURE.

Probate Rules.

ADDITIONAL RULE AND ORDER *for the Registrars of the Principal and District Probate Registries with regard to Non-Contentious Business.*

Dated the 20th day of November, 1897.

All Rules, Orders, and Instructions, and the existing practice of the Court with respect to non-contentious business shall so far as the circumstances of each case will allow be applicable to grants of probate and administration made under the authority of the Land Transfer Act, 1897.

The Number of this Rule for the Principal Registry is 109 ; *and for the District Registries*, 103.

CANADIAN RULES.]

SUPREME COURT RULES.

The rules of practice and procedure of the Supren
of Judicature for Ontario have the force and effe
Act of the Legislature (O. J. A. s. 129; and see also *S*
v. *Batt*, 8 Q B. D. 701; *Garnett* v. *Bradby*, 3 A. C. 90
The High Court of Justice has power to app
administrator or administrator with will annexed as p
in Judicature Rules 194, 195.

Rule 194. When in any action or other proceeding it
that a deceased person who was intrusted in the ma
question has no personal representative, the Court or
may either proceed in the absence of any person re
ing his estate, or may appoint some person to repres
estate for all the purposes of the action or other pro
on such notice as may seem proper, [notwithstandi
the estate in question may have a substantial interes
matters, or that there may be active duties to be pe
by the person so appointed, or that he may re
interests adverse to the plaintiff, or that there may
braced in the matter an administration of the estate
representation is sought]; and the order so made a
orders consequent thereon, shall bind the estate
deceased person in the same manner as if a duly ap
personal representative of such person had been
to the action or proceeding [and had appeared
(see *Bank of Montreal* v. *Wallace*, 1 Chy. Ch. 261).

The foundation of this Rule is Chy. Gen. Ord. 5
clauses in brackets are additions made by R. S. O
c. 49, s. 9, to the provisions of that order, which w
stantially the same as the present (Eng. (1883) R. 168

A person appointed to represent an estate under th
is not entitled to the assets of the deceased, or to adm
the same; his authority is purely representative, an
the subsequent grant of general administration to a
his authority, even as a representative of the de
estate, is entirely superseded (*McLean* v. *Allen*, 18 P.
Fairfield v. *Ross*, 4 O. L. R. 534; *Ashberry* v. *Ellis*
A. C. 339).

This Rule has still a comparatively limited scope, as the representation which may be ordered under it is only of a deceased person "who was interested in the matter in question" within the meaning of the Rule. He must in his lifetime have been interested in the matters in question (*Hughes* v. *Hughes*, 6 O. A. R. 373; *sed vide Webster* v. *British Empire Insurance Co.*, 15 Ch. D. 169). The legal personal representative of deceased must in such case be a party to properly constitute the action (*Outram* v. *Wyckoff*, 6 P. R. 150; *Leonard* v. *Clydesdale*, 6 P. R. 142; *Toronto Savings Bank* v. *Canada Life Assurance Co.*, 13 Gr. 171), unless, there being an executor *de son tort*, Rule 196 applies; but a judgment against an executor *de son tort* would not bind the deceased person's estate (see *Mohamidu* v. *Pitchey*, [1891] A. C. 437; 71 L. T. 99), except so far as is provided by Rule 196.

The Rule enables the Court to take one of two courses: either (1) to proceed without a representative of the estate of the deceased person who may have been interested in the matters in question; or (2) to appoint some person to represent such deceased person's estate for the purposes of the action.

Where the Court makes an order adopting either of these courses, the estate in question is bound and concluded by the proceedings as though it had been represented in the litigation by a duly appointed legal personal representative.

In order to bind the estate, however, an order under this Rule must be made; it is not enough that the Court should proceed to adjudicate on the matter before it in the absence of a representative of the estate (*Re Richerson*, [1893] 3 Chy. 146; 3 R. 643; and see *Mohamidu* v. *Pitchey*, [1894] A. C. 437; 71 L. T. 99).

Originally the Chy. O. only applied to the representation of the personal estate, and wherever it was necessary that the real estate of a deceased person should be represented in any action or proceeding, the Court had no power, before the Devolution of Estates Act, under this Rule to proceed in the absence of the real representative, or to appoint any person to represent such estate, so as to bind it by the proceedings. But in the case of the estates of persons dying after the 1st July, 1886, the personal representative is also the representative of the realty, unless his powers are expressly limited to the personal estate, or have expired as to realty by reason of his omitting to register a caveat (*Ramus* v. *Dow*, 15 P. R. 219; R. S. O., [1897] c. 127, ss. 1, 13; and see *Re Williams and M'Kinnon*, 14 P. R. 338; *sed vide* R. S. O., [1897] c. 59, s. 61).

CANADIAN RULES.]

Further provisions are made by Rules 201, 206 to e
actions to be prosecuted in the absence of persons
according to the ordinary practice, should be joined as p

The application under Rule 194 is usually made
parte motion in chambers, but the order may be made
trial of the action, or on a motion for judgment (*Gaird*
Gairdner, 1 Ont. 184), or at a subsequent stage of the a
when the party whose estate is to be represented dies
the trial (*McCarthy* v. *Arbuckle*, 31 C. P. 48). Befo
order is made notice is sometimes required to be giv
the person, if any, who would be entitled to lett
administration (*Curtius* v. *Caledonian Life Insurance*
Chy. D. 534).

When an estate had been administered, and pendi
suit for administration the personal representative
and all that remained to be done was for the Master to
his report, and it appeared that the estate was insolve
order was made appointing the solicitor of the de
administratrix to represent the estate (*Re Tobin*, *C*
Tobin, 6 P. R. 40; and see *Sherwood* v. *Freeland*, 6 G
Toronto Savings Bank v. *Canada Life Assurance*
Gr. 171).

The Rule has been held to apply when the estate is
(*Re Colton*, *Fisher* v. *Colton*, 8 P. R. 542).

An administrator *ad litem* does not, under R. S. O.,
c. 129, s. 11, sufficiently represent the estate of a de
person sued for a *tort* who dies *pendente lite* (*Hunter* v.
3 O. L. R. 183).

The Master in Chambers has power to entertain
cations under this Rule for the appointment of a pers
represent the estate of a deceased party (*Collon* v. *S*
8 P. R. 42).

This Rule does not authorize the High Court to
letters probate of wills or letters of administratio
merely enables the Court to proceed with an action s
bind the personal estate of a deceased person, even t
no letters probate or letters of administration have
granted by the surrogate court.

An administrator *ad litem* may be appointed b
surrogate court (R. S. O., [1897] c. 59, s. 59, *ante*, p. 681

Rule 195. When probate of the will of a deceased p
or letters of administration to his estate, have not
granted, and representation of such estate is required i
action or proceeding in the High Court, the Court
appoint some person administrator *ad litem*.

Under this Rule an administrator *ad litem* only c
appointed. He will have no powers or duties other

206 to enable
persons who,
ined as parties.
y made by *ex*
be made at the
t (*Gairdner* v.
e of the action,
nted dies after
). Before the
o be given to
to letters of
surance Co., 19

d pending the
entative died,
Master to make
s insolvent, an
the deceased
Tobin, Cook v.
and, 6 Gr. 305;
urance Co., 13

estate is small

R. S. O., [1897]
of a deceased
Hunter v. *Bord*,

ntertain appli-
of a person to
lon v. *Swazzie*,

Court to grant
inistration. It
action so as to
n, even though
ion have been

ointed by the
ite, p. 681).
eceased person,
have not been
required in any
he Court may

n only can be
ies other than

[*CANADIAN RULES.*

those of representing the estate in the action and of obeying and carrying into execution any orders of the Court, giving directions or imposing duties upon him (*Rodger* v. *Moran*, 28 Ont. 283; and *McLean* v. *Allen*, 18 P. R. 255).

The Rule seems to authorize the appointment of an administrator only in the case where no probate of the will of a deceased person, or letters of administration to his estate, have been granted.

This Rule may, since the Devolution of Estates Act (R. S. O., [1897] c. 127), be applied when a deceased person has left only land (*Re Williams and McKinon*, 14 P. R. 338).

The order appointing an administrator *ad litem* should, as nearly as possible, follow the form of a grant of administration made in a like case by the surrogate court, and should contain all the particulars necessary to be entered in the books of the surrogate clerk under the Surrogate Rule 48, and a copy of the order should be forwarded to the surrogate clerk at Osgoode Hall (see Surrogate Act, ss. 44-51. For form of order, see Holmested and Langton's Forms, No. 456).

The authority of an administrator *ad litem* in a probate action terminates on the pronouncing of a judgment in favour of a will; a grant of probate is not necessary to put an end to his powers.

Rule 196. Where an order for general administration is not asked or required, or where it is shown that an executor *de son tort* has taken possession of the bulk of the personal assets belonging to the estate of a deceased person, he may, on the application of any one interested in the estate of the deceased, without the appointment of any personal representative, be required to account for any assets of the estate which have come into his hands; and when a case is made for the appointment by the High Court of a receiver of the estate of a deceased person who has no personal representative, the estate may be administered under the direction of the Court without the appointment of any person other than the receiver to represent the estate (Con. Rules, S. C. J. 196).

Rule 944. Any person claiming to be a creditor, or a specific, pecuniary, or residuary legatee, or the next-of-kin, or one of the next-of-kin, or the heir, or a devisee interested under the will of a deceased person, may apply to the Court or a judge upon motion, without an action being instituted, or any other preliminary proceeding, for judgment for the administration of the estate, real or personal, of such deceased person.

Non-contentious Business.

COSTS

To be allowed Proctors, Solicitors and Attornies practi
Principal Registry of the Court of Probate

IN NON-CONTENTIOUS BUSINES

Dated the 5th day of February, 1874.

In respect of Probates.

Non-contentious Business.

Including Double or Cessate Probates or Letters of Administration with will annexed, de bonis non or cessate, upon which Stamp Duty is payable in respect of the personal estate of the testator.

Effects sworn under	Oath of Executor and attendance on the party being sworn.		Affidavit for the Inland Revenue Office and attendance on the party being sworn.		Engrossing & collating the Will, 3 folios of 90 words or under, including parchment.		Probate under Seal.			Extracting.		Clerks.		
£	s.	d.	s.	d.	s.	d.	£	s.	d.	s.	d.	£	s.	d.
5	2	6	2	6	4	6	0	1	0	1	0		—	
20	2	6	2	6	4	6	0	1	0	3	4	0	1	0
100	5	0	5	0	4	6	0	1	0	6	8	0	2	0
200	6	8	6	8	4	6	0	3	0	6	8	0	2	0
300	10	0	10	0	4	6	0	7	6	6	8	0	2	0
450	10	0	10	0	4	6	0	12	0	6	8	0	2	0
600	10	0	10	0	4	6	0	16	6	6	8	0	2	0
800	10	0	10	0	4	6	1	2	6	6	8	0	2	0
1,000	10	0	10	0	4	6	1	13	0	6	8	0	2	0
1,500	10	0	10	0	4	6	2	5	0	6	8	0	5	0
2,000	10	0	10	0	4	6	3	0	0	6	8	0	5	0
3,000	0	0	10	0	4	6	3	15	0	13	4	0	5	0
4,000	10	0	10	0	4	6	4	10	0	13	4	0	5	0
5,000	10	0	10	0	4	6	4	15	0	13	4	0	7	6
6,000	10	0	10	0	4	6	5	0	0	13	4	0	7	6
7,000	10	0	10	0	4	6	5	5	0	13	4	0	7	6
8,000	10	0	10	0	4	6	5	10	0	13	4	0	7	6
9,000	10	0	10	0	4	6	5	15	0	13	4	0	7	6
10,000	10	0	10	0	4	6	6	0	0	13	4	0	7	6
12,000	10	0	10	0	4	6	6	5	0	13	4	0	7	6
14,000	10	0	10	0	4	6	6	10	0	13	4	0	7	6
16,000	10	0	10	0	4	6	6	17	6	13	4	0	7	6
18,000	10	0	10	0	4	6	7	5	0	13	4	0	7	6
20,000	10	0	10	0	4	6	7	12	6	13	4	0	7	6
25,000	10	0	10	0	4	6	8	2	6	13	4	0	7	6
30,000	10	0	10	0	4	6	8	15	0	13	4	0	7	6
35,000	10	0	10	0	4	6	9	7	6	13	4	0	7	6
40,000	10	0	10	0	4	6	10	6	3	13	4	0	7	6
45,000	10	0	10	0	4	6	11	5	0	13	4	0	7	6
50,000	10	0	10	0	4	6	12	3	9	13	4	0	7	6
60,000	10	0	10	0	4	6	13	2	6	13	4	0	7	6
70,000	10	0	10	0	4	6	15	0	0	13	4	0	7	6
80,000	10	0	10	0	4	6	16	17	6	13	4	1	1	0
90,000	10	0	10	0	4	6	18	15	0	13	4	1	1	0
100,000	10	0	10	0	4	6	20	12	6	13	4	1	1	0
120,000	10	0	10	0	4	6	21	11	3	13	4	1	1	0
140,000	10	0	10	0	4	6	23	8	9	13	4	1	1	0
160,000	10	0	10	0	4	6	25	6	3	13	4	1	1	0
180,000	10	0	10	0	4	6	27	3	9	13	4	1	1	0
200,000	10	0	10	0	4	6	29	1	3	13	4	1	1	0
250,000	10	0	10	0	4	6	30	18	9	13	4	1	1	0
300,000	10	0	10	0	4	6	35	12	6	13	4	1	1	0
350,000	10	0	10	0	4	6	40	6	3	13	4	1	1	0
400,000	10	0	10	0	4	6	41	17	6	13	4	1	1	0
500,000	10	0	10	0	4	6	43	8	9	13	4	1	1	0

[NOTE.—*The basis of these* ad valorem *fees is the* GROSS *amount of the* personal *estate dealt with by the grant.*]

£

Non-contentious Business.

And for every additional £100,000, or any fractional part of £100,000, under which the personal estate is sworn, in addition to the above fees, a further fee for probate, under seal, of 3

In addition to the above, for all second or subsequent grants of probate or letters of administration with will annexed, the same fees for looking up the will and bespeaking engrossment as on similar grants upon which no stamp duty is payable.

For engrossing and collating the will, if more than three folios of ninety words each, per folio, including parchment . . 0

When there are two or more executors, and they are not sworn at the same time, for each attendance after the first on their being sworn to oath and affidavit—

If the effects are sworn under £20 0
If the effects are sworn under £100 0
If the effects are sworn above £100 0

In respect of Letters of Administration with Will annexe

In addition to the above fees, for preparing and attendance on the execution of the bond if the effects are—

£

Under £20 0
£20 and under £100 0
£100 and upwards 0 1

For engrossing and collating a will or codicil for a grant of probate or letters of administration with the will annexed, when there are pencil-marks in the will or codicil, or when the will or codicil is to be registered fac-simile, in addition to any other fee for engrossing and collating the same—

If the pencil-marks in the will or codicil, or the part or parts thereof to be registered fac-simile, are two folios of ninety words in length or under 0
If exceeding two folios, for every additional folio or part of a folio of ninety words 0

In respect of Letters of Administration.

Non-contentious Business.

Including Letters of Administration de bonis non or cossato, upon which Stamp Duty is payable in respect of the personal estate of the intestato.

Effects sworn under	Oath of Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office and attendance on Administrator being sworn.	Letters of Administration under Seal.	Extracting.	Clerks.
£	*s.* *d.*	*s.* *d.*	£ *s.* *d.*	*s.* *d.*	£ *s.* *d.*
5	2 6	2 6	0 1 0	1 0	—
20	3 4	2 6	0 1 0	3 4	0 1 0
50	5 0	5 0	0 1 6	4 8	0 2 0
100	6 8	6 8	0 3 0	6 8	0 2 0
200	10 0	6 8	0 4 6	6 8	0 2 0
300	13 4	10 0	0 12 0	6 8	0 2 0
450	13 4	10 0	0 16 6	6 8	0 2 0
600	13 4	10 0	1 2 6	6 8	0 2 0
800	13 4	10 0	1 13 0	6 8	0 2 0
1,000	13 4	10 0	2 5 0	6 8	0 5 0
1,500	13 4	10 0	3 7 6	6 8	0 5 0
2,000	13 4	10 0	4 10 0	13 4	0 5 0
3,000	13 4	10 0	4 13 9	13 4	0 7 6
4,000	13 4	10 0	4 17 6	13 4	0 7 6
5,000	13 4	10 0	5 5 0	13 4	0 7 6
6,000	13 4	10 0	5 12 6	13 4	0 7 6
7,000	13 4	10 0	6 0 0	13 4	0 7 6
8,000	13 4	10 0	6 7 6	13 4	0 7 6
9,000	13 4	10 0	6 15 0	13 4	0 7 6
10,000	13 4	10 0	7 2 6	13 4	0 7 6
12,000	13 4	10 0	7 10 0	13 4	0 7 6
14,000	13 4	10 0	7 17 6	13 4	0 7 6
16,000	13 4	10 0	8 8 9	13 4	0 7 6
18,000	13 4	10 0	9 0 0	13 4	0 7 6
20,000	13 4	10 0	9 11 3	13 4	0 7 6
25,000	13 4	10 0	10 6 3	13 4	0 7 6
30,000	13 4	10 0	11 5 0	13 4	0 7 6
35,000	13 4	10 0	12 3 9	13 4	0 7 6
40,000	13 4	10 0	13 11 3	13 4	0 7 6
45,000	13 4	10 0	15 0 0	13 4	0 7 6
50,000	13 4	10 0	16 7 6	13 4	0 7 6
60,000	13 4	10 0	17 16 3	13 4	0 7 6
70,000	13 4	10 0	20 12 6	13 4	0 7 6
80,000	13 4	10 0	23 8 9	13 4	1 1 0
90,000	13 4	10 0	26 5 0	13 4	1 1 0
100,000	13 4	10 0	29 1 3	13 4	1 1 0
120,000	13 4	10 0	30 9 6	13 4	1 1 0
140,000	13 4	10 0	33 5 9	13 4	1 1 0
160,000	13 4	10 0	36 2 0	13 4	1 1 0
180,000	13 4	10 0	38 18 3	13 4	1 1 0
200,000	13 4	10 0	41 14 6	13 4	1 1 0
250,000	13 4	10 0	44 10 9	13 4	1 1 0
300,000	13 4	10 0	46 17 6	13 4	1 1 0
350,000	13 4	10 0	49 4 6	13 4	1 1 0
400,000	13 4	10 0	51 11 3	13 4	1 1 0
500,000	13 4	10 0	53 18 3	13 4	1 1 0

NOTE.—*The basis of these* ad valorem *fees is the* GROSS *amount of the* personal *estate.*]

Non-contentious Business.

And for every additional £100,000, or any fractional part o £100,000, under which the personal estate is sworn, i addition to the above fees, a further fee for letters of adminis tration under seal of . . . . . .

When there are two or more administrators, and they are no sworn at the same time, for each attendance after the firs on their being sworn to oath and affidavit and on executio of the bond—

If the effects are under £20 . . . . .
If the effects are under £100 . . . . .
If the effects are above £100 . . . . .

In addition to the above fees, for preparing bond if the effect are—

Under £20 ... .
£20 and under £50 . . . . . .
£50 and under £100 . . . . . .
£100 and upwards . . . . . .

In respect of Double or Cessate Probates, upon which no Stamp Duty is payable.

If the effects are sworn under	Attendance in the Registry, and looking up the Will and bespeaking the engrossment.	Oath of the Executor and attendance on his being sworn.	Affidavit for Inland Revenue Office, and attendance on the Executor being sworn.	Drawing and copying statement in support of application for the duty-paid Stamp.	Attending the Commissioners of Stamps and procuring the duty-paid Stamp.	Double or Cessate Probate under Seal.	Extracting.	Clerks.
£	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
5	3 4	2 6	2 6	—	—	1 0	1 0	—
20	3 4	2 6	2 6	—	—	1 0	3 4	1 0
100	6 8	5 0	5 0	6 8	13 4	1 0	6 8	2 0
200	6 8	6 8	6 8	6 8	13 4	3 0	6 8	2 0
300	6 8	10 0	10 0	6 8	13 4	7 6	6 8	2 0
450	6 8	10 0	10 0	6 8	13 4	12 0	6 8	2 0
600	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
800	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1,500	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
2,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
3,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
4,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
5,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	7 6
Above 5,000	The fees to be taken are the same as above, except the clerk's fee, which, if the effects are of the value of £70,000 or upwards, is £1 1s.							

The above fees for drawing and copying the statement in support of application for the duty-paid stamp is to be taken when the statement is five folios of seventy-two words or under. If the statement exceeds five folios, for each additional folio of seventy-two words . . . . . £ s. d. 0 1 4

When there are two or more executors to be sworn, and they are not sworn at the same time, for each attendance after the first, on their being sworn, the same fee as on a first grant under the same sum.

Non-contentious Business.

Non-contentious Business.

Exemplification of Probate or Letters of Administr or without Will annexed.

Attending in the registry, looking up the grant of probate an original will or grant of administration, and bespeakin exemplification . . . . . .
Exemplification under seal and stamp . . . . .
Extracting . . . . . .
Clerks . . . . . .

In respect of Duplicate and Triplicate Probates or Administration with or without Will annexe

Attending in the registry, looking up the will, and bespeakin duplicate or triplicate of a grant and engrossment .
Drawing and copying statement in support of application t the Inland Revenue Office for the duty-paid stamp:
The same fee as on a double or cessate probate.
Attending at the Inland Revenue Office and procuring th duty-paid stamp . . . . . .
Duplicate or triplicate probate or letters of administratio with or without will annexed. If the personal estate i under £450, or any smaller sum, the same fee as on th original grant.
If the personal estate is of the value of £450 and upwards
Extracting . . . . . .
Clerks . . . . . .

In respect of Letters of Administration with or without Will annexed, de bonis non or cessate, upon which no Stamp Duty is payable.

If the effects are sworn under	Attending in the Registry, looking up and perusing the Will, and taking an account of the former Grant.	Oath of the Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office and attendance on Administrator being sworn.	Drawing and copying Statement in support of application to the Inland Revenue Office for the duty-paid Stamp.	Attending at the Inland Revenue Office and procuring the duty-paid Stamp.	De bonis or cessate administration with or without Will under Seal and duty-paid Stamp.	Extracting.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 6 8	0 5 0	0 2 6	—	—	0 1 0	0 1 0	—
20	0 6 8	0 5 0	0 2 6	—	—	0 1 0	0 3 4	0 1 0
50	0 6 8	0 6 8	0 5 0	—	—	0 1 6	0 4 8	0 2 0
100	0 6 8	0 10 0	0 6 8	0 5 0	0 6 8	0 3 0	0 6 8	0 2 0
200	0 6 8	0 13 4	0 6 8	0 6 8	0 13 4	0 4 6	0 6 8	0 2 0
300	0 6 8	0 16 8	0 10 0	0 6 8	0 13 4	0 12 0	0 6 8	0 2 0
450	0 6 8	0 16 8	0 10 0	0 6 8	0 13 4	0 12 6	0 6 8	0 2 0
Above 450	The fees to be taken are the same as above, except the extracting fee, which, if the effects are £1,500 and upwards, is 13s. 4d., and the clerk's fee, which, if the effects are £600 and upwards, is 5s.							

	£ s. d.
If there has been more than one previous grant, for each grant looked up after the first, a further fee of	0 5 0
The above fee for drawing and copying the statement in support of application to the Inland Revenue Office for the duty-paid stamp is to be taken if the statement is five folios of seventy-two words or under. If it exceeds five folios, for each additional folio	0 1 4
In addition to the above: for preparing the bond, and for each attendance after the first on the administrators being sworn, and on execution of the bond, when there are two or more administrators and they are not sworn at the same time, the same fees as on ordinary grants of letters of administration.	

Non-contentious Business.

In respect of Probates, Special or Limited.

Consulting fee . . . . . .
Affidavit for Inland Revenue Office, and attendance on the executor being sworn thereto:—The same fee as on ordinary probates.
Drawing special oath of executor, per folio of seventy-two words . . . . . .
Fair copy of the oath for the registrar, per folio of seventy-two words . . . . . .
Attending the registrar thereon . . . . . .
Engrossing same, per folio of seventy-two words . . . .
Each attendance on the executors being sworn . . . .
Engrossing and collating the will . . . . . } The
Special or limited probate under seal . . . . } as
Extracting . . . . . } na
Clerks . . . . . } ba

In respect of Letters of Administration with or with annexed, Special or Limited.

Consulting fee . . . . . .
Perusing and abstracting deeds or other instruments, when necessary, at per folio of seventy-two words . . . .
Proxy of nomination . . . . . .
Affidavit for Inland Revenue Office and attendance on the administrators being sworn thereto:—The same fees as on ordinary grants of letters of administration.
Drawing special oath of the administrators, per folio of seventy-two words . . . . . .
Fair copy of the oath for the registrar to peruse, per folio of seventy-two words . . . . . .
Attending the registrar thereon . . . . . .
Engrossing same, per folio of seventy-two words . . . .
Each attendance on the administrators being sworn, and on execution of the bond . . . . . .
Engrossing and collating the will . . . } The same fees a
Letters of administration, under seal and stamp . . . . . } dinary grants
Extracting . . . . . } of administrat
Clerks . . . . . } or without
nexed.

Office Copies of, or Extracts from, Records, Wills, an Documents.

For attendance in the registry and searching for a record, will, or other document, or for a grant of probate, or letters of administration, with or without will annexed, for five years, or any period less than five years, *including* the ordering of a copy . . . . . .
For every five years after the first five years . . . . .
For the perusal of a record, will, or other document, when necessary, for the purpose of ordering extracts or for any other purpose, including the ordering of extracts, per folio of ninety words . . . . . .

Limited.

	£	s.	d.
. . .	0	6	8
nee on the on ordinary			
eventy-two			
. . .	0	1	0
eventy-two			
. . .	0	0	4
. . .	0	13	4
. . .	0	0	4
. . .	0	6	8
. } The same fees as on ordinary probates.			
. }			
. }			

h or without Will

	£	s.	d.
. . .	0	6	8
nts, when			
. . .	0	0	4
. . .	0	13	4
ce on the fees as on			
r folio of			
. . .	0	1	0
er folio of			
. . .	0	0	4
. . .	0	13	4
. . .	0	0	4
rn, and on			
. .	0	6	8
same fees as on ordinary grants of letters administration, with without will annexed.			

Wills, and other

	£	s.	d.
a record, or letters l, for five *ading* the			
. .	0	5	0
. .	0	3	4
nt, when r for any er folio of			
. .	0	0	4

	£	s.	d.
For collating an office copy or extract of a record, will, or other document, with the original, or a registered copy thereof, including extracting fee, per folio of ninety words .	0	0	2
For collating an office copy of the act on granting probate or administration with the original entry thereof, including extracting fee.	0	1	0

Non-contentious Business.

Caveats.

	£	s.	d.
For attendance in the registry and entering or subducting a caveat	0	6	8
For attendance in the registry and giving instructions for warning caveators to enter an appearance	0	6	8
For service of warning to a caveat, and copy	0	5	0

Affidavits other than the Affidavits and Oaths included in the Fees of Probate and Letters of Administration; and Declarations of Personal Estate and Effects.

	£	s.	d.
For taking instructions for every affidavit or declaration of personal estate and effects	0	6	8
For drawing and fair copy of the same, per folio of seventy-two words	0	1	4
For every attendance on the deponents or declarants being sworn or affirmed to such affidavit or declaration . .	0	6	8

Instruments of Renunciation and Consent, Letters of Attorney, and other Documents.

	£	s.	d.
For taking instructions for every instrument of renunciation or consent, letters of attorney, or other document . .	0	6	8
For drawing and fair copy thereof, per folio of seventy-two words	0	1	4

For Commissioners of the Court.

	£	s.	d.
For each oath administered to each deponent by a commissioner, surrogate, or other person authorised to administer oaths in the Court of Probate	0	1	6
For marking each exhibit	0	1	0
For each occasion of superintending and attesting the execution of a bond	0	1	6

Taxing Bill of Costs.

	£	s.	d.
For attendance on taxation of bill of costs	0	6	8
If long, such further fee as the registrar may think proper.			

Non contentious Business.

Proctors, Solicitors, and Attornies are not entitled to an addition to those allowed by the foregoing tablo in resp non-contentious business comprised therein; but in ca transacting any business not therein provided for, th allowed as follows :—

For instructions for any original instrument prepared by them . . . . . .
For perusing every document which it is necessary to peruse as instructions, per folio of seventy-two words
For drawing and fair copy of any original instrument, per folio of seventy-two words . . . . .
For every plain copy of a document, per folio of seventy-two words . . . . . .
If the same, or any part thereof, is to be copied fac-simile, for the part or parts to be so copied, per folio of seventy-two words, in addition to the above . .
For every necessary attendance on counsel, or on any practitioner or party other than their own client .

FEES

To be taken in the Principal Registry of the Court of Probate on and after the 2nd day of March, 1874,

IN NON-CONTENTIOUS BUSINESS.

Probates or Letters of Administration with Will annexed,

Including double or cessate probates or letters of administration with will annexed, de bonis non or cessate, upon which stamp duty is payable in respect of the value of the personal estate of the testator.

If the personal estate is sworn to be—	£	s.	d.
Under the value of £5	0	1	0
20	0	1	0
100	0	1	0
200	0	3	0
300	0	7	6
450	0	12	0
600	0	16	6
800	1	2	6
1,000	1	13	0
1,500	2	5	0
2,000	3	0	0
3,000	3	15	0
4,000	4	10	0
5,000	4	15	0
6,000	5	0	0
7,000	5	5	0
8,000	5	10	0
9,000	5	15	0
10,000	6	0	0
12,000	6	5	0
14,000	6	10	0
16,000	6	17	3
18,000	7	5	0
20,000	7	12	6
25,000	8	2	6
30,000	8	15	0
35,000	9	7	6
40,000	10	6	3
45,000	11	5	0
50,000	12	3	9
60,000	13	2	6
70,000	15	0	0
80,000	16	17	6
90,000	18	15	0
100,000	20	12	6
120,000	21	11	3
140,000	23	8	9
160,000	25	6	3

Non-contentious Business.

If the personal estate is sworn to be—
Under the value of £180,000 . . . . .
200,000 . . . . .
250,000 . . . . .
300,000 . . . . .
350,000 . . . . .
400,000 . . . . .
500,000 . . . . .
For every additional £100,000, or any fractional part of £100,000, a further and additional fee of . . . .

[NOTE.—*The basis of these* ad valorem *fees is held to be the v of the* PERSONAL *estate upon which stamp duty is paid. No f in respect of the real estate (if any).*]

DOUBLE OR CESSATE PROBATE, ETC.

For every double or cessate probate, or letters of administration with the will annexed, de bonis non or cessate, upon which no stamp duty is payable, when the personal estate is under £450, or any smaller sum, the same fee as on a first grant under the same sum.
When the personal estate is of the value of £450 and upwards
For every duplicate and triplicate probate, or letters of administration with the will annexed, when the personal estate is under £450 or any smaller sum, the same fee as on a first grant under the same sum.
When the personal estate is of the value of £450 and upwards

EXEMPLIFICATIONS.

For every exemplification of a probate, or letters of administration with the will annexed, in addition to the fees for engrossing and collating the will, and other documents registered with the same . . . . . .

REGISTERING AND COLLATING OR ENGROSSING AND COLLATING WILLS.

For registering and collating or engrossing and collating wills and other documents, if three folios of ninety words each, or under, including parchment . . . . . .
If above three folios of ninety words each, per folio . .
In cases of grants for Queen's pay or prize money, the effects being under £100, without reference to the length of the will . . . . . .
If there are pencil marks in a will or codicil, or if a will or codicil, or any part thereof is to be or has been registered fac-simile, in addition to any other fee for registering and collating, or for engrossing and collating the same:
If the part or parts to be registered or engrossed fac-simile are two folios of ninety words in length, or under .
If exceeding two folios, for every additional folio or part of a folio of ninety words . . . . . .

CODICILS TO WILLS ALREADY PROVED.

For every probate of a codicil or codicils, or letters of administration with a codicil or codicils annexed, being a codicil or codicils to a will already proved, the same fees respectively as on a duplicate probate or duplicate letters of administration with will annexed.

Letters of Administration,

Non-contentious Business.

Including letters of administration de bonis non or cessate, upon which stamp duty is payable in respect of the personal estate of an intestate.

If the personal estate is sworn to be—	£	s.	d.
Under the value of £5	0	1	0
20	0	1	0
50	0	1	0
100	0	1	0
200	0	4	6
300	0	12	0
450	0	16	6
600	1	2	6
800	1	13	0
1,000	2	5	0
1,500	3	7	6
2,000	4	10	0
3,000	4	13	9
4,000	4	17	6
5,000	5	5	0
6,000	5	12	6
7,000	6	0	0
8,000	6	7	6
9,000	6	15	0
10,000	7	2	6
12,000	7	10	0
14,000	7	17	6
16,000	8	8	9
18,000	9	0	0
20,000	9	11	3
25,000	10	6	3
30,000	11	5	0
35,000	12	3	9
40,000	13	11	3
45,000	15	0	0
50,000	16	7	6
60,000	17	16	3
70,000	20	12	6
80,000	23	8	9
90,000	26	5	0
100,000	29	1	3
120,000	30	9	6
140,000	33	5	9
160,000	36	2	0
180,000	38	18	3
200,000	41	14	6
250,000	44	10	9
300,000	46	17	6
350,000	49	4	6
400,000	51	11	3
500,000	53	18	3
For every additional £100,000, or any fractional part of £100,000, a further additional fee of	4	13	6

[NOTE.—*These* ad valorem *fees are taken upon the amount of the net* PERSONAL *estate upon which stamp duty is paid. No fee is taken in respect of the real estate (if any).*]

Non-contentious Business.

DUPLICATE AND TRIPLICATE LETTERS OF ADMINISTRAT

For every duplicate and triplicate letters of administrati when the personal estate is under £300, or any sum less th £300, the same fee as on a first grant of letters of admin tration under the same sum.
For every duplicate and triplicate letters of administrati when the personal estate is of the value of £300 and upwa

EXEMPLIFICATIONS.

For every exemplification of letters of administration .

ADMINISTRATION DE BONIS NON OR CESSATE.

For every grant of letters of administration de bonis non cessate, upon which no stamp duty is payable, when t personal estate is under £300 or any smaller sum, the sa fee as on a first grant under the same sum.
When the personal estate is of the value of £300 and upwar

ADDITIONAL SECURITY.

For noting on the grant of letters of administration with without will annexed, and on the act, that additio security has been given . . . . . .
For every certificate for the Inland Revenue Office, th additional security has been given . . . . .

ARTICLES TO PAY PRO RATA.

For articles entered into by administrators to pay creditors *p rata*, per folio of seventy-two words each . . .
For the bond for the performance of the articles, or for pa ment of creditors *pro rata*, per folio of seventy-two words

SEARCHES AND INSPECTION OF WILLS, ETC.

For every search for will or grant of letters of administrati or any document filed in the principal registry, includi the looking up and inspecting an original will before t same is registered, or a registered copy of a will or a administration act . . . . . .
For every third will or administration act looked up in additi to the above . . . . . .
For looking up and inspecting an original will after the san is registered in addition to the fee for the search . .
For looking up and producing any document filed in t registry other than an original will or administration act
For a search for a will or grant of letters of administratio and for reading the will when the party applying is unab or unwilling to search for or read the same:—
For the search for each year or part of a year . .
For reading the will:—
If twenty folios of ninety words each or under .
For every additional twenty folios or part of twent folios of ninety words each . . . .

DMINISTRATION, ETC.

	£	s.	d.
dministration sum less than s of adminis-			
dministration 0 and upwards	0	12	6
ation . .	1	1	0
CESSATE.			
bonis non or le, when the um, tho same			
and upwards	0	12	6
ation with or at additional . . .	0	5	0
Office, that . . .	0	1	0
A.			
creditors *pro* . . .	0	2	0
s, or for pay- two words .	0	2	0
LLS, ETC.			
dministration ry, including ll before the a will or an . . .	0	1	0
p in addition . . .	0	1	0
ter the same h . . .	0	1	0
filed in the ration act .	0	1	0
ministration, ing is unable r . . .	0	0	6
under . .	0	1	0
rt of twenty . . .	0	1	0

SEARCHES FOR FORMER GRANTS.

	£	s.	d.	Non-contentious Business.
For every search by an officer of the principal registry in order to ascertain whether any probate or grant of letters of administration has already issued, or any application has been made for a grant of probate or administration, as under:—				
For every full year or part of a year which has elapsed since the deceased's death	0	0	6	
In case it be requisite to extend the search to one or more district registries, a similar additional fee for the search in each of such registries.				

SPECIAL AND LIMITED GRANTS.

For every special or limited grant of probate or letters of administration with or without will annexed, in addition to the ordinary fees, as under:—

If the personal estate is under the value of £20, 1*s.* per folio of seventy-two words each on the bond, on the act, and on the grant of probate or letters of administration.

If the personal estate is of the value of £20 and upwards, 2*s.* per folio of seventy-two words each on the bond, on the act, and on the grant of probate or letters of administration.

Whenever the personal estate to be placed in possession of, or dealt with by, the executor or administrator, by means of a special or limited grant of probate or letters of administration, exceeds in value the sum of £20, the fee of 2*s.* per folio of seventy-two words shall be payable on the bond, on the act, and on the grant, although the personal estate be sworn under £20.

SEALING IRISH AND SCOTCH GRANTS.

For affixing the seal of the court to any grant of probate or letters of administration, with or without will annexed, or to any exemplification of probate or letters of administration, with or without will annexed, under seal of the Court of Probate in Ireland, in order to its becoming in force for property in England,—such fee as would be payable in respect of a grant originally made in England for property equal in amount to the property in England which is to be affected by the probate or other instrument to which the seal of the court is to be affixed.

See Order Supreme Court Fees, Dec. 1892 (Irish Grants), *post*, p. 911.

	£	s.	d.
For the registrar's fiat on an Irish grant	0	5	0
For affixing the seal of the court to any confirmation of an executor issued by authority of a Commissary Court in Scotland	1	1	0

NOTATION OF DOMICILE.

	£	s.	d.
For noting on a probate or on letters of administration, with or without will annexed, that the testator or intestate died domiciled in England	0	5	0

OFFICE COPIES AND EXTRACTS.

	£	s.	d.
For every office copy or extract of a will, or of a probate, or administration act, or of any document filed or deposited in the principal registry, if five folios of ninety words or under	0	2	6

Non-contentious Business

If exceeding five folios of ninety words, for every additional folio or part of a folio . . . . . .
If the will or other document is 200 years old, and five folios of ninety words or under . . . . . .
If exceeding five folios of ninety words, for every additional folio or part of a folio . . . . . .
If the office copy of a will or any part of a will or other document is required to be made fac-simile, and such will or part of a will or other document is two folios of ninety words in length or under, in addition to the fee for the copy .
If exceeding two folios of ninety words, for every additional folio or part of a folio . . . . . .
For copies of wills and other documents in foreign language made by persons specially employed for that purpose, the charges of the persons so employed will be taken in addition to any other fees which may be payable in respect of such copies.
If a copy is required to be printed (in addition to a manuscript copy for the printer, at 6*d.* per folio of ninety words, and collating):—
For twenty folios of ninety words or under . .
For every additional folio or part of a folio . .
For office copy of a will, minute, order, decree, or any document under seal of the court for which no other fee is payable:—
For the seal, in addition to the fee for the copy and collating . . . . . .
For copies of plans, drawings, and armorial bearings, etc., such fee as shall be determined by the registrar in each particular case.

COLLATING DOCUMENTS (*a*).

For collating copy of a probate and will, or copy of letters of administration with or without the will annexed, or any other instrument to be filed or deposited in the registry, or for collating any copy or instrument with an original document already filed or deposited in the registry, including the registrar's certificate in verification thereof:—
If ten folios of ninety words each, or under . .
If above ten folios of ninety words each, per folio .
If there is any pencil-writing copied, or the copy or any part thereof is fac-simile, in addition to the above fees:—
If such pencil-writing or fac-simile copy is two folios of ninety words in length or under . . . .
For every additional folio or part of a folio . .

ATTENDANCES (*b*).

For attendance with any book or original document in any of the courts of law or equity in London or Westminster, or elsewhere within three miles of the principal registry.

(*a*) The fee for re-collating, or for collating a "copy to attend fiat copy, is 3*d.* per folio for each necessary examination. The fee of 2*s.* 6*d.* referred to in the Rules and Orders not being applicable to this class of work (Circular, March 21st, 1898).

(*b*) The scale of fees for attendance is now that prescribed as to Supreme Court Fees, 1884 (see p. 588).

	£	s.	d.	
For the second and each subsequent attendance in the same term or sittings after term	0	10	6	Non-contentious Business.
For attendance with books or original documents in any of the courts of law or equity in London or Westminster, or elsewhere within three miles of the principal registry, when more than one book or document are required, for each book or document besides the first	0	5	0	
For the second and each subsequent attendance in the same term or sittings after term, for each book or document besides the first	0	2	6	
For each day's attendance with any book or original document in any of the courts of law or equity, or elsewhere beyond the distance of three miles from the principal registry, exclusive of travelling expenses	1	1	0	
For each day's attendance with books or original documents in any of the courts of law or equity, or elsewhere beyond the distance of three miles from the principal registry, exclusive of travelling expenses, when more than one book or document are required, for each book or document beside the first	0	5	0	
The travelling expenses to be advanced and paid to the messenger attending with books or original documents shall include all other necessary expenses which are to be or may have been incurred by such messenger.				

REGISTRAR'S ORDER.

For every registrar's order for revocation of a grant	0	5	0
For every other registrar's order	0	2	6

FILING.

For filing every affidavit or other document in the principal registry, except the oaths for executors, administrators, or administrators with the will, the first administration bond and the testamentary papers in respect of which probate or administration with will annexed is granted	0	2	6	N.B.—The filing fee on affidavits has been altered to 2s. See London Gazette, Oct. 28th, 1875(c).
For filing every exhibit	0	1	0	
For filing in the principal registry any notice required to be sent there by a district registrar	0	0	6	
For filing in a district registry any notice required to be sent there by a registrar of the principal registry	0	0	6	

CAVEATS.

For the entry of every caveat	0	1	0
For each notice of such caveat to the district registrars	0	1	0
For every warning to a caveat	0	2	6
For every service of a warning to caveat sent by a registrar through the public post	0	2	6
For subducting a caveat	0	1	0
For notice to any district registrar to whom notice of a caveat has been sent of its having been subducted or warned	0	1	0

RECEIPTS FOR PAPERS.

For every receipt for documents left in the principal registry in order to obtain a grant of probate or letters of

(c) The fee for filing a declaration remains at 2s. 6d. (Registrar's Decision, March 15th, 1877).

Non-contentious Business.

administration with or without will annexed, or any second or subsequent grant . . . . . .
For every receipt for a document or documents delivered out of the principal registry . . . . . .

DEPOSIT OF WILLS.

For depositing every will of a person deceased in the principa registry for safe custody . . . . . .
For depositing every will of a living person for safe custody including the deposit receipt . . . . . .

TAXING COSTS.

For taxing every bill of costs, inclusive of the registrar's certificate:—
If five folios of seventy-two words or under . .
If exceeding that length, for every additional folio .
For postponement of appointment for taxation of costs, to b paid by the party at whose instance the appointment i postponed:—
If the bill of costs is five folios of seventy-two words, o under . . . . . .
If exceeding five folios of seventy-two words, and unde fifteen folios . . . . . .
If exceeding fifteen folios . . . . . .

BONDS.

For superintending and attesting the execution of a bond
If not completed on one occasion, for each subsequen attestation . . . . . .

OATHS.

This fee for oath was altered to 1s. 6d. in 1876.

For every oath administered by the registrars, or by a com missioner authorised to administer oaths in the principa registry, to each deponent . . . . . .
For marking each exhibit . . . . . .

SETTLING ADVERTISEMENTS.

For settling the abstract of citation for advertisement or othe advertisement . . . . . .

ALTERATIONS IN GRANTS.

For making alterations in grants of probate or letters administration in pursuance of the order of one of th registrars . . . . . .

NOTATIONS.

For noting alterations in and revocations of grants on th record of the same . . . . . .
For noting second and subsequent grants on the record of th first grant . . . . . .
For noting renunciations, or any other necessary matter the record of a grant . . . . . .

Non-contentious Business.

CERTIFICATES.

	£	s.	d.
For every certificate under the hand of one or more of the registrars of the principal registry for which no other fee is payable	0	2	6

FIATS.

	£	s.	d.
For the fiat of a registrar as to the form in which any will or codicil is to be registered	0	5	0
For noting on a testamentary paper that probate thereof is refused	0	5	0

NOTICES.

	£	s.	d.
For every notice required to be sent to a district registrar for which no other fee is payable, except notices required by Rule 72	0	1	0

PERUSING AND SETTLING OATHS, ETC.

	£	s.	d.
For perusing and settling oaths to lead special or limited grants of probate or letters of administration, with or without will, or other instruments:—			
If five folios of seventy-two words, or under	0	2	6
If above five folios, for each additional folio	0	0	3
For perusing deeds and other documents when necessary, per folio of seventy-two words	0	0	3

COMMISSIONER.

	£	s.	d.
For each appointment of a commissioner to administer oaths in the Court of Probate, other than clerks and officers of the court authorised to administer oaths in the principal or in a district registry only	1	0	0
For registering the appointment of a commissioner appointed to administer oaths in the Court of Chancery	0	5	0

For fees payable in respect of Colonial Probates Act, 1892, see Order as to Supreme Court Fees, 12th December, 1892, *post*, p. 911.

For summary of fees on resealing in England, Irish Grants, Scotch Confirmations, and Colonial Grants, see p. 912.

For fees payable in Ireland on resealing English Grants, see pp. 913, 914.

Non-contentious Business.

In addition to the Ordinary Fees to be taken in th
Registry of the Court of Probate in

NON-CONTENTIOUS BUSINESS,

The following fees are to be taken in th
DEPARTMENT FOR PERSONAL APPLIC

On Probates or Letters of Administration with annexed,

Or double or cessate probates or letters of administratio annexed, de bonis non or cessate, upon which stamp dut in respect of the personal estate of the testator.

Effects sworn under	Preparing Oath of Executors.	Preparing Affidavit for the Inland Revenue Office.	Probate under Seal.
£	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 1 0
20	0 2 6	0 2 6	0 1 0
100	0 5 0	0 5 0	0 1 0
200	0 5 0	0 5 0	0 2 0
300	0 5 0	0 5 0	0 5 0
450	0 5 0	0 5 0	0 8 0
600	0 5 0	0 5 0	0 11 0
800	0 5 0	0 5 0	0 15 0
1,000	0 5 0	0 5 0	1 2 0
1,500	0 5 0	0 5 0	1 10 0
2,000	0 5 0	0 5 0	2 0 0
3,000	0 5 0	0 5 0	2 10 0
4,000	0 5 0	0 5 0	3 0 0
5,000	0 5 0	0 5 0	3 2 6
6,000	0 5 0	0 5 0	3 5 0
7,000	0 5 0	0 5 0	3 7 6
8,000	0 5 0	0 5 0	3 10 0
9,000	0 5 0	0 5 0	3 12 6
10,000	0 5 0	0 5 0	3 15 0
12,000	0 5 0	0 5 0	3 17 6
14,000	0 5 0	0 5 0	4 0 0
16,000	0 5 0	0 5 0	4 3 9
18,000	0 5 0	0 5 0	4 7 6
20,000	0 5 0	0 5 0	4 11 3
25,000	0 5 0	0 5 0	4 16 3
30,000	0 5 0	0 5 0	5 2 6
35,000	0 5 0	0 5 0	5 8 9
40,000	0 5 0	0 5 0	5 18 3
45,000	0 5 0	0 5 0	6 7 6
50,000	0 5 0	0 5 0	6 17 0

Non-contentious Business.

Fees of Probate—*continued.*

Effects sworn under	Preparing Oath of Executors.	Preparing Affidavit for the Inland Revenue Office.	Probate under Seal.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
60,000	0 5 0	0 5 0	7 6 3	0 7 6
70,000	0 5 0	0 5 0	8 5 0	0 7 6
80,000	0 5 0	0 5 0	9 3 9	1 1 0
90,000	0 5 0	0 5 0	10 2 6	1 1 0
100,000	0 5 0	0 5 0	11 1 3	1 1 0
120,000	0 5 0	0 5 0	11 10 9	1 1 0
140,000	0 5 0	0 5 0	12 9 6	1 1 0
160,000	0 5 0	0 5 0	13 8 3	1 1 0
180,000	0 5 0	0 5 0	14 7 0	1 1 0
200,000	0 5 0	0 5 0	15 5 9	1 1 0
250,000	0 5 0	0 5 0	16 4 6	1 1 0
300,000	0 5 0	0 5 0	18 11 3	1 1 0
350,000	0 5 0	0 5 0	20 18 3	1 1 0
400,000	0 5 0	0 5 0	21 13 9	1 1 0
500,000	0 5 0	0 5 0	22 9 6	1 1 0

For every additional £100,000, or any fractional part of £100,000, under which the effects are sworn, in addition to the above fees, £1 11*s.* 3*d.*

In addition to the above, for all second and subsequent grants, the same fees for looking up and taking an account of each former representation as on similar grants on which no stamp duty is payable.

	£	s.	d
For engrossing and collating the will, if three folios of ninety-words or under, including parchment	0	4	6
If exceeding three folios, per folio	0	1	6
For engrossing and collating a will or codicil for a grant of probate or letters of administration with the will annexed, when there are pencil-marks in the will or codicil, or when the will or codicil is to be registered fac-simile, in addition to any other fee for engrossing and collating the same:—			
If the pencil-marks in the will or codicil, or the part or parts thereof to be registered fac-simile, are two folios of ninety words in length or under	0	1	0
If exceeding two folios, for every additional folio or part of the folio of ninety words	0	0	6

Fees on Letters of Administration with Will annexed.

In addition to the above Fees:— For preparing the Bond—if the effects are—	£	s.	d.
Under £20	0	1	6
£20 and under £100	0	3	6
£100 and upwards	0	5	0

Non-contentious Business.

On Letters of Administration granted to a Widow Intestate or to his Children.

When the personal estate is sworn—

Not to exceed in value £20	. . . . .
30	. . . . .
40	. . . . .
50	. . . . .
60	. . . . .
70	. . . . .
80	. . . . .
90	. . . . .
100	. . . . .

The above include all fees payable in respect of such gra paring oath of administrator and bond, preparing affidavit fo revenue, for letters of administrator under seal, for cler administering oath or affirmation to the administrato execution of bond and instructions for and drawing and instrument of renunciation to be executed by the widow if

[*This scale is obsolete: see amended table*, p. 910.]

On other Grants of Letters of Administration, in Letters of Administration de Bonis non or Cess

Upon which Stamp Duty is payable in respect of the person the intestate.

Effects sworn not to exceed	Preparing Oath of Administrator and Bond.	Preparing Affidavit for the Inland Revenue.	Letters of Administration under Seal.
£	£ s. d.	£ s. d.	£ s. d.
5	0 4 0	0 2 6	0 1 0
20	0 4 0	0 2 6	0 1 0
50	0 7 6	0 3 0	0 1 0
100	0 8 6	0 5 0	0 1 0
Effects sworn under			
200	0 10 0	0 5 0	0 3 0
300	0 10 0	0 5 0	0 8 0
450	0 10 0	0 5 0	0 11 0
600	0 10 0	0 5 0	0 15 0
800	0 10 0	0 5 0	1 2 0
1,000	0 10 0	0 5 0	1 10 0
1,500	0 10 0	0 5 0	2 5 0
2,000	0 10 0	0 5 0	3 0 0
3,000	0 10 0	0 5 0	3 1 9
4,000	0 10 0	0 5 0	3 3 9
5,000	0 10 0	0 5 0	3 7 6

Grants of Letters of Administration—*continued.*

Non-contentious Business.

Effects sworn under	Preparing Oath of Administrator and Bond.	Preparing Affidavit for the Inland Revenue.	Letters of Administration under Seal.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
6,000	0 10 0	0 5 0	3 11 3	0 7 6
7,000	0 10 0	0 5 0	3 15 0	0 7 6
8,000	0 10 0	0 5 0	3 18 9	0 7 6
9,000	0 10 0	0 5 0	4 2 6	0 7 6
10,000	0 10 0	0 5 0	4 6 3	0 7 6
12,000	0 10 0	0 5 0	4 10 0	0 7 6
14,000	0 10 0	0 5 0	4 13 9	0 7 6
16,000	0 10 0	0 5 0	4 19 6	0 7 6
18,000	0 10 0	0 5 0	5 5 0	0 7 6
20,000	0 10 0	0 5 0	5 10 9	0 7 6
25,000	0 10 0	0 5 0	5 18 3	0 7 6
30,000	0 10 0	0 5 0	6 7 6	0 7 6
35,000	0 10 0	0 5 0	6 17 0	0 7 6
40,000	0 10 0	0 5 0	7 10 9	0 7 6
45,000	0 10 0	0 5 0	8 5 0	0 7 6
50,000	0 10 0	0 5 0	8 18 9	0 7 6
60,000	0 10 0	0 5 0	9 13 3	0 7 6
70,000	0 10 0	0 5 0	11 1 3	0 7 6
80,000	0 10 0	0 5 0	12 9 6	1 1 0
90,000	0 10 0	0 5 0	13 17 6	1 1 0
100,000	0 10 0	0 5 0	15 5 9	1 1 0
120,000	0 10 0	0 5 0	15 19 9	1 1 0
140,000	0 10 0	0 5 0	17 8 0	1 1 0
160,000	0 10 0	0 5 0	18 16 3	1 1 0
180,000	0 10 0	0 5 0	20 4 0	1 1 0
200,000	0 10 0	0 5 0	21 12 6	1 1 0
250,000	0 10 0	0 5 0	23 0 3	1 1 0
300,000	0 10 0	0 5 0	24 3 9	1 1 0
350,000	0 10 0	0 5 0	25 7 3	1 1 0
400,000	0 10 0	0 5 0	26 10 6	1 1 0
500,000	0 10 0	0 5 0	27 14 0	1 1 0
600,000	0 10 0	0 5 0	30 10 0	1 1 0
700,000	0 10 0	0 5 0	32 7 9	1 1 0
800,000	0 10 0	0 5 0	34 13 9	1 1 0
900,000	0 10 0	0 5 0	37 1 6	1 1 0
1,000,000	0 10 0	0 5 0	39 8 6	1 1 0

For every additional £100,000, or any fractional part of £100,000 under which the effects are sworn, in addition to the above fees, £2 7*s.*

In addition to the above, for all second and subsequent grants, the same fees for looking up and taking an account of each former representation as on similar grants on which no stamp duty is payable.

Non-contentious Business.

On Double or Cessate Probates on which no Stamp Payable.

If the effects are sworn under	Looking up and taking an account of each former Grant.	Oath of the Executor.	Affidavit for Inland Revenue Office.	Double or Cessate Probate under seal.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 2 6	0 1 0
20	0 2 6	0 2 6	0 2 6	0 1 0
100	0 5 0	0 5 0	0 5 0	0 1 0
200	0 5 0	0 6 6	0 5 0	0 3 0
300	0 5 0	0 6 6	0 5 0	0 7 6
450	0 5 0	0 6 6	0 5 0	0 12 0
600	0 5 0	0 6 6	0 5 0	0 12 6
800	0 5 0	0 6 6	0 5 0	0 12 6
1,000	0 5 0	0 6 6	0 5 0	0 12 6
1,500	0 5 0	0 6 6	0 5 0	0 12 6
2,000	0 5 0	0 6 6	0 5 0	0 12 6
3,000	0 5 0	0 6 6	0 5 0	0 12 6
4,000	0 5 0	0 6 6	0 5 0	0 12 6
5,000	0 5 0	0 6 6	0 5 0	0 12 6
Above 5,000	The fees to be taken are the same as above, fee for clerks, which, if the effects are of of £70,000 or upwards, is £1 1s.			

On Exemplification of Probate or Letters of Admin with or without Will annexed.

Looking up the grant of probate and original will, or grant o administration . . . . . .
Exemplification under seal, in addition to the £3 stamp.
Clerks . . . . . .

On Duplicate and Triplicate Probates, or Letters of tration, with or without Will annexed, etc.

Looking up the will . . . . . .
Duplicate or triplicate probate or letters of administration, with or without the will annexed, or probate of codicil to will already proved, or letters of administration (with same annexed), if the personal estate is sworn under £450, or any smaller sum, the same fees as on the original grant.
If the personal estate is of the value of £450 and upwards .
Clerks . . . . . .

Non-contentious Business.

On Letters of Administration, with or without Will annexed, de Bonis non or Cessate, on which no Stamp Duty is payable.

If the Effects are sworn under	Looking up and taking an Account of each former Grant.	Oath of the Administrator and Bond.	Affidavit for Inland Revenue Office.	De Bonis or Cessate Administration under Seal and Duty-paid Stamp.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 2 6	0 2 6	0 2 6	0 1 0	—
20	0 2 6	0 4 0	0 2 6	0 1 0	0 1 0
50	0 3 6	0 6 0	0 3 0	0 1 6	0 2 0
100	0 5 0	0 7 6	0 5 0	0 3 0	0 2 0
200	0 5 0	0 10 0	0 5 0	0 4 6	0 2 0
300	0 5 0	0 10 0	0 5 0	0 12 0	0 2 0
450	0 5 0	0 10 0	0 5 0	0 12 6	0 2 0
600	0 5 0	0 10 0	0 5 0	0 12 6	0 2 0

If the effects are £600 and upwards, the same fees as above, except the fee for clerks, which is 5*s*.

Instructions, Drawing, Copying, etc.

	£ s. d.
Instructions for every oath, affidavit, instrument or document, other than the oaths and affidavits and instruments of remuneration included in the foregoing fees	0 5 0
Drawing same, at per folio of 72 words	0 1 0
Copies of any documents prepared in the department for personal applications, not included in the foregoing fees, at per folio of 72 words	0 0 6
Instructions for special or limited probates, or letters of administration (*with or without will annexed*) . . .	0 5 0
Attendances on settling oaths for special or limited grants .	0 10 0
All other fees to be taken the same as for ordinary grants.	

Perusing, etc.

Perusing and settling oaths, affidavits, and other instruments and documents not drawn in the department for personal applications, if six folios of 72 words or under . . .	0 1 6
If exceeding six folios, at per folio of 72 words . . .	0 0 3
Perusing and abstracting deeds, or other instruments when necessary, at per folio of 72 words	0 0 3

Oaths, etc.

Administering oaths, or taking affirmations, other than those included in the foregoing fees, each deponent . . .	0 1 0	Fee for oath altered to 1*s*. 6*d*. in 1877.
Marking each exhibit	0 1 0	

Non-contentious Business.

Bonds.

	£	s
Attesting execution of bond, other than the bond of a widow or children of an intestate included in former fees . . .	0	1
If not completed on one occasion, for each subsequent attestation	0	1
On giving additional security, in addition to the above fees and the fees for preparing new bond:—		
For looking up original or any former bond . . .	0	5

TABLE OF FEES

To be taken in the Principal Registry and District Registries of the Court of Probate, and by the Registrars of County Courts, in pursuance of the Act 36 *&* 37 *Vict. c.* 52.

Letters of administration of the personal estate of an intestate granted to his widow or one or more of his children, under the authority of the Act 36 & 37 Vict. c. 52, when the whole of such personal estate is sworn :—

	£	*s.*	*d.*
Not to exceed in value £20	0	5	0
30	0	6	0
40	0	7	0
50	0	8	0
60	0	9	0
70	0	10	0
80	0	11	0
90	0	12	0
100	0	13	0

The moiety of the above fees to be paid to or retained by the Acting County Court Registrar, and the remaining moiety to be deposited in or remitted to the Principal or District Registries of the Court in the form of fee stamps.

(Signed) JAMES HANNEN.

Dated this 8th day of August 1873.

Approved by the Commissioners of Her Majesty's Treasury, 13th August 1873.

[For the rule issued with this Table of Fees, see p. 817.]

Non-contentious Business.

AMENDED TABLE OF FEES

To be taken in the Principal Registry of the Court of Pro
on and after the 26th day of July, 1875,

IN NON-CONTENTIOUS BUSINESS.

On letters of administration granted to a widow of an intestate, o
one or more of his children, or to one or more of the children o
intestate widow, on personal application at the principal registry, o
than letters of administration granted in pursuance of the provisio
the Act of 36 & 37 Vict. c. 52, as extended by the Act of 38 & 39 V
c. 27, in lieu of all fees heretofore authorised to be taken when
personal estate is sworn—

	£.	s.	d.
Not to exceed in value £20	0	5	0
30	0	6	0
40	0	7	0
50	0	8	0
60	0	9	0
70	0	10	0
80	0	11	0
90	0	12	0
100	0	13	0

The above include the fees payable for taking instructions for,
drawing and copying an instrument of renunciation to be executed
the widow of an intestate if required, and all other fees payable
respect of such grants.

ORDER AS TO SUPREME COURT FEES.

I, the Right Honourable Farrer, Baron Herschell, Lord High Chancellor of Great Britain, by and with the consent of the undersigned judges of the Supreme Court and with the concurrence of the Lords Commissioners of her Majesty's Treasury, do hereby, in pursuance and execution of the powers given to me by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling me in this behalf, order and direct in manner following :—

(1.) The fees hereunder written are fixed and appointed to be taken in the principal probate registry in respect of applications under the Colonial Probates Act, 1892, in addition to any fees payable under the existing table of fees in non-contentious business.

For affixing the seal of the court to any grant of probate or letters of administration, with or without will annexed, or copy thereof, in order to its becoming in force for property in England, such fee as would be payable in respect of a grant originally made in England for property equal in amount to the property in England which is to be affected by the probate or other instrument to which the seal of the court is to be affixed.

For the registrar's fiat . . . . . 5*s.* 0*d.*

If the application to seal under the above-mentioned Act be made through the personal application department, the ...al fees payable when a grant is extracted through ...partment, inclusive of the *ad valorem* fee for probate ...ers of administration under seal, are to be taken.

(2.) The existing fee for affixing the seal of the court to an Irish grant is hereby amended as follows :—

On and after the 1st of February, 1893, for affixing the seal of the court to any grant of probate or letters of administration, with or without will annexed, or to any exemplification of probate or letters of administration with or without will annexed, under seal of the Court of Probate in Ireland

Non-contentious Business.

in order to its becoming in force for property in England, such fee as would be payable in respect of a grant original made in England for property equal in amount to t property in England which is to be affected by the proba or other instrument to which the seal of the court is to affixed, except as under :—

When the property in England amounts to or exceeds £300 in value, and is shown to have been included in the property in respect of which a fee was paid in Ireland	12*s.* 6

HERSCHELL, C.
COLERIDGE, C.J.
F. H. JEUNE, P.
J. GORELL BARNES, J.

12th December, 1892.

We certify that this order is made with concurrence of t Commissioners of her Majesty's Treasury.

THOMAS E. ELLIS.
W. A. MCARTHUR.

Summary of Fees payable on Resealing Irish, Scotch, and Colonial Grants.

IRISH PROBATE.

	£	*s.*
Receipt	0	1
Collating copy probate (*a*)		—
Search (*b*)		—
Fiat	0	5
Sealing free effects in England, £ (see p. 911)		—
Filing Copy probate	0	2
Filing Inland Revenue certificate as to duty	0	2

IRISH ADMINISTRATION.*

Receipt	0	1
Collating copy administration* (*a*)		—
Search (*b*)		—
Fiat	0	5
Sealing fee effects in England, £ (see p. 911)		—
Filing copy administration*	0	2
Filing Inland Revenue certificate as to duty	0	2
Filing certificate as to bond	0	2

* (*With will*) *when applicable.*

(*a*) If 10 folios of 90 words each, 2*s.* 6*d.*; if above 10 folios, p folio, 3*d.*

(*b*) For every full year or part of a year which has elapsed since t death, 6*d.*

Non-contentious Business.

SCOTCH CONFIRMATION.

	£	s.	d.
Receipt	0	1	0
Collating copy confirmation (see note (*a*) preceding page)		—	
Search (see note (*b*) preceding page)		—	
Sealing fee	1	1	0
Filing copy confirmation	0	2	6

COLONIAL GRANT.

	£	s.	d.
Receipt	0	1	0
Collating copy grant (see note (*a*) preceding page)		—	
Search (see note (*b*) preceding page)		—	
Registrar's fiat and certificate	0	7	6
Sealing fee effects in England, £ (see p. 911)		—	
Filing copy grant	0	2	6
Filing power of attorney (if any)	0	2	6
Filing certificate of delay (if any)	0	2	6

[NOTE.—Where an application to reseal a grant is made under s. 33, Customs and Inland Revenue Act, 1881, or s. 16, Finance Act, 1894, a fee of 2*s.* 6*d.* only is payable.]

THE HIGH COURT OF JUSTICE (IRELAND).

PROBATE AND MATRIMONIAL DIVISION.

Fees in respect of Resealing in Ireland English Probates or Letters of Administration with Will annexed.

Grant—	£	s.	d.
Effects in Ireland sworn under £20	0	1	0
" " " £100	0	10	0
" " at or over £100	0	12	6
Search—			
For every full year or part of a year (except the current one) which has elapsed since the deceased's death	0	0	6
Filing notice of application	0	2	6
Receipt for grant	0	1	0
Registrar's fiat	0	5	0
Filing copy will and grant	0	2	6
Comparing copy with original grant—			
If 10 folios of 90 words each or under	0	2	6
If above 10 folios of 90 words each, per folio	0	0	3
Stamp office certificate	0	2	6
Certificate of bond (if any)	0	2	6

Non-contentious Business.

Fees in respect of Resealing in Ireland English Letters Administration.

	£
Grants—	
Effects in Ireland sworn under £20	0
,, ,, ,, £50	0
,, ,, ,, £100	0
,, ,, at or over £100	0
Search—	
For every full year or part of a year (except the current one) which has elapsed since the deceased's death	0
Filing notice of application	0
Receipt for grant	0
Registrar's fiat	0
Filing copy grant	0
Comparing copy with original grant—	
If 10 folios of 90 words each or under	0
If above 10 folios of 90 words each, per folio	0
Stamp office certificate	0
Certificate of bond	0

GRANTS.

h Letters of

	£	s.	d.
. .	0	1	0
. .	0	5	0
. .	0	10	0
. .	0	12	6
current			
th .	0	0	6
. .	0	2	6
. .	0	1	0
. .	0	5	0
. .	0	2	6
. .	0	2	6
. .	0	0	3
. .	0	2	6
. .	0	2	6

APPENDIX III.

DIRECTIONS

For describing Testators or Intestates and Parties applying for Probate and Administration.

As a general rule the signature of a testator is to be adopted as his name, although it differ from the name written in the heading of the will.

In case of a variation between the name of the testator in the heading of the will, and the name signed at the foot or end of it, if the former is the more correct of the two, the testator should be described by the name signed, the word "otherwise" followed by the name given to him in the will being added (*a*).

If the testator's name is wrongly spelt in the will, and the will is signed by his initials or by a mark, he should be described by his correct name, the word "otherwise" followed by the name written in the will being added.

If the testator is described in the will as the "elder," but has not so subscribed, such description is not to be inserted.

If the testator is described in the will as the "younger," but does not so subscribe, he should, notwithstanding, be described as the "younger," or "*heretofore* the younger," as the case may be.

The testator's place of residence, stated in the will or codicil, must form part of his description, and any previous or subsequent residence may be added, provided that not more than three places of residence be inserted.

When there is one executor or executrix only named in the will, he or she should be described as the "sole executor" or the "sole executrix."

When there are more executors than one, if they are all females, they are to be described as "the executrixes." If

(*a*) Though, no doubt, the directions in this and the following paragraph were formerly carried out, the more recent practice has been to avoid, if possible, unnecessary aliases, and to describe the deceased by the name only which originally belonged to, or was adopted by him in his lifetime.

they are all males, or partly males and partly females, th
to be described as "the executors."

If the name of an executor or executrix is misspelt
will, the words "in the will written" should be added
or her correct name, and if the two names be identi
sound, no proof of identity is required.

If an executor be wrongly described in the will as
elder," or "the younger," or by a wrong christian nam
affidavit is required in proof of the identity of the
intended, whether he be the executor applying for the
or an executor to whom power is to be reserved.

Whenever it appears by the will that an executor or
trix is related to the testator as father, mother, grandf
grandmother, son, daughter, grandson, granddaughter, br
sister, uncle, aunt, great uncle, great aunt, nephew,
great nephew, great niece, he or she is to be so described.

Occasionally even greater particularity is used. If a te
describe an executor as "his nephew A., son of his b
B.," that executor must designate himself such in the oat

Persons applying for administration are to be descri
the oath as follows:—

A husband	as "the lawful husband."
A wife . .	"the lawful widow and relict."
A father .	"the natural and lawful father and of-kin."
A mother .	"the natural and lawful mother an next-of-kin."
A child . .	"the natural and lawful child, and next-of-kin," *or* "the natural lawful child, and one of the next-of
A brother .	"the natural and lawful brother."
A sister . .	"the natural and lawful sister."
	If there be no parents living brother or sister is further described as "one of the next-of or the "only next-of-kin."
An uncle .	"the lawful uncle," } and "one of
An aunt . .	"the lawful aunt." } or "only of-kin."
A nephew (*b*)	"the lawful nephew," } and "one of
A niece (*b*) .	"the lawful niece." } or "only ne kin."

(*b*) If an intestate leave a brother or sister who are cleared off
nephew or niece applies for the grant, he or she should be descri
as "next-of-kin," but as the natural and lawful child of A.
natural and lawful brother [*or* sister] of the intestate who died
lifetime, and as such one of the persons entitled in distribution
personal estate.

A grandparent, grandchild, cousin, etc., is to be described as "lawful" and "one of the next-of-kin," or "only next-of-kin."
An heir-at-law "the heir-at-law."

This particularity of description is not used in all cases, though the grantee be as near in kindred as any of those before designated; *e.g.*, an executor being the testator's great grandfather is not required to be so described in the oath. Persons further removed in relationship than those just mentioned, *e.g.*, cousins of any degree, are also not to be so described. Exceptions.

A FEW FURTHER MEMORANDA.

The practitioner must be careful to insert the *true place of residence* (even if only temporary) of every deponent to the "oath" or affidavits. A *club* will not suffice, unless it be the actual residence.

Where there is more than one codicil, mention the number in the "oath."

If the executor (or rather, the person claiming to be the *persona designata*) be described by a wrong christian name in the will, a strong affidavit will be required, deposing to facts which warrant the recognition of the person claiming to be executor.

When power is reserved to an executor, and in all cases of temporary or other grants which may cease, a copy of the account of the estate annexed to the Inland Revenue affidavit must be brought in. No filing fee. This copy is not required in cases where an inventory or declaration of the estate is filed.

In cases of special and limited grants, and of grants *de bonis non*, applied for at the principal registry, the practitioner can submit the oath in draft to the clerk of the seat in order to its being "settled," a 2*s.* 6*d.* fee (stamp) or more, according to length, being charged.

APPENDIX IV.

STAMP DUTIES payable on obtaining Grants of Pr
Administration and Forms of Inland Revenue Affid

SUMMARY.

DEATH OF DECEASED AFTER AUG. 1ST, 1894.
ESTATE DUTY—
Upon what Property leviable.
Exceptions.
Aggregation.
Settlement Estate Duty.
Accountable Persons.
Principal Value.
Interests in Expectancy.
When Duty is due.
Deduction of Duty.
Rates of Duty.
Exemption from other Duties.
Forms of Inland Revenue Affidavits, etc.
How paid.

DEATH OF DECEASED AUG. 2ND, 1894.
PROBATE DUTY—
Rate of Duty under and Inland Reve 1881.
Rate of Duty under and Inland Reve 1889.
Small Estates.
Forms of Inland Affidavits.
STATUTES AS TO STAMI PRIOR TO 1881.

THE following instructions, numbered 1 to 83, are i
the Commissioners of Inland Revenue, and are reprin
by the kind permission of the Secretary of the Esta
Office.

[For use where the Deceased died *at any time* AFTER the 1s
1894.]

Form A—2.
[Instructions.]

ESTATE DUTY.

(Finance Acts, 1894 to 1900.)

Inland Revenue.

INSTRUCTIONS as to ESTATE DUTY in respect of passing on the Deaths of Persons dying after the 1st Aug Finance Acts, 1894, 1896, 1898, *and* 1900, *and Revenue* (57 & 58 *Vict. c.* 30; 59 & 60 *Vict. c.* 28; 61 & 62 *Vict. Vict. c.* 7; *and* 3 *Edw. VII, c.* 46.)

OBSERVE.—The references in these instructions are to the Fi 1894, unless it is otherwise stated.

PROPERTY UPON WHICH ESTATE DUTY IS LEVIABLE.

1. ESTATE DUTY, except as expressly provided, is leviable upon the principal value of all property, real or personal, settled or not settled, which passes on the death of a person who dies after the 1st August, 1894. [See ss. 1 and 24.] CHARGE OF DUTY.

2. Property so passing includes (*inter alia*) the following [see s. 2] :— PROPERTY LIABLE.

3. Property of which the deceased was *competent to dispose* [see s. 22 (2) (a)] at his death, whether he actually disposed of it by his will or not. Competent to dispose.

4. Donations *mortis causâ*. Donations.

5. *Inter vivos* gifts of property made by the deceased within a year of his death without reservation. Gifts.

6. *Inter vivos* gifts made by the deceased at any time, whereof *bonâ fide* possession was not immediately taken and thenceforth retained to the entire exclusion of the deceased, but a benefit, either charged upon the property or not, was reserved or secured to the deceased by contract or otherwise, or a power or authority was reserved to the deceased to restore to himself or to reclaim the absolute interest in such property or in some part of it. Gifts with reservation.

7. Property which the deceased, having been absolutely entitled thereto, either by himself alone or by arrangement with some other person, caused to be transferred to or vested in himself and some other person jointly, either by disposition, purchase, investment, or otherwise, so that the beneficial interest in such property, or in some part thereof, passed or accrued by survivorship on his death to such other person. Joint investments.

8. The deceased's severable share of property of which he was joint tenant or joint owner with another or with others. Joint ownerships.

9. (1.) Property which the deceased had an enjoyment of or interest in for life, or for some period determinable by reference to death under an express or an implied trust in a settlement made by the deceased by instrument *inter vivos*, or under an express or implied trust, created by the deceased in writing or otherwise. Life interests.

(2.) Where the deceased died after the 31st March, 1900, and he or any other person had an interest in property limited to cease on the deceased's death, and that interest was disposed of, whether for value or not, to or for the benefit of any person entitled to an interest in remainder or reversion in such property, then the property is nevertheless to be deemed to pass on the deceased's death, unless the disposition was *bonâ fide* made twelve months before the deceased's death, and *bonâ fide* possession and enjoyment was immediately assumed thereunder, and thenceforward retained to the entire exclusion of the person who had the interest so limited to cease, and of any benefit to him by contract or otherwise. [See Finance Act, 1900, s. 11 (1).]

10. Policies which the deceased effected on his life, and kept up wholly or partially for the benefit of a donee, whether nominee or assignee. Policies.

11. Annuities (other than [see s. 15 (1)] a single annuity not exceeding £25, or the first granted of two or more such annuities), or other interests, which the deceased, either by himself alone, or in concert or by arrangement with some other person, purchased or provided so that a benefit arose or accrued by survivorship or otherwise, on the death of the deceased. Annuities.

12. Property not comprised in any of the foregoing classes in which the deceased or some other person had an interest which ceased on the death of the deceased, to the extent to which a benefit accrued or arose by the cesser of such interest, but exclusive of property the interest in which, of the deceased or other person, was only an interest as holder of an office or recipient of the benefits of a charity, or as a corporation sole. Other property.

Definition of "Property."

13. The expression "property" includes real property and property, and the proceeds of sale thereof respectively, and a or investment for the time being representing the proceed [See s. 22 (1) (f).]

14. Property passing on the death includes property pass immediately on the death, or after any interval, or at a period able only by reference to death, either certainly or contlng either originally or by way of substitutive limitation. [See s.

Competent to dispose.

15. A person is deemed *competent to dispose* of property if he an estate or interest therein, or such general power as would, *sui juris*, enable him to dispose of the property, including a tall, whether in possession or not; and the expression "gener inclu[illegible] every power or authority enabling the donee or oth thereof to appoint or dispose of property as he thinks fit exercisable by instrument, *inter vivos*, or by will, or both, but of any power exerciseable in a fiduciary capacity under a d not made by himself, or exerciseable as tenant for life under t Land Act, 1882, or as a mortgagee. [See s. 22 (2) (a).]

16. Money which a person has a general power to charge or is deemed to be property of which he has power to dispose. (2) (c).]

Foreign property.

17. Immovable property situate out of the United Kingd chargeable with Estate Duty. [See s. 2 (2).]

18. Moveable property situate out of the United Kingdo chargeable with Estate Duty where the deceased was the o was domiciled *out* of the United Kingdom at the time of his d is chargeable where the deceased was the owner and was dom the United Kingdom at the time of his death. It is also, generally, chargeable where the deceased was only interested and at his death the property formed the subject of a Britisl was vested in a British trustee. [See s. 2 (2).]

EXCEPTIONS.

Trust property.

19. Estate Duty is not payable on property held by the de trustee for another person under a disposition not made by the or under a disposition made by the deceased more than 1 before his death, where possession and enjoyment of the pro *bonâ fide* assumed by the beneficiary immediately upon the e the trust, and thenceforward retained to the entire exclusi deceased, or of any benefit to him by contract or otherwi s. 2 (3).]

Purchase.

20. Estate Duty is not payable on property passing on the the deceased by reason only of a *bonâ fide* purchase from th under whose disposition the property passes, or the falling int sion of the reversion on any lease for lives, or the determina annuity for lives, where such purchase was made, or suc annuity granted, for full consideration in money or money's to the vendor or grantor for his own use or benefit, or in th lease for the use or benefit of any person for whom the gra trustee. [See s. 3 (1).] When any such purchase was made, annuity granted, for partial consideration in money or m paid to the vendor or grantor for his own use or benefit, or in of a lease for the use or benefit of any person for whom the gra a trustee, the value of the consideration is allowed as a dedu the value of the property. [See s. 3 (2).]

Seamen, etc.

21.—(1.) Estate Duty is not payable on the property of seamen, marines, or soldiers who are slain or die in His Majesty [See s. 8 (1).]

(2.) Where the deceased died since the 11th October, 1899, from wounds inflicted, accident occurring, or disease contracted, within twelve months before death, while on active service against an enemy, whether on sea or land, and was, when the wounds were inflicted, the accident occurred, or the disease was contracted, either subject to the Naval Discipline Act or subject to Military law, whether as an officer, non-commissioned officer, or soldier, under part V. of the Army Act, the Treasury may, if they think fit, on the recommendation of the Secretary for War or of the Admiralty, as the case requires, remit, or in the case of duty already paid, repay, up to an amount not exceeding £150 in any one case, the whole or any part of the Estate or other Death duties leviable in respect of property passing upon the death of the deceased *to his widow or lineal descendants*, if the total value for the purpose of Estate Duty of the property so passing does not exceed £5000. [See Finance Act, 1900, s. 14.]

Any application for the remission of duty must in the first instance be made to the War Office or the Admiralty, as the case requires.

Indian pensions.

22. Estate Duty is not payable in any pension or annuity payable by the Government of British India to the widow or child of any deceased officer of such Government, notwithstanding that the deceased contributed during his lifetime to the fund from which such pension or annuity is paid. [See s. 15 (3).]

Where probate or account duty paid.

23. Estate Duty is not payable where the deceased's death in respect of personal property settled by a will or on intestacy of any person dying before the 28th August, 1894, has been the subject of an Inventory and Account Duty which has been paid, or is payable, unless in either case the deceased had the time of his death, or at some time since exercised, a power of disposition over such property which he has been competent to dispose of the property. [See s. 21 (1).]

Church patronage.

24. Estate Duty is not payable upon any advowson or Church patronage settled as such unless the same is sold. [See s. 15 (4).]

Enlargement of interest.

25. Estate Duty is not payable where a settlor, who is tenant for life, acquires by the death, after the 1st July, 1896, in his own lifetime, of a subsequent limited owner under the settlement, the immediate reversion or an absolute power to dispose of the whole property. [See Finance Act, 1896, s. 15 (1).]

26. Estate Duty is not payable where property reverts to a settlor on the death, on or after the 1st July, 1896, of a limited owner under the settlement, and no other interest is created by the settlement, unless the limited owner had, prior to the disposition, been competent to dispose of the property. [See Finance Act, 1896, s. 15 (1), (2), and (3).]

Husband and wife.

27. Estate Duty is not payable where the deceased was entitled in right of his wife to the rents of her real estate, and by his death, on or after the 1st July, 1896, she becomes entitled to the property in virtue of her former interest. [See Finance Act, 1896, s. 15 (4).]

Gifts to nation, etc.

28. The Treasury may remit the duty on such pictures, prints, books, manuscripts, works of art, or scientific collections, as appear to them to be of national, scientific, or historic interest, and given for national purposes or to any University, or to any County Council or Municipal Corporation. [See s. 15 (2).]

Objects of national interest.

29. Objects of national, scientific, or historic interest, admitted by the Treasury to be such, passing on a death on or after the 1st July, 1896, and settled to be enjoyed in succession in kind only, are not to be charged with Estate Duty until they are actually sold, or are in the possession of some person competent to dispose of them. [See Finance Act, 1896, s. 20 (1).]

30. Where a husband or wife is entitled, either solely or jointly with

the other, to the income of any property settled by the other under
disposition which has taken effect before the 2nd August, 1894, and
his or her death the survivor becomes entitled to the *income* (as di
tinguished from the capital) of the property settled by such survive
the Estate Duty is not payable in respect of that property until th
death of the survivor. [See s. 21 (5).]

Estate duty not twice payable under same settlement.

31. If the Estate Duty has already been paid in respect of the settle
property since the date of the settlement, neither it nor the Settlemer
Estate Duty is again payable in respect thereof, unless the decease
was, at the time of his death, or had been at any time during th
continuance of the settlement, *competent to dispose* [see s. 22 (2) (a
thereof [see s. 5 (2)], and unless the deceased, if on his death subsequer
limitations under the settlement take effect in respect of such propert
was *sui juris* at the time of his death, or had been *sui juris* at any tim
while so competent to dispose of the property. [See Finance Act, 189
s. 13.]

Where interest falls before possession and settlement continues.

32. In the case of settled property where the interest of any perso
under the settlement fails or determines by reason of his death before
becomes an interest in possession, and subsequent limitations under th
settlement continue to subsist, the property is not deemed to pass o
his death. [See s. 5 (3).]

AGGREGATION.

AGGREGATION.

33.—(1) For determining the rate of Estate Duty to be paid in respe
of any property passing on the deceased's death, all property so passin
in respect of which Estate Duty is leviable, is to be aggregated so as
form one estate, and the duty is to be levied at the proper rate on th
principal value thereof. Provided that any property so passing
which the deceased never had an interest, or which, under a dispositio
not made by the deceased, passes immediately on the death of th
deceased to some person other than the wife or husband or a lineal ancesto
or descendant of the deceased, is not to be aggregated with any oth
property, but is to be an estate by itself, and the Estate Duty is to b
levied at the proper rate on the principal value thereof, but if any benef
under such a disposition is reserved or given to the wife or husband o
a lineal ancestor or descendant of the deceased, such benefit is to b
aggregated with property of the deceased for the purpose of determinin
the rate of Estate Duty. [See s. 4.]

Estate by itself.

(2.) But where the deceased died on or after the 9th April, 1900, th
exclusion of property from aggregation under sect. 4. of the Finance Ac
1894, no longer has effect, except as regards property in which th
deceased never had an interest. [See Finance Act, 1900, s. 12 (1).]

(3.) *Settled* property, however, where the disponer died on or befor
the 1st August, 1894, and such property, if he had died after that dat
would have been chargeable with Estate Duty on *his* death, is only t
be aggregated on a death on or after the 9th April, 1900, to a limite
extent. The rate of duty upon such settled property, treated as a
"estate by itself," or upon any other property aggregable therewith, b
force of sect. 4 of the Finance Act, 1894, as amended, is not to be enhance
by reason of such aggregation, more than one half per cent. [Se
Finance Act, 1900, s. 12 (2).] For a definition of "Settled Property,
see clause 37 (3) below. Property over which the deceased had, an
exercised, an absolute power of appointment, is considered to be liabl
to full, and not limited, aggregation.

(4.) Where an estate in expectancy in settled property has, before th
9th April, 1900, been *bonâ fide* sold or mortgaged for full consideratio
in money or money's worth, then no other duty on such property is t
be payable by the purchaser or mortgagee when the interest falls int

possession on a death on or after the 9th April, 1900, than would have been payable if the law as to aggregation had not been amended. [See Finance Act, 1900, s. 12 (1) (proviso).]

Small estate.

34. Where the net value of the property, real and personal, on which Estate Duty is payable on the death of the deceased, where the death occurs *at any time after* the 1st August, 1894, exclusive of property settled otherwise than by the will of the deceased, does not exceed £1000, such property is not to be aggregated with any other property, but is to form an estate by itself. [See s. 16 (3).]

Gifts to nation.

35. Gifts of pictures, prints, books, manuscripts, works of art and scientific collections, of national, scientific, or historic importance, given for national purposes, or to any University, or to any County Council or Municipal Corporation, the Estate Duty whereon has been remitted by the Treasury, are not to be aggregated with any other property. [See s. 15 (2).]

Objects of national interest.

36. Objects of national, scientific, or historic interest, admitted by the Treasury to be such, as passing on a death on or after the 1st July, 1896, and settled so as to be enjoyed in succession in kind only, are to form an "estate by itself." [See Finance Act, 1896, s. 20 (1).]

SETTLEMENT ESTATE DUTY.

SETTLEMENT ESTATE DUTY.

37.—(1.) Where property, in respect of which Estate Duty is leviable, is settled by the will of the deceased, or having been settled by some other disposition passes under that disposition on the death of the deceased to some person not *competent to dispose* [see s. 22 (2) (a)] of the property, a further Estate Duty called "Settlement Estate Duty" is leviable upon the principal value of the settled property, except where the only life interest in such property, after the deceased's death, is that of the husband or wife of the deceased [see s. 5 (1) (a)], or where the disposition took effect before the 2nd August, 1894 (see s. 21 (1), (4)], or, under the deceased's will, where the net value of the property in respect of which Estate Duty is leviable on the death of the deceased, exclusive of property settled otherwise than by the deceased's will, does not exceed £1000. [See s. 16 (3).]

(2.) Where on a death on or after the 1st July, 1898, Settlement Estate Duty is paid in respect of any property contingently settled, and it is thereafter shown that the contingency has not arisen, and cannot arise, the said duty paid in respect of such property is to be repaid. [See Finance Act, 1898, s. 14.]

(3.) "Settled Property" is property comprised in a "settlement" [see s. 22 (1) (h)], and a "settlement" is any instrument which is a settlement within the meaning of sect. 2 of the Settled Land Act, 1882, *or* if it related to real property would be a settlement within the meaning of that section, and includes a settlement effected by a parol trust. [See s. 22 (1) (i).]

38. Settlement Estate Duty leviable in respect of Personal Property settled by the deceased's will (unless the will contains an express provision to the contrary), is, *where the deceased died on or after the 1st July*, 1896, to be payable out of the settled property in exoneration of the rest of the deceased's estate. [See Finance Act, 1896, s. 19 (1).]

Crown entails.

39. Where lands or chattels are so settled by Act of Parliament or Royal grant that no one of the persons successively entitled can alienate the same, the Settlement Estate Duty is not payable. [See s. 5 (5).]

Deduction of stamp duty paid on settlement.

40. The *ad valorem* stamp duty (if any) charged on a settlement may be deducted from the Settlement Estate Duty payable thereunder [see s. 5 (4)], but the settlement must be produced in support of the deduction.

ACCOUNTABLE PERSONS.

ACCOUNTABLE PERSONS.

Executor.

41. The executor of the deceased is to pay the Estate Duty in re of all personal property, wheresoever situate, of which the deceased *competent to dispose* [see s. 22 (2) (a)] at his death, except [see Fin Act, 1896, s. 20 (2)] such objects of national, etc., interest as are wi clause 29 above, on delivering the Inland Revenue Affidavit, and pay in like manner the Estate Duty on any other property passin such death, which by virtue of any testamentary disposition of deceased is under the control of the executor, or in the case of prop not under his control, if the persons accountable for the duty the request him to make such payment. [See ss. 6 (2) and 8 (3).] Executor is not liable for any Estate Duty in excess of the assets w he has received as Executor, or might, but for his own neglec default, have received. [See s. 8 (3).] Settlement Estate D leviable in respect of Personal Property, settled by the deceased's is to be collected upon an account to be delivered by the Exec within six months after the death. [See Finance Act, 1896, s. 19 (2

Other persons accountable.

42. Where property passes on the death of the deceased, and executor is not accountable for the Estate Duty thereon, every perso whom any property so passes for any beneficial interest in possess and also, to the extent of the property actually received or dispose by him, every trustee, guardian, committee or other person in wh any interest in the property so passing or the management thereof i any time vested, and every person in whom the same is veste possession by alienation or other derivative title, is accountable for Estate Duty on the property. [See s. 8 (4).] Such objects of natio etc., interest as are within clause 29 above are to be accounted fo the person who sells them or becomes competent to dispose of th [See Finance Act, 1896, s. 20 (2).]

Purchaser without notice.

43. A *bonâ fide* purchaser for valuable consideration without notic not liable to or accountable for duty. [See s. 8 (18).]

An account to be delivered.

44. Estate Duty, so far as not paid by the Executor, is collected u an account setting forth the particulars of the property. It is to delivered to the Commissioners of Inland Revenue within six mon after the death by the person accountable for the duty [see s. 6 (except in the case of such objects of national, etc., interest as are s clause 29 above, the account whereof is to be delivered within month of a sale, or within six months of their coming into possess of some one competent to dispose of them. [See Finance Act, 18 s. 20 (2).]

PRINCIPAL VALUE.

PRINCIPAL VALUE.

45. The principal value of any property is the price which, in opinion of the Commissioners, such property would fetch if sold in open market at the time of the deceased's death. [See s. 7 (5).] P vided that in the case of any agricultural property, where no part of principal value is due to the expectation of an increased income fr such property, the principal value shall not exceed twenty-five times annual value, as assessed under Schedule A of the Income Tax A after making such deductions as have not been allowed in that asse ment, and are allowed under the Succession Duty Act, 1853, and mak a deduction for expenses of management not exceeding five per cent the annual value so assessed. [See s. 7 (5).]

Agricultural property.

46. The expression, "agricultural property," means agricultural la pastures, and woodland, and also includes such cottages, farm buildin farm houses, and mansion houses (together with the lands occup

therewith) as are of a character appropriate to the property. [See s. 22 (1) (g).]

47. The value of the benefit accruing or arising on the death of a deceased person from the cesser of an interest in any property is the principal value of the property where the interest extended to the whole income of the property, but where it extended to less than the whole income it is the principal value of an addition to the property equal to the income to which the interest extended. [See s. 7 (7).] Cesser of an interest.

48. Where lands or chattels are so settled by Act of Parliament or Royal grant that no one of the persons successively entitled can alienate the same, the property passing on the death of any person in possession thereof is the interest of his successor, and the value is the life interest value as for Succession Duty. [See s. 5 (5), and the Succession Duty Act, 1853 (16 & 17 Vict. c. 51), s. 21.] Crown entails.

49. Where the Commissioners are satisfied that any additional expense in administering or in realising foreign property has been incurred by reason of the property being situate out of the United Kingdom, an allowance for such expense not exceeding 5 per cent. on the value of the property is made. [See s. 7 (3).] Administration expenses of property out of the United Kingdom.

50. Where the Commissioners are satisfied that by reason of the deceased's death any duty in respect of foreign property is payable in the country where the property is situate, an allowance of the amount of the duty is made from the value of the property. [See s. 7 (4).] Foreign duty.

51. Every estate is to include all income upon the property included therein down to and outstanding at the date of the deceased's death. [See s. 6 (5).] Income and interest.

52. Allowance against the gross principal value of an estate is made for reasonable funeral expenses and for debts and incumbrances (including mortgages or terminable charges [see s. 22 (1) (k)]) incurred or created by the deceased *bonâ fide* for full consideration in money or money's worth wholly for his own use and benefit, and which take effect out of his interest. [See s. 7 (1) (a).] Funeral expenses and debts.

53. No allowance can be made for any debt in respect whereof there is a right to re-imbursement from any other estate or person unless such re-imbursement cannot be obtained. [See s. 7 (1) (b).] Debts in respect whereof re-imbursement claimable.

54. An allowance is not made in the first instance for debts due from the deceased to persons resident out of the United Kingdom, unless contracted to be paid in the United Kingdom or charged on property situate within the United Kingdom, except out of the value of any personal property of the deceased situate out of the United Kingdom on which Estate Duty is paid. No repayment of Estate Duty is made in respect of any such debts except to the extent to which the personal property of the deceased situate out of the United Kingdom is shown to be insufficient for their payment. [See s. 7 (2).] Foreign debts.

INTERESTS IN EXPECTANCY.

55. Where an estate includes an interest in expectancy (and this expression covers an estate in remainder or reversion, and every other future interest, whether vested or contingent, but does not include reversions expectant upon the determination of leases [see s. 22 (1) (j)]) Estate Duty in respect of that interest is to be paid, at the option of the person accountable for the duty, either with the duty on the rest of the estate or when the interest falls into possession. [See s. 7 (6).] If the duty is not paid with the Estate Duty on the rest of the estate, then for the purpose of determining the rate of Estate Duty in respect of the rest of the estate, the value of the interest is to be its value at the date of the death of the deceased. [See s. 7 (6) (a).] The rate of Estate Duty upon the interest when it falls into possession is to be INTERESTS IN EXPECTANCY.

calculated according to its value at that time, together with the v
of the rest of the estate as previously ascertained. [See s. 7 (6) (b).

Commutation on interests in expectancy.

56. The Commissioners, in their discretion, upon application b
person entitled to an interest in expectancy, may commute the Es
Duty which would or might, but for the commutation, become pay
in respect of such interest for a certain sum to be presently paid,
for determining that sum they will put a present value upon that d
regard being had to the contingencies affecting the liability to, and
and amount of, such duty. [See s. 12.]

Where interest in expectancy sold or mortgaged.

57.—(1.) Where an interest in expectancy has, before the 2nd Aug
1894, been *bonâ fide* sold or mortgaged for full consideration in mo
or money's worth, then no other duty on such property is payabl
the purchaser or mortgagee when the interest falls into possession t
would have been payable if the Finance Act, 1894, had not passed.
the case of a mortgage, any higher duty payable by the mortgagor i
rank as a charge subsequent to that of the mortgagee. [See s. 21 (3

(2.) Where the sale or mortgage was after the 1st August, 1894,
before the 9th April, 1900, then no other duty on such property is t
payable by the purchaser or mortgagee when the interest falls i
possession, on a death on or after the 9th April, 1900, than would h
been payable if the law as to aggregation had not been amended by
Finance Act, 1900 [see that Act, s. 12 (1) (proviso)].

WHEN DUTY IS DUE.

WHEN DUTY IS DUE.

58. The duty, which is to be collected upon an Inland Reve
Affidavit or Account, is due on the delivery thereof, or at the expira
of six months from the death, whichever first happens. [See s. 6
Except in the case of such objects of national, etc., interest as
within clause 29 above, where the duty is due one month after the
of sale, or six months after their coming into possession of a per
competent to dispose of them, as the case may be, or on delivery of
account, whichever first happens. [See Finance Act, 1896, s. 20 (2)

Payment of additional duty.

59. Estate Duty is, in the first instance, calculated at the appropr
rate according to the value of the estate, as set forth in the Inl
Revenue Affidavit or Account delivered, but if afterwards it app
that for any reason too little duty has been paid, the additional dut
payable, and is treated as duty in arrear. [See s. 8 (7).]

Interest on duty.

60. Simple interest at 3 per cent. per annum, without deduction
income tax, is payable upon all Estate Duty from the date of
deceased's death, or, where the duty is payable by instalments
becomes due at any later date than six months after the death, f
the date at which the first instalment or the duty becomes due, an
recoverable in the same manner as if it were part of the duty. [
Finance Act, 1896, s. 18 (1).]

Interest on fixed duty.

61. When the fixed duty of 30s. or 50s. under sect. 16 is paid wi
12 months after the death of the deceased, interest is not char
[See s. 16 (5).]

Instalments on real property.

62. The Estate Duty due upon an account of real property may
the option of the person delivering the account, be paid by eight e
yearly instalments or sixteen half-yearly instalments, with interes
the rate of 3 per cent. per annum from the date at which the
instalment is due, and the first instalment is to be due at the expira
of twelve months from the death, and the interest on the un
portion of the duty is to be added to each instalment and paid acc
ingly, but the duty for the time being unpaid, with such interest to
date of payment, may be paid at any time, and, in case the propert
sold, is to be paid on completion of the sale, and if not so paid, is t
duty in arrear. [See s. 6 (8).]

Instalments on annuities.

63. The Estate Duty in respect of any annuity or other definite annual sum referred to in sect. 2 (1) (d) of the Finance Act, 1894, may be paid by four equal yearly instalments, the first to be due 12 months after the death. Interest on the whole unpaid duty is to be added to the second and subsequent instalments. [See Finance Act, 1896, s. 16.]

DEDUCTION OF DUTY.

Deduction of Colonial duty.

64.—(1.) In the case of moveable property situate in a British possession, and passing on the death of a person dying domiciled in the United Kingdom, if any duty in respect thereof is payable in the British possession, a sum equal to the amount of that duty is to be deducted from the Estate Duty payable in respect of that property on the same death; but only where by the law of such possession either no duty is chargeable in respect of property situate in the United Kingdom when passing on death, or a like allowance as against the duty chargeable in such possession is made in respect of any duty payable in the United Kingdom. This provision only applies to such British possessions as are from time to time brought within its scope by Order in Council. [See s. 20.]

(2.) The section has been applied to the following possessions:—Australia (South), Australia (Western), Bahamas, Barbadoes, Bermudas, British Columbia, British Guiana, Cape of Good Hope, Ceylon, Falkland Islands, Fiji, Gambia, Gibraltar, Gold Coast, Hong Kong, India (not including the Feudatory Native States), Jamaica, Labuan, Lagos, Leeward Islands, Manitoba, Natal, New Brunswick, Newfoundland, New South Wales, New Zealand, Nova Scotia, Ontario, Quebec, Sierra Leone, Straits Settlements, Tasmania, Trinidad and Tobago, and Victoria.

Deduction of prior duties.

65. Deduction against the Estate Duty payable on a death, on or after the 1st July, 1896, in respect of settled property, may be taken in respect of any of the following duties, which, prior to the 2nd August, 1894, had been paid, or were payable, under the settlement, upon the capital of the property in respect of which the Estate Duty is payable, viz.,—the additional Succession Duties under sect. 21 of the Customs and Inland Revenue Act, 1888 (51 & 52 Vict. c. 8), the temporary Estate Duties under sects. 5 and 6 of the Customs and Inland Revenue Act, 1889 (52 & 53 Vict. c. 7), and the one per cent. Legacy and Succession Duties. [See Finance Act, 1896, s. 21.]

MISCELLANEOUS.

Executor to disclose estate.

66. The executor of the deceased is, to the best of his knowledge and belief, to specify in appropriate accounts annexed to the Inland Revenue Affidavit *all* the property in respect of which Estate Duty is payable upon the death of the deceased, whether he is or is not accountable for the duty thereon. [See s. 8 (3).]

Production of books, etc.

67. Accounts and statements are to be verified on oath, and by production of all necessary books and documents. [See s. 8 (14).]

Power of Commissioners to call for accounts.

68. Every person accountable for Estate Duty, and every person whom the Commissioners believe to have taken possession of or administered any part of the estate of the deceased or of the income thereof, is, to the best of his knowledge and belief, if required by the Commissioners, to deliver to them and verify a statement of such particulars and evidence as they require, relating to any property which they have reason to believe to form part of an estate, in respect of which Estate Duty is leviable on the death of the deceased. [See s. 8 (5).]

Penalties.

69. Penalties are provided for the wilful failure to deliver accounts or to comply with the requirements which the Commissioners are empowered to make. [See s. 8 (6) and (14).]

RATES OF ESTATE DUTY.

RATES OF ESTATE DUTY.

70.—(1.) The rates of Estate Duty are according to the scale. [See s. 17.]

Principal Value of the Estate.						Rate per cent
	£				£	
			Not above		100	0
Above	100	but	not above		500	1
,,	500	,,	,,		1,000	2
,,	1,000	,,	,,		10,000	3
,,	10,000	,,	,,		25,000	4
,,	25,000	,,	,,		50,000	4½
,,	50,000	,,	,,		75,000	5
,,	75,000	,,	,,		100,000	5½
,,	100,000	,,	,,		150,000	6
,,	150,000	,,	,,		250,000	6½
,,	250,000	,,	,		500,000	7
,,	500,000	,,	,,		1,000,000	7½
,,	1,000,000	.	.	.	. .	8

(2.) In the case of settled property passing on a death on or 9th April, 1900, where the disponer died on or before the 1s 1894, and such property, if he had died after that date, would l chargeable with Estate Duty on his death, the amended law as gation, stated in clause 33 (3) above, may result in the rates o the settled property, treated as an "estate by itself," and on aggregable therewith, being raised one-half per cent., except in of the 8 per cent. rate, which cannot be raised. In result, rates of duty, viz., ½, 1½, 2½, and 3½ per cent. are charg appropriate circumstances in place of 0, 1, 2, and 3 per cent.

Rate of Settlement Estate Duty.

71. The rate of the Settlement Estate Duty is 1 per ce s. 17.]

Fractions of £100 capital.

72.—(1.) In ascertaining the value of an estate, whether an a "one estate" or an "estate by itself," as the case may be purpose of determining under sect. 4 of the Act of 1894 th Estate Duty chargeable, and the principal value upon which at such rate is to be charged, the following adjustments are THE DECEASED DIED BEFORE THE 9TH APRIL, 1900, to be mad

(2.) *Where the deceased died* BEFORE *the 1st July*, 1896:—An of £10, in excess of £10, or of any multiple thereof, in the a "one estate" or "estate by itself," as the case may be, increased to £10. [See s. 17.] So that an estate of £10,099 treated as £10,100, and the rate of duty would be 4 per cent. amount £404. An estate of £199 would be treated as £200, a pay £2.

(3.) Where duty is paid in respect of real property as well as property, on one affidavit or account, and there is an odd f £10 in the respective capitals, and the two fractions togeth £10, *each* class of property should be increased to the next m £10. Thus, Personal £1,482 and Real £929 (aggregate £2,411) treated as Personal £1,490 and Real £930, and Personal £1,489 £922 (aggregate £2,411) should also be treated as Personal £ Real £930. Where, however, the two fractions together do n £10, whichever of the two classes of property has the larger f £10 should be increased to the next multiple of £10, whilst in

class of property the fraction should be disregarded. Thus, Personal £1,482 and Real £926 (aggregate £2,408) should be treated as Personal £1,480 and Real £930. Whilst Personal £1,486 and Real £922 (aggregate £2,408) should be treated as Personal £1,490 and Real £920.

(4.) *Where the deceased died* ON OR AFTER *the 1st July*, 1896, *but before the 9th April*, 1900:—Any fraction of £100 in excess of £100, or of any multiple thereof, in the aggregated "one estate" or "estate by itself," as the case may be, is to be disregarded, except that where the principal value of the estate exceeds £100, but does not exceed £200, the Estate Duty is to be £1. [See Finance Act, 1896, s. 17.] So that an estate of £10,099 would be treated as £10,000, and the Estate Duty would be at 3 per cent., and would amount to £300. An estate of £10,100 would, however, be treated as £10,100, and the rate of duty would be 4 per cent., and the amount £404. An estate of £199 would by this rule be treated as £100, but it does not thereby acquire exemption from Estate Duty as *not exceeding* £100, but pays £1, as stated above.

(5.) Where duty is paid in respect of real property as well as personal property, on one affidavit or account, and there is an odd fraction of £100 in the respective capitals, and the two fractions together do not amount to £100, each fraction is to be disregarded. Thus, Personal £1,422 and Real £929 (aggregate £2,351) should be treated as Personal £1,400 and Real £900. Where, however, the two fractions together amount to or exceed £100, whichever of the two classes of property has the larger fraction of £100 should be raised to the next multiple of £100, whilst in the other class of property the fraction should be disregarded. Thus, Personal £1,482 and Real £929 (aggregate £2,411) should be treated as Personal £1,500 and Real £900. Whilst Personal £1,429 and and Real £982 (aggregate £2,411) should be treated as Personal £1,400 and Real £1,000.

(6.) WHERE, HOWEVER, THE DECEASED DIED ON OR AFTER THE 9TH APRIL, 1900, the Estate Duty is to be levied on the exact net principal value of the estate, both as regards rate and amount of duty, without the exclusion of any fraction of that value. [See Finance Act, 1900, s. 13 (1).] So that an estate of £10,099 15*s.* 0*d.* would be treated as £10,099 15*s.* 0*d.*, and the Estate Duty would be at 4 per cent., and would amount to £403 19*s.* 9*d.*

Estates not above £500 gross.

73. Where the GROSS value of the property real and personal on which Estate Duty is payable on the death of the deceased exclusive of property settled otherwise than by the will of the deceased exceeds £100, but does not exceed £300, a fixed duty of 30*s.* *may be* paid, and where it exceeds £300 but does not exceed £500, a fixed duty of 50*s.* *may be* paid. [See s. 16 (1).] Where the fixed duty of 30*s.* or 50*s.* has been paid, and it is afterwards discovered that the gross value of the property exceeds £500, the *ad valorem* duty according to the true value is payable, and no allowance can be made for the duty paid at first. But where 30*s.* has been paid and it is discovered that 50*s.* should have been paid, the difference only is payable. [See s. 16 (1), embodying and extending the Customs and Inland Revenue Act, 1881 (44 Vict. c. 12), s. 35.] Where, however, the deceased died on or after the 1st September, 1903, and the Commissioners are satisfied that there were reasonable grounds for the original estimate of the value of the property, an allowance may be made for the duty paid at first. [See Revenue Act, 1903, s. 14.]

Option.

74. Where the assistance of the local Inland Revenue Officer is not required, the *ad valorem* duty according to the scale may be paid instead of the fixed duty of 30*s.* or 50*s.* [See s. 16 (2), and s. 16 (1), embodying and extending the Customs and Inland Revenue Act, 1881, s. 33.] Where the net estate is small it may be found that the *ad valorem* duty is less in amount than the fixed duty.

EXEMPTION FROM OTHER DUTIES.

EXEMPTION FROM OTHER DUTIES in cases not over £1000 net.

75. Where the NET value of the property real and personal, on w
Estate Duty is payable on the death of the deceased, exclusi
property settled otherwise than by the will, if any, of the deceased,
not exceed £1,000, and the fixed duty or *ad valorem* Estate Dut
been paid upon the principal value of that estate, the Settlement E
Duty and the Legacy and Succession Duties are not payable unde
will or intestacy of the deceased in respect of that estate.
s. 16 (3).]

FORMS.

FORMS IN USE.

76. The Forms in use are:—

AFFIDAVITS:—

B—2. Inland Revenue Affidavit for Probate or Administ
where there is *no* Settled Property, and the GROSS pri
value of the free and other unsettled property, rea
personal, in respect of which Estate Duty is leviable o
death of the deceased, does not exceed £500 (except
the *gross* value exceeds £100, but the *net* value doe
exceed £100), *and*, if any Estate Duty is payable there
is desired to pay the fixed duty of 30s. or 50s.

NOTE.—Where, in the circumstances of the case, t
valorem duty in respect of the *net* estate is less
the fixed duty [see clauses 70 and 72], and it is d
to pay the smaller duty, the Form A—3, A—4, or
whichever is appropriate, should be used, and no
Form B—2.

B—3. Inland Revenue Affidavit for Probate or Administ
similar to B—2, but to be used where there *is* Settle
perty in addition.

No. 24. Summary of Duty and Interest: To accompany
B—3.

A—4. Inland Revenue Affidavit for Probate or Administ
where the property in respect of which Estate Duty i
able on the death of the deceased consists *exclusi*
FREE *personal property* situate *in the United Kingdo*
passing under the deceased's will or intestacy; except
the net value exceeds £100, but the *gross* value do
exceed £500, *and* the fixed duty of 30s. or 50s. is to b

No. 16. Summary of Duty and Interest: To accompany
A—4.

A—6. Inland Revenue Affidavit for Probate or Administ
where the property in respect of which Estate D
payable on the death of the deceased consists *exclusi*
FREE *personal* AND REAL *property* situate *in the*
Kingdom, and *passing under the deceased's will or int*
except where the net value exceeds £100, but the *gros*
does not exceed £500, *and* the fixed duty of 30s. or
to be paid.

No. 17. Summary of Duty and Interest: To accompany
A—6.

A—5. Inland Revenue Affidavit for second or subs[illegible]nt
where the property was within the operation of s
grant. Where it was not so, the same form as fo[illegible] o
grant should be used.

A—3. Inland Revenue Affidavit for Probate or Administ
except where B—2, B—3, A—4, A—6, or A—5 is app

No. 15. Summary of Duty and Interest: To accompany Form A—3.
D—1. (In duplicate.) Corrective Affidavit.

ACCOUNTS:—
C—1. (In duplicate.) Account of property which passed on the death, but the Estate Duty whereon was not paid on the Inland Revenue Affidavit.
C—2. (In duplicate.) Account for Settlement Estate Duty.
C—3. Account for instalments of Estate Duty and Settlement Estate Duty.
D—2. (In duplicate.) Corrective Account.

77. All the forms can be obtained of any Collector of Inland Revenue, or by application to the Secretary, Estate Duty Office, Somerset House, London, W.C. Where forms obtainable.

78. All the forms, except A—5, can be obtained at any Money Order Post Office outside the Metropolitan Police District.

79. Where a person dies on or before the 1st August, 1894, duties in force immediately prior to the commencement of the Finance Act, 1894, continue to be payable [see s. 21 (2)], and the above forms are not applicable. DEATHS ON OR BEFORE 1ST AUGUST, 1894.

80. The Inland Revenue Affidavit is to be delivered to the Probate Registrar on application for Probate or Administration. DELIVERY OF AFFIDAVITS AND ACCOUNTS.

HOW PAID.

81. The payment of Estate Duty on Inland Revenue Affidavits for Probate, etc., may be made in any of the following ways:—

1. Personally in Room 25, Accountant General's Department, Inland Revenue, Somerset House, London, W.C.
2. Through the post to the Accountant General (Cashier), Inland Revenue, Somerset House, London, W.C.
   (A) By cheque drawn in favour of the "Commissioners of Inland Revenue" and crossed "Bank of England—Inland Revenue."
   (B) Where the duty does not exceed £40, by Free Money Order drawn in favour of the "Commissioners of Inland Revenue" and crossed "Bank of England—Inland Revenue." These Money Orders can be obtained on production of the Affidavit at any Money Order Post Office. Postmasters are restricted, in the receipt of Estate Duty, to the issue of Money Orders; they may not otherwise receive the duty, nor may they accept Affidavits for the purpose of having them stamped.
3. At the Office of any Collector of Inland Revenue.

In every case the Affidavit *and Warrant* must accompany the payment.

Where payment of the fixed duty of 30s. or 50s. is made (see paragraphs 73 and 74) the appropriate Estate Duty stamp must be used and affixed to the first page of the Affidavit. These stamps can be purchased at any Post Office or at the Office of any Distributor of Stamps.

82. Accounts and corrective affidavits are to be TRANSMITTED BY POST to the Secretary, Estate Duty Office, Somerset House, London, W.C. If preferred, they may be left at the office by hand. In suitable cases an appointment will be arranged. The envelope should be legibly marked "ACCOUNT." They will be examined, and instructions as to the amount of duty and how to pay it will be issued. *Where duty is to be returned* the Corrective Affidavit or Account should be accompanied by evidence in support of the claim. In Corrective Affidavit cases, the Probate or Letters of Administration should be forwarded, and in Corrective Account cases where a return of duty is claimed, the original stamped account should be sent.

88. The Commissioners may, if they think fit, dispense with an o
in corrections of Estate Duty. [See Finance Act, 1900, s. 13
Where duty is *to be paid*, the Affidavit may, if desired, be transmi
unsworn in the first instance.

There are two further forms of Inland Revenue Affidavits applic
to the estates of persons who have died after August 1st, 1894, viz.:

Y—1. To be used where the deceased died domiciled abroad,
no property situate in the United Kingdom passed at
death within the meaning of the Finance Acts, 189
1900, but a grant is required in respect to assets which
since been [or are about to be] transmitted to this cou

Z—1. To be used where no property chargeable with Estate D
passed on the death of the deceased, and the grant is so
in respect of property of which the deceased was tru
only.

These forms can be obtained from the Secretary, Estate Duty Of
Somerset House.

PROBATE DUTY

**Payable on personal estate only, and when the death occurred on
or before August 1st, 1894.**

(1) (Customs and Inland Revenue Act, 1881.)

Where the estate exceeds £100 and does not exceed £500, £1 for
£50 or fraction of £50; where the estate exceeds £500 and does
exceed £1,000, £1 5s. for each £50 or fraction of £50; where the e
exceeds £1,000, £3 for each £100 or fraction of £100.

If the deceased died domiciled in the United Kingdom, debts d
persons in the United Kingdom and funeral expenses may be dedu
in estimating the value of the estate for duty.

(2) (Customs and Inland Revenue Act, 1889.)

Where the personal estate exceeds £10,000 and the application fo
grant is made on or after June 1st, 1889, and the date of death is b
August 2nd, 1894, a statement must be delivered with the affidavi
an additional duty is payable at the rate of £1 for each £100 or fra
of £100. [See Act, s. 5, p. 627.]

SMALL ESTATES.

(Customs and Inland Revenue Act, 1881, s. 33.)

Where the gross value of the personal estate, wherever situate,
person dying on or after June 1st, 1881, and before August 2nd,
does not exceed £300, the fixed probate duty of 30s. (if such estate ex
£100) may be paid.

FORMS OF INLAND REVENUE AFFIDAVITS

to be used where the deceased died on *or* before August 1st, 189

FORM A.

To be used in all cases where Form B, Y, or Z is not applicable.

FORM Z.

To be used where the gross personal estate does not exceed £100 in value, or where the whole personal estate, wherever situate, and without deducting debts or funeral expenses, does not exceed the value of £300, the deceased in either case having died on or after June 1st, 1881.

FORM Y.

To be used where the deceased left no personal estate in this country, and the property to be dealt with was at the time of the death situated abroad, and has since been [or is about to be] transmitted to this country.

FORM Z.

To be used where the deceased was merely a trustee of the personal estate to be dealt with by the grant, and had no personal property of his own.

STATUTES AS TO STAMP DUTIES PRIOR TO 1881.

List of statutes under which stamp duties on English grants were levied at different periods previously to June 1st, 1881:—

5 Will. & M. c. 21 (1694).
9 & 10 Will. III. c. 25 (1698).
19 Geo. III. c. 66 (1779).
23 Geo. III. c. 58 (1783).
29 Geo. III. c. 51 (1789).
35 Geo. III. c. 30 (1795).
37 Geo. III. c. 90 (1797).
41 Geo. III. c. 86 (1801).
44 Geo. III. c. 98 (1804).
48 Geo. III. c. 149 (1808).
55 Geo. III. c. 184 (1815).
22 & 23 Vict. c. 36 (1859).
23 & 24 Vict. c. 15 (1860).
43 Vict. c. 14 (1880).

CANADIAN ACT.]

AN ACT TO AMEND THE SUCCESSION DUTY ACT

5 EDW. VII. c. 6.

Section 6. No duty shall be leviable:—

(1) On any estate, the aggregate value of which does exceed $10,000.

(2) On property devised or bequeathed for religi charitable, or educational purposes to be carried on b corporation or person domiciled within the Province Ontario.

(3) On property passing under a will, intestacy, or oth wise to or for the use of a father, mother, husband, w child, daughter-in-law, or son-in-law of the deceased wh the aggregate value of the property, as defined by this A passing to the persons mentioned in this subsection, does exceed $50,000.

Section 8. Save as aforesaid the following property sh be subject to a succession duty as hereinafter provid to be paid for the use of the province over and above fees payable under the Surrogate Court Act:—

(*a*) All property situate within this province, and a interest therein or income therefrom, whether the decea person owning or entitled thereto was domiciled in Onta at the time of his death or was domiciled elsewhere, a all movable or personal property locally situate out of t province and any interest therein when the owner w

[154] Any administrator, executor, or trustee, having in charge or t any estate, legacy, or property subject to the said duty, shall deduct duty therefrom, or collect the duty thereon upon the appraised v thereof, from the person entitled to such property, and he shall not del any property subject to duty to any person until he has collected the thereon (R. S. O., [1897] c. 24, s. 14).

A testator possessed of a considerable number (more than five) of $

domiciled in this province at the time of his death, whether such property passes by will or intestacy.

(*b*) All property situate as aforesaid, or any interest therein or income therefore which shall be voluntarily transferred by deed, grant, bargain, sale or gift made in contemplation of the death of the grantor, bargainor, vendor or donor, or made or intended to take effect in possession or enjoyment after such death to any person in trust or otherwise, or by reason whereof any person shall become beneficially entitled in possession or expectancy to any property, or the income thereof.

(*c*) Any property taken as a *donatios mortis causâ* made by any person dying on or after the 7th day of April, 1896, or taken under a disposition made by any person so dying, purporting to operate as an immediate gift *inter vivos*, whether by way of transfer, delivery, declaration of trust, or otherwise, which shall not have been *bonâ fide* made twelve months before the death of the deceased, including property taken under any gift, whenever made, of which property *bonâ fide* possession and enjoyment shall not have been assumed by the donee immediately upon the gift, and thenceforward retained to the entire exclusion of the donor, or of any benefit to him by contract or otherwise.

(*d*) Any property which a person dying on or after the 7th day of April, 1896, having been absolutely entitled thereto, has caused, or may cause to be transferred to, or vested in himself, and any other person jointly, whether by disposition or otherwise, so that the beneficial interest therein, or in some part thereof, passes or accrues by survivorship on his death to such other person, including also any purchase or investment effected by the person who was absolutely entitled to the property either by himself alone, or in concert, or by arrangement with any other person.

(*e*) Any property passing under any past or future settlement, including any trust, whether expressed in writing or otherwise, and if contained in a deed or other instrument

debentures, bearing interest at four per cent., of a certain city, both at the time of making a codicil to his will and at the time of his death, by the codicil devised to each of two devisees "one debenture of" (the city) "for the sum of $1000, bearing interest at four per cent. per annum," and directed that if "I should deliver over any of the said debentures in my lifetime to any of the above legatees, such delivery shall be considered and taken as a satisfaction of the legacy of the person to whom it is so delivered." He had in previous clauses bequeathed to each of the five

CANADIAN ACT.]

affecting the settlement, whether such deed or other instrument was made for valuable consideration or not as between the settlor and any other person, made by any person dying on or after the 7th day of April, 1896, by deed or other instrument not taking effect as a will, whereby an interest in such property, or the proceeds of sale thereof for life, or any other period, determinable by reference to death, is reserved either expressly or by implication to the settlor, or whereby the settlor may have reserved to himself, the right by the exercise of any power to restore to himself, or to reclaim the absolute interest in such property or the proceeds of sale thereof, or to otherwise resettle the same or any part thereof.

(*f*) Any annuity or other interest purchased or provided by any person dying on or after the 7th day of April, 1896, either by himself alone, or in concert, or by arrangement with any other person, to the extent of the beneficial interest accruing or arising by survivorship or otherwise on the death of the deceased.

(*g*) Any property of which a person dying after the 1st day of April, 1899, was at the time of his death competent to dispose; and a person shall be deemed competent to dispose of property if he has such an estate or interest therein, or such general or limited power as would, if he was *sui juris*, enable him to dispose of the property as he thinks fit, or to dispose of the same for the benefit of his children or some of them, whether the power is exercisable by instrument *inter vivos*, or by will, or both, including the power exercisable by a tenant in tail whether in possession or not, but exclusive of any power exercisable in a fiduciary capacity under a disposition not made by himself or a mortgagee. A disposition taking effect out of the interest of the person so dying shall be deemed to have been made by him whether the concurrence of any other person was or was not required. Money which a person has a general power to charge on property shall be deemed to be property of which he has the power to dispose.

named persons one debenture for the sum of $1000, bearing interest at four per cent.: *Held*, that the legacies to the two legatees were not specific legacies; and that even if they had been, the legatees were not entitled to receive them free of succession duty, which the executors should either deduct or collect the duty before payment (*Re Mackey*, 6 O. L. R. 292).

A direction in a will to executors to pay debts, funeral and testamentary expenses does not operate so as to make succession duty payable

(*h*) Any estate in dower or by the courtesy in any land of the person so dying, to which the wife or husband of the deceased becomes entitled on the decease of such person.

(2) The descriptions of property in clauses (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) shall not be construed to restrict the generality of the descriptions contained in clauses (*a*) and (*b*).

(3) When the aggregate value of the property of the deceased exceeds $50,000, and passes in manner aforesaid, either in whole or in part, to or for the benefit of the father, mother, husband, wife, child, son-in-law, or daughter-in-law of the deceased, the same, or so much thereof as so passes (as the case may be), shall be subject to a duty at the rate and on the scale as follows:—

(*a*) When the said aggregate value exceeds $50,000, and does not exceed $75,000, 1 per cent.

(*b*) Exceeds $75,000, and does not exceed $100,000, 2 per cent.

(*c*) Exceeds $100,000, and does not exceed $150,000, 3 per cent.

(*d*) Exceeds $150,000, and does not exceed $200,000, 4 per cent.

(*e*) Exceed $200,000, 5 per cent.

(4) Provided that when the value of any dutiable property, as determined by the provisions of subsection 4 of section 2 of this Act, exceeds $100,000, and the amount passing in manner aforesaid to any one person mentioned in the next preceding subsection exceeds the amount hereinafter mentioned, a further duty shall be paid on the amount so passing in addition to the rates in the next preceding subsection mentioned as follows:—

(*a*) When the whole amount so passing to one person exceeds $100,000, and does not exceed $200,000, 1 per cent.

(*b*) Exceeds $200,000, and does not exceed $400,000, 1½ per cent.

under R. S. O., [1897] c. 24, a charge on the residue and to exonerate the legatee from payment thereof (*Manning* v. *Robinson*, [1898] 29 O. R. 483, followed *Re Holland*, 6 O. L. R. 496).

REVENUE.—For the purpose of arriving at the aggregate value of the property of a deceased person under sec. 3, sub-s. 3 of the Succession Duty Act (R. S. O., [1897] c. 24, repealed by the Succession Duty Amendment Act, 5 Ed. VII. c. 6, s. 6), debts are to be deducted. The duty to

CANADIAN ACT.]

(*c*) Exceeds $400,000, and does not exceed $600,000, 2 per cent.

(*d*) Exceeds $600,000, and does not exceed $800,000, 2½ per cent.

(*e*) Exceeds $800,000, 3 per cent.

(5) When the aggregate value of the property of the deceased exceeds $10,000, so much thereof as passes to or for the benefit of the grandfather or grandmother, or any other lineal ancestor of the deceased, except the father and mother, or to any brother or sister of the deceased, or to any descendant of such brother or sister, or to a brother or sister of the father or mother of the deceased, or to any descendant of such last-mentioned brother or sister, shall be subject to a duty of $5 for every $100 of the value.

(6) Provided that when the value of any dutiable property, as determined by the provisions of subsection 4 of section 2 of this Act, exceeds $50,000, and the amount passing in manner aforesaid to any one person mentioned in the next preceding subsection, except the father and mother, exceeds the amount hereinafter mentioned, a further duty shall be paid on the amount so passing, in addition to the duty in the next preceding subsection mentioned as follows:—

(*a*) When the whole amount so passing to one person exceeds $50,000, and does not exceed $100,000, 1 per cent.

(*b*) Exceeds $100,000, and does not exceed $150,000, 1½ per cent.

(*c*) Exceeds $150,000, and does not exceed $200,000, 2 per cent.

(*d*) Exceeds $200,000, and does not exceed $250,000, 2½ per cent.

(*e*) Exceeds $250,000, and does not exceed $300,000, 3 per cent.

be paid by the person who takes is on the value of the estate which he takes at the time of taking.

Sums *bonâ fide* paid by executors for the purpose of settling claims against them as such, must be considered debts for the purpose of administration and of ascertaining the amount of succession duty.

Where executors, erroneously and in ignorance of the existence of claims, over-valued the estate and paid succession duty for which the estate would not have been liable had the amount of such claims been deducted therefrom, they were held entitled to recover back from the

(*f*) Exceeds $300,000, and does not exceed $350,000, 3½ per cent.

(*g*) Exceeds $350,000, and does not exceed $400,000, 4 per cent.

(*h*) Exceeds $400,000, and does not exceed $450,000, 4½ per cent.

(*i*) Exceeds $450,000, 5 per cent.

(7) When the aggregate value of the property of the deceased exceeds $10,000, and any part thereof passes to or for the benefit of any person in any other degree of collateral consanguinity to the deceased than is above described, or to or for the benefit of any stranger in blood to the deceased, save as is hereinbefore provided for, same shall be subject to a duty of $10 for every $100 of the value.

(8) Provided that when the whole value of any property devised, bequeathed, or passing to any one person under a will or intestacy does not exceed $200, the same shall be exempt from payment of the duty imposed by this section.

(9) (*a*) Provided that any portion of the estate of any deceased person, who at time of his death was domiciled in this province, which is brought into this province by the executors or administrators of the estate to be administered or distributed in this province, shall be liable to the duty hereinbefore imposed; but if any estate, succession or legacy duty or tax has been paid upon such property elsewhere than in Ontario, and such duty or tax is equal to or greater than the duties payable on property in this province, then the property upon which such duty or tax has been paid elsewhere shall be subject to the payment only of the succession duty provided for in the preceding subsections of this section as will equal the difference between the duties

Crown the amount of the duty wrongly paid (*Ross* v. *The Queen*, 32 O. R. 143; 1 O. L. R. 487).

SHARE IN PARTNERSHIP.—For the purpose of taking out probate, and paying the fees thereon, the representatives of a deceased partner in a mercantile firm must be taken to be interested as the corpus of the partnership effects to the extent of the share of the deceased, undiminished by the debts and liabilities of the firm (*In re Surrogate Court of Wentworth and Kerr*, 44 U. C. R. 207).

TRUST ESTATE.—(See *Re Reid*, 32 C. & J. 200.)

Payment of duty under the Succession Duty Act is based upon

CANADIAN ACT.]

payable under this Act with respect to property in the Province of Ontario, and the duty or tax so paid elsewhere.

(*b*) Provided further that where any movable or personal property locally situate outside of the province, or any interest therein as aforesaid, shall have paid any estate, succession or legacy duty or tax elsewhere than in Ontario, a like allowance for the amount so paid, as in the next preceding clause mentioned, shall be made by this province, and the property upon which such duty or tax has been paid elsewhere shall be subject to the payment of such portion only of the succession duty provided for in the preceding subsections of this section as will equal the difference between the duties payable under this Act with respect to property in the Province of Ontario and the duty of tax so paid elsewhere.

(*c*) Provided further that allowance for any estate, succession or legacy duty or tax payable elsewhere than in the Province of Ontario shall be made under this subsection only as to any country, state, or British province or possession where an allowance is made for the succession duty paid under this Act on property situate in this province passing on the death of any person domiciled in any such country, state, or British province or possession, and the Lieutenant-Governor in Council by Order in Council shall have extended the provisions of this subsection as to such allowance by the Province of Ontario so as to apply to such country, state, or British province or possession.

(*d*) The Lieutenant-Governor may, by Order in Council, revoke any such Order, when it appears that the law of any such country, state, British province or possession has been so altered that it would not authorize the making of an Order hereunder.

(10) In case an executor or administrator shall, in order to escape payment of succession duty imposed by this Act, distribute any part of the estate without bringing the same into this province, such executor or administrator shall be liable personally to pay to his Majesty the amount of the duty which would have been payable had the assets so distributed been brought within this province. Provided that

administration; and duty is payable upon any property which can properly be administered only in Ontario.

Payment of non-negotiable deposit receipts, payable after notice at branches in Ontario, of Canadian banks held by a foreigner at the time

the subsection shall not apply to payments made to persons domiciled without the province out of assets situate without the province.

(11) Nothing herein contained shall render liable for duty any property *bonâ fide* transferred for a consideration that is of a value substantially equivalent to the property transferred.

of his death in the foreign country, cannot be enforced except by his personal representative in Ontario, and succession duty is payable there in respect of the amount covered by them (*Attorney-General of Ontario* v. *Newman*, 31 O. R. 340; 1 O. L. R. 511).

APPENDIX V.

FORMS

USED IN CONTENTIOUS AND NON-CONTENTIOUS BUSINESS.

Attention is particularly directed to the fact that in the following collection of forms, the oaths and other instruments have been drawn to suit the cases of persons dying on or since January 1st, 1898.

Speaking generally, these forms can also be used where the death occurred before 1898, *but if so used any reference to the heir-at-law or persons interested in the real estate of the deceased should be omitted.*

In adapting the following examples for use where the application for a grant is to be made in a District Probate Registry, all oath to lead the grant must contain a statement that the deceased had at the time of his death a fixed place of abode at within the district of (the probate district where the application is made). Forms which are peculiar to the district registries are collected at the end of this appendix.

The forms prescribed under the Colonial Probates Act, 1892, *will be found on pp.* 822–824.

AFFIDAVITS.

AFFIDAVITS TO LEAD GRANTS. *See* "OATHS."

No. 1.—Affidavit of due Execution of a Will or Codicil by an attesting Witness.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Affidavit of Execution of a Will or Codicil.

I, C., D., of , in the county of , carpenter, make oath that I am one of the subscribing witnesses to the last will and testament [*or* codicil, *as the case may be*], of the said A. B., of , in the county of , deceased, the said will [*or* codicil] being nowhere unto annexed, bearing date , and that the said testator executed the said will [*or* codicil] on the day of the date thereof by signing his name at the foot

or end thereof as the same now appears thereon, in the presence of me and of , the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will [*or* codicil] in the presence of the said testator.

Sworn at on the day of 19 , before me, } (Signed) C. D.

No. 2.—Affidavit of Execution where a Will is signed in the Attestation or Testimonium Clause.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Affidavit of Execution where a Will is signed in the Attestation or Testimonium Clause.

I, C. D., of , in the county of , carpenter, make oath and say, that I am one of the subscribing witnesses to the last will and testament of A. B., of , deceased, the said will being now hereunto annexed, bearing date the .

And I further make oath and say, that the said testator executed the said will on the day of the date thereof by signing his name in the attestation [*or* testimonium] clause thereof [*or as the case may be*], as the same now appears thereon, meaning and intending the same for his final signature to his will in the presence of me and of , the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will in the presence of the said testator.

Sworn at on the day of 19 , before me, } (Signed) C. D.

No. 3.—Affidavit as to Death of Attesting Witnesses.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Affidavit as to Death of Attesting Witnesses.

We, C. D., of , widow, E. F., of , grocer, and H. I., of , estate agent, having severally carefully inspected the last will and testament of the said A. B., of , deceased, hereunto annexed and dated , and having also observed the names K. L., and M. N., subscribed to the said will as witnesses attesting the due execution thereof, severally made oath and say as follows:—

I, the said C. D., for myself say, that I am the lawful widow and relict of the said testator, and the sole executrix named in his said will:

That I have made inquiries and have caused inquiries to be made respecting the execution of the said will, and by means of such inquiries I have ascertained that no person or persons was or were present at the execution of the said will, save and except the said testator and the said K. L. and M. N.

And I, the said E. F., for myself say, that I knew and was well acquainted with the said A. B., who died on the day of 19 , at for many years before and down to the time of his death, and that during such period I have frequently seen him write and subscribe his name to writings and I have thereby become well acquainted with his manner and character of handwriting, and I say, that I verily believe the names A. B., subscribed to the said will as

aforesaid, to be of the true and proper handwriting of the said A. B., deceased.

And I, the said E. F., for myself further say, that I knew and was well acquainted with the said K. L., whose name appears subscribed to the said will as one of the attesting witnesses thereto, and that the said K. L. died on or about the day of 19 .

And I, the said E. F., further say, that during the period of my acquaintance with the said K. L. I frequently saw him write, and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting; and I further say, that I verily believe that the names K. L., now appearing subscribed to the said will, are of the true and proper handwriting of the said K. L.

And I, the said H. I., for myself say, that I am a cousin of the said M. N., whose name appears subscribed to the said will as a witness thereto, and that the said M. N. died on or about the day of 19 .

And I, the said H. I., further say, that I have frequently seen the said M. N. write and subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting; and I further say, that I verily believe that the names M. N., appearing subscribed to the said will, are of the true and proper handwriting of the said M. N.

Sworn by the said at
this day of 19 ,
before me,

(Signed) C. D.
E. F.
H. I.

No. 4.—Affidavit as to Absence of Attesting Witnesses.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Affidavit as to Absence of Attesting Witnesses.

We, C. D., of , in the county of , grocer, and E. F., of , in the county of , baker, jointly and severally make oath and say as follows:—

We have carefully inspected the last will and testament of the said A. B., of , in the county of , spinster, deceased, the said will being now hereunto annexed, and bearing date the and subscribed A. B., and have also observed the names G. H. and I. K. subscribed to the said will as witnesses attesting the due execution thereof.

And I, the said E. F., for myself say, that I knew and was well acquainted with the said testatrix, who died on the day of 19 , at for many years before and down to the time of her death, and that during such period I have frequently seen her write and subscribe her name to writings, and I have thereby become well acquainted with her manner and character of handwriting, and I say that I verily believe the names A. B. subscribed to the said will as aforesaid to be of the true and proper handwriting of the said A. B., deceased.

And I, the said C. D., for myself say, that I am the sole executor named in the said will, and that I have made inquiries and have caused inquiries to be made respecting the execution of the said will, and I have ascertained that no person was present at the execution of the said will, save and except the said testatrix and the said G. H. and I. K.

And I, the said E. F., for myself say, that I am the uncle of the said I. K., and that the said I. K. in the month of 19 , left this country for some place unknown to this deponent, and has not since been heard of.

And I, the said E. F., further say, that I have frequently seen the

said I. K. write and subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting; and I further say, that I verily believe that the names I. K. now appearing subscribed to the said will, are of the true and proper handwriting of the said I. K.

[*Account for the other attesting witness in a similar way.*]

Sworn by the said C. D. and E. F., at this day of 19 , before me, } C. D. E. F.

No. 5.—Affidavit of Handwriting.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Affidavit of Handwriting.

I, C. D., of , in the county of , widow, make oath, that I knew and was well acquainted with A. B., of , in the county of , deceased, who died on the day of , at for many years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting, and having now carefully perused and inspected the paper writing hereunto annexed, purporting to be and contain the last will and testament of the said deceased, bearing date and being subscribed thus "A. B.," I further make oath, that I verily believe the whole of the said will, together with the names "A. B." subscribed thereto as aforesaid, to be of the true and proper handwriting of the said A. B., deceased.

Sworn at on the day of 19 , before me, } (Signed) C. D.

No. 6.—Affidavit of Plight and Condition and Finding.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Affidavit of Plight and Condition and Finding.

I, C. D., of , in the county of , schoolmaster, make oath that I am the sole executor named in the paper writing now hereunto annexed, purporting to be and contain the last will and testament of A. B., of , in the county of , deceased, who died on the day of , at , the said will bearing date the day of , and having viewed and perused the said will and particularly observed [*here recite the various obliterations, interlineations, erasures, and alterations (if any), or describe the plight and condition of the will, or any other matters requiring to be accounted for, and set forth the finding of the will in its present state, and, if possible, trace the will from the possession of the deceased in his lifetime up to the time of making the affidavit*] I the deponent lastly make oath that the same is now in all respects in the same state, plight, and condition as when found [*or as the case may be*] by me as aforesaid.

Sworn at on the day of 19 , before me, } (Signed) C. D.

No. 7.—Affidavit of Search.

In the High Court of Justice. Probate, Divorce, and Admiralty Di
The Principal Probate Re

In the estate of A. B., deceased.

Affidavit of Search.

I, C. D., of , in the county of , gardener, make oath
am the sole executor named in the paper writing hereunto an
purporting to be and contain the last will and testament of A.
, deceased, who died on the day of in the yea
at , the said will beginning thus, " ," ending thus
witness whereof I have hereunto set my hand this day of
the year of our Lord 19 " [*or as the case may be*], and bein
subscribed, "A. B." And referring particularly to the fact th
blank spaces originally left in the said will for the insertion of t
and month of the date thereof have never been supplied [*or* th
said will is without date, *or as the case may be*], I further mak
that I have made inquiry of E. F., the solicitor of the said de
and that I have also made diligent and careful search in all
where he the said deceased usually kept his papers of mome
concern, and in his depositories, in order to ascertain whether
or had not left any other will, but that I have been unable to d
any such will. And I lastly make oath that I verily believe th
deceased died without having left any will, codicil, or testam
paper whatever, other than the said will hereinbefore referred to

Sworn at
on the day of
19 , before me,

(Signed) C

No. 8.—Affidavit of Justification of Sureties (*a*).

In the High Court of Justice. Probate, Divorce, and Admiralty D
The Principal Probate R

In the estate of A. B., deceased.

Affidavit of Justification of Sureties.

We, C. D., of , esquire, and E. F., of , estate agent,
and severally make oath, that we are the proposed sureties o
of G. H., the intended administrator of the estate of the said A
, deceased, in the penal sum of pounds, for his faithful a
tration of the said estate of the said deceased; and I, the sai
for myself further make oath that I am, after payment of
just debts, well and truly worth in real or personal estate the
, and I, the said E. F., for myself further make oath tha
after payment of all my just debts, well and truly worth in
personal estate the sum of pounds.

Sworn by the said C. D. and
E. F. at on the
day of 19 , before me,

(Signed)

No. 9.—Affidavit as to a Testator's Knowledge of the C of his Will.

In the High Court of Justice. Probate, Divorce, and Admiralty
The Principal Probate

In the estate of A. B., deceased.

Affidavit as to a Testator's Knowledge of the Contents of his Will.

I, C. D., of , plumber, make oath and say that I am on

(*a*) *See Form No.* 44 *for affidavit, where a guarantee society*
security.

subscribing witnesses to the last will and testament of the said A. B., of , deceased, the said will being now hereunto annexed, bearing date the day of 19 .

1. And I further make oath and say, that the said testator duly executed his said will on the day of the date thereof by signing his name [*or* making his mark] at the foot or end thereof, as the same now appears thereon, in the presence of me the said C. D. and of E. F. the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will in the presence of the said testator.

2. And I further make oath, that previously to the execution of the said will by the said testator, the same was read over to him by me [*or* by E. F. in my presence, *or* by himself in my presence], and he the said deceased at such time seemed thoroughly to understand the same [*or* had full knowledge of the contents thereof].

Sworn at
on the day of
19 , before me, } (Signed) C. D.

No. 10.—Affidavit verifying Alterations in a Will (deposed to by a Subscribed Witness).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Affidavit verifying Alterations in a Will (deposed to by a Subscribed Witness).

I, C. D., of , dentist, make oath and say, that I am one of the attesting witnesses to the last will and testament of the said A. B., of , deceased, the said will being now hereunto annexed and bearing date the day of 19 , and having particularly observed the words interlined between the and lines of the sheet of the said will, make oath and say as follows:—

That the said testator executed the said will on the day of the date thereof by signing his name at the foot or end thereof as the same now appears thereon, in the presence of me the said C. D. and of E. F. the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will in the presence of the said testator.

And I further make oath and say, that the said recited interlineation was written and made in the said will previously to the execution thereof.

Sworn at
this day of
19 , before me, } (Signed) C. D.

No. 11.—Affidavit verifying Alterations in a Will (made by any other Person).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

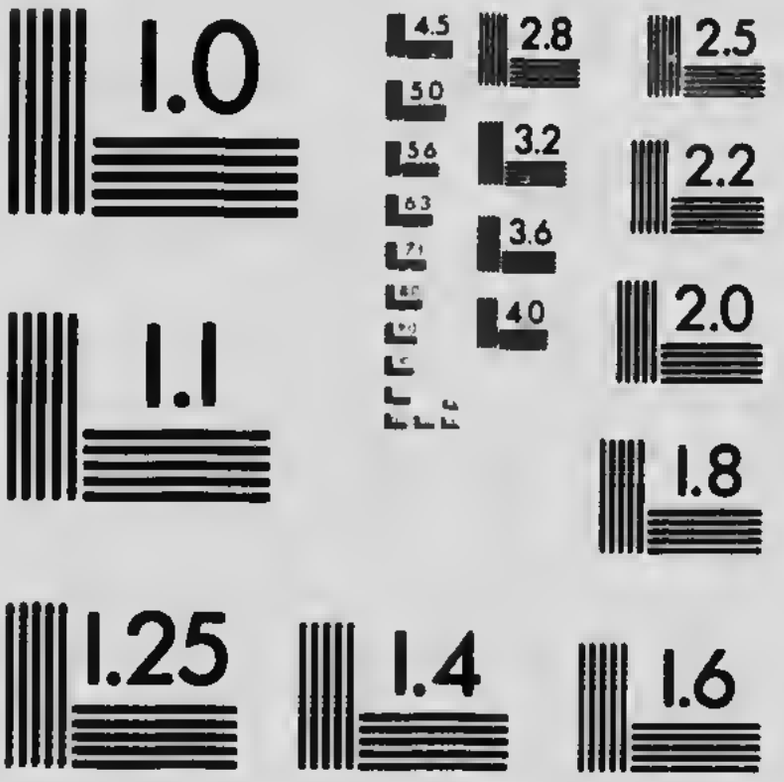
In the estate of A. B., deceased.

Affidavit verifying Alterations in a Will (made

I, C. D., of , surgeon, make oath and say, that I was the writer of the last will and testament of the said A. B., of , deceased (the

MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



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Rochester, New York 14609 USA
(716) 482 - 0300 - Phone
(716) 288 - 5989 - Fax

by any other Person).

same being now hereunto annexed), bearing date the da
19 , and referring to the said will and to an erasure appeari
beginning of the line of the page or side thereof, im
before the name and to an interlineation of the word
the and lines of the said page; I further make oat
that the said erasure and interlineation were made by me in
will in manner and form as the same now appear previou
execution of the said will.

Sworn at
the day of
19 , before me, } (Signed)

No. 12.—Affidavit as to Foreign Law.

In the High Court of Justice. Probate, Divorce, and Admiralty
The Principal Probate

In the estate of A. B., deceased.

Affidavit as to Foreign Law.

I, C. D., of [*an advocate or other person conversant with of the country* (*b*)], make oath and say as follows:—

I am conversant with the laws and constitutions of the of .

I have referred to the last will and testament of the said , deceased, bearing date the day of 19 , and unto annexed, and I say that the said will is made in conform and is valid by the aforesaid laws and constitutions.

Sworn at
on the day of
19 , before me, } (Signed)

No. 13.—Affidavit as to British Status of Testat

In the High Court of Justice. Probate, Divorce, and Admiralty
The Principal Probate

In the estate of A. B., deceased.

Affidavit as to British Status of Testator.

I, C. D., of , butcher, make oath and say as follows:—

That I am the sole executor named in the last will and testa the said A. B. of , deceased, now hereunto annexed, bear the day of 19 .

That the said will was made at .

That the said A. B. was a British subject, and born of English at , and that his domicil of origin was English.

Sworn at
on the day of
19 , before me, } (Signed)

(*b*) *An affidavit as to Scotch law may be made by a write signet.*

No. 14.—Affidavit as to Domicile.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Affidavit as to Domicile.

I, C. D., of , make oath and say, that I knew and was well acquainted with the said A. B., of in the kingdom of , deceased, who died on the day of at .

And I further say, that the said deceased was at the time of his death domiciled in the said kingdom of . [*A clause should be added showing the grounds on which the assertion is made.*]

Sworn by the said C. D. at
on the day of 19 ,
before me,

(Signed) C. D.

No. 15.—Affidavit as to sufficiency of Scotch Copy Will (being an Extract from Books of Council and Session) which Will has not been confirmed.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Affidavit as to Scotch Copy Will.

I, C. D., of (an advocate of the Scottish Bar, or Writer to the Signet), make oath and say, that I am conversant with the laws and constitutions of Scotland, that I have referred to the will of A. B., of , deceased, registered in the books of council and session for , and of which will an extract is now hereunto annexed, and I say that the said will is made in conformity with and is valid by the aforesaid laws and constitutions, and I say that the official extract hereunto annexed is by the said laws and constitutions equivalent in all respects to the original, and is received in all courts in Scotland as making faith in judgment equally with the original, and that confirmation is granted by the Commissary Court of Scotland on production of such extract.

Sworn, etc.

(Signed) C. D.

No. 16.—Affidavit of Creditor to lead Citation.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Affidavit of Creditor to lead Citation.

I, C. D., of , baker, make oath and say, that the said A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor, without parent, brother or sister, uncle or aunt, nephew or niece, cousin german, or any other known relation.

[*A clause should be added setting out the nature of the inquiries which have been made for next-of-kin.*]

And I further make oath and say, that the said deceased was at the time of his death justly and truly indebted to me in the sum of pounds of lawful money of Great Britain for work and labour done, materials found and goods sold and delivered between the and the day of by me to the said deceased in my business of a [*or in any other way*], and that no part of such sum

has been since received by me or by any person on my behalf, but th
the whole thereof still remains justly due and owing to me, and I he
no security whatever for the same or any part thereof.

And I further make oath and say, that the estate of the said deceas
consists of, etc. [*state amount and particulars*].

Sworn at
this day of
19 , before me,

(Signed) C. D.

No. 17.—Affidavit as to the Insertion of Advertisements f Next-of-Kin.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisio
The Principal Probate Regist

In the estate of A. B., deceased.

Affidavit as to the Insertion of Advertisements for Next-of-Kin.

I, E. F., of , solicitor, make oath and say, that I am the solicit
of C. D., the party applying for letters of administration of the estate
the said A. B., of , deceased:

And I further make oath and say, that, acting on behalf of the s
C. D., I caused an advertisement requesting the relatives (if any) of t
said deceased to apply to me, to be inserted once in the London morni
newspaper called the to wit, on the day of , a
once in the London morning newspaper called the to wit, on
the day of , and once in the London evening newspaper call
the to wit, on the day of (as by reference to t
said newspapers hereunto annexed marked respectively No. 1, No. 2, a
No. 3, will more fully appear), but that no application whatever has be
made to me, this deponent in consequence of or in answer to the s
advertisement, nor have I been able to obtain any information respecti
the relatives (if any) of the said deceased.

Sworn at
this day of
19 , before me,

(Signed) E. F.

No. 18.—Affidavit as to the Insertion of Advertisements f the Recovery of a Lost Will.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisio
The Principal Probate Regist

In the estate of A. B., deceased.

Affidavit as to the Insertion of Advertisements for the Recovery of a lost Will.

I, C. D., of , make oath and say as follows:—

I am the solicitor of E. F., the sole executrix named in the last w
and testament of the above-named A. B., of , deceased, and t
party applying for probate of a copy of the said will.

On the day of 19 , I caused to be inserted in the Lond
morning journal called the "Times" an advertisement in the words a
figures following, to wit:—

In the High Court of Justice, The Principal Probate Regist
Probate Division. A. B., deceased.
A. B., of , innkeeper, duly executed his will on the day
19 [*the day of its date*], in the presence of C. D., of
solicitor, and E. F., of , the testator's medical attendant.

this will the testator gave his personal estate to his wife C. B. and devised his real estate to her for life, and afterwards to his children. He appointed his wife solo executrix. He died on the day of 19 . A few months after his death a true copy of the will was made from the original, but the latter cannot now be found. Whoever will bring the original will or give such information as may lead to its discovery, to Mr. C. D., of , solicitor, will be rewarded.

The said journal is now hereunto annexed marked A. [*and so on with the two other newspapers*].

No application has been made to me, this deponent, in consequence of or in answer to the said advertisements, nor have I been able to obtain any information respecting the original will therein referred to.

Sworn at
on the day of
19 , before me, } (Signed) C. D.

No. 19.—Affidavit in Proof of Lunacy.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A.B., deceased.

We, C. D., of , surgeon, and E. F., of , nurse make oath, and say respectively as follows:—

Affidavit in Proof of Lunacy by doctor and nurse.

And I, the said C. D., for myself make oath, that for the space of years now last past I have attended in my professional capacity E. B. (who is, as I am informed and believe, the natural and lawful father of the said A. B., of , deceased), the said E. B. being a patient under the care of my fellow deponent the said E. F., at the asylum or house for the reception of lunatics at aforesaid, and that the said E. B. hath been for many years, and now is, a lunatic, and totally incapable of managing himself or his affairs, or of doing any act whatever requiring thought, judgment, or reflection, and is not likely soon to recover the use of his mental faculties.

And I, the said E. F., for myself make oath, that I am a nurse at the said lunatic asylum or house for the reception of lunatics where the said E. B. is now confined, and that the said E. B. hath been for years last past confined thereat, and has been under my care as a person of unsound mind, and that he is a lunatic and totally incapable of managing himself or his affairs.

Sworn at this
day of 19 , by
the said C. D. and E. F.
before me, } (Signed) C. D.
E. F.

No. 20.—Affidavit of Relict to lead a Joint Grant.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , widow, make oath and say as follows:—

Affidavit of Relict to lead a Joint Grant.

That the said A. B., of , deceased, died on the day of 19 , at , intestate, leaving me, this deponent, his lawful widow

and relict, and E. F., G. H., and I. K. his natural and lawful ar
children, the said E. F. being also his heir-at-law.

That I have been advised that by law and the practice of this D
I, this deponent, as the lawful widow and relict of the said decea
entitled primarily and by preference to have the letters of adm
tion of the estate of the said deceased granted to myself alone, hu
notwithstanding the same, consenting and desirous that the said
who is the eldest son of myself and the said deceased, be joine
me in the letters of administration of the estate of the said dece

Sworn at
this day of
19 , before me, } (Signed)

No. 21.—Affidavit to lead a Joint Grant of Administrat Guardians (Next-of-Kin and stranger) of Minors.

In the High Court of Justice. Probate, Divorce, and Admiralty D
The Principal Probate R

In the estate of A. B., deceased.

Affidavit to lead a Joint Grant to Guardians of Minors.

I, C. D., of , banker, make oath and say as follows:—

That A. B., of , deceased, died on the day of
at , intestate, a widower and not possessed of any real
leaving him surviving B. D., spinster, and W. D., his natu
lawful and only children and only next-of-kin, who are both
their minority, to wit, the said B. D., of the age of yea
and the said W. D., of the age of years only. That ther
testamentary or other lawful guardian of the said minors.

The said B. D. and W. D. have in and by an instrument in
under their respective hands, bearing date the day of
duly elected or chosen me this deponent their lawful grandfat
next-of-kin and X. Y. of to be their curators or guardians
purpose of obtaining letters of administration of the estate of
deceased, to be granted to us for the use and benefit of the sai
and W. D., and until one of them shall attain the age of twe
years.

I have been advised that by law and the practice of this Divi
the lawful grandfather and next-of-kin of the said minors duly
by them, I am entitled primarily and by preference to have the
of administration of the personal estate of the said deceased for
and benefit of the said minors granted to myself alone; but
withstanding desirous and consenting that the said X. Y., w
a friend of the said deceased, be joined with me in the le
administration of the estate of the said deceased.

For the space of years past I have been in an infirm
health and unable to transact business. The said X. Y. is a m
carrying on business at . He is thoroughly conversa
general business, and is also well acquainted with the affairs of
deceased, having been a friend of his; and I verily believe tha
be for the benefit and advantage of the estate of the said decea
of the said minors if the said X. Y. be joined with me in the sai
of administration.

Sworn at
on the day of
19 , before me, } (Signed)

* *If the deceased died possessed of real estate the heir-at-la*
be cleared off.

No. 22.—Affidavit to lead Registrar's Order assigning Guardians (Next-of-Kin and Stranger) to Infants for the purpose of taking a Joint Grant of Administration.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , baker, make oath and say as follows:—

That A. B., of , deceased, died on the day of 19 , at , intestate, a widower and not possessed of any real estate,* leaving him surviving W. T. and J. S., his natural and lawful and only children and only next-of-kin, who are both now in their infancy, to wit, the said W. T. of the age of five years and upwards, and the said J. S. of the age of four years and upwards, but respectively under the age of seven years. That there is no testamentary or other lawful guardian of the said infants.

I am the lawful paternal uncle and next-of-kin of the said infants, and I am ready and willing to undertake the guardianship of the said infants for the purpose of taking letters of administration of the estate of the said A. B., deceased, jointly with T. K. hereinafter mentioned, for the use and benefit of the said infants, and until one of them shall attain the age of twenty-one years.

I have been advised that by law and the practice of this Division, as the lawful paternal uncle and next-of-kin of the said infants, I am entitled primarily and by preference to be assigned guardian to the said minors for the purpose of taking letters of administration of the estate of the said deceased for the use and benefit of the said infants alone; but I am notwithstanding desirous and consenting that T. K., of , be joined with me in the letters of administration of the estate of the said deceased.

I am upwards of eighty years of age, and in infirm health. The said T. K. is of the age of thirty-five years only. The said T. K. is a by profession, and was a friend of the said deceased and acquainted with his affairs, and I verily believe that it will be for the benefit and advantage of the estate of the said deceased, and of the said infants, if the said T. K. be joined with me in the said letters of administration.

Sworn at
on the day of
19 , before me, } (Signed) C. D.

* *If the deceased died possessed of real estate the heir-at-law must be cleared off.*

No. 23.—Affidavit of lead Certificate that Bond given covers Irish Property.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , bootmaker, make oath and say as follows:—

That , of , deceased, died on the day of 19 .

That on the day of 19 , letters of administration of the estate of the said deceased were granted to me by the High Court of Justice at the Principal Probate Registry thereof:

That the gross value of the estate in the United Kingdom in respect of which the grant was made was then sworn to be £ :

Affidavit of lead Certificate that Bond given covers Irish Property.

That no additional estate has since come to my knowledge :
That part of the said estate amounting to £ (further par
of which are set forth in the schedule hereto annexed) is in Irel
Sworn, etc. (Signed)

SCHEDULE.

(*To be signed by d ponent.*)

No. 23A.—Certificate of Registrar as to sufficient S having been given to cover Irish Property.

In the High C t of Justice. Probate, Divorce, and Admiralty D
The Principal Probate R

In the of A. B., deceased.

Certificate of Registrar

I, the u ersigned, Registrar of the Principal Probate Registr
High Court of Justice in England, do hereby certify that le
administration ( ) of the estate of A. B., of , deceas
granted at the said registry on the day of to
I further certify that bond has been given to the President
Probate, Divorce, and Admiralty Division of the High Court of
in England in the sum of £ , the same being sufficient in
to cover the personal estate of the said deceased in Ireland as
his estate in England.
Dated the . (Signed) F. W.,
Regi

No. 24.—Affidavit to lead Alteration in Grant.

In the High Court of Justice. Probate, Divorce, and Admiralty D
The Principal Probate R

In the estate of A. B., deceased.

Affidavit to lead Alteration in Grant.

I, C. D., of , coachman, make oath and say, that on
day of 19 , letters of administration of the estate o
A. B., of , deceased, were granted by the High Court of Ju
me this deponent, the natural and lawful father and next-of-kin
said deceased.

That in the said letters of administration the date of the de
death is stated to be the 14th day of November, 1898, whereas t
date was the 24th day of the same month and year as appears
certificate of death hereunto annexed.

That the error arose by my not observing when the oath to
grant was read over to me that the wrong day, namely, the "14t
been inadvertently inserted in that document.

That I desire that the said letters of administration may be alt
substituting "24th" for the "14th" in the date of death of the d
Sworn, etc. (Signed)

No. 25.—Affidavit to lead Citation to accept or refuse Administration.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.
In the estate of A. B., deceased.

Affidavit to lead Citation.

I, C. D., of , tailor, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, without child or parent, leaving E. F. his lawful widow and relict him surviving:

And I further make oath and say, that the said E. F. has not taken upon her as yet the letters of administration of the estate of the said deceased:

And I further make oath and say, that I am the natural and lawful brother and one of the next-of-kin of the said deceased, and am desirous of obtaining letters of administration of the estate of the said deceased.

And I further make oath and say, that the estate left by the said deceased consists of [*state the nature and amount of the property*].

Sworn at
this day of
19 , before me,

(Signed) C. D.

No. 26.—Affidavit to lead Summons to exhibit an Inventory.

In the High Court of Justice. Probate, Divorce, and Admiralty Division
The Principal Probate Registry
In the estate of A. B., deceased.

Affidavit to lead Summons for Inventory.

I, C. D. (wife of W. D.), of , make oath and say as follows:—

1. The said A. B., of , deceased, died on the day of 19 , at , intestate, leaving him surviving M. B. his lawful widow and relict, and L. S. (wife of S.), me this deponent, and T. B. spinster, his natural and lawful and only children, and only next-of-kin, respectively, tho only persons entitled in distribution to his personal estate. I am also the heir-at-law of the said deceased.

2. On the day of 19 , letters of administration of the estate of the said deceased were granted by authority of this Division at the registry thereof to the said M. B., the lawful widow and relict of the said deceased.

3. The said M. B. has sworn the value of the estate of the said deceased to amount to £ , but I verily believe the same to be considerably less than the true amount and value thereof.

4. Part of the said estate consists of stock and growing crops, which should be forthwith valued and appraised before the same are removed or sold, in ordor that the true value thereof as assets belonging to the said estato may be satisfactorily ascertained.

5. Under tho circumstances mentioned in the preceding paragraphs of this affidavit, and upon other grounds, I am desirous of obtaining from this Division a citation calling upon the said M. B. to exhibit upon and by virtue of her corporal oath a true and perfect inventory of all and singular tho estate of the said deceased.

Sworn at
on the day of
19 , before me,

(Signed) C. D.

No. 27.—Affidavit to lead Citation for Limited Grant

In the High Court of Justice. (Probate.) Probate, Divorce, and Admiralty Div The Principal Probate Reg

In the estate of A. B., deceased.

Affidavit to lead Citation for Limited Grant.

I, Ann Houghton, of , widow, and James Houghton, of the piace, make oath and say respectiveiy as follows:—

1. In and by an indenture, bearing date the day of and made between, etc., certain moneys of and beionging to me deponent, then Ann Smith, in the said indenture particularly ment and described, were in consideration of the marriage then intend be had and soiemnized between her, the said Ann Smith, and J Houghton, in the said indenture mentioned, assigned and trans to the said A. B. and C. D., their executors, administrators and as to hold the same upon trust, that they, the said A. B. and C. D., o survivors of them, or their executors, or administrators of such vivors, should invest the same upon Government or real security pay the interest and dividends thereof to me, the said Ann S during my life, and after my decease for all and every the children child of the said Ann Smith and James Houghton, and if only child then for such one child only, the principal to be vested i said children or child on their or his or her attaining the a twenty-one years.

2. The said intended marriage was shortly afterwards duly hac solemnized between me, this deponent, then Ann Smith, spinster the said James Houghton, and there is issue of the said marriag child only, to wit, I, the said James Houghton.

3. I, the deponent, James Houghton, have attained the age of tw one years.

4. The said James Houghton, the father, died on the d 19 .

5. The said A. B. and C. D., the trustees aforesaid, lent and inv a sum of £1,000, part of the said trust moneys, upon a mortga certain copyhold premises, situate at in the county of beionging to of .

6. The said sum of £1,000 still remains so lent and invest aforesaid.

7. The said A. B. and C. D. are both now dead.

8. The said A. B. survived his co-trustee the said C. D.

9. The said A. B. was of and died on the day of a widower and intestate and not possessed of any real estate,* ic E. F. his natural and lawful son and only next-of-kin, and the person entitled to his personal estate him surviving, who resides at

10. Letters of administration of the estate of the said A. B., dece have not yet been taken out by the said E. F., or by any other per

11. We, these deponents, are respectiveiy the only persons benefi interested in and entitled to the said sum of £1,000 so lent and inv as aforesaid, and in and to the interest and dividends due and to due thereon, to wit, I the said Ann Houghton to the interest dividends thereof for and during my life, and I, the said James Ho ton, the son to the principal after the decease of deponent, the Ann Houghton, but the same cannot be duly administered under according to the trusts of the said indenture until in respect ther iegal personal representation of the said A. B., deceased, shall been constituted by the authority of the High Court of Justice.

* *If the deceased died possessed of real estate the heir-at-law m cleared off.*

12. We, these deponents, are desirous of obtaining letters of administration of the estate of the said A. B., deceased, limited so far only as concerns all the right, title and interest of him, the said A. B., in and to the aforesaid sum of £1,000 so lent and invested as aforesaid, and all interest and dividends now due and to grow due thereon, but no further or otherwise, to be granted to a person to be nominated by us for that purpose.

Sworn by the said Ann Houghton and James Houghton, at this day of 19 , before me, } (Signed) {A. HOUGHTON. J. HOUGHTON.

No. 28.—Affidavit to lead Subpœna to bring in Script.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Affidavit to lead Subpœna to bring in Script in a Proceeding in Common Form.

I, C. D., of , tailor, in the county of , make oath and say, that the said A. B., of , deceased, died on the day of 19 , at , having made and duly executed his last will and testament, bearing date the day of 19 , and thereof appointed E. F. and G. H. executors, and me, this deponent, residuary legatee:

And I further make oath and say, that the said will is now in the possession, within the power or under the control of the said E. F. and G. H. or one of them, and that they, the said E. F. and G. H., have neglected or declined to prove the said will or renounce the execution thereof, and I, this deponent, am desirous that the said will should be brought into the registry of this Division in order that I may prove the same or otherwise act as I may be advised:

And I further make oath and say, that the said E. F. resides at and that the said G. H. resides at .

Sworn at on the day of 19 , before me, } (Signed) C. D.

No. 29.—Affidavit to lead Revocation of Grant by Consent.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Affidavit to lead Revocation of Grant by Consent.

I, C. D., of , grocer, make oath and say as follows:—

The said A. B., who was of , died on the day of 19 , at , intestate, a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece.

I verily believed (until I had, as hereinafter deposed, ascertained to the contrary) that the said deceased left behind him no cousin-german or cousin-german once removed, and being one of the lawful second cousins of the said deceased I applied to this Division for, and on the day of 19 , I obtained therefrom, letters of administration of the estate of the said deceased, and which were granted to me in my character of second cousin on the suggestion that I was one of the next-of-kin of the said deceased.

Since the date last mentioned I have caused inquiries to be
and advertisements to be inserted in the public newspapers f
respecting the relations of the said deceased, and I have thereby
tained that E. F., of , is the lawful cousin-german and next
of the said deceased.

I am therefore desirous that the letters of administration her
granted to me shall be revoked and declared null and void
Division.

Sworn at
this day of
19 , before me,

(Signed)

No. 30.—Affidavit to lead Writ of Summons.

In the High Court of Justice. Probate, Divorce, and Admiralty Di
(Probate.)
In the estate of A. B., deceased.

Affidavit to lead Writ of Summons.

I, C. D., of , farmer, make oath and say as follows:—

1. That A. B., of , deceased, died on the day of
19 , at , having made and duly executed his last will and
ment bearing date the day of 19 , and thereof ap
me this deponent and M. D. executors.

2. That a caveat was entered in the estate of the above decea
the day of 19 , which caveat was duly warned
day of 19 .

3. That an appearance has been entered to the said warning on
of S. B., of , who is therein described as the lawful wid
relict of the said deceased.

Sworn, etc.

(Signed)

No. 31.—Affidavit of Service of Citation.

In the High Court of Justice. Probate, Divorce, and Admiralty D
(Probate.)
In the estate of G. H., deceased.
Between A. B., Plaintiff,
and
C. D., Defendant.

Affidavit of Service of Citation.

I, E. F., of , solicitor's clerk, make oath and say:—

That I did on the day of duly serve the above
C. D. with a true copy of a citation issued out of this Division
above-named action or matter, and now hereunto annexed ma
by delivering to and leaving the same with him at , and at t
time, at his desire and request, I showed him the original there

Sworn at
this day of
19 , before me,

(Signed)

No. 32.—Affidavit of Service of Warning and of Search and Non-Appearance.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , clerk to of , solicitor, make oath, that on the day of 19 , I duly served Messrs. of with a true copy of the warning now hereunto annexed marked A., by delivering to and leaving the same copy with a clerk of the said Messrs. at their office aforesaid [*or* leaving the same at their office aforesaid].

Affidavit of Service of Warning and of Search and Non-Appearance.

That I did on the day 19 , duly and carefully search the book kept in the principal probate registry of this Division for entering appearances from the said day of [*day of service*] to the present day inclusive, to ascertain whether or not any appearance to the said warning had been entered, and I say that no appearance to the said warning has been entered either by or on behalf of the said or persons whomsoever.

Sworn at
this day of
19 , before me,

(Signed) C. D.

No. 33.—Affidavit of Service of Summons (R. S. C., O. 54, r. 5; O. 67, r. 9).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of A. B., deceased.
B. C. against E. F.

I, F. G., of , clerk to Messrs. , the solicitors for the , make oath and say as follows:—

Affidavit of Service of Summons and Non-Appearance.

1. I did on the day of 19 before the hour of six [*or* two if served on Saturday] in the afternoon, serve , solicitor for the above-named [plaintiff *or* defendant] [*or* the above-named plaintiff or defendant who appeared in person] in this action with a true copy of the summons now produced and shown to me marked A., by leaving it at the office of the said , situate at , being the address for service in this action with [his clerk *or* servant] there.

2. And I further make oath and say that on the day of 19 , at o'clock in the noon, the day and hour upon which the said summons was returnable, I attended at the chambers of the judge of this Division at the Royal Courts of Justice [*or* of the Registrar at the Principal Probate Registry, Somerset House] sitting to hear summonses, and that neither the [plaintiff *or* defendant] nor his solicitor nor any one on his behalf attended to oppose the said summons between the said hour of [12] o'clock and [12.30].

Sworn, etc.

No. 34.—Affidavit of Personal Service of Writ of Sum
(whether within or without the jurisdiction) (R. S
O. 13, r. 2).

In the High Court of Justice. Probate, Divorce, and Admiralty Div
(Probate.)

In the estate of A. B., deceased.
B. C. against E. F.

Affidavit of Service of Writ of Summons.

I, G. H., of , clerk to L. M. of , solicitor, make oat
say as follows:—
1. I did on the day of 19 , at [*state where*] pers
serve C. D., the above-named defendant [*or* one of the above-n
defendants], with a true copy of the writ of summons in this
which appeared to me to have been regularly issued out of the C
Office of the Supreme Court against the above-named defenda
defendants] at the suit of the above-named plaintiff [*or* plaintiffs
which was dated the day of 19 .
2. At the time of the said service the said writ and the copy t
were subscribed in the manner and form prescribed by the Rules
Supreme Court.
3. I did on the day of indorse on the said writ the
the month and the week of the said service on the said defendant.
[*Jurat*]
This affidavit is filed on behalf of the .
(Signed) G.

No. 35.—Affidavit of Service of Notice to Produce and A

In the High Court of Justice. Probate, Divorce, and Admiralty Div
(Probate.)

In the estate of A. B., deceased.
B. C. against E. F.

Affidavit of Service of Notice to Produce and Admit.

I, G. H., of , clerk to of , solicitor for the plaintiff,
oath and say as follows:—
1. I did on the day of 19 , between the hours of
and , serve , the above-named , with a notice to pr
in this action, a true copy whereof is hereto annexed and marked
delivering the same to and leaving it with at h office or
of business situate at in the of .
2. I did also on the day of aforesaid, between the ho
and , serve the said with a notice to admit i
action, a true copy whereof is hereto annexed and marked B., by de
ing the same to and leaving it with at h office or pl
business as aforesaid.
3. The notice to produce mentioned and referred to in the said
to admit is the notice to produce, a copy whereof is hereto annexe
marked A. [App. B., Pt. 1, No. 12, R. S. C.]
Sworn, etc. (Signed) G.

No. 36.—Affidavit of Search and Non-Appearance to Citation to accept or refuse Grant.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.
In the estate of E. F., deceased.

I, G. H., of , clerk to L. M., of , solicitor, make oath and say as follows:—

Affidavit of Search and Non-Appearance to Citation to accept or refuse Grant.

On the day of 19 , the said L. M. extracted a citation on behalf of A. B. citing C. D. to accept or refuse probate of the will dated, etc., of E. F., deceased [*or* letters of administration of the estate of E. F., deceased, *or as the case may be*].

On the day of 19 , I duly and carefully searched the book kept in the principal probate registry of this Division for the entry of appearances to citations from the said day of 19 , to the present day (the day of instant), to ascertain whether or not any appearance to the said citation had been entered either by or on behalf of the above-named C. D., and I say that no appearance to the said citation has been entered either by or on behalf of the above-named C. D.

Sworn at
this day of
18 , before me,

(Signed) G. H.

No. 37.—Affidavit to lead Registrar's Order for Guardian of Infant taking Administration.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.
In the estate of A. B., deceased.

I, C. D., of , bookseller, make oath and say as follows:—

Affidavit to lead Registrar's Order for Guardian of Infant taking Administration.

The said A. B., of , died at aforesaid on the day of 19 , intestate, a widower and not possessed of any real estate,* leaving E. F. his natural and lawful and only child, who is now an infant of the age of six years and upwards, but under the age of seven years. There is no testamentary or other lawfully appointed guardian of the said infant.

I am the lawful grandfather and only [*or* one of the] next-of-kin of the said infant, and I am ready and willing to undertake the guardianship of the said infant for the purpose of taking letters of administration of the estate of the said A. B., deceased, for the use and benefit of the said infant until he shall attain the age of twenty-one years.

Sworn at
this day of
19 , before me,

(Signed) C. D.

* *If the deceased died possessed of real estate the heir-at-law must be cleared off.*

No. 38.—Affidavit to lead Registrar's Order for Guard Infant renouncing.

In the High Court of Justice. Probate, Divorce, and Admiralty D
The Principal Probate P

In the estate of A. B., deceased.

Affidavit to lead Registrar's Order for Guardian of Infant renouncing.

I, C. D., of , widow, make oath and say, that A. B., of deceased, died on the day of 19 , at , a widow intestate and not possessed of any real estate,* leaving him su E. F. and G. H. his natural and lawful and only children, a next-of-kin, who are now in their infancy, to wit, the said E. F age of years and upwards, and the said G. H., of the age o years and upwards, but respectively under the age of seven year there is no testamentary or other lawfully appointed guardian said infants.

And I further make oath and say, that I am the lawful grand and only [*or* one of the] next-of-kin of the said infants, and ar and willing to undertake the guardianship of the said infants, purpose of renouncing on their part and behalf all their right, t interest to and in the letters of administration of the estate of A. B., deceased.

Sworn at
this day of
19 , before me, } (Signed)

* *If the deceased died possessed of real estate the heir-at-law cleared off.*

No. 39 —Affidavit—Increase of Estate—Further Secu

In the High Court of Justice. Probate, Divorce, and Admiralty I
The Principal Probate F

In the estate of A. B., deceased.

Affidavit of Increase of Estate.

I, C. D., of , carpenter, make oath and say as follows:—
That on the day of 19 , letters of administration estate of A. B., of , deceased, were granted to me by th Court of Justice at the principal probate registry thereof.

That the gross value of the said estate in the United Kingd then sworn to amount to £ .

That I have since discovered that the value of the said estate that amount; and that the true gross value thereof is £ .

Sworn, etc. (Signed)

No. 40.—Affidavit to lead Order for Notation of Dom

In the High Court of Justice. Probate, Divorce, and Admiralty I
The Principal Probate I

In the estate of A. B., deceased.

Affidavit—Notation of Domicile,

I, C. D., of , make oath and say as follows:—
That A. B., of , deceased, died on the day of domiciled in England.

That on the day of 19 , probate of the will [o

case may be] of the said deceased was granted to me by the High Court of Justice at the principal probate registry thereof.

That the gross value of the estate in the United Kingdom in respect of which the grant was made was then sworn to be £ .

That no additional estate has since come to my knowledge.

That part of the said estate amounting to £ (further particulars of which are set forth in the schedule hereto annexed) is in Scotland.

Sworn, etc.

(Signed) C. D.

SCHEDULE.

[*To be signed by the deponent.*]

No. 41.—Affidavit of Heir-at-Law in support of Claim to Grant.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , mechanic, make oath and say as follows:—

Affidavit of Heir-at-Law in support of Claim to Grant

The above-named A. B. (wife of E. F.), of , was married once only, namely, to the said E. F., now residing at .

The said A. B. died on 19 , without leaving any parent or other ancestor, and without ever having had any issue.

That I am the eldest brother and heir-at-law of the said A. B., being the natural and lawful child and the eldest born son of J. S. and E. S. his wife, who were the natural and lawful father and the natural and lawful mother of the said A. B.

The said A. B. died possessed of certain real estate which she became entitled to under the will of E. H., proved in the principal probate registry on the day of 19 , being part of the real estate of the said E. H., and devised by her to trustees upon trust to pay the rents thereof to the said A. B.'s mother, the said E. S., during her life, and after her death to the use of the children of the said E. S. in fee simple.

The said E. S. died on the day of 19 .

Sworn, etc.

(Signed) C. D.

No. 42.—Another Form.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

I, E. B., of , gentleman, make oath and say as follows:—

That the above-named A. B., of , died on 19 , seized of two freehold dwelling-houses, being Nos. 4 and 5, Barking Road, Chester, in the county of Chester, which were devised to him by the will of , who died on the day of 19 . That the said A. B. was also seized of a plot of freehold building land situate at , in the county of , which was purchased by him.

That the said A. B. was married once only, namely, to C. B., formerly C. S., and had issue three natural and lawful children and no more.

That I, the said E. B., am the eldest born son and heir-at-law of the said A. B., being one of the said three children of the said A. B. and C. B.

Sworn, etc.

(Signed) E. B.

No. 43.—Affidavit by Heir by Custom of Gavelkind in supp of Claim to Grant.

In the High Court of J stice. Probate, Divorce, and Admiralty Divis
The Principal Probate Regis

In the estate of A. B., deceased.

Affidavit by Heir by Custom of Gavelkind in support of Claim to Grant.

I, C. D., of , in the county of Kent, saddler, make oath and as follows:—

That A. B., of , died on the day of 19 , intest a widower, without lineal ancestor or lineal descendant or brother.

That the said A. B. was the owner in fee simple of a freehold h and garden, No. 150, George Street, Deal, in the county of Kent. said house and garden were purchased by the said A. B. in the year

That I am one of the heirs, according to the custom of gavelkin the said A. B., being the natural and lawful and eldest son of G. B. natural and lawful eldest brother of the said A. B., born of the s father and mother. The said G. B. died in the lifetime of the said And I do further make oath and say that on the day of notice of this application was given to R. B., S. B., and T. B., who myself are the only heirs of the said A. B. according to the said cus

Sworn, etc. (Signed) C.

No. 44.—Affidavit of Justification—Guarantee Society.

In the High Court of Justice. Probate, Divorce, and Admiralty Divi
The Principal Probate Regi

In the estate of , deceased.

Affidavit of Justification—Guarantee Society.

I, W. S. B., of , in the county of Middlesex, assistant secr to the Society, Limited, make oath and say as follows:—

1. I am now, and have been since the day of 19 assistant secretary of Society, Limited, established in the 19 , in accordance with the provisions of the Companies Act, 186

2. The said society was registered on 19 , and now carri business at aforesaid.

3. The subscribed capital of the said society is £ , held in s of £ each (of which £ has been paid on each share), b standing in the names of a responsible body of proprietors, so that is an uncalled capital of £ , added to which the whole of the society's investments in the Government funds and otherwise (am ing to the sum of £ and upwards) are now available for the s ment of claims and demands of the said society in respect guarantees.

The funds of the said society are invested as follows: [*here set list of the securities*].

And I fu.ther say that all claims and demands properly arising the guarantees of the said society are regularly paid and satisfied the prescribed time after the same shall have been delivered. The p outstanding unsecured claims of every kind against the said soci not exceed the sum of £ .

4. The memorandum and articles of association of the said s were registered at the office of the Registrar of Joint Stock Com on the day of 19 , and contain no regulation as to a the common seal to bonds or other instruments. The execut

instruments required by law to be sealed with the common seal is regulated by a resolution passed by the board of directors on the day of 19 , which provides—"That bonds and all other "documents required to be under the common seal of the society may "be executed by affixing the said common seal, and by the signature of "any two of the directors and of the manager, or in the absence of the "manager of any three directors," and by a further resolution passed by the board of directors on the day of 19 , which provides—"That fidelity guarantee bonds and policies may in future be signed by "any two of the directors and the manager, or by any two of the "directors and the assistant secretary."

5. Save as hereinbefore is mentioned, there is no provision as to the due execution of the bonds issued by the said society, and all bonds to which the common seal has been affixed, and which have been signed by any two directors and the manager, or in the absence of the manager by any three directors, and as to fidelity guarantee bonds since the day of 19 , by any two of the directors and the assistant secretary, are binding on the society.

The bond now produced and shown to me and marked "A" was duly sealed by the seal of the said society and signed by two of the directors of the said society, and the names and signatures set and subscribed to the said bond are of the respective handwritings of , who are two of the directors of the said society (and the name or signature of is my handwriting, and I am the assistant secretary of the said society as aforesaid).

6. No petition or other proceeding is pending in any court for the purpose of winding up the said society.

Sworn, etc.

(Signed) W. S. B.

No. 45.—Affidavit as to Documents (R. S. C., O. 31, r. 13).

19 . No. .

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of E. F., deceased.

Between A. B., Plaintiff,
and
C. D., Defendant.

I, the above-named defendant C. D., make oath and say as follows:— Affidavit of Documents.

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be*].

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are*].

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in

the possession, custody, or powor of my solicitors or agents, sol
agent, or in the possession, custody, or power of any other pe
person on my behalf, any deed, account, book of account,
receipt, letter, memorandum, paper or writing, or any copy of o
from any such document, or any other document whatsoever,
to the matters in question in this suit, or any of them, or whe
entry has been made, relative to such matters, or any of the
than and except the documents set forth in the said first an
schedules hereto.

Sword, etc. (Signed)

[R. S. C., App. B., No. 8.]

No. 46.—Affidavit of Scripts (Rules 30 and 31, Conte Business).

In the High Court of Justice. Probate, Divorce, and Admiralty
(Probate.)

In the estate of E. F., deceased.
Between A. B., Plaintiff,
and
C. D., Defendant.

Affidavit of Scripts.

I, A. B., of , in the county of , party in this actio
oath and say, that no paper or parchment writing being or pr
to be or having the form or effect of a will or codicil or oth
mentary disposition of E. F., late of , in the county
deceased, the deceased in this action, or being or purporti
instructions for, or the draft of, any will, codicil, or other testa
disposition of the said E. F. has at any time, either before or
death, come to the hands, possession, or knowledge of me, this d
or to the hands, possession, or knowledge of my solicitors in th
so far as is known to me, this deponent, save and except the
original last will of the said deceased now remaining in the
registry of this court [*or* hereto annexed, *or as the case ma*
said will bearing date the day of 19 [*or as the case*
also save and except [*here add the dates and particulars of*
testamentary papers of which the deponent has any knowledge].

Sworn at
on the day of
19 , before me, } (Signed)

No. 47.—Affidavit on Application for Substituted (Order 10).

In the High Court of Justice. Probate, Divorce, and Admiralty
(Probate.)

In the estate of A. B., deceased.
C. D. against E. F.

Affidavit on Application for Substituted Service of Writ.

I, , of , clerk to , of , solicitor for th
named plaintiff, make oath and say as follows:—

1. Having been directed by to serve the above-named
with a copy of the writ of summons in this actio
appeared to me to have been regularly issued out of and unde

of the Central Office of the Supreme Court of Judicature by the above-named plaintiff against the above-named defendant, and dated the day of 19 , which said writ and copy were subscribed and endorsed in the manner and form prescribed by the Rules of the Supreme Court, and a true copy of which said writ is now produced and shown to me, marked "A," I did on the day of 19 , attend for the purpose of serving a copy of the said writ at [*describe efforts to effect service*].

I have made all reasonable efforts and used all due means in my power to serve the said defendant personally with a true copy of the said writ, but I have not been able to do so.

Sworn, etc.

This affidavit is filed on behalf of the

No. 48.—Affidavit verifying Administrator's and Receiver's Account.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

In the estate of A. B., deceased.

E. F. *v.* G. H.

Affidavit Verifying Administrator's and Receiver's Account.

I, C. D., of , the administrator and receiver *pendente lite* appointed in this cause, make oath and say as follows:—

1. The account marked with the letter A. produced and shown to me at the time of swearing this my affidavit, and purporting to be my account of *the rents and profits of the real estate and of the personal estate of* , the testator [*or* intestate] in this cause, from the day of 19 , to the day of 19 , both inclusive, contains a true account of all and every sum of money received by me or by any other person or persons by my order or, to my knowledge or belief, pursuant to order dated day of 19 .

2. The several sums of money mentioned in the said account, hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. W. X. and Y. Z. , the sureties named in the recognizance dated the of 19 , are both alive, and neither of them has become bankrupt or insolvent.

Jurat.

Sworn, etc.

(Signed) C. D.

No. 49.—Affidavit for leave to serve Writ Abroad (R. S. C., O. II. r. 4).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

In the estate of C. D., deceased.

A. B. against E. F.

Affidavit for leave to serve Writ Abroad.

I, A. B. [*address and description*], the above-named intended plaintiff [*or his solicitor*], make oath and say as follows:—

1. [*Set out the nature of the action.*]
2. I am advised and believe that I have good cause of action
the intended defendant in respect of the matters aforesaid.
3. The said intended defendant is at present residing at
is [*or* is not] a British subject.
Sworn, etc. (Signed)

[See Chitty's

APPEARANCES.

No. 50.—Appearance to Writ of Summons, Memorand (R. S. C., Order 12, r. 9).

19 . No.

In the High Court of Justice. Probate, Divorce, and Admiralty D
(Probate.)

In the estate of E. F., deceased.

Between A. B., Plaintiff,
and
C. D., Defendant.

Appearance to Writ of Summons.

Enter an appearance for C. D., defendant in this action.
Dated the day of 19 .
(Signed)
of
Agent for
Solicitor for the defendant .

NOTE.—*An appearance to writ of summons or to citation proceedings must be entered at the Central Office.*

No. 51.—Appearance to Writ of Summons, Notice of En (R. S. C., O. 12, r. 9).

19 . No.

In the High Court of Justice. Probate, Divorce, and Admiralty D
(Probate.)

In the estate of E. F., deceased.

Between , Plaintiff,
and
, Defendant.

Take notice, that have this day entered an appearance
Central Office, Royal Courts of Justice, for the defendant
writ of summons in this action.
[*If the defendant requires a Statement of Claim add a note
effect.*]
Dated the day of 19 .
(Signed)
of
Agent for
Solicitor for the defendant .

No. 52.—Appearance to Warning or Citation (Rule 26, Contentious Business).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of A. B., deceased.

Caveat No. 20, dated the day of 19 .
Citation dated the day of 19 .

Appearance to Warning or to Citation (other than Citation to see Proceedings).

PLAINTIFF (*the party warning or citing*).

C. D., of , the sole executor of the last will and testament of the above-named A. B., deceased, dated day of 19 [*or as the case may be*].

DEFENDANT (*the party warned or cited*).

E. F., of , the natural and lawful son and one of the next-of-kin of the said A. B. [*or as the case may be*].

Name and address (within three miles of the Central Hall of the Royal Courts of Justice) of solicitor or party appearing.

Dated the day of 19 .

[NOTE.—*An appearance to a warning or to a citation (other than a citation to see proceedings) must be entered in the Contentious Department by filling in this form and making the entry in the Index Book.*]

APPOINTMENT.

No. 53.—Appointment of Receiver of Real Estate.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of E. F., deceased.
A. B. against C. D. and Another.

Appointment of Receiver of Real Estate.

Whereas there is now depending in the Probate, Divorce, and Admiralty Division of the High Court of Justice a certain action touching the validity of the will of E. F., late of , deceased, wherein A. B. is plaintiff, and C. D. and E. F. are defendants; and whereas the said will affects the real estate of the said deceased. Now I, the Right Honorable Sir John Gorell Barnes, Knight, the President of the said Division of the Court, do hereby appoint G. H., of , to be the receiver of the rents and profits of the real estate of the said deceased pending the said action, he having given sufficient security for the faithful performance of the duties committed to him.

Dated this day of 19 .

(L.S.)

(Signed) J. G. B.

No. 54.—Appointment of Nominee of the Guardians Poor to take Grant (after Citation of the Next- if any).

In the High Court of Justice. Probate, Divorce, and Admiralty I
(Probato.)

In the goods of E. F., deceased.

Appointment of Nominee of the Guardians of the Poor to take Grant.

At a meeting of the Guardians of the Poor of the Uni at the Workhouse on Thursday, the day of ,

PRESENT:

A. B., Esq., chairman, and 20 other guardians out of a total of 31,

It was resolved that C. D., the clerk to the guardians, be, a hereby appointed nominee of the said guardians for the pu taking out letters of administration of the personal estate of the asylum for the county of at , and formerly of the county of , widow, who died at the said asylum on th day of 1906, and of whom the said guardians are creditor

I certify the above to be a true copy of the minute of the re duly passed at the above-mentioned meeting.

(Signed) C. D.,
Clerk to the Guar

ASSIGNMENT.

No. 55.—Assignment of Bond.

In the estate of A. B., deceased.

KNOW ALL MEN by these presents, that I, B. C., one of the re of the Principal Probate Registry of the High Court of pursuant to the 83rd section of the Court of Probate Ac and by virtue of an order [*quote the order for assignment summons*] made on the day of 19 , have assig by these presents do assign to C. D., of , in the co , farmer, the annexed bond bearing date the day 19 , for the due administration of the estate of A. B., of and all benefit and advantage arising therefrom.

B. C. (L
Regist

Signed, sealed and delivered, in the presence of E. F.

The assignment should bear an impressed stamp of 5*s*.

Assignment of Guardians. See under "Orders," Fo Nos. 210 to 213.

BONDS.

Bond—Administration.

No. 56.—Bond—Administration.

KNOW ALL MEN by these presents, that we, A. B., of , baker, C. D., of , banker, E. F., of , widow, are jointly and severally bound unto the Right Honorable Sir John Gorell Barnes, Knight, the President of the Probate, Divorce, and Admiralty Division of His Majesty's High Court of Justice, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said Sir John Gorell Barnes, or to the President of the said Division for the time being, for which payment well and truly to be made we bind ourselves and each of us, for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of 19 .

The stamp duty hereon is 5s., if the estate exceeds £100. No duty is payable if the estate does not exceed that sum.

If the deceased died on or since 1st January, 1898, the penalty is double the sum of the gross *principal* value of the personal estate and the gross *annual* value of the real estate. If the death was before 1898, the penalty is double the personal estate only.

The condition of this obligation is such, that if the above-named A. B., the lawful husband of F. B., of , deceased, who died on the day of 1898, and the intended administrator of all the estate which by law devolves to and vests in the personal representative of the said deceased, do, when lawfully called on in that behalf, make, or cause to be made, a true and perfect inventory of the said estate which has or shall come to his hands, possession, or knowledge, or into the hands and possession of any other person for him, and the same so made do exhibit, or cause to be exhibited, into the Principal Probate Registry of His Majesty's High Court of Justice, whenever required by law so to do: And the said estate do well and truly administer according to law, and further do make, or cause to be made, a just and true account of his said administration, whenever required by law so to do. And if it shall hereafter appear that any last will or testament was made by the said deceased, and the executor or executors or other persons therein named do exhibit the same into the said Division of the said Court, making request to have it allowed and approved accordingly, if the said intended administrator being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said Court, then this obligation to be void, and of none effect, or else to remain in full force and virtue.

A. B. (L.S.)
C. D. (L.S.)
E. F. (L.S.)

Signed, sealed and delivered by the within-named A. B., C. D., and E. F., in the presence of *A Commissioner for Oaths.*

No. 57.—Bond—Administration—Will.

Bond—Administration—Will.

KNOW ALL MEN by these presents, that we, A. B., of , baker, C. D., of , widow, and E. F., of , banker, are jointly and severally bound unto the Right Honorable Sir John Gorell Barnes, Knight, the President of the Probate, Divorce, and Admiralty Division of His Majesty's High Court of Justice, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said Sir John Gorell Barnes, or to the President of the said Division for the time being, for which payment well and truly to be made we bind ourselves and each of us, for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of 19 .

The condition of this obligation is such, that if the above-named A. B., the residuary legatee named in the will [*or as the case may be*] of

G. H., of , deceased, who died on the day of 19
the intended administrator (with the will) of all the estat
by law devolves to and vests in the personal representative of
deceased, do, when lawfully called on in that behalf, make, or
be made, a true and perfect inventory of the said estate whic
shall come to his hands, possession or knowledge, and the same
do exhibit, or cause to be exhibited, into the principal probate
of the said Division, whenever required by law so to do: and
estate do well and truly administer according to law, and fur
make, or cause to be made a just and true account of his said a
tration, when he shall be thereunto lawfully required, then this
tion to be void, and of none effect, or else to remain in all fo
virtue.

A. B.
C. D.
E. F.

Signed, sealed, and delivered by the within-named A. B., C.
E. F., in the presence of *A Commissioner for*

No. 58.—Bond. Administration under 73rd Section of of Probate Act, 1857.

Administration Bond (73rd Section of Court of Probate Act, 1857).

KNOW ALL MEN by these presents, that we, A. B., of ,
C. D., of , baker, and E. F., of , baker, are joint
severally bound unto the Right Honorable Sir John Gorell
Knight, the President of the Probate, Divorce, and Ad
Division of His Majesty's High Court of Justice, in the
pounds of good and lawful money of Great Britain
paid to the said Sir John Gorell Barnes, or to the President
said Division for the time being, for which payment well an
to be made we bind ourselves and every of us, for the whc
heirs, executors, and administrators, firmly by these pr
Sealed with our seals. Dated the day of 19 .

The condition of this obligation is such, that if the above-
A. B., the person appointed by the Right Honorable Sir John
Barnes, Knight, the President of the said Division, under and by
of the 73rd section of the Court of Probate Act, 1857, to be the ac
trator of all the estate which devolves to or vests in the personal
sentative of G. H., of , deceased, who died on the day of
19 , do, when lawfully called on in that behalf, etc., etc. [*here*
the previous form of bond, No. 56].

No. 59.—Bond of Creditor—Administration.

Bond of a Creditor—Administration.

KNOW ALL MEN by these presents, that we, C. D., of
maker, E. F., of , stationer, and G. H., of , bak
jointly and severally bound unto the Right Honorable Sir
Gorell Barnes, Knight, the President of the Probate, Divorc
Admiralty Division of His Majesty's High Court of Justice,
sum of pounds of good and lawful money of Great Brit
be paid to the said Sir John Gorell Barnes, or to the Presi
the said Division for the time being, for which payment w
truly to be made we bind ourselves and each of us, for the

our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of 19 .

The condition of this obligation is such, that if the above-named C. D., a creditor, and the intended administrator of all the estate which by law devolves to and vests in the personal representative, of A. B., of , deceased, who died on the day of 19 , do, when lawfully called on in that behalf, make, or cause to be made, a true and perfect inventory of the said estate which has or shall come to his hands, possession, or knowledge, and the same so made do exhibit, or cause to be exhibited, into the principal probate registry of the said Division, whenever required by law so to do, and the said estate do well and truly administer according to law, paying all and singular the debts which he, the said deceased did owe at his decease in due course of administration rateably and proportionably and according to the priority required by law, not, however, preferring his own debt by reason of his being administrator as aforesaid: And further do make [*continue as in Form No.* 56.]

No. 60.—Bond—Guarantee Society.

Bond—Guarantee Society.

KNOW ALL MEN by these presents, that we, A. B., of , baker, and The Society, Limited, having its registered office at in the county of , are jointly and severally bound unto the Right Honorable Sir John Gorell Barnes, Knight, the President of the Probate, Divorce, and Admiralty Division of His Majesty's High Court of Justice, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said Sir John Gorell Barnes, or to the President of the said Division for the time being, for which payment well and truly to be made we bind ourselves and each of us, for the whole, our heirs, executors, and administrators and successors and assigns, firmly by these presents. Sealed with our seals. Dated the day of 19 .

The condition of this obligation is such, that if the above-named A. B., the natural and lawful brother and one of the next-of-kin of C. D., of , deceased, who died on the day of 19 , and the intended administrator of all the estate which by law devolves to and vests in the personal representative of the said deceased, do, etc. [*continue as in Form* No. 56].

No. 60A.—Form of Execution and Attestation of a Guarantee Society's Bond.

Forms of Execution and Attestation of a Guarantee Society's Bonds.

Signed, sealed and delivered by the within-named A. B. in the presence of E. F. } (Signed) A. B. (Seal of A. B.)

A Commissioner for Oaths.

(Signed) G. H. }
J. K. } *Directors.*
W. S. B., *Secretary.*

(Seal of the Society.)

This seal of the Society, Limited, and the signatures of G. H. and J. K., two of the directors, and of W. S. B., the secretary of the society, were hereunto affixed in the presence of

(Signed) E. F., *A Commissioner for Oaths.*

EXHIBIT ON BOND.

This is the bond marked A. referred to in the affidavit of W. S. B., sworn before me this day of 19 .

(Signed) E. F. *A Commissioner for Oaths.*

(*Another Form.*)

Signed, sealed, and delivered by the within-named A. B. presence of

(Signed) E. F.,
A Commissioner for O
(Seal of A

The seal of the Corporation, Limited, was hereunto affi the presence of

(Signed) L. M. } *Directors.*
N. O. }
P. R., *General Manager and Secretary.*

(Seal of the Corporat

EXHIBIT ON BOND.

This is the exhibit marked A., referred to in the affidavit of sworn this day of 19 , before me,

(Signed) E

No. 61.—Bond to be executed by a Receiver of Real E *pendente lite* (Form 30, Contentious Business).

Bond of Receiver *pendente lite.*

KNOW ALL MEN by these presents, that we, A. B., of , b C. D., of , butcher, and E. F., of , barber, are and severally bound unto the Right Honorable Sir John Barnes, Knight, the President of the Probate, Divorce Admiralty Division of the High Court of Justice, in the s pounds of good and lawful money of Great Britain, paid to the said Right Honorable Sir John Gorell Barnes the President of the Probate, Divorce, and Admiralty Divi the said Court for the time being, for which payment well and to be made we bind ourselves and every of us, for the whe heirs, executors, and administrators, firmly by these pr Sealed with our seals. Dated the day of , in th of our Lord one thousand nine hundred and .

Whereas G. H., of , died on the day of , one sand nine hundred and , at , having, as asserted, mad duly executed his last will and testament, with codicil th bearing date respectively the [*here insert the dates of the testam papers*]. And whereas there is now pending in the High Co Justice a certain probate action instituted by I. J., as one executors named in the said will, against K. L., the natural and and next-of-kin of the said deceased, touching and concerni validity of the said will and codicil , in which said probate M. N., as the heir-at-law of the said G. H., has (*c*) [been cited proceedings, and has entered an appearance, and] become a party said probate action: And whereas the above-bounden A. B. ha duly appointed to be receiver of the real estate of the said dec pending the said probate action:

Now the condition of this obligation is such, that if the bounden A. B., the receiver of the real estate of the said G. H., dec pending the aforesaid probate action, do make a true and p inventory of all the rents, issues, and profits of the said real which have or shall come to his hands, possession, or knowledge, the hands, possession, or knowledge of any other person for hi the same so made do exhibit, or cause to be exhibited, into the pri probate registry of the High Court of Justice, when lawfully requi

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(*c*) *If such is the case.*

to do, and the same rents, issues, and profits do well and truly pay and appropriate according to law, that is to say, in payment and satisfaction of all charges and expenses which are or may be or become legally charged upon and payable out of the said rents, issues, and profits, and in the letting and managing the said real estate, and in performing other the duties committed to him by the President aforesaid, and further do make, or cause to be made, a true and just account of his administration of the said rents, issues, and profits, which shall be allowed by the said Court, and all the rest and residue of the said rents, issues, and profits do deliver and pay under the direction of the said Court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed, and delivered by the within-named in the presence of P. Q. — A. B. (L.S.) C. D. (L.S.) E. F. (L.S.)

A Commissioner for Oaths
(or a clerk in the Principal Probate Registry).

No. 62.—Bond of Administrator and Receiver *pendente lite*.

Bond of Administrator and Receiver *pendente lite*.

KNOW ALL MEN by these presents, that we, C. D., of , farmer , E. F., of , draper, and G. H., of , grocer, are jointly and severally bound unto Sir John Gorell Barnes, Knight, the President of the Probate Division of His Majesty's High Court of Justice, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said Sir John Gorell Barnes, or to the President of the said Division of the said Court for the time being, for which payment well and truly to be made we bind ourselves and each of us, for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of , in the year of our Lord one thousand nine hundred and .

Whereas A. B., of , died on the day of 19 , at , having, as asserted, made and duly executed his last will and testament, dated the day of 19 . And whereas there is now depending in the High Court of Justice a probate action entitled M. N. against P. Q., B. 19, No. , touching the validity of the said will. And whereas on the day of 19 , the Right Honorable Sir John Gorell Barnes, Knight, ordered [*or as the case may be*] that the said C. D. be appointed administrator of all the estate which by law devolves to and vests in the personal representative of the said A. B. pending the said action [*limited to set out limitations in order, if any*].

Now the condition of this obligation is such, that if the above-named C. D., the intended administrator of all the estate which by law devolves to and vests in the personal representative (*d*) of the said deceased [*limited as aforesaid*], do, pending the said action, well and truly administer the said estate, save distributing the residue thereof, under the direction and control of the said Court: and also do make or cause to be made a true and perfect inventory of such estate, and do exhibit the same into the principal probate registry of the said Court, together with a just and true account of administration thereof,

(*d*) *If the grant is of personal estate only, substitute "personal estate" for "all the estate which by law devolves to and vests in the personal representative."*

whenever thereunto lawfully required, then this obligation to
and of none effect, or else to remain in full force and virtue.

Signed, sealed, and delivered by the above-named C. D., E. F., G. H., in the presence of } C. D. E. F. G. H.

A Commissioner for Oaths.

CAVEAT.

No. 63—Caveat.

In the High Court of Justice. Probate, Divorce, and Admiralty Di
The Principal Probate Re

Caveat.

Let nothing be done in the estate of A. B., late of , de
who died on or about the day of 19 , at , unkn
C. D., of , having interest [*or* to E. F., of , solici
parties having interest].

Dated this day of 19 .

To be signed by the person entering the caveat.

CERTIFICATES.

No. 64.—Certificate of Further Security.

In the High Court of Justice. Probate, Divorce, and Admiralty D
The Principal Probate R

In the estate of A. B., deceased.

Certificate of Further Security.

I, the undersigned registrar of the principal probate registry
High Court of Justice, do hereby certify that the gross value
estate of A. B., of , deceased, originally sworn to amo
the sum of £ , has now been sworn to amount to the sum of
and full security has been given for the increased amount.

Letters of administration ( ) were granted at the Probate Registry on the day of . } Dated . (Signed) R. A. Regi

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No. 65.—Certificate or Reason of Delay.

In the High Court of Justice. Probate, Divorce, and Admiralty D
The Principal Probate R

In the estate of A. B., deceased.

Certificate or Reason of Delay.

I, C. D., of , the party applying for letters of administr
the estate [*or* probate of the will] of the said A. B., of , d
do hereby certify that the reason why I have not sooner applied
said letters of administration [*or* probate] is that the only p

which the said deceased died possessed of or entitled to consisted of the sum of bequeathed to her by the will of E. F., of , deceased, proved in the month of 19 , in this Division [*or as the case may be*], subject to the life interest therein of G. H., who died in the month of last; and that the said letters of administration [*or* probate] are required to enable me to give a legal discharge for the said sum, and for no other purpose whatever.

Dated the day of 19 .

(Signed) C. D.

I believe the above to be true,
S. H.,
Solicitor.

No. 66.—Certificate of Service to be endorsed on Citation.

This citation was served by A. B. on the within-named C. D., at on the day of 19 .

(Signed) A. B.

, Certificate of Service of Citation.

CITATIONS.

No. 67—Citation to Accept or Refuse Probate.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

EDWARD VII., by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith: To A. B., of , in the county of

WHEREAS it appears by the affidavit of C. D., sworn the day of 19 , that E. F., of , in the county of , died on the 1st day of January, 19 , at , having made and duly executed his last will and testament dated the day of , and thereof appointed you, the said A. B., executor, but did not therein name any residuary legatee or devisee. And whereas it further appears by the said affidavit that the said deceased died a bachelor without parent, and that the said C. D. is the natural and lawful brother, and one of the next-of-kin of the said deceased:

Citation to Accept or Refuse Probate.

Now this is to command you the said A. B. that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the principal probate registry of our High Court of Justice, at Somerset House, Strand, London, and accept or refuse probate of the said will, or show cause why letters of administration with the said will annexed, of all the estate which by law devolves to and vests in the personal representative of the said deceased, should not be granted to the said C. D. And take notice, that in default of your so appearing and accepting and extracting probate of the said will, our said court will proceed to grant letters of

P.P.

administration with the said will annexed of the said estate to the sa
C. D., your absence notwithstanding.
Dated at London this day of 19 , and in the ye
of our reign.
Extracted by of , Solicitor.
(Signed) G. H.,
Registrar.

No. 68.—Citation to Accept or Refuse Administration.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisio
(Probate.)

EDWARD VII., by the Grace of God of the United Kingdom
Great Britain and Ireland and of the British Dominio
beyond the Seas King, Defender of the Faith: To A. B
of , in the county of .

Citation to Accept or Refuse Administration.

WHEREAS it appears by an affidavit of C. D., sworn the day
19 , that E. F., of , in the county of , died on the 1
day of January, 19 , at , intestate, a widower, without child
parent, and not possessed of any real estate, leaving you the said A. B
his natural and lawful brother and only next-of-kin: And whereas
further appears by the said affidavit that the said C. D. is the lawf
nephew and one of the persons entitled in distribution to the person
estate of the said deceased, being the natural and lawful son of
the natural and lawful sister of the said deceased, who died in th
lifetime of the said deceased:

Now this is to command you the said A. B. that within eight day
after service hereof on you, inclusive of the day of such service, you
cause an appearance to be entered for you in the principal probat
registry of our High Court of Justice at Somerset House, Stran
London, and accept or refuse letters of administration of all the estat
which by law devolves to and vests in the personal representative of th
said deceased, or show cause why the same should not be granted
the said C. D., and take notice that in default of your so appearing an
accepting and extracting the said letters of administration, our sai
court will proceed to grant letters of administration of the said estat
to the said , your absence notwithstanding.
Dated at London this day of 19 , and in the yea
of our reign.
Extracted by of , Solicitor.
(Signed) G. H.,
Registrar.

No. 69.—Citation by Creditor against Next-of-Kin (if any) t Accept or Refuse Administration.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisio
(Probate.)

EDWARD VII., by the Grace of God of the United Kingdom
Great Britain and Ireland and of the British Dominio
beyond the Seas King, Defender of the Faith: To the next-o
kin (if any) and all other persons having or claiming an
interest in the estate of C. D., deceased.

Citation by Creditor against

WHEREAS it appears by the affidavit of A. B., sworn the day
, that C. D., of , in the county of , died on the 1st da

of January, 19 , at , intestate, a widower without child or parent, brother or sister, uncle or aunt, nephew or niece, cousin-german or any known relation, and that the said A. B. is a creditor of the said deceased:

Next-of-Kin (if any) to Accept or Refuse Administration.

Now this is to command you, that within one month after service by publication hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the principal probate registry of our High Court of Justice at Somerset House, Strand, London, and accept or refuse letters of administration of all the estate which by law devolves to and vests in the personal representative of the said deceased, or show cause why letters of administration of his personal estate should not be granted to the said A. B., and take notice that in default of your so appearing and accepting and extracting letters of administration as aforesaid, our said court will proceed to grant letters of administration of the personal estate of the said deceased to the said A. B., your absence notwithstanding.

Dated at London this day of 19 , and in the year of our reign.

Extracted by of , Solicitor. (Signed) G. H., Registrar.

No. 70.—Citation against a Minor to Accept or Refuse Administration.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

EDWARD VII., by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith: To A. B., of , in the county of .

Citation against a Minor to Accept or Refuse Administration.

WHEREAS it appears by the affidavit of E. F., sworn the day of , that G. H., of , in the county of , died on the 1st day of January, 19 , at , in the county of , intestate, a bachelor without parent, leaving you the said A. B., his natural and lawful brother and only next-of-kin, and the only person entitled in distribution to his personal estate, and that you are also his heir-at-law: And whereas it further appears by the said affidavit, that the said E. F. is a creditor of the said deceased, and that you the said A. B. are in your minority, and that C. D. is your lawful grandmother and only next-of-kin:

Now this is to command you the said A. B. that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the principal probate registry of our High Court of Justice at Somerset House, Strand, London, and accept or refuse letters of administration of all the estate which by law devolves to and vests in the personal representative of the said deceased, or show cause why the same should not be granted to the said E. F. And take notice, that in default of your so appearing and accepting and extracting the said letters of administration, our said court will proceed to grant letters of administration of the said estate to the said E. F., you absence notwithstanding.

Dated at London this day of 19 , and in the year of our reign.

Extracted by of , Solicitor. (Signed) G. H., Registrar.

No. 71.—Citation by Representative of Husband ag Heir-at-Law to Accept or Refuse Administratio *bonis non.*

In the High Court of Justice. Probate, Divorce, and Admiralty Di (Probate.)

EDWARD VII., by the Grace of God of the United Kingd Great Britain and Ireland and of the British Dom beyond the Seas King, Defender of the Faith: To of , in the county of .

Citation by Representative of Husband against Heir-at-Law to Accept or Refuse Administration *de bonis non.*

WHEREAS it appears by the affidavit of E. F. (wife of B. F.), the day of 19 , that A B., of , in the county of died on the day of , at , intestate, and that let administration of all the estate which by law devolves to and v the personal representative of the said deceased, were on the of granted by our High Court of Justice at the principal p registry thereof to B. B., the lawful husband of the said decease for some time intermeddled in the said estate, and died on the day of leaving part thereof unadministered. And whe further appears by the said affidavit that the said E. F. is the pe representative of the said B. B., deceased, letters of administ having been granted to him by our said court at the district p registry thereof, at , on the day of , and that y said C. D. are the heir-at-law of the said deceased:

Now this is to command you the said C. D. that within eigh after service hereof on you, inclusive of the day of such service, cause an appearance to be entered for you in the principal p registry of our said court at Somerset House, Strand, Londo accept or refuse letters of administration of the said unadmin estate, or show cause why the same should not be granted to th E. F., and take notice, that in default of your so appearing and ing and extracting the said letters of administration, our said cou proceed to grant letters of administration of the said unadmin estate to the said E. F., your absence notwithstanding.

Dated at London this day of 19 , and in the of our reign.

Extracted by of , Solicitor. (Signed) G. H Regis

No. 72.—Citation by Person claiming Limited Administration.

In the High Court of Justice. Probate, Divorce, and Admiralty Di (Probate.)

EDWARD VII., by the Grace of God of the United Kingd Great Britain and Ireland and of the British Dom beyond the Seas King, Defender of the Faith: To of , in the county of .

Citation by Person claiming

WHEREAS it appears by the affidavit of C. D., sworn the of 19 , that E. F., of , in the county of , died on

day of January, 19 , at , in the county of , intestate, a widower, leaving you, the said A. B., his natural and lawful son, only next-of-kin, heir-at-law, and only person entitled to his estate: And whereas it further appears by the said affidavit that the said C. D. is the only person beneficially interested in and entitled to the sum of pounds with interest due and to become due thereon, secured by an indenture of mortgage bearing date the day of upon all that tenement or messuage situate in the parish of , in the county of , and its appurtenances, assigned by I. K. to the said E. F. in and by the said indenture of mortgage: Limited Administration.

Now this is to command you the said A. B. that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the principal probate registry of our High Court of Justice, at Somerset House, Strand, London, and accept or refuse letters of administration of all the estate which by law devolves to and vests in the personal representative of the said deceased, or show cause why letters of administration of the said estate limited to all the right, title, and interest of the said deceased in and to the said sum of pounds, with interest due and to become due thereon, should not be granted to the said C. D.: And take notice, that in default of your so appearing and accepting and extracting the said letters of administration, our said court will proceed to grant letters of administration of the said estate limited as aforesaid, or under such other limitations as to the court shall seem meet, your absence notwithstanding.

Dated at London this day of 19 , and in the year of our reign.

Extracted by of , Solicitor. (Signed) G. H., Registrar.

No. 73.—Citation to bring in Probate (another Will set up).

In the High Court of Justice. (Probate.) Probate, Divorce, and Admiralty Division.

EDWARD VII., by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith: To A. B., of , in the county of .

WHEREAS it appears by the affidavit of C. D., sworn the day of 19 , that probate of the alleged last will and testament of E. F., of , deceased, was on the day of 19 , granted to you by our High Court of Justice, at the principal probate registry thereof: And whereas it is alleged in the said affidavit that the said deceased made and duly executed his last will and testament, dated the day of , and thereof appointed the said C. D. executor, and that the said probate ought to be called in, revoked, and declared null and void in law: Citation to bring in Probate (another Will set up).

Now this is to command you the said A. B. that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal probate registry of our said court at Somerset House, Strand, London, the aforesaid probate in order that

the said C. D. may proceed in due course of law for the revocat
the same.

Dated at London this day of 19 , and in the
of our reign.

Extracted by of , Solicitor. (Signed) G. H
Regist

No. 74.—Citation by Executor of Executor against Exe to whom Power was reserved to Accept or R Probate.

In the High Court of Justice. Probate, Divorce, and Admiralty Di
(Probate.)

EDWARD VII., by the Grace of God of the United Kingd
Great Britain and Ireland and of the British Dom
beyond the Seas King, Defender of the Faith: To
of , in the county of .

Citation by Executor of Executor against Executor to whom Power was reserved to Accept or Refuse Probate.

WHEREAS it appears by the affidavit of G. H., sworn the
of 19 , that probate of the will of A. B., of , deceas
on the day of granted by our High Court of Justice
principal probate registry thereof to C. D., one of the executors t
power being reserved of making a like grant to E. F., the other e
thereof: And whereas it further appears by the said affidavit t
said C. D. for some time intermeddled in the estate of the said d
and died on the day of , leaving part thereof unadmin
and that on the day of 19 , probate of the will of t
C. D., deceased, was granted by our said court at the said registry
said G. H., the sole executor thereof:

Now this is to command you the said E. F. that within eig
after service hereof on you, inclusive of the day of such servi
do cause an appearance to be entered for you in the principal
registry of our said court at Somerset House, Strand, Londo
accept or refuse probate of the will of the said A. B., deceased, a
notice that in default of your so appearing and accepting and ex
probate of the said will, your rights as such executor will wholl
and the representation to the said A. B., deceased, will devolve s
had not been appointed executor.

Dated at London this day of 19 , and in the
of our reign.

Extracted by of , Solicitor. (Signed) G.
Reg

No. 75.—Citation to bring in Probate (Intestacy alle

In the High Court of Justice. Probate, Divorce, and Admiralty
(Probate.)

EDWARD VII., by the Grace of God of the United Kin
Great Britain and Ireland and of the British Do
beyond the Seas King, Defender of the Faith: To
of , in the county of .

Citation to bring in Probate

WHEREAS it appears by the affidavit of C. D., sworn the
of 19 , that probate of the alleged last will and testament

of , deceased, was on the day of , 19 , granted to you by our High Court of Justice at the principal probate registry thereof, and that the said deceased died a bachelor, leaving the said C. D., his natural and lawful father and next-of-kin. And whereas it is alleged in the said affidavit that the said deceased died intestate, and that the said probate ought to be called in, revoked, and declared null and void in law: (Intestacy alleged).

Now this is to command you the said A. B. that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal probate registry of our said court at Somerset House, Strand, London, the aforesaid probate in order that the said C. D. may proceed in due course of law for the revocation of the same.

Dated at London this day of 19 , and in the year of our reign.

Extracted by of , Solicitor. (Signed) G. H., Registrar.

No. 76.—Citation to bring in Administration (Will set up).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

EDWARD VII., by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith: To A. B., of , in the county of .

WHEREAS it appears by the affidavit of C. D., sworn the day of 19 , that letters of administration of all the estate which by law devolves to and vests in the personal representative of E. F., of deceased, were on the day of granted to you by our High Court of Justice at the principal probate registry thereof. And whereas it is alleged in the said affidavit that the said deceased made and duly executed his last will and testament dated the day of 19 , and thereof appointed the said C. D. executor, and that the said letters of administration ought to be called in, revoked, and declared null and void in law: Citation to bring in Administration (Will set up).

Now this is to command you the said A. B. that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal probate registry of our said court at Somerset House, Strand, London, the aforesaid letters of administration in order that the said C. D. may proceed in due course of law for the revocation of the same.

Dated at London this day of 19 , and in the year of our reign .

Extracted by of , Solicitor. (Signed) G. H., Registrar.

No. 77.—Citation to bring in Administration (Administrator alleged not to be entitled).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

EDWARD VII., by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith: To A. B. of , in the county of .

Citation to bring in Administration (Administrator alleged not to be entitled).

WHEREAS it appears by the affidavit of C. D., sworn the 19 , that letters of administration of all the estate which by law devolves to and vests in the personal representative of E. F., of deceased, were on the day of 19 , granted to you out of the High Court of Justice at the principal probate registry thereof as the natural and lawful brother and one of the next-of-kin of the said deceased. And whereas it is alleged in the said affidavit that you are not one of the next-of-kin of the said deceased, and that the said deceased died a widower leaving the said C. D., his natural and lawful son and one of the next-of-kin, and that the said letters of administration ought to be called in, revoked, and declared null and void in law:

Now this is to command you the said A. B. that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal probate registry of our said Court at Somerset House, Strand, London, the aforesaid letters of administration in order that the said C. D. may proceed in due course of law for the revocation of the same.

Dated at London this day of 19 , and in the of our reign.

Extracted by of , Solicitor. (Signed) G. Registrar.

No. 78.—Citation to see Proceedings.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

EDWARD VII., by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith: To A. B. of , in the county of .

Citation to see Proceedings.

WHEREAS it appears by the affidavit of C. D., sworn the 19 , that there is now depending in our High Court of Justice a probate action entitled "A. and another against B., 1900, F. No. ," wherein the plaintiffs are proceeding to prove in solemn form of law the alleged last will and testament dated the day of 19 , of , who died on the day of 19 , at whereas it further appears by the said affidavit that you are the and lawful and one of the next-of-kin of the said deceased.

Now this is to give notice to you the said A. B. to appear in the said action, either personally or by your solicitor, should you think fit or your interest so to do, at any time during the dependence of the said action and before final judgment shall be given therein. And take notice that, in default of your so doing, our said court will proceed

hear the said will proved in solemn form of law and pronounce judgment in the said action, your absence notwithstanding.

Dated at London this day of 19 , and in the year of our reign.

Extracted by of , Solicitor. (Signed) G. H., Registrar.

The appearance must be entered at the central office.

No. 79.—Citation against an Executor who has intermeddled.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

EDWARD VII., by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith: To A. H., of , in the county of .

Citation against an Executor who has intermeddled.

WHEREAS it appears by an affidavit of R. G., sworn the day of 19 , that S. G., of , died on the day of 19 , at aforesaid, having made and duly executed his last will and testament bearing date the day of 19 (now remaining in the principal probate registry of our High Court of Justice), and thereof appointed you the said A. H. sole executor, and that the said R. G. is interested in the estate of the said deceased under the said will. And whereas it is alleged in the said affidavit that you the said A. H. have intermeddled in the estate of the said deceased:

Now this is to command you the said A. H. that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the said principal probate registry at Somerset House, Strand, London, and show cause why you should not be ordered to take probate of the said will under pain of the law and contempt thereof.

Dated at London this day of 19 , and in the year of our reign.

Extracted by (Signed) J. C. H., Registrar.

NOTES.—*The affidavit must give instances of intermeddling. For form of order in default of appearance see p.* 1056. *As to attachment, see pp.* 316-318. *See also* 55 *Geo. III. c.* 184, *s.* 37.

No. 80.—Citation by Guardian of Minor Children of Deceased against the Widow of Deceased to propound Paper Writing (she being Sole Executrix and Universal Legatee) or to Accept or Refuse Administration.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

EDWARD VII., by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith: To H. G., of , widow.

Citation to propound Paper Writing.

WHEREAS it appears by the affidavit of W. G., sworn the day of 19 , that J. G., of , died on the day of 19 , possessed of no real estate, leaving you the said H. G., his

lawful widow and relict, and L. G. and M. G., his natural and
children and only next-of-kin; and whereas it further appe
the said L. G. and M. G. are in their minority and have elect
uncle the said W. G. to be their guardian. And whereas it
appears by the said affidavit that the said deceased left a certai
writing purporting to be a will whereby he appointed you the sa
sole executrix and universal legatee and devisee:

Now this is to command you the said H. G. that within eig
after service hereof on you, inclusive of the day of such service,
cause an appearance to be entered for you in the principal
registry of our High Court of Justice at Somerset House,
London, and propound the said paper writing should you thin
your interest so to do, or accept or refuse letters of administrati
the estate which by law devolves to and vests in the personal rep
tive of the said deceased as having died intestate or show cause
same should not be granted to the said W. G. for the use and b
the said minors. And take notice that in default of your so ap
and doing as aforesaid our said court will proceed to grant le
administration of the said estate to the said W. G., your
notwithstanding.

Dated at London this day of 19 , and in the
of our reign.

Extracted by (Signed)
Regi

No. 81.—Præcipe for Citation.

In the High Court of Justice. Probate, Divorce, and Admiralty D
(Probate.)

In the estate of I. K., deceased.

Præcipe for Citation.

Citation for A. B. against C. D. in a matter of calling upon
E. F., and G. H. to accept or refuse letters of administration
estate of I. K., of , in the county of , who died on th
day of 19 , at [*or as the case may be*].

(Signed) G. H., Solicitor for
(Address for Service).

The day of 19 .

No. 82.—Abstract of Citation for Advertisement.

In the High Court of Justice. Probate, Divorce, and Admiralty D
(Probate.)

To A. B.

Abstract of Citation for Advertisement.

TAKE NOTICE, that a citation has issued citing you to cause an
ance to be entered for you in the principal probate registry, So
House, Strand, London, within days after publication here
accept or refuse letters of administration of the estate of C. D., of
in the county of , deceased, or show cause why the same sho
be granted to E. F. as with an intimation that in default
appearance letters of administration will be granted to the said

(Signed) G. H
Solicitors. Regis

To be advertised in the following newspapers:

COMMISSION.

No. 83.—Commission to examine Witnesses (O. 37, r. 6).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

EDWARD THE SEVENTH, by the grace of God, etc., to , of , and , of , commissioners named by and on behalf of , and to , of , and , of , commissioners named by and on behalf of the , greeting: Know ye that we in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *viva voce* as hereinafter mentioned witnesses on behalf of the said and respectively at , before you or any two of you, so that one commissioner only on each side be present and act at the examination.—And we command you as follows: Commission to examine Witnesses.

1. Both the said and the said shall be at liberty to examine on interrogatories and *viva voce* on the subject-matter thereof or arising out of the answers thereto such witnesses as shall be produced on their behalf with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and *viva voce*, the party producing any witness for examination being at liberty to re-examine him *viva voce;* and all such additional *viva voce* questions, whether on examination, cross-examination, or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said commission.

2. Not less than days before the examination of any witness on behalf of either of the said parties, notice in writing, signed by any one of you, the commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the names of the witnesses to be examined, shall be given to the commissioners of the other party by delivering the notice to them, or by leaving it at their usual place of abode or business, and if the commissioners or commissioner of that party neglect to attend pursuant to the notice, then one of you, the commissioners of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination, or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the commissioners or commissioner present and acting to be a true and correct copy or extract, shall be annexed to the witness's deposition.

4. Each witness to be examined under this commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the commissioners or commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *viva voce* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the commissioners or commissioner present at the

examination, and to be previously sworn according to his or their se
religions by or before the said commissioners or commissioner tru
interpret the questions to be put to the witness and his answers the

6. The depositions to be taken under this commission shall be
scribed by the witness or witnesses, and by the commissioners or
missioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, toge
with any documents referred to therein, or certified copies there
extracts therefrom, shall be sent to the Senior Registrar at the Prin
Probate Registry, Somerset House, Strand, London, on or before
day of , enclosed in a cover under the seals or seal o
commissioners or commissioner.

8. Before you or any of you, in any manner act in the execu
hereof, you shall severally take the oath hereon indorsed on the
Evangelists or otherwise in such other manner as is sanctioned by
form of your several religions and is considered by you respective
be binding on your respective consciences. In the absence of any
commissioner a commissioner may himself take the oath.

And we give you or any one of you authority to administer such
to the other or others of you.

Witness, etc.

Witnesses' Oath.

You are true answer to make to all such questions as shall be a
you, without favour or affection to either party, and therein you
speak the truth, the whole truth, and nothing but the truth.

So help you G

Commissioners' Oath.

You [*or* I] shall, according to the best of your [*or* my] skill
knowledge, truly and faithfully, and without partiality to any or e
of the parties in this cause, take the examinations and deposition
all and every witness and witnesses produced and examined by v
of the commission within written. So help you [*or* me] G

[Where there is only a single commissioner, he may be authorise
administer this oath to himself. (*Wilson* v. *De Coulon*, 22 C. D. 84

Interpreter's Oath.

You shall truly and faithfully, and without partiality to any or e
of the parties in this cause, and to the best of your ability, interpret
translate the oath or oaths, affirmation or affirmations which he
administer to, and all and every the questions which shall be exhi
or put to, all and every witness and witnesses produced before
examined by the commissioners named in the commission w
written, as far forth as you are directed and employed by the said
missioners, to interpret and translate the same out of the English
the language of such witness or witnesses, and also in like manne
interpret and translate the respective depositions taken and mad
such questions out of the language of such witness or witnesses int
English language. So help you G

Clerk's Oath.

You shall truly, faithfully, and without partiality to any or eith
the parties in this cause, take, write down transcribe, and engros
and every the questions which shall be exhibited or put to all and e
witness and witnesses, and also the depositions of all and every

witness and witnesses produced before and examined by the said commissioners named in the commission within written, as far forth as you are directed and employed by the commissioners to take, write down, transcribe or engross the said questions and depositions.

So help you God.

Direction of Interrogatories, etc., when returned by the Commissioners.

THE SENIOR REGISTRAR, PRINCIPAL PROBATE REGISTRY,
SOMERSET HOUSE, LONDON.

[Letters so addressed travel post free from any part of the United Kingdom.]

CONSENT.

No. 84.—Consent of the other Next-of-Kin to a Grant being made jointly to Relict and one Next-of-Kin.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

WHEREAS A. B., of , deceased, died on the day of 19 , at , intestate, leaving C. D., his lawful widow and relict, and E. F., G. H., and I. K., his natural and lawful children and only next-of-kin, the said E. F. being also his heir-at-law.

Consent of the other Next-of-Kin to a Grant being made jointly to Relict and one Next-of-Kin.

And whereas the said C. D. is consenting and desirous that the letters of administration of the estate of the said deceased be committed and granted to her jointly with the said E. F.: Now we the said G. H., of , and I. K., of , do hereby severally declare that we expressly consent that letters of administration of the personal estate of the said deceased be committed and granted to the said C. D., widow, and E. F. jointly.

In witness whereof we have hereunto set our hands this day of 19 .

Signed by the said G. H. and I. K. in the presence of } Witness.

(Signed) G. H.
(Signed) I. K.

No. 85.—Consent to a Limited Grant.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

WHEREAS in and by an indenture bearing date the day of 19 , and made between, etc. [*describe the parties*], all those twenty messuages, etc., with their appurtenances, were assigned to A. B., of , for the remainder of a term of years, to hold the same, etc., upon the trusts therein mentioned:

Consent to a Limited Grant.

And whereas the said A. B. is since dead, to wit, on the day of 19 , without having assigned the remainder of the said term, intestate, a bachelor, leaving me, the undersigned C. D., his natural and lawful father:

And whereas the said term still remains unsatisfied so far as re
the sum of £ :

Now I, the said C. D., of , do hereby declare that I exp
consent that letters of administration of the estate of the said dec
limited so far as concerns all the aforesaid messuages situate as
said, with their appurtenances, and the remainder of the said te
years therein granted and assigned to the said deceased b
said indenture, and all benefit and advantage to be had, receive
taken therefrom, may be granted to E. F., of , as a perso
that purpose named by and on the part and behalf of G. H., of
the sole person entitled to the said sum of £ .

In witness whereof I have hereunto set my hand this
of 19 .

Signed by the said C. D. in the presence of } (Signed) C
Witness.

No. 86.—Consent of Next-of-Kin to another Next-of-K taking a Grant.

In the High Court of Justice. Probate, Divorce, and Admiralty Div
The Principal Probate Re

Consent of Next-of-Kin to another Next-of-Kin taking a Grant.

WHEREAS A. B., of , deceased, died on the day of
at , intestate, a widower, without child or parent, brother or
uncle or aunt, nephew or niece, leaving C. D. and me, the under
E. F., his lawful cousins-germa and only next-of-kin:

Now I, the said E. F., do hereby declare that I do expressly co
to letters of administration of the estate of the said deceased
granted to the said C. D., one of the lawful cousins-germa and n
kin of the said deceased as aforesaid.

In witness whereof I have hereunto set my hand this
of 19 .

Signed by the said E. F. in the presence of } (Signed) E
Witness.

DECLARATION.

No. 87.—Declaration on Oath of the Estate of a Testat an Intestate.

In the High Court of Justice. Probate, Divorce, and Admiralty Di
The Principal Probate Re

In the estate of A. B., deceased.

Declaration on Oath of the Estate of a Testator or an Intestate.

A true declaration of all the estate which by law devolves t
vests in the personal representative of A. B., of , deceased, wh
on the day of 19 , at , which has since his death
to the hands, possession, or knowledge of C. D., the intended ad
trator of the said estate made and exhibited upon and by

of the corporeal oath of the said intended administrator, as follows, to wit:—

This declarant declares the said estate to be as follows:—

PERSONAL PROPERTY.	£	s.	d.
Cash in the house			
Cash at bankers			
Household goods, furniture, plate, linen, china, jewellery, etc., valued by , of , licensed appraiser .			
Policy of insurance, viz.:			
Leasehold property:			
Description—			
Years unexpired			
Gross rents			
Ground rent			
Outgoings paid by lessee . .			
Value of property			
Other personal property not comprised under foregoing heads, viz.:—			
REAL PROPERTY.			
Total . . £			

This declarant further declares that no estate devolving to or vesting as aforesaid in the personal representative of the said deceased has at any time since his death come to the hands, possession, or knowledge of this declarant, save as is hereinbefore set forth.

(Signed) C. D.

On the day of 19 , the said was duly sworn to the truth of the above declaration at before me,

A Commissioner for Oaths.

ELECTION.

No. 88.—Election of Guardian to take Grant (or renounce the same).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry

Election of Guardian to take Grant (or renounce the same).

WHEREAS A. B., of , in the county of , deceased, died on the day of 19 , at , intestate, a widower and not possessed of any real estate,* leaving C. D., E. F., spinster, and G. H., his natural and lawful and only children and only next-of-kin, the said C. D. being a minor of the age of twenty years only, the said E. F. being also a minor of the age of nineteen years only, and the said G. H. being an infant of the age of six years only:

Now we, the said C. D. and E. F., of , do hereby make choice of and elect K. L., of , in the county of , our lawful maternal uncle and one of our next-of-kin [*or as the case may be*], to be our curator or guardian, for the purpose of his obtaining letters of administration of the estate of the said A. B., deceased, to be granted to him,

---

* *If the deceased died possessed of real estate the heir-at-law must be cleared off.*

for our use and benefit, and also for the use and benefit of th infant, until one of us shall attain the age of twenty-one years *cases of minors only*) for the purpose of renouncing for us and behalf all our right, title, and interest to and in the letters of ad tration, etc., as the case may be].

In witness whereof we have hereunto set our hands this of in the year 19 .

Signed by the said C. D. and E. F. in the presence of } (Signed)

[*One disinterested wit.* ss.]

INTERROGATORIES.

No. 89.—Interrogatories (O. 31, r. 4).

19 . [*Here put letter and n*

In the High Court of Justice. Probate, Divorce, and Admiralty D (Probate.)

In the estate of H. I., deceased.

Between A. B., Plaintiff,

and

C. D., E. F., G. H., Defendants.

Interrogatories.

Interrogatories on behalf of the above-named [*plaintiff*, or *de C. D.*] for the examination of the above-named [*defendants E. G. H.*, or *plaintiff*].

1. Did not, etc.
2. Has not, etc.

etc. etc. etc.

[*The defendant E. F. is required to answer the in tories numbered .*]

[*The defendant G. H. is required to answer the in tories numbered .*]

[R. S. C., App. B., N

No. 90.—Answer to Interrogatories (O. 31, r. 9).

19 . [*Here put letter and n*

In the High Court of Justice. Probate, Divorce, and Admiralty D (Probate.)

In the estate of H. I., deceased.

Between A. B., Plaintiff,

and

C. D., E. F., G. H., Defendants.

Answer to Interrogatories.

The answer of the above-named defendant E. F. to the interrog for his examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named E. F oath and say as follows :—

[R. S. C., App. B., N

INVENTORY.

No. 91.—Inventory.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of A. B., deceased.
Between E. F., Plaintiff,
and
C. D., Defendant.

Inventory.

A true, full, and particular inventory of the estate of A. B., of , deceased, which have at any time since his death come to the hands, possession, or knowledge of C. D., the sole executor of the last will and testament of the said deceased [*or* administrator of the estate of the said deceased, *as the case may be*], made and exhibited upon and by virtue of the corporal oath [*or* solemn affirmation] of the said C. D., follows, to wit:—

	£	s.	d.
First, this exhibitant saith that the said deceased was at the time of his death possessed of or entitled to certain household goods and furniture, plate and jewellery, in and about his dwelling-house situate at which have since his death been valued and appraised by , of , licensed appraiser, at the sum of pounds shillings and pence			
Second, this exhibitant saith that the said deceased was at the time of his death possessed of or entitled to a leasehold messuage or dwelling-house and premises situate at , of the lease whereof at the time of his death years remained unexpired, and for which the said deceased paid a yearly rent of £ , and that the said messuage and premises have been valued and appraised by the said at the sum of pounds shillings and pence			
Third, this exhibitant saith, that the said deceased was at the time of his death possessed of or entitled to the sum of pounds shillings and pence in the hands of his bankers the London and County Bank . .			
Fourth, this exhibitant saith, that the deceased was at the time of his death possessed of or entitled to the sum of £ of the preference stock of the Great Western Railway Company, which sum is of the value of pounds shillings and pence			
Fifth (*a*)			
Total . . £			

Lastly, this exhibitant saith, that no estate of or belonging to the said deceased have at any time since his death come to the hands, possession, or knowledge of this exhibitant, save as is hereinbefore set forth.

(Signed) C. D.

On the day of 19 , the said C. D. was duly sworn to the truth of the above inventory at .

Before me,
A Commissioner for Oaths.

(*a*) *If the deceased died possessed of real estate it must be similarly set out.*

MEMORIAL.

No. 92.—Memorial to the Commissioners of Inland Re for a Duty-paid Stamp or Certificate as to Duty Cessate Grant or a Grant *de bonis non*.

To the Honourable the Commissioners of Inland Revenue.

Memorial to the Commissioners of Inland Revenue.

The memorial of A. B., of , solicitor, or agent, for C. D., o showeth that E. F., late of , deceased, died on the 19 .

1. That on the day of 19 , a grant of "pro the will" [*or* "administration (with the will annexed) estate" or "administration of the estate"] of the said d was granted by the Probate Division of the High Court of at , to G. H., the sole executor [*or as the case may b* died on the day of 19 , leaving part of the estate deceased unadministered by reason whereof, a further g necessary.

2. That the said G. H. swore the estate to be of the gros of £ and paid stamp duty of £ on the Inland R Affidavit [*or* "on the said grant" *as the case may be*].

3. That the said G. H., by a corrective affidavit dated of 19 , reswore the value of the said estate at £ paid further stamp duty of £ .

4. That the above-named C. D., as the intended admini (with the will) of the unadministered estate of the said deces *as the case may be*], has by a corrective affidavit dated resworn the said estate at £ , and paid further stamp £ .

NOTE.—*Strike out paragraphs* 3 *or* 4 *if inappropriate.*

5. That the estate of the said deceased, within the opera the said grant, consisted of the items set forth in the fo Account No. 1:—

ACCOUNT NO. 1.

NOTE.—*Insert here the items and value of the aggregate estate referred to in paragraphs* 2, 3, *and* 4.

£

6. That the estate of the said deceased remaining unadmi consists of the items in the following Account No. 2:—

ACCOUNT NO. 2.

NOTE.—*Insert here the items and present value of the unadministered assets, and if not identical with the relative items in Account No.* 1, *state what asset they represent in that account.*

£

7. That the said C. D. , who is the residuary legatee named in the said will [*or as the case may be*], is now applying for a grant of administration with the will annexed of the said unadministered estate [*or as the case may be*], and has sworn the said estate to be of the value of £ .

Your memorialist therefore prays that your Honourable Board will be pleased to grant the usual duty-paid stamp, or certificate, on the Inland Revenue Affidavit for the proposed grant.

Dated the day of 19 .

(Signed) A. B.

INSTRUCTIONS

As to making application to the Commissioners of Inland Revenue for a Duty-paid Stamp or Certificate, in respect to a Second or Subsequent Grant of Probate or Administration.

The memorial should be transmitted to the Secretary, Estate Duty Office, Somerset House, London, and it should in every case state:—

(1.) The circumstances which render the further grant necessary.

(2.) Particulars of the assets disclosed when the original grant was obtained, and their value as then sworn; together with similar details of any further assets which have subsequently been disclosed by any corrective affidavit.

(3.) Particulars of the assets remaining unadministered at the date of the memorial with their value at that date. The identity of these assets with the corresponding items in the account of the aggregate property should be clearly shown.

[NOTE.—*Full particulars of leaseholds, stocks, and shares should always be given.*]

Where the original grant bears date before June 1st, 1881, and has not already been produced at the Estate Duty Office in connection with an adjustment of stamp duty, it must accompany the memorial: otherwise, it is not required.

It is not the practice to supply copies of residuary or other accounts for the purpose of the memorial. If full details of the whole estate cannot be given in the first instance the memorialist should give the best he is able.

The Inland Revenue Affidavit leading to the second grant (including a double probate and a cessate grant) should be on Form A—5, and should set forth the particulars and *present* value of the unadministered assets only.

Forms of memorial are not supplied officially, but they may be obtained from a law stationer.

MINUTE.

No. 93.—Minute to found Jurisdiction of the County Court (s. 10, Court of Probate Act, 1858).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

In the estate of A. B., deceased.

On reading the affidavit of C. D., sworn on the day of 19 , it appears to the satisfaction of the undersigned registrar of the principal probate registry of the High Court of Justice that A. B., of , in respect of whose estate a grant of [*probate*] is applied for, had

Minute to found Jurisdiction of County Court in Contentious Business.

at the time of his death, which happened on the day o
19 , a fixed place of abode in the district of [*Manchester*], and t
personal estate of the said deceased which he died possessed
entitled to, exclusive of what he may have been possessed of or
to as a trustee for any other person and not beneficially, and
deducting anything on account of the debts due and owing fr
said deceased, were at the time of his de th under the value
hundred pounds, and that the said deceas d at the time of hi
was not seised or entitled beneficially of or to any real estate
value of three hundred pounds or upwards.

Dated the day of 19 .

(Signed) W
Rep

MOTION.

No. 94.—Case on Motion.

In the High Court of Justice. Probate, Divorce, and Admiralty D
(Probate.)

In the estate of E. F., deceased.
Between A. B., Plaintiff,
and
C. D., Defendant.

Case on Motion.

E. F., of , died on the day of 19 , at , i
without child or parent, leaving the said C. D., his lawful wi
relict, and the said A. B., his natural and lawful brother and o
of-kin.

The said C. D. having deferred taking upon her letters of adm
tion of the estate of the said deceased, the said A. B. on the
19 , extracted a citation, out of this Division, against
said C. D. to accept or refuse letters of administration of the
the said deceased, or show cause why the same should not be g
him the said A. B.

This citation was afterwards, viz., on the day of
personally served on the said C. D., and was, on the day
19 , returned into this Division.

No appearance has been given to the said citation.

The above averments are proved by affidavits.

The court will be moved by counsel to decree letters of admi
of the estate of the said deceased to be granted to the said A. B

Nomination. See "Appointment of Nominee."

NOTICES.

No. 95.—Notice of Change of Solicitor and Agent (
O. 7, r. 3).

In the High Court of Justice. Probate, Divorce, and Admiralty
(Probate.)

In the estate of A. B., deceased.
E. B., Plaintiff.
F. D., Defendant.

Notice of Change of Solicitor and Agent.

Take notice that [*new solicitor's name or names*], of
have] been appointed to act as the solicitor of the abo

[*plaintiff or defendant* (*naming the defendant or defendants if more than one*)] in this action, in the place of [*original solicitors*], and that the undersigned , of , has [*or* have] been appointed to act as the London agents of the said [*new solicitors*] in this action in the place of [*original agents*].

The address for service (of the above-named) is

Dated this day of 19 .

Yours, etc.,

[*Signatures of new agents.*]

Agents for

To the above-named defendant [*or* plaintiff] or his [*or* their] solicitors.

[R. S. C., App. B., No. 30.]

No. 96.—Notice of Change of Town Solicitor (R. S. C., O. 7, r. 3).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

In the estate of A. B., deceased.

E. B., Plaintiff.

F. D., Defendant.

Notice of Change of Town Solicitor.

Take notice that [*name and address of new solicitor*], of , has [*or* have] been appointed to act as the solicitor of the above-named [*plaintiff or defendant* (*if for one or more of several defendants, naming the defendant or defendants*)], in the place of [*name of original solicitor*].

The address for service (of the above-named) is

Dated this day of 19 .

Yours, etc.,

[*Signature of new solicitor.*]

To the above-named defendant [*or* plaintiff] or his [*or* their] solicitor.

[R. S. C., App. B., No. 31.]

No. 97.—Notice of Change of Town Agent (R. S. C., O. 7, r. 3).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

In the estate of A. B., deceased.

E. B., Plaintiff.

F. D., Defendant.

Notice of Change of Town Agent.

Take notice that [*newly appointed agent*], of , has [*or* have] been appointed by the undersigned [*plaintiff's* (*or defendant's*) *solicitors*], of , the solicitors of the above-named [*plaintiff or defendant*], to act as his [*or* their] London agents in this action, in the place of [*names of original agents*].

The address for service (of the above-named) is

Dated this day of 19 .

Yours, etc.,

[*Signatures of newly appointed agents.*]

To the above-named defendant [*or* plaintiff] or his [*or* their] solicitor.

[R. S. C., App. B., No. 32.]

No. 98.—Notice of Motion.

In the High Court of Justice. Probate, Divorce, and Admiralty
(Probate.)

In the estate of A. B., deceased.
B. C. against E. F.

Notice of Motion. Take notice that the Court will be moved on day the
of 19 , at o'clock in the foronoon, or so soon the
counsel can be heard by that
(Signed) , of ,
Solicitor for the p

No. 99.—Notice of Trial (R. S. C., O. 36, r. 1

In the High Court of Justice. Probate, Divorce, and Admiralty
(Probate.)

In the estate of A. B., deceased.
B. C. against E. F.

Notice of Trial. Take notice of trial of this [*or* of the issues in this
to be tried] [*or as the case may be*] in [*or as the case m*
the day of next.
X. Y., plaintiff's solicitor [*or as the case may be*].
Dated
To Z., defendant's solicitor [*or as the case may be*].
See *Harris* v. *Gamble*, 7 C. D. 877.
[R. S. C., App. B.,

No. 100.—Notice to Produce (General Form) (R. O. 32, r. 8).

In the High Court of Justice. Probate, Divorce, and Admiralty
(Probate.)

In the estate of A. B., deceased.
B. C. against E. F.

Notice to Produce. Take notice, that you are hereby required to produce and sh
Court on the trial of this all books, papers, letters,
letters, and other writings and documents in your custody,
or power, containing any entry, memorandum, or minute relat
matters in question in this , and particularly
Dated the day of 19 .
To the above-named } (Signed) , of
agent for , solic
h solicitor *or* agent . } for the above named
[R. S. C., App. B.,

No. 101.—Notice to admit Facts (R. S. C., O. 32, r. 5).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of A. B., deceased.
B. C. against E. F.

Take notice that the plaintiff [*or* defendant] in this cause requires the defendant [*or* plaintiff] to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant [*or* plaintiff] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause. Notice to admit Facts.

Dated, etc.

G. D., solicitor [*or* agent] for the plaintiff [*or* defendant].

To E. F., solicitor [*or* agent] for the defendant [*or* plaintiff].

The facts, the admission of which is required, are—

1. That John Smith died on the 1st of January, 1890.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1896.
5. That Julius Smith never was married.

[R. S. C., App. B., No. 12.]

No. 102.—Notice to produce Documents (R. S. C., O. 31, r. 16).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of E. F., deceased.
A. B. *v.* C. D.

Take notice that the plaintiff [*or* defendant] requires you to produce for his inspection, the following documents referred to in your [*statement of claim*, or *defence*, or *affidavit*, *dated the day of* , A.D.]. Notice to produce Document.

[*Describe documents required.*]

X. Y., solicitor to the .

To Z., solicitor for .

[R. S. C., App. B., No. 9.]

No. 103.—Notice to inspect Documents (R. S. C., O. 31, r. 17).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of E. F., deceased.
A. B. *v.* C. D.

Take notice that you can inspect the documents mentioned in your notice of the day of , A.D. [*except the deed numbered in that notice*] at my office on Thursday next, the instant, between the hours of 12 and 4 o'clock. Notice to inspect Documents.

Or, that the plaintiff [*or* defendant] objects to giving you inspection of the documents mentioned in your notice of the day of , A.D. , on the ground that [*state the ground*]:—

[R. S. C., App. B., No. 10.]

No. 104.—Notice to admit Documents (R. S. C., O. 32, r. 3).

In the High Court of Justice. Probate, Divorce, and Admiralty D
(Probate.)

Notice to admit Documents.

Take notice that the plaintiff [*or* defendant] in this cause pro adduce in evidence the several documents hereunder specified, a the same may be inspected by the defendant [*or* plaintiff], his or agent, at , on , between the hours of ; defendant [*or* plaintiff] is hereby required, within forty-eight hou the last-mentioned hour, to admit that such of the said docum are specified to be originals were respectively written, signed, cuted, as they purport respectively to have been; that such specified as copies are true copies; and such documents as are to have been served, sent, or delivered, were so served, sent, or d respectively; saving all just exceptions to the admissibility of documents as evidence in this cause.

Dated, etc.

(Signed)
G. H., solicitor [*or* agent] for plaintiff [*or* defendant].

To E. F., solicitor [*or* agent] for defendant [*or* plaintiff].

[*Here describe the documents, the manner of doing which ma follows:—*

ORIGINALS.

Description of Documents.	Dates.

COPIES.

Description of Documents.	Dates.	Original or Dupl served, sent, or de when, how, and by

OATHS.

No. 105.—Oath, Executors.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , widow, make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament [*with a codicil or as the case may be*] of the said A. B., of , formerly of , deceased, who died on the day of 19 , at ; that I am the relict of the said deceased and the sole executrix named in the said will; that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the gross value of the said estate amounts to * £ and no more, to the best of my knowledge, information, and belief. Oath, Executors.

Sworn at
this day of
19 , before me, } (Signed) C. D.

A Commissioner of Oaths.

* *If deceased died on or since January 1st*, 1898, *insert the value of the real and personal estate. If the death was before* 1898, *insert the value of the personal estate only.*

No. 106.—Oath, Double Probate.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , baker, make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original [*or*, a true copy of the true and original, *as the case may be*] last will and testament of , formerly of , deceased, who died on the , at ; that in the month of 19 , probate of the said will was granted at to E. F., one of the executors named in the said will, power being reserved of making the like grant to C. D., the son of the said deceased, the other executor therein named; that I am the son of the said deceased and the other executor named in the said will, and that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; and that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the gross value of the said estate now unadministered amounts to £ and no more, to the best of my knowledge, information, and belief. Oath, Double Probate.

Sworn, etc.

(Signed) C. D.

No. 107.—Oath of Executor, former Probate having bee revoked.

In the High Court of Justice. Probate, Divorce, and Admiralty Divi
The Principal Probate Regi

In the estate of A. B., deceased.

Oath of Executor, former Probate having been revoked.

I, C. D., of , brewer, make oath and say as follows:—
The said A. B., of , deceased, died on the day of 19 , at , having made and duly executed his last will testament, bearing date the day of 19 , and the appointed his son, me this deponent, sole executor.
That probate of an earlier will of the said testator, dated the day of 19 , was on the day of 19 , granted by Division [at the principal (*or* district) probate registry thereo E. F., the sole executor therein named.
The said probate has been since voluntarily brought in by the E. F., and revoked.
I believe the paper writing hereto annexed and marked by m contain the true and original last will and testament of the deceased, and that I am the sole executor named in the said w I will administer according to law all the estate which by law devo to and vests in the personal representative of the deceased.
That I will exhibit a true and perfect inventory of the said est and render a just and true account thereof whenever required by so to do; and that the gross value of the said estate amounts to sum of £ and no more, to the best of my knowledge, informat and belief.
Sworn, etc. (Signed) C. I

No. 108.—Oath on proving the Draft of a Will.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisi
The Principal Probate Regist

In the estate of A. B., deceased.

Oath on proving the Draft of a Will.

I, C. D., of , confectioner, make oath and say, that the s A. B., of , widow, deceased, died at on the day 19 , having made and duly executed her last will and te ment, bearing date the day of , and thereof appointed son, me the deponent, sole executor:
That at the time of the death of the said deceased the said will whole and unrevoked, but that since the death of the said deceased said will has been lost and cannot now be found:
That on the day of , the Right Honorable the Presid of this Division, in an action entitled "S. and others against T. another," pronounced for the force and validity of the said will contained in a draft thereof, and ordered that probate of the said as contained in the said draft be granted and committed to me, sole executor therein named, limited until the original will or a m authentic copy thereof be brought into and left in the said registry.
That I believe the said paper writing now hereto annexed marked by me to contain the true last will and testament (the sa being the original draft thereof) of the said testatrix; that I am sole executor therein named, and that I will administer according law all the estate which by law devolves to and vests in the perso

representative of the said deceased, until the said original will or a more authentic copy thereof shall be brought into and left in the said registry; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the gross value of the said estate amounts to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

No. 109.—Oath on proving a Copy of a Will, the Original being lost.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , butcher, make oath and say, that A. B., of , deceased, died on the day of 19 , at , having made and duly executed his last will and testament, bearing date the day of , and thereof appointed his wife D. B. (since deceased) and me the said C. D. executors: **Oath on proving a Copy of a Will, the Original being lost.**

That at the time of the death of the said deceased the said will was whole and unrevoked, and in the same state as when executed, but that the said will has since been lost and cannot now be found:

That shortly after the death of the said deceased a copy of the said will was made by , of , solicitor, at the request of the said D. B., widow, the relict of the said deceased, and the same was by him examined with the original and found to agree therewith:

That I believe the paper writing hereto annexed and marked by me to contain the true last will and testament (the same being the aforesaid copy thereof) of the said testator; that I am the surviving executor named in the said will; and that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased until the original will or a more authentic copy thereof be brought into the principal probate registry of this Division. That I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the gross value of the said estate amounts to the sum of £ , to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

No. 110.—Oath on proving a Copy of a Will transmitted to England, the Original being in existence elsewhere.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , carpenter, make oath and say, that A. B., of , deceased, died at , on the day of , having made and duly executed his last will and testament, bearing date the day of , and thereof appointed his son, me the deponent, sole executor: **Oath on proving a Copy of a Will transmitted to England, the Original being in existence elsewhere.**

And I further make oath and say, that the said will was executed by the said deceased when he was resident at , and the same was

deposited by the said deceased after the execution thereof with
of that place, and who still retains possession thereof:

And I further make oath and say, that on the day of
copy of the said will was received by me in due course of post fro
said E. F.:

And I further make oath and say, that there is not now in
Britain a more authentic copy thereof than the aforesaid copy, an
it is essential to the interest of the estate of the said deceased
probate thereof should be granted without waiting the arrival
said original will or a more authentic copy thereof:

And I further make oath and say, that I believe the paper w
hereto annexed and marked by me to contain the true last wil
testament (the same being the aforesaid copy thereof) of the
deceased, and that I am the sole executor therein named; that
until the said original will or a more authentic copy thereof sh
brought into and left in the principal probate registry of this Div
administer according to law [etc., *complete as in Form No.* 105].

Sworn, etc. (Signed) C.

No. 111.—Oath for Limited Probate (*Feme coverte*).

N.B.—*As has been shown previously, the form of grant of limited pr*
(feme coverte) *has been abolished. The following form of o*
therefore obsolete, but it is inserted here, as in former editio
meet the possibility of its being at any time, and under sp
circumstances, required.

In the High Court of Justice. Probate, Divorce, and Admiralty Divi
The Principal Probate Regi

Oath for Limited Probate (*Feme coverte*).

In the goods of A. B. (wife of D. B.), deceased.

I, C. D., of , plumber, make oath and say, that the said
(wife of D. B.), of , deceased, died on the day of
at , having during her coverture with the said D. B. by vi
of certain powers and authorities vested in her by the last will
testament of her mother E. F., widow, deceased, bearing date
day of and duly proved in the Prerogative Cour
Canterbury in the month of , made and executed her last will
testament, bearing date the day of 18 , and thereof appoi
her son, me the deponent, sole executor:

And I further make oath, that I believe the paper writing he
annexed and marked by me to contain the true and original last will
testament of the said A. B., deceased, bearing date as aforesaid,
that I am the sole executor therein named; and that I well
faithfully administer all such personal estate as she
by virtue of the aforesaid will of the said E. F. had app
or dispose of, and has in and by her said will appointe spose
accordingly, but no further or otherwise, by paying h ebts
the legacies contained in her will so far as the sa l the
extend and the law bind me; that I will exhibit a true and pe
inventory of the said estate limited as aforesaid, and render a just
true account thereof whenever required by law so to do; and that
whole of the personal estate of the said testatrix, limited as afores
amounts in value to the sum of £ and no more, to the bes
my knowledge, information, and belief.

Sworn, etc. (Signed) C. I

For Oath—Limited Administration with Will not revoked by Su
quent Marriage, see Form No. 189.

No. 112.—Oath for Probate limited to the Testatrix's Executorship.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the goods of A. B. (wife of B. B.), deceased.

Oath for Probate limited to the Testatrix's Executorship.

I, C. B., of , bootmaker, make oath and say, that the said A. B., of , deceased, died on the day of , at , having during her coverture with the said B. B., in virtue of certain powers and authorities given to and vested in her by a certain indenture bearing date the day of , and made between her the said deceased by her then name and description of A. F., of of the first part, G. H., of of the second part, I. K., of and L. M., of of the third part, made and executed her last will and testament and thereof appointed her son, me the said C. B., and her brother N. O., executors, and that on the day of probate of the said will limited so far only as concerned all the right, title, and interest of her the said deceased in and to all such personal estate as she the said deceased by virtue of the said indenture had a right to appoint or dispose of, and had in and by her said will appointed and disposed of accordingly, but no further or otherwise, was granted by the Prerogative Court of Canterbury to me the said C. B., the said N. O. having renounced the probate and execution thereof:

And I further make oath and say, that the said A. B., widow, was the sole executrix of the will of P. Q., deceased, which will on the day of she duly proved in the Prerogative Court of Canterbury, and that the said P. Q. was the surviving executor of the will of R. S., late of , deceased, which last-mentioned will was proved in the said court on the day of by the said P. Q.:

And I further make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said A. B., deceased; and that I will well and faithfully administer the personal estate of the said deceased, limited so far as concerns all such personal estate as vested in her the said deceased as the sole executrix of the will of the said P. Q., deceased; and that I will exhibit a true and perfect inventory of the said estate limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the whole of the personal estate of the said deceased, limited as aforesaid, amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc.

(Signed) C. B.

No. 113.—Oath for Probate as to Property not covered by first Grant.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Probate as to Property not covered by first Grant.

I, C. D., of , stationer, make oath and say, that the said A. B., of , deceased, died on the day of 18 , at , having made and duly executed his last will and testament, bearing date the day of 18 , and therein named his son, me the deponent, sole executor:

And I further make oath, that the said deceased was at the
his death possessed of personal estate within the province of Cant
and that in the month of 18 , I duly proved the said will
Prerogative Court of Canterbury, as by the records of the said cou
remaining in the principal probate registry of the Probate, Divor
Admiralty Division of the High Court of Justice appears:

And I further make oath, that the said deceased was, at the
his death, possessed of personal estate in England not within the
of the jurisdiction of the said Prerogative Court of Canterbury:

And I further make oath and say, that probate of the said will,
to the personal estate of the said deceased in England, not cove
the aforesaid probate, is now required to be granted to me:

And I further make oath and say, that I believe the paper
hereto annexed and marked by me to contain the true and origi
will and testament of the said deceased; that I am the sole ex
therein named; and that I will well and faithfully administer the p
estate of the said testator limited as aforesaid, by paying his jus
and the legacies contained in his will so far as the same shall
extend and the law bind me; and that I will exhibit a true and
inventory of the said estate limited as aforesaid, and render a ju
true account thereof whenever required by law so to do; and th
personal estate of the said testator, limited as aforesaid, amou
value to the sum of £ and no more, to the best of my knov
information, and belief.

Sworn, etc. (Signed) C.

No. 114.—Oath for Probate *save and except.*

In the High Court of Justice. Probate, Divorce, and Admiralty Di
The Principal Probate Re

In the estate of A. B., deceased.

Oath for Probate *save and except.*

I, C. D., of , builder, make oath and say, that the said
of , deceased, died at on the day of 19 ,
made and duly executed his last will and testament, bearing da
day of 19 , and therein named his son, me the dep
executor, save and except as regards all real and personal estates
soever vested in him upon or for the trusts or purposes of the las
and testament of E. F., of , deceased:

And I further make oath and say, that I believe the paper w
hereto annexed and marked by me to contain the true and origin
will and testament of the said A. B., deceased, and that I am the ex
therein named as aforesaid; and that I will administer according
all the estate which by law devolves to and vests in the personal
sentative of the said deceased, save and except so far as relates to a
and personal estates vested in the said testator upon or for the tru
purposes of the will of the said E. F., deceased; that I will exh
true and perfect inventory of the said estate, save and except as afor
and render a just and true account thereof whenever required by l
to do; and that the gross value of the said estate of the said tes
under the exceptions aforesaid, amounts to the sum of £ a
more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C.

No. 115.—Oath for Probate of Will of a Seaman R.N., save and except Wages, etc.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Probate, save and except Wages of a Seaman R.N.

I, C. D., of , in the county of , widow, make oath and say, that the said A. B., of , a seaman in the Royal Navy, deceased, died on the day of , at , having made and executed his last will and testament and thereof appointed his wife, me the said C. D., sole executrix, but that the said will is not made in conformity with the provisions of "The Navy and Marines (Wills) Act, 1865" (28 & 29 Vict. c. 72), and is therefore invalid so far as respects all wages, prize-money, bounty-money, grant, or other allowance in the nature thereof, or other money payable by the admiralty, or any effects or money in charge of the admiralty; that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said deceased; that I am the relict of the said deceased and sole executrix therein named; and that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased, save and except all wages, prize-money, bounty-money, grant, or other allowance in the nature thereof, or other money payable by the admiralty, or any effects or money in charge of the admiralty; that I will exhibit a true and perfect inventory of the said estate, save and except as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the whole of the estate of the said deceased, under the exceptions aforesaid, amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

No. 116.—Oath for Probate *cæterorum*.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Probate *cæterorum*.

I, C. B., of , esquire, make oath and say, that the said A. B., of , deceased, died on the day of 19 , at , having made and duly executed his last will and testament bearing date the day of 19 , and therein named E. F. executor in respect of his literary papers and documents, and his son, me this deponent, executor as to the rest of his estate:

That in the month of 19 , probate of the said will, limited so far only as respected the literary papers and documents of the said testator, was by authority of this Division granted to the said E. F.:

That I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said testator; and that I am the executor therein named as to the rest of his estate; and that I will administer according to law all the rest of the estate which by law devolves to and vests in the personal representative of the said deceased; and that I will exhibit a true and perfect inventory of the rest of the said estate, and render a just and true account thereof whenever required by law so to do; and that the rest of the said estate amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. B.

No. 117.—Oath for Cessate Probate to a Substituted Executor.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisi
The Principal Probate Regis

In the estate of A. B., deceased.

Oath for Cessate Probate to a Substituted Executor.

I, C. D., of , stockbroker, make oath and say, that A. B., of deceased, died on the day of 19 , at , having made last will and testament.

That on the day of 19 , probate of the said will granted at the principal probate registry of the High Court of Justice E. F., widow, the relict of the said deceased, the executrix for life nam in said will. That the said E. F. died on the day of 19 whereby the said probate has ceased and expired:

And I further make oath, that I believe the paper writing her annexed and marked by me to contain the true last will and testame of the said A. B., deceased, of which probate was so granted as aforesa that I am the son of the said deceased and the executor substituted the said will, and I will administer according to law all the estate whi by law devolves to and vests in the personal representative of the s deceased; that I will exhibit a true and perfect inventory of the s estate, and render a just and true account thereof whenever required law so to do; and that the whole of the unadministered estate of t said testator amounts in value to the sum of £ and no more, to t best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

No. 118.—Oath for Cessate Probate, the Executor having attained his Majority.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisio
The Principal Probate Registr

In the estate of A. B., deceased.

Oath for Cessate Probate, the Executor having attained his Majority.

I, C. D., of make oath and say, that the said A. B., of deceased, died on the day of 19 , at , having made a duly executed his last will and testament. That I am the nephew the said deceased, and the sole executor named in the said will:

That on the day of 19 , letters of administration (wit the said will annexed) of the estate of the said deceased were grante by this Division at the principal [*or as the case may be*] registry, E. F., the natural and lawful mother and lawful guardian of me, th deponent, for my use and benefit until I should attain the age twenty-one years:

That on the day of 19 , I attained the age of twenty-o years, and the said letters of administration with the said will annex have consequently ceased and expired:

And I further make oath and say, that I believe the paper writi hereto annexed and marked by me to contain the true last will a testament of the said deceased; that I will administer according to la all the estate which by law devolves to and vests in the personal repr sentative of the said deceased; that I will exhibit a true and perfe inventory of the said estate, and render a just and true account there whenever required by law so to do; and that the whole of the una ministered estate of the said deceased amounts in value to the sum £ and no more, to the best of my knowledge, information, a belief.

Sworn, etc. (Signed) C. D.

No. 119.—Oath for Cessate Probate to Executor where Attorney has proved.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.
In the estate of A. B., deceased.

Oath for Cessate Probate to Executor where Attorney has proved.

I, C. B., of , civil engineer, make oath and say, that the said A. B., of , deceased, died on the day of 19 , at , having made and duly executed his last will and testament. That I am the son of the said deceased, and the sole executor named in the said will:

That on the day of 19 , letters of administration with the said will annexed of the estate of the said deceased were by authority of this Division granted at the principal probate registry to E. F. as the lawful attorney and for the use and benefit of me, this deponent, and until I should duly apply for and obtain probate of the said will:

And I further make oath and say, that I believe the paper writing hereto annexed and marked by me to contain a true copy of the last will and testament of the said deceased; that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the unadministered estate amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. B.

No. 120.—Oath for Administrators (Husband takes).

In the High Court of Justice. Probate, Divorce, and Admiralty Division
The Principal Probate Registry.
In the estate of A. B., deceased.

Oath for Administrators (Husband takes).

I, C. B., of , ironmonger, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, and that I am the lawful husband of the said deceased; that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; that I will exhibit a true and perfect inventory of the said estate and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. B.

No. 121.—Oath for Administrators (Husband's Representative takes).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.
In the estate of A. B., deceased.

Oath for Administrators

I, C. D., of , butcher, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, and

(Husband's Representative takes).

not possessed of any real estate,* leaving E. B., her lawful husband, wh
died without having taken upon him letters of administration of h
estate, and that I am the sole executor of the will [*or* the administrat
of the estate] of the said E. B., deceased, probate of the said will [
letters of administration, etc.] having been granted to me by th
Division [at the principal (*as the case may be*) registry] in the mont
of 19 ; that I will administer according to law [etc., *complete*
in Form No. 120].

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 122.—Oath for Administrators (Child takes on Husban renouncing).

In the High Court of Justice. Probate, Divorce, and Admiralty Divisio
The Principal Probate Registr

In the estate of A. B., deceased.

Oath for Administrators (Child takes on Husband renouncing).

I, C. D., of , grocer, make oath and say, that A. B., of
deceased, died on the day of 19 , at , intestate, a
not possessed of any real estate,* leaving E. B., her lawful husband h
surviving, who has duly renounced the letters of administration of h
estate, and that I am the natural and lawful son and one of the nex
of-kin of the said deceased; that I will administer according to la
[etc., *complete as in Form No.* 120].

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 123.—Oath for Administrators (Widow takes).

In the High Court of Justice. Probate, Divorce, and Admiralty Divisio
The Principal Probate Regist

In the estate of A. B., deceased.

Oath for Administrators (Widow takes).

I, C. B., of , widow, make oath and say, that A. B., of
deceased, died on the day of 19 , at , intestate, a
that I am the lawful widow and relict of the said deceased; that I w
administer according to law [etc., *complete as in Form No.* 120].

No. 124.—Oath for Administrators (Child or Heir-at-Law takes on Widow renouncing).

In the High Court of Justice. Probate, Divorce, and Admiralty Divisi
The Principal Probate Regist

In the estate of A. B., deceased.

Oath for Administrators (Child or Heir-at-Law takes on Widow renouncing).

I, C. D., of , spinster, make oath and say, that A. B., of
deceased, died on the day of 19 , at , intestate, leav
E. B., his lawful widow and relict, who has duly renounced letters
administration of his estate, and that I am the natural and law
daughter and one of the next-of-kin [*or* I am the heir-at-law] of the
deceased; that I will administer according to law [etc., *complete a*
Form No. 120].

No. 125.—Oath for Administrators (Child or Heir-at-Law takes, Widow having died).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , stockbroker, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, leaving E. B., his lawful widow and relict, who is since dead, without having taken upon herself letters of administration of his estate, and that I am the natural and lawful son and the only next-of-kin [*or* I am the heir-at-law] of the said deceased; that I will administer according to law [etc., *complete as in Form No.* 120].

Oath for Administrators (Child or Heir-at-Law takes, Widow having died).

No. 126.—Oath for Administrators (Child or Heir-at-Law takes, the Deceased being a Widow or Widower).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a widow [*or* a widower], and that I am the natural and lawful son and one of the next-of-kin [*or* I am the heir-at-law] of the said deceased; that I will administer according to law [etc., *complete as in Form No.* 120].

Oath for Administrators (Child or Heir-at-Law takes, Deceased being a Widow or Widower).

NOTE.—*For forms of affidavits in support of claim of heir-at-law to grant, see Nos.* 41, 42, *and* 43.

No. 127.—Oath for Administrator of Estate of Divorced Woman.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

I, D. B., of , spinster, make oath and say, that the said A. B., of , deceased, formerly the wife of E. B., died on the day of 19 , at , intestate, a single woman, leaving her surviving me this deponent, her natural and lawful child and only next-of-kin:

And I further make oath and say, that the marriage of the said A. B. with the said E. B. was dissolved by the final decree made by this Division on the day of 19 .

And I further make oath and say, that I am the natural and lawful daughter and only next-of-kin of the said deceased; that I will administer according to law [etc., *complete as in Form No.* 120].

Oath for Administrator of Estate of Divorced Woman.

NOTE.—*A divorced woman is described by the name she was accustomed to use at the time of her death.*

No. 128.—Oath for Administrators (Representative of Widow or Child takes).

In the High Court of Justice. Probate, Divorce, and Admiralty Division The Principal Probate Registry

In the estate of A. B., deceased.

Oath for Administrators (Representative of Widow or Child takes).

I, C. D., of , gentleman, make oath and say, that A. B., of deceased, died on the day of 19 , at , intestate, and no possessed of any real estate,* leaving E. B., his lawful widow and relict and G. B., I. B., and K. B., his natural and lawful and only children and only next-of-kin, together the only persons entitled in distribution to his personal estate; that the said E. B., G. B., I. B., and K. B. have all since died without having taken upon them letters of administration of the estate of the said deceased; that I am one of the executors of the will [*or* administrator of the estate] of the said E. B. [*or* of G. B.] deceased (probate of the said will *or* letters of administration, etc. having been granted to me by this Division [at the principal (*or* district) registry *as the case may be*], in the month of 19); that I will administer according to law [etc., *complete as in Form No.* 120].

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 129.—Oath for Administrators (Father takes).

In the High Court of Justice. Probate, Divorce, and Admiralty Division The Principal Probate Registry

In the estate of A. B., deceased.

Oath for Administrators (Father takes).

I, C. D., of , schoolmaster, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], and that I am the natural and lawful father and next-of-kin of the said deceased, that I will administer according to law [etc., *complete as in Form No.* 120].

No. 130.—Oath for Administrators (Son of Father takes on the Father renouncing and consenting).

In the High Court of Justice. Probate, Divorce, and Admiralty Division The Principal Probate Registry

In the estate of A. B., deceased.

Oath for Administrators (Son of Father takes on the Father renouncing and consenting).

I, C. D., of , esquire, make oath and say, that A. B., of deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], leaving surviving him [*or* her] E. F., his [*or* her] natural and lawful father and next-of-kin, who has duly renounced letters of administration of his [*or* her] estate and consented to letters of administration being granted to me the deponent, and that I am the natural and lawful son of the said E. F.; that I will administer according to law [etc., *complete as in Form No.* 120].

No. 131.—Oath for Administrators (Father's Representative takes).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , hosier, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], leaving E. F., his [*or* her] natural and lawful father and next-of-kin, him [*or* her] surviving, who is since dead, without having taken upon him letters of administration of his [*or* her] estate; that I am one of the executors of the will [*or* the administrator of the estate] of the said E. F., deceased, probate of the said will [*or* letters of administration, etc.] having been granted to me by the principal probate registry [*or* district probate registry at , *as the case may be*] of the High Court of Justice in the month of 19 ; that I will administer according to law [etc., *complete as in Form No.* 120].

Oath for Administrators (Father's Representative takes).

No. 132.—Oath for Administrators (Mother takes as Next-of-Kin).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , widow, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], without a father, and that I am the natural and lawful mother and only next-of-kin of the said deceased; that I will administer according to law [etc., *complete as in Form No.* 120].

Oath for Administrators (Mother takes as Next-of-Kin).

No. 133.—Oath for Administrators (Brother takes on the Mother renouncing).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , carpenter, make oath and say, that A. B., of ; deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], without a father, and not possessed of any real estate,* leaving E. F., widow, his [*or* her] natural and lawful mother and only next-of-kin him [*or* her], who has duly renounced lotters of administration of his [*or* her] estate; that I am the natural and lawful brother of the said deceased; that I will administer according to law [etc., *complete as in Form No.* 120].

Oath for Administrators (Brother takes on the Mother renouncing).

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 134.—Oath for Administrators (Brother takes, the Mother being dead).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administrators (Brother takes, the Mother being dead).

I, C. D., of , saddler, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], without a father, and not possessed of any real estate,* leaving E. F., widow, his [*or* her] natural and lawful mother and only next-of-kin him [*or* her], who is since dead, without having taken upon her letters of administration of his [*or* her] estate; that I am the natural and lawful brother of the said deceased; that I will administer according to law [etc., *complete as in Form No.* 120].

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 135.—Oath for Administrators (Brother or Sister taken as Next-of-Kin).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administrators (Brother or Sister takes as Next-of-Kin).

I, C. D., of , waterman, make oath and say, that B., of deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], without a parent, and that I am the natural and lawful brother [or sister] and one of the [*or* only] next-of-kin of the said deceased; that I will administer according to law [etc., *complete as in Form No.* 120].

No. 136.—Oath for Administrators (Nephew takes, the Next-of-Kin renouncing).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administrators (Nephew takes, Next-of-Kin renouncing).

I, C. D., of , fisherman, make oath and say that A. B., of , deceased, died on the day of , at , intestate, a bachelor [*or* a spinster], without parent, not possessed of any real estate,* leaving E. F., his [*or* her] natural lawful mother and only next-of-kin him [*or* her] surviving; that the said E. F. has duly renounced letters of administration of his [*or* her] estate; that I am the lawful nephew and one of the persons entitled in distribution to the personal estate of the said deceased, being the natural and lawful son of G. H., the natural and lawful brother of the said A. B., who died in his lifetime; that I will administer according to law [etc., *complete as Form No.* 120].

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 137.—Oath for Administrators (Nephew takes, the Next-of-Kin being dead).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , baker, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], without a parent, and not possessed of any real estate,* leaving E. F. and G. H., spinster, his natural and lawful brother and sister and only next-of-kin, him [*or* her] surviving, who have both died without having taken upon themselves letters of administration of his [*or* her] estate; that I am the lawful nephew [*or* and one] of the persons entitled in distribution to the personal estate of the said intestate, being the natural and lawful son of I. K., the natural and lawful brother also of the said A. B., who died in his lifetime; that I will administer according to law [etc., *complete as in*].

Oath for Administrators (Nephew takes, the Next-of-Kin being dead).

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 138.—Oath for Administrators (Representative of Brother or Sister takes).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , widow, make oath and say, that A. B., of , deceased, died on the day of at , intestate, a bachelor [*or* a spinster], without a parent, and not possessed of any real estate,* leaving E. F. and G. H., spinster [*or* her] natural and lawful brother and sister, and only next-of-kin, only persons entitled in distribution to his [*or* her] personal estate him [*or* her] surviving; that the said E. F. and G. H. have both since died, without having taken upon themselves letters of administration of the estate of the said deceased; and that I am the administrator of the estate of [*or* one of the executors of the will of] the said E. F. [*or* G. H.] (letters of administration, etc., *or* probate of the said will having been granted to me [at the principal probate registry, *or* district probate registry, *as the case may be*] in the month of 19); that I will administer according to law [etc., *complete as in Form No.* 120].

Oath for Administrators (Representative of Brother or Sister takes).

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 139.—Oath for Administrators (Uncle or Aunt, Nephew or Niece takes as Next-of-Kin).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administrators (Uncle or Aunt, Nephew or Niece takes as Next-of-Kin).

I, C. D., of , bootmaker, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate a bachelor [*or* a spinster], without a parent, brother, or sister, and that I am the lawful uncle [*or* aunt *or* nephew *or* niece], and one of the next-of-kin of the said deceased; that I will administer according to law [etc., *complete as in Form No.* 120].

No. 140.—Oath for Administrators (Representative of Uncle, Aunt, Nephew or Niece takes).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administrators (Representative of Uncle, Aunt, Nephew or Niece takes).

I, C. D., of , grocer, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], without a parent, brother, or sister, and not possessed of any real estate,* leaving E. F. and G. H., spinster, his [*or* her] lawful nephew and niece [*or* lawful uncle and aunt] and only next-of-kin him [*or* her] surviving; that the said E. F. and G. H. have both since died without having taken upon them letters of administration of the estate of the said deceased, and that I am one of the executors of the will [*or* administrator of the estate] of the said E. F. [*or* G. H.] (probate of the said will *or* letters of administration, etc., having been granted to me by the High Court of Justice [at the principal probate (*or if it be so*, the district probate) registry] in the month of 19); that I will administer according to law [etc., *complete as in Form No.* 120].

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 141.—Oath for Administrators (Cousin-German takes as Next-of-Kin).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administrators (Cousin-German takes as Next-of-Kin).

I, C. D., of , farmer, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], without parent, brother or sister, uncle or aunt, nephew or niece, and that I am the lawful cousin-german and one of the next-of-kin of the said deceased; that I will administer according to law [etc., *complete as in Form No.* 120].

No. 142.—Oath for Administrators (Representative of Cousin-German takes).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , horse dealor, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], without parent, brother or sister, uncle or aunt, nephew or niece, and not possessed of any real estate,* leaving E. F. and G. H., spinster, his [*or* her] lawful cousins-german and only next-of-kin him [*or* her] surviving; that the said E. F. and G. H. have both since died without having taken upon themselves letters of administration of the estate of the said deceased, and that I am one of the executors of the will [*or* administrator of the estate] of the said E. F. [*or* G. H.] (probate of the said will *or* letters of administration, etc., having been granted to me by the High Court of Justice [at the probate principal (*or* district probate) registry] in the month of 19); that I will administer according to law [etc., *complete as in Form No.* 120].

Oath for Administrators (Representative of Cousin-German takes).

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 143.—Oath for Administrators (Second Cousin takes as Next-of-Kin).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , stonemason, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], without a parent, brother or sister, uncle or aunt, nephew or niece, cousin-german, or cousin-german once removed; that I am his [*or* her] lawful second cousin and only next-of-kin; that I will administer according to law [etc., *complete as in Form No.* 120].

Oath for Administrators (Second Cousin takes as Next-of-Kin).

No. 144.—Oath for Administrators (Creditor takes, the Next-of-Kin renouncing, etc.).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , greengrocer, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor, without a parent, and not possessed of any real estate,* leaving E. F. and G. H., spinster, his natural and lawful brother and sister and only next-of-kin, and the only persons entitled in distribution to his personal estate, him surviving, who have duly renounced letters of administration of his said estate, and that I am a creditor of the said deceased; that I will administer according to law [etc., *complete as in Form* No. 120].

Oath for Administrators (Creditor takes, the Next-of-Kin renouncing, etc.).

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 145.—Oath of Administrator when the Intestate's Domicile is noted on Grant.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisio
The Principal Probate Registr

In the estate of A. B., deceased.

Oath of Administrator when the Intestate's Domicile is noted.

I, C. D., of , widow, make oath and say, that the said A. B., , deceased, died on the day of 19 , at , intestat and that I am his lawful widow and relict; that I will administ according to law all the estate which by law devolves to and vests i the personal representative of the said deceased; that I will exhibit true and perfect inventory of the said estate, and render a just and tru account thereof whenever required by law so to do; that the decease was domiciled in England at the time of his death; and that the whol of the said estate amounts in value to the sum of £ and n more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

[N.B.—*This form may be followed* mutatis mutandis *for executor taking the first part of the oath from that for executor.*]

No. 146.—Oath for Administration to Attorney of Intestate's Husband.

In the High Court of Justice. Probate, Divorce, and Admiralty Division
The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration to Attorney of Intestate's Husband.

I, C. D., of , licensed victualler, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, leaving E. B., her lawful husband, who now resides in the East Indies, and that I am the lawful attorney of the said E. B.; that I will administer according to law all the estate which by law devolves to and vest in the personal representative of the said deceased for the use and benefit of the said E. B., and until he shall duly apply for and obtain letters of administration of the said estate: that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc.

(Signed) C. D.

No. 147.—Oath for Administration to Attorney of Intestate's Widow.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration to Attorney of Intestate's Widow.

I, C. D., of , fishmonger, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, leaving E. F., his lawful widow and relict, who is now residing in Australia, that I am the lawful attorney of the said E. F., and that I will administer according to law [etc., *complete as in Form No.* 146].

No. 148.—Oath for Administration to Attorney of Intestate's Father.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , spinster, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], leaving surviving him [*or* her] E. F., his [*or* her] natural and lawful father and next-of-kin, who is now residing in North America; that I am the lawful attorney of the said E. F., and that I will administer according to law [etc., *complete as in Form No.* 146].

Oath for Administration to Attorney of Intestate's Father.

No. 149.—Oath for Administration to Attorney of Intestate's Mother.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , screw maker, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], without father, leaving surviving him [*or* her] E. F., widow, his [*or* her] natural and lawful mother and only next-of-kin, who is now residing in the East Indies; that I am the lawful attorney of the said E. F., and that I will administer according to law [etc., *complete as in Form No.* 146].

Oath for Administration to Attorney of Intestate's Mother.

No. 150.—Oath for Administration to Attorney of Intestate's Child.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , carpenter, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a widow [*or* a widower]; that I am the lawful attorney of E. F., the natural and lawful son and one of the next-of-kin of the said deceased; that the said E. F. is now residing in the United States of America; that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased for the use and benefit of the said E. F., and until he shall apply for and obtain letters of administration of the said estate; that I will exhibit [etc., *complete as in Form No.* 146].

Oath for Administration to Attorney of Intestate's Child.

No. 151.—Oath for Administration (the Death of the Deceased being presumptive).

In the High Court of Justice. Probate, Divorce, and Admiralty Div
The Principal Probate Re

In the estate of A. B., deceased.

Oath for Administration (the Deceased being presumptively dead).

I, C. D., of , in the county of , widow, make oath an
that A. B., of , in the county of , deceased, died in or
the year 18 , intestate, a bachelor, without father, but I am una
depose as to the place of his death:

That on the day of July, 19 , by an order on motion ma
this Division, it was ordered that, on an application being mad
letters of administration of the estate of the said intestate, the de
the said deceased may be sworn to have occurred in or since the
18 , aforesaid:

That I am the natural and lawful mother and only next-of-kin
said deceased; that I will administer according to law [etc., *compl*
in Form No. 120].

Sworn, etc.

(Signed) C.

No. 152.—Oath for Administrator (the former Grant having been revoked).

In the High Court of Justice. Probate, Divorce, and Admiralty Div
The Principal Probate Reg

In the estate of A. B., deceased.

Oath for Administrator (the former Grant having been revoked).

I, C. D., of , saddler, make oath and say as follows:—

That A. B., of , deceased, died on the day of
at , intestate, a widower, without child or parent, brother or s
uncle or aunt, nephew or niece:

That notwithstanding the premises, letters of administration o
estate of the said deceased were, on the day of 19 , gra
at the principal probate registry [*or as the case may be*] of the High C
of Justice to E. F., the lawful second cousin of the said deceased, o
suggestion that the said deceased died intestate, a widower, without
or parent, brother or sister, uncle or aunt, nephew or niece, ce
german or cousin-german once removed, and that the said E. F.
one of the next-of-kin of the said deceased:

That the said letters of administration have been since volunt
brought in by or on behalf of the said E. F., and have been duly rev
and declared null and void:

That I am the lawful cousin-german and one of the next-of-ki
the said deceased; I will administer according to law all the e
which by law devolves to and vests in the personal representative o
said deceased; I will exhibit a true and perfect inventory of the
estate, and render a just and true account thereof whenever require
law so to do; and that the whole of the said estate amounts in v
to the sum of £ and no more, to the best of my knowledge
formation, and belief.

Sworn, etc.

(Signed) C. I

No. 153.—Oath of Guardian administering for the Use of a Minor.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Oath of Guardian administering for the Use of a Minor.

I, C. D., of , tea dealer, make oath and say, that the said A. B., of , deceased, died at on the day of , intestate, a widower, and not possessed of any real estate,* leaving E. F. and G. H., his natural, lawful, and only children and only next-of-kin, who are now in their minority, to wit, the said E. F., of the age of years and upwards, and the said G. H., of the age of years and upwards, but severally under the age of twenty-one years:

That there is no testamentary or other lawfully appointed guardian of the said minors, and that I am the lawful and next-of-kin of the said E. F. and G. H., who have by an instrument in writing under their hands bearing date the day of 19 , elected me to be their guardian for the purpose of taking letters of administration of the estate of the said deceased for their use and benefit, and until one of them shall attain the age of twenty-one years:

And I further make oath and say, that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased, for the use and benefit of the said minors until one of them shall attain the age of twenty-one years; that I will exhibit a true and perfect inventory of the said estate and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 154.—Oath of Guardian administering for the Use of an Infant.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Oath of Guardian administering for the Use of Infants.

I, C. D., of , butcher, make oath and say, that the said A. B., of , deceased, died at on the day of 19 , intestate, a widower, and not possessed of any real estate,* leaving E. F. and G. H., his natural and lawful children and only next-of-kin, who are now in their infancy, to wit, the said E. F., of the age of years and upwards, and the said G. H., of the age of years and upwards, but respectively under the age of seven years:

That there is no testamentary or other lawfully appointed guardian of the said infants, and that I am the lawful and next-of-kin of the said infants, and have been duly assigned their guardian for the purpose of taking letters of administration of the estate of the said deceased, for their use and benefit until one of them shall attain the age of twenty-one years:

And I further make oath and say, that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased, for the use and benefit of the said E. F. and G. H. until one of them shall attain the age of twenty-one years; that I will exhibit [etc., *complete as in previous Form, No. 153*].

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 155.—Oath of Testamentary or other specially appoint Guardian administering for the Use of Minors.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisi
The Principal Probate Regist

In the estate of A. B., widow, deceased.

Oath of Testamentary or other specially appointed Guardian administering for the Use of Minors.

I, C. D., of , tailor, in the county of , make oath and s
that the said A. B., of , deceased, died on the day of 19
at , intestate, a widow, and not possessed of any real estate,* leavi
E. F. and G. H., her natural and lawful and only children and o
next-of-kin her surviving, who are both now in their minority, to w
the said E. F., of the age of years and upwards, and the said G.
of the age of years and upwards, but severally under the age
twenty-one years:

And I further make oath and say, that I. K., late of , deceas
the natural and lawful father of the said minors, by his will dated t
day of 19 , and proved in the month of 19 , in t
principal probate registry, appointed me, this deponent, to be guardian
his said children:

And I further make oath and say, that I will administer according
law all the estate which by law devolves to and vests in the perso
representative of the deceased, for the use and benefit of the said E.
and G. H., until one of them shall attain the age of twenty-one yea
that I will exhibit a true and perfect inventory of the said estate, a
render a just and true account thereof whenever required by law so
do; and that the whole of the said estate amounts in value to the su
of £ and no more, to the best of my knowledge, information, a
belief.

Sworn, etc. (Signed) C. D.

NOTE.—*In case the guardian has been appointed by the Chance Division, insert the following words:—"That I have been duly appoint guardian of the estate of the said minors under and by virtue of an ord of the Chancery Division of the High Court of Justice, made on the day of , during their minority, and until the further order of t said Court."*

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 156.—Oath of Committee administering for the Use of Lunatic.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisio
The Principal Probate Registr

In the estate of A. B., deceased.

Oath of Committee administering for the Use of Lunatic.

I, C. D., of , upholsterer, make oath and say, that the sa
A. B., of , deceased, died at on the day of 19
intestate, a widower, and not possessed of any real estate,* leaving E. B
his natural and lawful son and only next-of-kin him surviving:

And I further make oath and say, that the said E. B. is a lunatic
found by inquisition, and that by an order made in Lunacy on the

* *If the deceased died possessed of real estate the heir-at-law must cleared off.*

day of 19 , I, this deponent, was appointed committee of the estate of the said lunatic:

And I further make oath and say, that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased, for the use and benefit of the said lunatic, during his lunacy; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

No. 157.—Oath of Person appointed under the Lunacy Acts administering for Use of Lunatic.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath of Person appointed under Lunacy Act.

I, C. D., of , joiner, make oath and say, that the said A. B., of , deceased, died at on the day of 19 , intestate, a bachelor, leaving E. B., his natural and lawful father and next-of-kin him surviving:

That the said E. B. is now a lunatic; that I am the person intrusted under an order made in Lunacy and dated the day of 19 , with the application of the estate to which the said E. B. is, or may be entitled:

And I further make oath and say, that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased for the use and benefit of the said lunatic, during his lunacy; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

No. 158.—Oath of Next-of-Kin administering for the Use of Lunatic.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath of Next-of-Kin administering for the Use of Lunatic.

I, C. D., of , carpenter, make oath and say, that the said A. B., of , deceased, died at on the day of 19 , intestate, a widower, and not possessed of any real estate,* leaving E. B., his natural and lawful son and only next-of-kin him surviving:

That the said E. B. is now a lunatic:

That no committee has been appointed of the estate of the said E. B., nor has any order been made in Lunacy intrusting the application of his estate to any person:

And I further make oath and say, that I am the natural and lawful son and one of the next-of-kin of the said E. B., and that I will administer

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* *If the deceased left real estate the heir-at-law must be cleared off.*

according to law all the estate which by law devolves to and vests in personal representative of the said deceased, for the use and benefi the said E. B. during his lunacy; that I will exhibit a true and per inventory of the said estate, and render a just and true account the whenever required by law so to do; and that the whole of the said es amounts in value to the sum of £ and no more, to the best of knowledge, information, and belief.

Sworn, etc. (Signed) C. I

No. 159.—Oath of Administrator *pendente lite.*

In the High Court of Justice. Probate, Divorce, and Admiralty Divis
The Principal Probate Regis

In the estate of A. B., widow, deceased.

Oath of Administrator *pendente lite.*

I, C. D., of , land agent, make oath and say, that the said A. of , widow, deceased, died on the day of 19 , at

And I further say, that there is now depending in the afore Division an action entitled E. against F., touching and concerning validity of the will of the said deceased:

And I further make oath, that the Right Honorable the Presiden the aforesaid Division did, on the day of , order that letter administration of the personal estate of the said deceased be grante me this deponent pending the said action:

And I further make oath, that I will faithfully administer the perso estate of the said deceased, pending the said action, save distribut the residue thereof, under the directions and control of this court; t I will exhibit a true and perfect inventory of the said estate, and ren a just and true account thereof whenever required by law so to do; that the whole of the personal estate of the said deceased amounts value to the sum of £ and no more, to the best of my knowled information, and belief.

Sworn, etc. (Signed) C. D

NOTE.—*If the order of the court contains any limitation or extend the real estate of the deceased, this Form must be varied accordingly.*

No. 160.—Oath for Cessate Administration to Next-of-Ki on attaining his Majority.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisi
The Principal Probate Regist

In the estate of A. B., deceased.

Oath for Cessate Administration to Next-of-Kin on attaining his Majority.

I, C. D., of , auctioneer, make oath and say, that A. B., of deceased, died on the day of 19 , at , intestate widower; that in the month of 19 , letters of administration the estate of the said deceased were granted by the Division aforesaid the principal probate registry to E. F., the lawful uncle and next-of-k of and guardian lawfully assigned to me the deponent, then an infant the natural and lawful and only child and only next-of-kin of the s deceased, for my use and benefit, and until I should attain the age twenty-one years:

(*e*) *Or "the guardian duly elected of me the deponent, then a minor,"*

And I further make oath and say, that on the day of 19 , I attained the age of twenty-one years, by reason of which the said letters of administration have ceased and expired:

And I further make oath and say, that I am the natural and lawful child and only next-of-kin of the said deceased; that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; that I will exhibit a true and perfect inventory of the said estate and render a just and true account thereof whenever required by law so to do; and that the unadministered estate amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc.

(Signed) C. D.

No. 161.—Oath for Cessate Administration, the Attorney Administrator having died.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B. (wife of C. D.), deceased.

I, C. D., of , coachman, make oath and say, that A. B. (wife of me the said C. D.), of , deceased, died on the day of 19 , at , intestate; that in the month of 19 , letters of administration of the estate of the said deceased were granted at the principal probate registry to E. F., the lawful attorney of me, the deponent, the lawful husband of the said deceased, then residing in America, for my use and benefit, and until I should duly apply for and obtain letters of administration of the said estate:

Oath for Cessate Administration, the Attorney Administrator having died.

And I further make oath and say, that the said E. F. died on the day of 19 , by reason of which the said letters of administration have ceased and expired; that I am the lawful husband of the said deceased; that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the unadministered estate of the said deceased amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc.

(Signed) C. D.

No. 162.—Oath for Cessate Administration, a Suit in Chancery having terminated.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , hutler, make oath and say, that the said A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor:

Oath for Cessate Administration, a Suit in Chancery having terminated.

And I further make oath and say, that in the month of 19 , letters of administration of the estate of the said deceased were, upon my consent, granted at the said principal probate registry to G. H., as a

P.P.

person for that purpose named by and on the part and behalf of J
limited to the purpose only of attending, supplying, substantiating
confirming the proceedings then already had or which at any
thereafter should or might be had in a certain action then dependi
the Chancery Division between the said J. K., plaintiff, and L. M
N. O., defendants, and in any other action which might at any
thereafter be commenced between the parties aforesaid or any
parties touching the matters at issue in the said action, until a
decree should be made therein and the said decree carried into execu
and the execution thereof fully completed, but no further or othe
(as by the records of the said court will appear):

And I further make oath and say, that the proceedings in the
Chancery Division for or in respect of which the said letters of adm
tration were granted have since terminated, whereby the said lett
administration have ceased and expired:

And I further make oath and say, that I am the natural and l
father and next-of-kin of the said deceased:

And I further make oath and say, that I will administer accordi
law all the estate which by law devolves to and vests in the per
representative of the said deceased; that I will exhibit a true and pe
inventory of the said estate, and render a just and true account the
whenever required by law so to do; and that the whole of the
estate amounts in value to the sum of £ and no more, to the
of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D

No. 163.—Oath for Administration limited to Wages, Prize-Money, etc., of a Seaman in the Royal Navy.

In the High Court of Justice. Probate, Divorce, and Admiralty Divi
The Principal Probate Regi

In the estate of A. B., deceased.

Oath for Administration limited to Wages, Prize-Money, etc.

I, C. D., of , ferryman, make oath and say, that the said A
of , a seaman in the Royal Navy, died at sea on the d
19 , a bachelor, without parent, having made his will, but n
conformity with the provisions of "The Navy and Marines (Wills)
1865," and having therefore died intestate so far as relates to w
prize-money, bounty-money, grant or other allowance in the na
thereof, or other money payable by the Admiralty, or any effect
money in charge of the Admiralty:

And I further make oath, that I am the natural and lawful bro
and one of the next-of-kin of the said deceased, and that I will faith
administer the estate of the said deceased, limited so far only as conc
all wages, prize-money, bounty-money, grant or other allowance in
nature thereof, or other money payable by the Admiralty, or any ef
or money in charge of the Admiralty, by paying his just debts
distributing the residue of his said estate according to law; that I
exhibit a true and perfect inventory of the said estate, limited as a
said, and render a just and true account thereof whenever require
law so to do; and that the said estate of the said deceased, under
aforesaid limitations, amounts in value to the sum of £ an
more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C.

No. 164.—Oath for Administration limited to Trust Property (viz., to transferring it).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.
In the estate of A. B., deceased.

Oath for Administration limited to Trust Property (viz., to transferring it).

I, C. D., of , civil servant, make oath and say, that in and by an indenture of settlement made the day of 19 , between E. F. of of the first part, G. H. of of the second part, and the said A. B., deceased, therein described of of the third part, after reciting that a marriage was intended to be had and solemnized between the said E. F. and G. H., it was witnessed that the said A. B., his executors, administrators, and assigns, should stand possessed of and interested in the sum of pounds, etc., upon trust, after the solemnization of the said intended marriage, to pay the interest, dividends, and annual produce of the said sum to the said G. H. for and during her life, and after her decease to the said E. F. during his life, and after the decease of the survivor of them in trust for all and every or such one or more exclusively of the other or others of the children of the said G. H. by the said E. F. as she the said G. H. should by deed or will appoint, and in default of such appointment in trust for all and every the children and child of the said E. F. and G. H. who being a son or sons should attain the age of twenty-one years, or being a daughter or daughters should attain the said age or marry as therein mentioned, and if there should be but one such child the whole to be in trust for that one child, his or her executors or administrators; and it is provided in and by the said indenture that if the said A. B. should depart this life, or decline to act in the trusts thereby created, it should be lawful for the said E. F. and G. H. and the survivor of them to appoint a trustee in the room of the said trustee so dying or refusing or declining to act for the purposes of the said indenture (as in and by the said indenture on reference being thereunto made will more fully appear):

And I further make oath and say, that the said intended marriage was afterwards duly had and duly solemnized between the said E. F. and the said G. H., and there is issue of the said marriage one child only, who has attained the age of twenty-one years:

And I further make oath and say, that the said G. H. died on the day of 19 , in the lifetime of her husband, intestate, and without having appointed the said trust estate or any part thereof by deed or otherwise:

And I further make oath and say, that the said A. B., who was of , deceased, died at on the day of 19 , having made and duly executed his last will and testament bearing date the day of 19 , and therein appointed I. K. sole executor and residuary legatee and devisee, and that the said I. K. hath renounced the probate and execution of the said will:

And I further make oath and say, that the said E. F., under and by virtue of the power vested in him in and by the said indenture of settlement as aforesaid, hath in and by a certain deed of appointment bearing date the day of 19 , nominated, constituted, and appointed L. M., of , and N. O., of , to be trustees in the room of the said A. B., deceased, for all the purposes of the said indenture of settlement (as in and by the said last-mentioned deed will more fully appear):

And I further make oath and say, that the said L. M. and N. O. have in and by an instrument under their hands and seals authorised me, this deponent, to procure letters of administration of the personal estate of the said A. B., deceased, to be granted to me as a person for that purpose named by them and on their part and behalf, limited so far

only as concerns all the right, title, and interest of him the said ceased in and to the said sum of £ , etc., and all dividends interest due and to become due thereon, and for transferring the sum into the names of the said L. M. and N. O. for the purpose carrying into effect the trusts of the said indenture of settlement of day of 19 , but no further or otherwise:

And I further make oath and say, that I will faithfully admini the personal estate of the said A. B., deceased, limited so far onl concerns all the right, title, and interest of him the said deceased in to the aforesaid sum of £ and all dividends and interest due to become due thereon, and for transferring the said sum into names of the said L. M. and N. O., for the purpose of carrying effect the trusts of the said indenture of the day of 1 but no further or otherwise; that I will exhibit a true and per inventory of the said estate, limited as aforesaid, and render a just true account thereof whenever required by law so to do; and that personal estate of the said deceased, limited as aforesaid, amount value to the sum of £ and no more, to the best of my knowle information, and belief.

Sworn, etc. (Signed) C.

No. 165.—Oath for Administration limited to Trust Prop (viz., to dealing with it).

In the High Court of Justice. Probate, Divorce, and Admiralty Divi The Principal Probate Regi

In the estate of A. B., deceased.

Oath for Administration limited to Trust Property (viz., to dealing with it).

I, C. D., of , printer, make oath and say, that E. F., of deceased, by her will gave, devised, and bequeathed the whole of real estate and the residue of her personal estate unto G. H. and A their executors, administrators, and assigns, upon trust to convert same into money, and to invest the proceeds in some one or mo the public stocks or funds, and to pay the interest and dividends ar therefrom unto I. K. and L. M. during their natural lives and the of the survivor of them, and upon the decease of such survivor to the principal unto her grandson, me this deponent, and of her said appointed the said G. H. and A. B. executors, who duly proved same in this Division in the month of 19 :

And I further make oath and say, that the said G. H. and A. B execution of the aforesaid trusts, converted the said real estate residue of the said deceased's personal estate into money, and inv the same in the purchase of £ , etc., in their names in the kept by the Governer and Company of the Bank of England.

That the said sum of £ , etc., still remains standing in names of the said G. H. and A. B., or in the name of the said A. the survivor, in the account thereof in the books of the Governo Company of the Bank of England, but that neither the said A. B the said G. H. had any beneficial interest whatever therein, or in part thereof, or in the said dividends and interest thereof:

And I further make oath and say, that the said A. B., of deceased, survived the said G. H., and died on the day of 19 , at aforesaid, intestate, a widower, and not possessed o real estate,* leaving surviving him N. O. and P. Q., his natural, l

* *If the deceased left real estate the heir-at-law must be cleared o*

and only children and only next-of-kin, the only persons entitled in distribution to his personal estate, who have in and by a certain instrument in writing under their respective hand consented that letters of administration of the estate of the said B., deceased, may be committed and granted to me under the limitations hereinafter mentioned:

And I further say, that no letters of administration of the said estate have as yet been granted:

And I further make oath and say, that I am the administrator (with the will annexed) of the estate of the said E. F., deceased, left unadministered by the said G. H. and A. B. (both since deceased), and that I will faithfully administer the estate of the said A. B., deceased, limited so far only as concerns all the right, title, and interest of him the said deceased in and to the aforesaid sum of £ , etc., and the dividends and interest due or to grow due thereon, but no further or otherwise; that I will exhibit a true and perfect inventory of the said estate, limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the estate of the said deceased under the aforesaid limitations amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

No. 166.—Oath limited to an Unsatisfied Term.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Oath limited to an Unsatisfied Term.

I, C. D., of , make oath and say, that in and by an indenture bearing date the day of 19 , and made between, etc. [*describe the parties*], all those twenty messuages, etc. [*describe the messuages*], with the appurtenances, were assigned to A. B., of , to hold the same unto the said A. B., his executors, administrators, and assigns for the residue of a term of years then to come and unexpired thereby upon trust [*describe the trusts, the sum secured, and show the title of the deceased mortgagor*] as in and by the said indenture, on reference being thereunto had, will more fully appear:

And I further make oath and say, that the said A. B. since died, to wit, on the day of 19 , at , without having assigned the remainder of the said term:

And I further make oath and say, that the said A. B. died intestate, and that letters of administration of his estate have not been granted to any person whomsoever, so that there is not any legal personal representative of the said deceased competent to assign the said remainder of the said term:

[*Here insert a paragraph clearing off the persons entitled to a general grant, whether by citation or otherwise.*]

And I further make oath and say, that the said term still remains unsatisfied, so far as regards the sum of £ :

And I further make oath and say, that E. F., of , the sole person entitled to the said sum of £ , hath nominated and appointed me this deponent to apply for and obtain letters of administration of the estate of the said , deceased, under the limitations hereinafter mentioned:

And I further make oath and say, that I will faithfully administer the

estate of the said A. B., deceased, limited so far as concerns all the right, title, and interest of him the said deceased in and to all the aforesaid messuages situate as aforesaid, with their appurtenances, and the remainder of the said term of years therein granted and assigned to the said deceased by the said indenture, and all benefit and advantage to be had, received, and taken therefrom, but no further or otherwise: that I will exhibit a true and perfect inventory of the said estate, limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the estate of the said deceased, under the aforesaid limitations, amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

No. 167.—Oath for Administration limited to Proceedings in Chancery.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration limited to Proceedings in Chancery.

I, E. F., of , merchant, make oath and say, that on the day of 19 , G. H. delivered his statement of claim in an action brought by him in the Chancery Division against I. K. and others claiming [*state briefly the averments of the statement*]:

And I further make oath and say, that divers proceedings have been had in the said action, but that no further proceedings can be had therein until there is a legal personal representative of the said A. B. before the said Chancery Division:

And I further make oath and say, that the said A. B., of deceased, died on the day of 19 , at , intestate, a bachelor, leaving C. D. his natural and lawful father and next-of-kin who has renounced the letters of administration of the estate of the said deceased:

And I further make oath and say, that I am nominated and appointed by and on the part and behalf of the said G. H. to apply for and obtain letters of administration of the estate of the said deceased, under the limitations hereinafter mentioned:

And I further make oath and say, that I will faithfully administer the estate of the said deceased, limited to the purpose only to become and be made a party to the aforesaid action depending in the said Chancery Division, and to attend, supply, substantiate, and confirm the proceedings already had or that shall or may hereafter be had therein, or in any other action which may be commenced in the said Division or in any other Division between the before-mentioned parties or any other parties touching and concerning the matters at issue in the said action and until a final decree shall be had and made therein and the said decree carried into execution, and the execution thereof fully completed but no further or otherwise; that I will exhibit a true and perfect inventory of the said estate, limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the said estate of the said deceased, under the aforesaid limitations, amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) E. F.

No. 168.—Oath for limited Administration under 38 Geo. III. c. 87, and Court of Probate Acts, 1857 and 1858.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , insurance agent, make oath and say, that A. B., of , deceased, died on the day of 19 , at , having made and duly executed his last will and testament, bearing date the day of 19 , and thereof appointed E. F. and G. H. executors, who in the month of 19 , duly proved the same in the registry of this Division:

Oath for limited Administration under Geo. III. c. 87, and Court of Probate Acts, 1857, 1858.

And I further make oath and say, that the said E. F. is since dead:

And I further make oath and say, that there is now depending in the Chancery Division an action touching and concerning the administration of the estate of the said A. B., deceased, wherein is plaintiff, and are defendants:

And I further make oath and say, that the said G. H., the now surviving executor, and to whom probate was granted as aforesaid, has departed this kingdom, and is out of the jurisdiction of His Majesty's High Court of Justice, and by reason thereof no further proceedings can be had with effect in the said suit:

And I further make oath and say [etc., *as in the preceding Form*]; that I will faithfully administer the estate of the said deceased, limited to the purpose only to become and be made a party to the aforesaid action now depending in the said Chancery Division, touching and concerning the administration of the estate of the said deceased, wherein the said is plaintiff and the said are defendants, and to carry the decree or decrees of the said Division made or to be made in the said action into effect, but no further or otherwise; that I will exhibit a true and perfect inventory of the said estate limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the estate of the said deceased, under the aforesaid limitations, amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

No. 169.—Oath for Administration limited to a Policy of Assurance.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , coal dealer, make oath and say, that the said A. B., of , deceased, died on the day of 19 , at , intestate, a spinster, without parent, brother or sister, and not possessed of any real estate,* leaving E. F., her lawful uncle and only next-of-kin, who has duly renounced the letters of administration of the estate of the said deceased:

Oath for Administration limited to a Policy of Assurance.

That in the year 19 I lent the said deceased various sums of money, and that by a certain policy of assurance, bearing date the day

* *If the deceased left real estate the heir-at-law must be cleared off.*

of 19 , numbered and under the hands of three o
directors of the Life Assurance Company, the sum of £
assured to be paid to the executors, administrators, or assigns of the
A. B., together with such further sum or sums as should have
appropriated as bonuses to the said policy after proof being given
death as therein mentioned. That the said assurance was effect
the name of the said A. B., but that the same was so effected a
instance of me the said C. D.; that although the said policy was
legally assigned to me, the same was never in the possession of th
A. B., but was delivered to me as my own property and effects, a
now in my possession or held for my benefit, and the premiums th
were from the month of 19 , to the death of the said dec
paid by me; that I am the sole person equitably entitled to the
policy and to the money secured thereby, but that I am unal
obtain payment thereof for want of a legal personal representative
said deceased; that I will faithfully administer the personal est
the said deceased, limited so far only as concerns all the right, titl
interest of her the said deceased in and to the aforesaid poli
assurance numbered in the said Life Assurance Com
and the said sum of £ secured thereby, and all profits, bo
and accumulations thereon, and all benefit and advantage to be
received, and taken therefrom, but no further or otherwise; that
exhibit a true and perfect inventory of the said estate, and render
and true account thereof whenever required by law so to do; and
the estate of the said deceased, under the aforesaid limitations, am
in value to the sum of £ and no more, to the best of my
ledge, information, and belief.

Sworn, etc. (Signed) C.

No. 170.—Oath for Administration *ad colligenda*.

In the High Court of Justice. Probate, Divorce, and Admiralty Div
The Principal Probate Reg

In the estate of A. B., deceased.

Oath for Administration *ad colligenda*.

I, J. W. C., of , banker, make oath and say as follows:—
That E. J. C., of , died at on , intestate, a bachelor,
out parent, and not possessed of any real estate,* leaving, as I be
two natural and lawful sisters and only next-of-kin, whose name
addresses are unknown to me. That as a member of the firm of W
& Co., bankers, I am a creditor of the said deceased. That by an
on motion made in this matter on it was ordered by the
that letters of administration of the estate of the said deceas
granted to me the said J. W. C. under the limitations herei
mentioned. That I will faithfully administer the estate of th
deceased, limited for the purpose only of collecting and getting i
receiving the personal estate, and doing such acts as may be nec
for the preservation of the same during the absence of the per
persons entitled by law to the said estate, and until they or one of
obtain letters of administration of the same, but no further or othe
That I will exhibit a true and perfect inventory of the said estat
render a just and true account thereof whenever required by law
do, and that the said personal estate of the said deceased amou
value to the sum of £ and no more, to the best of my know
information, and belief.

Sworn, etc. (Signed) J. W

* *If the deceased left real estate the heir-at-law must be cleared*

No. 171.—Oath for limited Administration under the 73rd Section of the Court of Probate Act, 1857.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for limited Administration under the 73rd Section of the Court of Probate Act, 1857.

I, C. D., of , confectioner, make oath and say as follows:—

That the said A. B., of , deceased, died on the day of 19 , at , intestate, a widower, leaving him surviving E. F., G. H., and I. K., his natural and lawful and only children and only next-of-kin, the only persons entitled in distribution to his personal estate, the said E. F. being the heir-at-law of the deceased.

That the said E. F. and G. H. have respectively duly renounced all their right and title in and to the letters of administration of the estate of the said deceased.

That the said I. K. left this country in the year 19 and has not been heard of since.

That on the day of 19 , the Right Honorable the President of this Division appointed me, this deponent, to be the administrator of the estate of the said deceased, under and by virtue of the 73rd section of the Court of Probate Act, 1857.

That I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

No. 172.—Oath for limited Administration (Married Woman protected under 20 & 21 Vict. c. 85).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B. (wife of E. F.), deceased.

Oath for limited Administration (Married Woman protected under 20 & 21 Vict. c. 85).

I, C. D., of , spinster, in the county of , make oath and say, that the said A. B. (wife of E. F.), of , deceased, died on the day of 19 , at , intestate, leaving surviving her the said E. F., her lawful husband:

And I further make oath and say, that on the day of 19 , two of His Majesty's justices of the peace, at a petty sessions of the peace holden for the petty sessional division of in the county of at the Guildhall in made an order under their respective hands and seals, whereby they ordered that any money or property she, the said deceased, had acquired since the day of 19 , when she was deserted by the said E. F., or might thereafter acquire, should be protected from her said husband and from all creditors and persons claiming under him, and should belong to the said deceased as if she were a *feme sole*; and that on the day of 19 , the said order was duly entered with the registrar of the county court at , being the county court within whose jurisdiction the said A. B. was resident when the said order was made as aforesaid, and that the said order remained in full force until the death of the said deceased:

And I further make oath and say, that the said deceased died without child or parent, and that I am the natural and lawful sister and one of the next-of-kin of the said deceased; that I will faithfully administer the estate of the said deceased, limited to all such estate as she the said deceased, by virtue of the said order, was entitled to as a *feme sole*, but no further or otherwise, by paying her just debts and distributing the residuo of her said estate according to law; that I will exhibit a true and perfect inventory of the said estate, limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the whole of the estate of the said deceased, limited as aforesaid, amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

No. 173.—Oath for limited Administration (Married Woman judicially separated).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for limited Administration (Married Woman judicially separated).

I, C. D., of , banker, in the county of , make oath and say, that the said A. B. (wife of E. F.), of . deceased, died on the day of 19 , intestate, leaving surviving her the said E. F., her lawful husband:

That on the day of 19 , the Right Honorable Sir John Gorell Barnes, Knight, the President of the Probate, Divorce, and Admiralty Division, by his final decree, decreed the said A. B. to be judicially separated from the said E. F.

That the separation under the said decree continued from the making thereof to the time of the death of the said deceased.

That the said deceased died without child or parent, and that I am the natural and lawful brother, and one of the next-of-kin of the said deceased, that I will faithfully administer the estate of the said deceased, limited to all such estate as she the said deceased acquired after the said day of 19 , but no further or otherwise, by paying her just debts, and distributing the residue of her said estate according to law; that I will exhibit a true and perfect inventory of the said estate, limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the whole of the estate of the said deceased, limited as aforesaid, amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

No. 174.—Oath for Administration as to Property not covered by first Grant.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the goods of A. B., deceased.

Oath for Grant of Administration as to Property not

I, C. D., of , engineer, make oath and say, that the said A. B. of , deceased, died on the day of 18 , at , leaving him surviving C. D., his lawful widow and relict:

And I further make oath and say, that the said deceased was at the time of his death possessed of personal estate within the province of Canterbury, and that in the month of 18 , letters of administration of all and singular the personal estate of the said deceased were committed and granted by the Prerogative Court of Canterbury to me this deponent (as by the records of the said court now remaining in the principal probate registry of this Division appears): covered by first Grant.

And I further make oath and say, that the said deceased was at the time of his death possessed of personal estate in England not within the limits of the jurisdiction of the said Prerogative Court of Canterbury:

And I further make oath and say, that letters of administration of the personal estate of the said deceased, limited to the personal estate of the said deceased in England not covered by the aforesaid letters of administration, are now required to be granted to me:

And I further make oath and say, that I am the lawful widow and relict of the said deceased; that I will faithfully administer the personal estate of the said deceased, limited as aforesaid, by paying his just debts and distributing the residue of his said estate according to law; that I will exhibit a true and perfect inventory of the said estate, limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the personal estate of the said deceased, limited as aforesaid, amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

No. 175.—Oath for Administration (Will) to Residuary Legatee (no Executor).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , widow, make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of A. B., of , deceased, who died on the day of 19 , at ; that the said deceased did not in his said will name any executor; that I am the relict of the said deceased and the residuary legatee named in the said will; that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief. Oath for Administration (Will) to Residuary Legatee.

Sworn, etc. (Signed) C. D.

No. 176.—Oath for Administration (Will) to Residuary Legatee (Executor renouncing).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , draper, make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament, with a codicil thereto, of A. B., of , Oath for Administration (Will) to

Residuary Legatee.

deceased, who died on the day of 19 , at ; that E. F. and G. H., the executors and residuary legatees and devisees in trust named in the said will, have duly renounced the probate and execution thereof; that I am the relict and the residuary legatee named in the said will; that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £ , to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

No. 177.—Oath for Administration (Will) to Residuary Devisee (Executor dead).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration (Will) to Residuary Devisee.

I, C. D., of , spinster, make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of A. B., of , deceased, who died on the day of 19 , at ; that E. F., the son of the deceased, and sole executor named in the said will, survived the said deceased, and is since dead, without having taken upon him the probate and execution of the said will; that I am the daughter of the said deceased and one of the residuary devisees named in the said will; that I will administer according to law [etc., *complete as in Form No.* 176].

No. 178.—Oath for Administration (Will) to substituted Residuary Legatee.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration (Will) to substituted Residuary Legatee.

I, C. D., of , butcher, make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of A. B., of , deceased, who died on the day of 19 , at ; that E. F., widow, the relict of the said deceased, the sole executrix and the residuary legatee and devisee for life named in the said will, has duly renounced the probate and execution thereof; that I am the son and one of the residuary legatees substituted in the said will; that I will administer according to law [etc., *complete as in Form No.* 176].

No. 179.—Oath—Administration (Will) to Heir-at-Law.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath—Administration (Will) to Heir-at-Law.

I, C. D., of , carriage builder, make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of A. B., of , formerly

of , deceased, who died on the day of 19 , at ; that the deceased did not in his said will appoint any executor or dispose of his residuary estate; that I am the heir-at-law of the said deceased; that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the gross value of the said estate amounts to £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

NOTE.—*The heir-at-law would not be entitled to the grant in this case unless the deceased left real estate.*

See Forms Nos. 41 *and* 42 *for affidavits in support of heir-at-law's claim.*

No. 180.—Oath for Administration (Will) to Legatee.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration (Will) to Legatee.

I, C. D., of , saddler, make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of A. B., of , deceased, who died on the day of 19 , at , that E. F., the sole executor and residuary legatee and devisee named in the said will, has duly renounced the probate and execution thereof; that I am a legatee named in the said will; that I will administor according to law [etc., *complete as in Form No.* 176].

No. 181.—Oath for Administration (Will) to Creditor.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration (Will) to Creditor.

I, C. D., of , make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament, with a codicil thereto, of A. B., of , deceased, who died on the day of 19 , at , that E. F. and G. H., the sons of the said deceased, the executors and residuary legatees in trust, and the residuary legatees named in the said will, have duly renounced the probate and execution of the said will and codicil; that the said deceased died possessed of no real estate; * that I am a creditor of the said deceased; that I will administer according to law [etc., *complete as in Form No.* 176].

* *If the deceased left real estate the persons interested in the residuary real estate must be cleared off.*

No. 182.—Oath for Administration (Will) to Testator's Next-of-Kin (the Executor and Residuary Legatee having Renounced and there being no Real Estate).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration (Will) to Testator's Next-of-Kin (on renunciation of Executor and Residuary Legatee).

I, C. D., of , miller, make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of A. B., of , deceased, who died on the day of 19 , at ; that E. F., the sole executor and the residuary legatee named in the said will, has duly renounced the probate and execution thereof; that the said deceased died a bachelor, without parent; that I am the natural and lawful brother and one of the next-of-kin of the said deceased; that I will administer, according to law, all the estate which by law devolves to and vests in the personal representative of the said deceased; that I will exhibit a true and perfect inventory of the said estate and render a just and true account thereof whenever required by law so to do; and that the gross value of the said estate amounts to £ and no more, to the best of my knowledge, information, and belief.

I further make oath and say, that the deceased did not die possessed of any real estate.*

Sworn, etc. (Signed) C. D.

* *If the deceased in this case had left real estate, it would have been necessary to clear off the persons interested in the residuary real estate.*

No. 183.—Oath for Administration (Will) to Testatrix's Next-of-Kin (there being no Executor or Disposition of the Residuary Estate).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration (Will) to Testatrix's Next-of-Kin (there being no Executor or Disposition of the Residuary Estate.)

I, C. D., of , gardener, make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of A. B., of , deceased, who died on the day of 19 , at ; that the said deceased died a widow, and did not in her said will name any executor or dispose of her residuary estate; that I am the natural and lawful son and one of the next-of-kin of the said deceased; that I will administer according to law [etc., *complete as in Form No.* 176].

No. 184.—Oath for Administration (Will) to Testator's Widow (there being no Executor and Residuary Legatee).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration (Will) to Testator's Widow

I, C. D., of , surgeon, make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of A. B., of , deceased, who

died on the day of 19 , at ; that the said deceased did not in his said will name any executor or residuary legatee [*or* devisee if the testator left real estate *]; that I am the lawful widow and relict of the said deceased; that I will administer according to law [etc., *complete as in Form No.* 176]. (there being no Executor and Residuary Legatee).

* *If the deceased left no real estate, it must be so sworn.*

No. 185.—Oath of Attorney of an Executor.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , postmaster, make oath and say, that the said A. B., of , deceased, died on the day of 19 , at , having made and duly executed his last will and testament, and thereof appointed E. F. sole executor, who now resides at :

That I am the lawful attorney of the said E. F.:

And I further make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said deceased; that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased for the use and benefit of the said E. F., and until he shall duly apply for and obtain probate of the said will; that I will exhibit a true and perfect inventory of the said estate and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) C. D.

Oath of Attorney of an Executor.

No. 186.—Oath of Committee administering for the Use of a Lunatic Executor.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

I, C. D., of , farmer, make oath and say as follows:—

That A. B., of , deceased, died on the day of 19 , at , having made and duly executed his last will and testament bearing date the day of 19 , and thereof appointed E. F. sole executor:

That on the day of 19 , the said E. F. was, upon an inquisition directed by the judge in Lunacy, found to be a lunatic or person of unsound mind, and incapable of managing his affairs: and by an order made in Lunacy on the day of 19 , I, this deponent, was appointed committee of the estate of the said lunatic.

That I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of the said deceased; I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased, for the use and benefit of the said E. F., and until he shall become of sound mind; that I will exhibit a true and perfect inventory [etc., *complete as in Form No.* 185].

Oath of Committee administering for the Use of a Lunatic Executor.

No. 187.—Oath for Administration (Will) under the Section of the Court of Probate Act, 1857.

In the High Court of Justice. Probate, Divorce, and Admiralty D
The Principal Probate R

In the estate of A. B., deceased.

Oath for Administration (Will) under 73rd section of the Court of Probate Act, 1857.

I, C. D., of , cattle deal make oath and say as follows:
That A. B., of , deceased, died on the day of at , having made and duly executed his last will and tes and thereof appointed E. F. sole executor and residuary legatee, now resident out of the United Kingdom of Great Britain and I
That I am a creditor of the said deceased:
That on the day of 19 , the Right Honorable S Gorell Barnes, Knight, President of this Division, appointed deponent to be the administrator (with the said will) of the estat said deceased under and by virtue of the 73rd section of the C Probate Act, 1857.
That I believe the paper writing hereto annexed and marked contain the true and original last will and testament of the said de I will administer according to law all the estate which by law to and vests in the personal representative of the deceased; exhibit a true and perfect inventory of the said estate, and rend and true account thereof whenever required by law so to do; whole of the said estate amounts in value to the sum of £ no more, to the best of my knowledge, information, and belief.
Sworn, etc. (Signed)

No. 188.—Oath for limited Administration to Attor the Person intrusted with the Administration Court of the Domicil of the Deceased.

In the High Court of Justice. Probate, Divorce, and Admiralty D
The Principal Probate R

In the estate of Y. D., deceased.

Oath for limited Administration to Attorney.

I, J. S., of , banker, make oath and say as follows:—
That Y. D., of , in Spain, deceased, died on , a intestate, domiciled in Spain; that by an order of the court instance at , being the court of the domicil of the said d S. D., a son of the said deceased, was appointed administrato estate of the said deceased. That the said S. D. now resides at Spain:
That the said deceased died possessed of a certain policy of a No. in the Life Assurance Society, London, effected life for the sum of £ .
That I am the lawfully appointed attorney of the said S. D., purpose only of receiving the moneys payable under the said p by appears); that I will administor according to law the the said deceased, limited so far only as concerns all the right, t interest of the deceased in and to the said policy of assurance, said sum of £ payable thereunder, and all profits, bonu accumulations thereon, and all benefit and advantage to be received therefrom, but no further or otherwise, for the use and of the said S. D., and until he shall duly apply for and obtain l administration of the estate of the said Y. D., deceased, by pa

just debts of the said deceased, and distributing the residue of his said estate, limited as aforesaid, according to law; that I will exhibit a true and perfect inventory of the said estate limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the estate of the said deceased limited as aforesaid, amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) J. S.

NOTE.—*Where, as in this case, it appears that the donor of the power would himself be entitled to a general grant, the registrars require special reasons to be given for the attorney taking a limited grant.*

No. 189.—Oath—Limited Administration (with Will)—Will made under Power and not revoked by subsequent Marriage (1 Vict. c. 26, s. 18).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of G. B. R., deceased.

Oath—Will not revoked by subsequent Marriage.

I, J. H. R., formerly J. H. S., spinster, of , widow, the relict of the said deceased, make oath and say that G. B. R., of , died on at , having made and executed a will dated the day of 1901, whereby, in exercise of certain powers and authorities vested in him by the will of his mother, E. R., widow, deceased, dated the day of , and proved in the principal probate registry of the said High Court on the day of 1894, he gave and bequeathed all such personal estate over which at the time of his decease he should have power of appointment to J. H. R., in his will described as J. H. S., and by his said will he appointed me, the said J. H. R., sole executrix.

That the said G. B. R., on the day of 1903, intermarried with me, the said J. H. R., whereby the said will was revoked except so far as it was made in exercise of the said power.

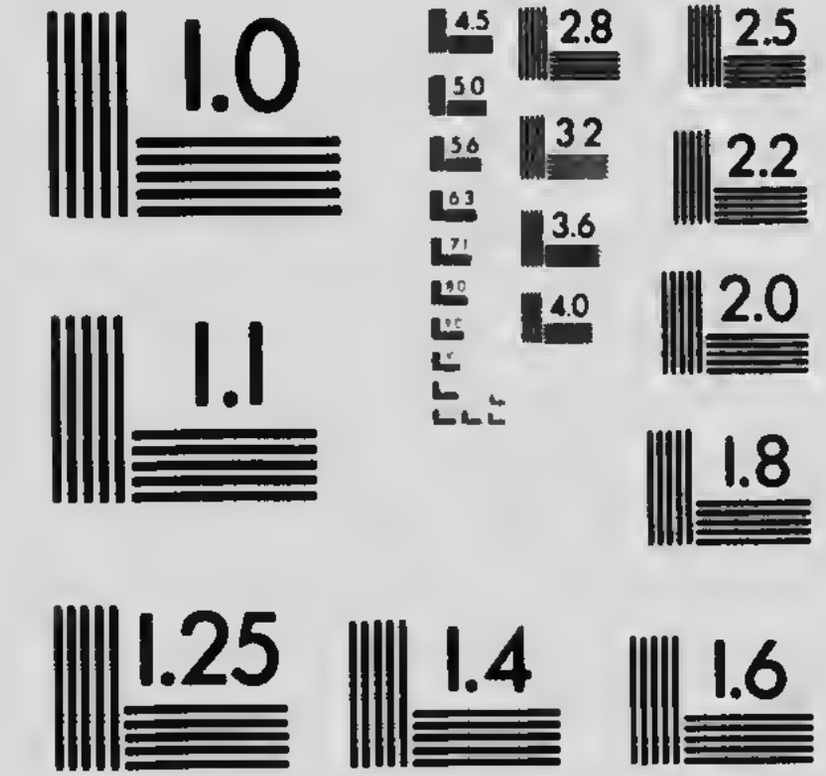
That by an order made on the day of by the Honorable , one of the justices of the said High Court, it was ordered that letters of administration (with the said will annexed) of the estate of the said G. B. R., deceased, be granted to me, the deponent, under the limitations hereinafter mentioned. That I believe the paper writing hereto annexed to contain the true and original last will and testament of the said G. B. R. dated as aforesaid. That I am the relict of the said deceased, and the appointee named in his said will.

That I will well and faithfully administer the estate of the said deceased, limited to such personal estate as he the said deceased, by virtue of the said will of the said E. R., had a right to appoint or dispose of, and has, in and by his said will, appointed or disposed of accordingly, but no further or otherwise. That I will exhibit a true and perfect inventory of the said personal estate limited as aforesaid, and render a just and true account thereof whenever required by law so to do; and that the whole of the said personal estate of the said deceased limited as aforesaid amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn at
this day of
19 , before me, } (Signed) J. H. R.

MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



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No. 190.—Oath for Cessate Administration (Will) to R Legatee [or Devisee] on his attaining his Majority

In the High Court of Justice. Probate, Divorce, and Admiralty The Principal Probate

In the estate of A. B., deceased.

Oath for Cessate Administration (Will) to Residuary Legatee or Devisee on his attaining his Majority.

I, C. D., of , grocer, make oath and say, that A. B., deceased, died on the day of 19 , at , hav and duly executed his last will and testament and thereof his son, E. F., executor, and mo, this deponent, residuary l devisee]:

That the said E. F. heretofore renounced the probate of the and on the day of 19 , letters of administration said will annexed) of the estate of the said deceased were the principal probate registry of the High Court of Justice my lawful uncle and next-of-kin, and the guardian lawfully a me, the said C. D., then an infant, for my use and benefit, a should attain the age of twenty-one years:

That on the day of 19 , I attained the age of years, by reason of which the said letters of administratio said will annexed ceased and expired:

And I further make oath, that I believe the parchment wri annexed, and marked by mo to contain the true last will ment of the said A. B., deceased; that I am the residu [*or* devisee] named in the said will, and I will administer a law all the estate which by law devolves to and vests in t representative of the said deceased; that I will exhibit perfect inventory of the said estate, and render a just and t thereof whenever required by law so to do; and that t the said estate now unadministered amounts in value to £ and no more, to the best of my knowledge, infor belief.

(Signed)

Sworn, etc.

No. 191.—Oath for Administration *de bonis n* Intestate's Child.

In the High Court of Justice. Probate, Divorce, and Admir The Principal Prob

In the estate of A. B., deceased.

Oath for Administration *de bonis non* to Intestate's Child.

I, C. D., of , stud groom, make oath and say, that A. deceased, died on the day of 19 , at , in in the month of 19 , letters of administration of hi granted at the principal probate registry of this court, lawful widow and relict, who died on the day of part of the said estate unadministered, and that I am th lawful son and one of the next-of-kin of the said A. B., d I will administer according to law all the unadministered by law devolves to and vests in the personal representati deceased; that I will exhibit a true and perfect invento estate left unadministered as aforesaid, and render a account thereof whenever required by law so to do; whole of the estate left unadministered as aforesaid am to the sum of £ and no more, to the best of my formation, and belief.

(Sign

Sworn, etc.

No. 192.—Oath for Administration *de bonis non* to Representative of Intestate's Father.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration *de bonis non* to Representative of Intestate's Father.

I, C. D., of , cowkeeper, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], leaving E. F., his [*or* her] natural and lawful father and next-of-kin him [*or* her] surviving; that in the month of 19 , letters of administration of the estate of the said deceased were granted at the said principal probate registry to the said E. F., who died on the day of 19 , leaving part of the said estate unadministered; that I am the administrator of the estate of the said E. F., under a grant of administration made to me at the said registry, on the day of 19 ; that I will administer according to law [etc., *complete as in Form No.* 191].

No. 193.—Oath for Administration *de bonis non* to Intestate's Brother or Sister entitled in Distribution.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration *de bonis non* to Intestate's Brother or Sister entitled in Distribution.

I, C. D., of , wood carver, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], without a father, and not possessed of any real estate,* leaving E. F., widow, his [*or* her] natural and lawful mother and only next-of-kin him [*or* her] surviving; that in the month of 19 , letters of administration of the estate of the said deceased were granted at the said principal probate registry to the said E. F., who died on the day of 19 , leaving part of the said estate unadministered; that I am the natural and lawful brother [*or* sister] of the said deceased; that I will administer according to law [etc., *complete as in Form No.* 191].

* *If A. B., the deceased, left real estate the heir-at-law must be cleared off.*

No. 194.—Oath for Administration *de bonis non* to Representative of Intestate's only Child, etc.

In the High Court of Justice. Probate, Divorce, and Admiralty Division
The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration *de bonis non* to Representative of Intestate's only Child, etc.

I, C. D., of , spinster, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a widow [*or* a widower], and not possessed of any real estate;* that in the month of 19 , letters of administration of the estate of the said deceased were granted hy this Division at the principal probate

---

* *If A. B., the deceased, left real estate his heir-at-law must be cleared off.*

registry [*or as the case may be*] to E. F., the natural and lawful s and only next-of-kin and the sole person entitled to the personal est of the said deceased, who died on the day of 19 , leav part of the said estate unadministered; that I am one of the execut of the will of the said E. F., deceased (probate of his will having b granted to me at the registry on the day of 19 that I will administer according to law [etc., *complete as in Fo No.* 191].

No. 195.—Oath for Administration *de bonis non* to Intestat Brother, as one other of the Next-of-Kin.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisi The Principal Probate Regist

In the estate of A. B., deceased.

Oath for Administration *de bonis non* to Intestate's Brother as one other Next-of-Kin.

I, C. D., of , brewer, make oath and say, that A. B., of deceased, died on the day of 19 , at , intestate bachelor, without parent; that in the month of 19 , letters administration of the estate of the said deceased were granted by t Division at the principal probate registry [*or as the case may be*] E. F., his natural and lawful brother [*or* sister] and one of his next kin, who died on the day of 19 , leaving part of the s estate unadministered; that I am the natural and lawful brother one other of the next-of-kin of the said deceased; that I will adminis according to law [etc., *complete as in Form No.* 191].

No. 196.—Oath for Administration *de bonis non* to Intestat Nephew, entitled in Distribution.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisi The Principal Probate Regis

In the estate of A. B., deceased.

Oath for Administration *de bonis non* to Intestate's Nephew, entitled in Distribution.

I, C. D., of , wine merchant, make oath and say, that A. of , deceased, died on the day of 19 , at , testate, a bachelor [*or* a spinster], without parent, and not possesse any real estate,* leaving E. F., his [*or* her] natural and lawful brot and only next-of-kin him [*or* her] surviving; that in the month 19 , letters of administration of the estate of the said decea were granted at the principal probate registry [*or as the case may be* the said E. F., who died on the day of 19 , leaving par the said estate unadministered; that I am the lawful nephew and of the persons entitled in distribution to the personal estate of the deceased; being the natural and lawful son of G. H., the natural lawful brother also of the said A. B., deceased, who died in his lifeti to wit, on the day of 19 ; that I will administer accor to law [etc., *complete as in Form No.* 191].

* *If the deceased, A. B., left real estate the heir-at-law mus cleared off.*

No. 197.—Oath for Administration *de bonis non* to Intestate's Niece, as one other of the Next-of-Kin.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration *de bonis non* to Intestate's Niece, as one other of the Next-of-Kin.

I, C. D., of , widow, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], without parent, brother or sister; that in the month of 19 , letters of administration of the estate of the said deceased were granted at the principal probate registry [*or as the case may be*] to E. F., the lawful nephew and one of the next-of-kin of the said deceased, who died on the day of 19 , leaving part of the said estate unadministered; that I am the lawful niece and one other of the next-of-kin of the said deceased; that I will administer according to law [etc., *complete as in Form No.* 191].

No. 198.—Oath for Administration *de bonis non* to Representative of Intestate's Cousin.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration *de bonis non* to Representative of Intestate's Cousin.

I, C. D., of , make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor [*or* a spinster], without parent, brother or sister, uncle or aunt, nephew or niece, and not possessed of any real estate; * that in the month of 19 , letters of administration of the estate of the said deceased were granted at the principal probate registry [*or as the case may be*] to E. F., the lawful cousin-german and only next-of-kin of the said deceased, who died on the day of 19 , leaving part of the said estate unadministered; that I am the administrator of the estate of the said E. F.; that I will administer according to law [etc., *complete as in Form No.* 191].

* *If the deceased, A. B., left real estate the heir-at-law must be cleared off.*

No. 199.—Oath for Administration *de bonis non*, the Lunatic for whose Use the Original Grant was made having died in the Lifetime of Grantee.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration *de bonis non*, the Person for whose Use the Original Grant was made having died.

I, C. D., of , builder, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor, without parent, brother or sister, uncle or aunt, nephew or niece, and not possessed of any real estate,* leaving him surviving E. F., his lawful cousin-german and only next-of-kin, who was then, and until the time of his death continued to be, a lunatic or person of unsound mind:

---

* *If the deceased left real estate it is suggested that the heir-at-law be cleared off.*

And I further make oath and say, that on the day of letters of administration of the estate of the said deceased were at the principal probate registry of the High Court of Justice this deponent, the lawful and one of the next-of-kin of t E. F. for his use and benefit during his lunacy:

. And I further make oath and say, that the said E. F. died on th day of 19 , and that part of the said estate of the sai remains unadministered:

And I further make oath and say, that I am the administrato estate of the said E. F., deceased, under letters of admini granted to me on the day of 19 , at the said p probate registry:

And I further make oath and say, that I will administer accor law all the estate which by law devolves to and vests in the representative of the said deceased; that I will render a jus account thereof whenever required by law so to do; and that th of the said unadministered estate amounts in value to the £ , to the best of my knowledge, information, and belief.

Sworn, etc. (Signed)

No. 200.—Oath for Administration (Will) *de bonis no* Residuary Legatee [or Devisee].

In the High Court of Justice. Probate, Divorce, and Admiralty D The Principal Probate R

In the estate of A. B., deceased.

Oath for Administration (Will) *de bonis non* to Residuary Legatee or Residuary Devisee.

I, C. D., of , spirit merchant, make oath and say as foll

That A. B., of , deceased, died on the day of at , having made and duly executed his last will and test

That on the day of 19 , probate of the said w granted at the principal probate registry [*or as the case may be* High Court of Justice to E. F., the brother of the said decea sole executor named in the said will, who died on the day 19 , intestate, leaving part of the estate of the said test administered:

That I believe the paper writing hereto annexed and marke to contain the true and original (*f*) last will and testament of deceased:

That I am the son and the residuary legatee [or devisee] name said will of the said deceased, and I will administer according all the unadministered estate which by law devolves to and ves personal representative of the said deceased; that I will exhib and perfect inventory of the said estate, and render a just account thereof whenever required by law so to do, and that th of the said estate left unadministered as aforesaid amounts in the sum of £ and no more, to the best of my knowledge, tion, and belief.

Sworn, etc. (Signed)

(*f*) *The administrator, if not sworn to the original will, may to the probate, or a sealed copy of the will, in which cases t "and original" should be omitted.*

No. 201.—Oath for Administration (Will) *de bonis non* to Representative of Residuary Legatee.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration (Will) *de bonis non* to Representative of Residuary Legatee.

I, C. D., of , fruit salesman, make oath and say, that A. B., of , deceased, died on the day of 19 , at , having made and duly executed his last will and testament, and thereof appointed his sons E. F. and G. H. executors, and the said G. H. residuary legatee, and that the said deceased died possessed of no real estate: *

That on the day of 19 , probate of the said will was granted at the principal probate registry [*or as the case may be*] to the said E. F. and G. H., the executors aforesaid:

That the said E. F. and G. H. are both since dead, leaving part of the estate of the deceased unadministered, and that the said G. H. survived his said co-executor, and died on the day of 19 , having made and duly executed his last will and testament, and thereof appointed H. I. sole executor, who has duly renounced the probate and execution thereof:

That I believe the writing hereto annexed and marked by me to contain the true last will and testament of the said A. B.:

That I am the administrator (with the will annexed) of the estate of the said G. H., deceased, under a grant of administration (with will) made to me at the Registry on the day of 19 :

And that I will administer according to law [etc., *complete as in Form No.* 200].

* *If the deceased left real estate the person entitled to the residuary part of it must be cleared off.*

No. 202.—Oath for Administration (Will) *de bonis non* to Creditor or Legatee.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Administration (Will) *de bonis non* to Creditor or Legatee.

I, C. D., of , dairyman, make oath and say as follows:—

That A. B., of , deceased, died on the day of 19 , at , having made and duly executed his last will and testament, and thereof appointed E. F. sole executor:

That on the day of 19 , probate of the said will was granted at the principal probate registry [*or as the case may be*] to the said E. F., who died on the day of 19 , intestate, leaving part of the estate of the said deceased unadministered:

That the said testator also in and by his said will appointed his son G. H. residuary legatee [and devisee *], who has renounced his right to letters of administration (with the said will annexed) of the estate of the said deceased left unadministered as aforesaid:

That I believe the paper writing hereto annexed and marked by me to contain the last will of the said deceased, being an official copy of the said will; that I am a creditor of the said A. B., deceased [*or* a legatee

* *Or if the deceased left no real estate it should be so sworn.*

named in the said will], and I will administer according to la
unadministered estate which by law devolves to and vests in the
representative of the said deceased; that I will exhibit a true an
inventory of the said estate, and render a just and true accoun
whenever required by law so to do; and that the whole of the s
left unadministered amounts in value to the sum of £
more, to the best of my knowledge, information, and belief.
Sworn, etc. (Signed)

No. 203.—Oath for Administration *cæterorum* to Hu

In the High Court of Justice. Probate, Divorce, and Admiralty
The Principal Probate

In the goods of A. B., deceased.

Oath for Admin *cæteror* Husba

I, C. B., of , solicitor, make oath and say, that the s
wife of me the said C. B., of , deceased, died on the
18 , at , having during her coverture with me the
by virtue of certain powers and authorities vested in her by an
of settlement bearing date the day of 18 , a
between E. F., of , etc. [*describe the parties*], and of all oth
and authorities her enabling, made and executed her last will
ment, bearing date the day of 18 , and thereof
G. H. and I. K. executors:

That in the month of 18 , probate of the said will limi
only as concerned all such personal estate as she the said de
virtue of the said indenture and of all other powers and a
had a right to appoint or dispose of, and had in and by her
appointed and disposed of accordingly, but no further or othe
granted by authority of this Division to the said G. H. and I.
the records of the said Division will appear); that the said dec
possessed of other personal estate over which she had no
power, and concerning which she is dead intestate:

That I am the lawful husband of the said deceased; that I
fully administer the rest of the personal estate of the said dece
and except any personal estate which vested in her as the execu
person, by paying her just debts and distributing the residue
estate according to law; that I will exhibit and perfect
of the rest of her said estate, and render a e accou
whenever required by law so to do; and t st of th
estate of the said deceased amounts in v the sum
and no more, to the best of my knowledge, in mation, and
Sworn, etc. (Signed)

No. 204.—Oath for Administration *cæterorum*, after Probate to Next-of-Kin.

In the High Court of Justice. Probate, Divorce, and Admiralty
The Principal Probate

In the goods of A. B., widow, heretofore wife of C. B., dec

Oath for Administration *cæterorum*, after limited Probate to Next-of-Kin.

I, D. E., of , club steward, make oath and say, tha
A. B., etc., of , deceased, died on the day of 18
having during her coverture with the said C. B., by virtue
powers and authorities given to and vested in her by the
and testament of F. G., deceased, bearing date the da

18 , and duly proved in this Division in the month of 18 , made and executed her last will and testament bearing date the day of 18 , and thereof appointed G. H. sole executor:

That the said A. B. survived her said husband and died a widow, without having revoked or republished her said will:

That in the month of 18 , probate of the said will of the said deceased, limited so far only as concerned all such personal estate as she the said deceased by virtue of the said will of the said F. G. had a right to appoint or dispose of, and had in and by her said will appointed and disposed of accordingly, but no further or otherwise, was granted by the authority of this Division to the said G. H., the sole executor therein named; that the said deceased died possessed of other personal estate over which she had no disposing power, and concerning which she is dead intestate:

That I am one of the natural and lawful children, and one of the next-of-kin of the said deceased; that I will faithfully administer the rest of the personal estate of the deceased, save and except any personal estate which vested in her as the executrix of any person, by paying her just debts and distributing the residue of her said estate according to law; that I will exhibit a true and perfect inventory of the rest of the said estate and render a just and true account thereof whenever required by law so to do; and that the rest of the personal estate of the said deceased amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief.

Sworn, etc. (Signed) D. E.

No. 205.—Oath for Administration *cæterorum* to Next-of-Kin, after Administration.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Oath for Administration *cæterorum*, after limited Administration to Next-of-Kin.

I, C. D., of , make oath and say, that the said A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor, leaving E. F., his natural and lawful father and next-of-kin:

That the said E. F. duly renounced the letters of administration of the estate of the said deceased, and that in the month of 19 , letters of administration of the personal estate of the said deceased, limited to the purpose only to become and to be made a party to a certain action then depending in the Chancery Division, between G. H., plaintiff, and I. K., defendant, and to attend, supply, substantiate, and confirm the proceedings then already had or that should or might thereafter be had therein, or in any other cause or suit which might be commenced in the said court or in any other court between the before-named parties or any other parties touching and concerning the matters at issue in the said action, and until a final decree should be had and made therein, and the said decree carried into execution and the execution thereof fully completed, but no further or otherwise, were granted by this Division to L. M. as a person for that purpose named by and on the part and behalf of the said G. H.:

And I further make oath and say, that the said E. F. is since dead, and that in the month of 19 , letters of administration of his estate were granted at to me (the deponent); and that I will faithfully administer [etc., *complete as in Form No.* 204, *substituting "said" for "personal" wherever it occurs*].

Sworn, etc. (Signed) C. D.

ORDERS.

No. 206.—Order for filing a Renunciation.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisio
The Principal Probate Registr

In the estate of A. B., deceased.

Order for filing a Renunciation.

On reading an instrument of renunciation under the hand of I. K and referring to the probate of the will of A. B., of , decease whereby it appeared he died on , and that on the day 19 , the said probate was granted by this court at the registry thereof to the said G. H., one of the said executors, the usu power being reserved of making the like grant to the said I. K., t other executor, that the said I. K. had in and by the said instrume under his hand renounced the probate and execution of the said wi the undersigned registrar of the principal probate registry ordered t said instrument of renunciation to be filed in the said registry, and t renunciation to be noted on the record of the said probate.

Dated the day of .

(Signed) T. H. O.,
Registrar.

No. 207.—Order for Alteration of Grant.

In the High Court of Justice. Probate, Divorce, and Admiralty Divisio
The Principal Probate Registr

In the estate of A. B., deceased.

Order for Alteration of Day of Death in Grant.

On reading the affidavit of , sworn on the day of 19 and referring to the probate of the will [*or* letters of administrati (with will) of the estate] of A. B., of , deceased, granted at t probate registry of this court on the day of 19 whereby it appeared that in the said probate [*or* letters of administrati (with will)] the death of the said deceased is stated to have occurred the 14th day of April, 1891, whereas in fact it occurred on the 15th d of said month and year, the undersigned registrar of the princip probate registry ordered that the said probate [*or* letters of administr tion (with will)] be altered by striking out the word "14th" a substituting therefor the word "15th" in the line thereof.

Dated the day of .

(Signed) G. H.,
Registrar.

No. 208.—Order for an Alteration of the Name of the Deceased in a Grant.

[*This Form* mutatis mutandis *is the same as No.* 177.]

No. 209.—Order for a Grant to be made to Widow and Next-of-Kin jointly.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Order for a Grant to be made to Widow and Next-of-Kin jointly.

On reading an affidavit of E. B., widow, the relict of the said deceased, wherein she deposed that she was consenting and desirous that G. B., the natural and lawful son of herself and A. B., of , deceased, should be joined with her in the letters of administration of the estate of the said deceased, and also an instrument under the hands of I. B., L. B., and N. B., who with the said G. B. are the natural and lawful and only children and only next-of-kin of the said deceased, the said I. B. being also the heir-at-law of the said deceased, in which instrument the said I. B., L. B., and N. B. have consented to letters of administration of the said estate being granted to the said E. B., widow, and the said G. B. jointly, the undersigned registrar of the said principal probate registry ordered that letters of administration of the said estate be granted to the said E. B., the lawful widow and relict of the said deceased, and the said G. B. jointly.

Dated the day of ,

(Signed)
Registrar.

No. 210.—Order assigning Guardian to an Infant for the purpose of taking Administration.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Order assigning Guardian to an Infant for the purpose of taking Administration.

On reading the affidavit of C. D., sworn on the day of instant, whereby it appeared that A. B., of , died at , intestate, a widower, and not possessed of any real estate,* leaving surviving him E. B. and G. B., his natural and lawful and only children and only next-of-kin, and that the said E. B. and G. B. are now infants, to wit, E. B., of the age of years and upwards, and G. B., of the age of years and upwards, but under the age of seven years, and therefore by law incapable of acting in their own name or of electing a guardian to act on their part and behalf, and that there is no testamentary or other lawful guardian of the said E. B. and G. B., and that the said C. D. is the lawful grandmother and next-of-kin of the said infants, and is ready and willing to accept their guardianship for the purpose of taking letters of administration of the estate of the said A. B., deceased, for the use and benefit of the said infants, until one of them shall attain the age of twenty-one years, the undersigned registrar of the principal probate registry assigned the said C. D. guardian to the said infants for the purpose aforesaid.

Dated the day of .

(Signed) H. E. E.,
Registrar.

* *If the deceased left real estate the heir-at-law must be cleared off.*

No. 211.—Order assigning Guardians (Next-of-Ki Stranger) to Infants.

In the High Court of Justice. Probate, Divorce, and Admiralty
The Principal Probate

In the estate of A. B., deceased.

Order assigning Guardians (Next-of-Kin and Stranger) to Infants.

On reading the affidavit of C. D., sworn the day of whereby it appeared that A. B., of , deceased, died on t day of 19 , at , intestate, a widow, leaving her W. B. and J. B., her natural and lawful and only children next-of-kin, who are both now in their infancy, to wit, the s [who is also the heir-at-law of the deceased *], of the age of and upwards, and the said J. B., of the age of four years and but respectively under the age of seven years, and who are th law incapable of acting in their own names or of electing a gu act on their part and behalf, and that there is no testamentar lawful guardian of the said infants, and that the said C. D. is paternal uncle and next-of-kin of the said infants, and is r willing to accept the guardianship of the said infants for the p taking letters of administration of the estate of the said A. B., for the use and benefit of the said infants, until one of them sh the age of twenty-one years, and that the said C. D. is upwards years of age and in infirm health, and is consenting and desi J. K., of , be joined with him in the letters of adminis the said estate, the undersigned registrar of the principal registry assigned the said C. D. and J. K. guardians to the sai for the purpose aforesaid.

Dated the day of .

(Signed) H. E. F.
Re

* *Or if there be no real estate it should be so stated in the o*

No. 212.—Order assigning Guardian to an Infant f purpose of Renouncing.

In the High Court of Justice. Probate, Divorce, and Admiralty
The Principal Probate

In the estate of A. B., deceased.

Order assigning Guardian to an Infant for the purpose of Renouncing.

On reading the affidavit of C. D., sworn on the day of whereby it appeared that A. B., of , died at , in widower, leaving behind him E. B., his natural and lawful child and only next-of-kin and heir-at-law; and that the said now an infant, to wit, of the age of years, and therefor incapable of acting in his own name, or of electing a guardian his part and behalf, and there is no testamentary or othe guardian of the said infant, and that the said C. D. is the lawfu father and next-of-kin of the said infant, and is ready and w accept the guardianship of the said infant for the purpose of re for him and on his part and behalf the letters of administratio estate of the said deceased, the undersigned registrar of the probate registry assigned the said C. D. guardian to the said i the purpose aforesaid.

Dated the day of .

(Signed) H. M. C.,
Reg

No. 213.—Order assigning Guardian to an Infant cited.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Division.

In the estate of E. F., deceased.
I. K. *v.* C. D.

Order assigning Guardian to an Infant cited.

On reading the affidavit of L. M., wherein it appears that a citation has issued under seal of this Division, bearing date the day of 19 , at the instance of I. K., of , alleging himself to be a creditor of the said deceased, citing the said C. D., the residuary legatee and devisee named in the last will and testament of the said E. F., deceased, bearing date the day of 19 , to accept or refuse the letters of administration, with the said will annexed, of the estate of the said E. F., deceased, or show cause why the said letters of administration with the said will annexed, of the said estate should not be committed and granted to the said G. H. creditor of the said deceased; and it further appearing, by the said affidavit, that the said C. D. is now an infant of the age of , and that L. M. is the lawful grandfather and next-of-kin of the said infant, and is ready and willing to accept the guardianship of the said infant for the purpose of appearing to the said citation, and accepting the said letters of administration, with the said will annexed, of the said estate as his guardian, to be granted to him for the use and benefit of the said infant until he shall attain the age of twenty-one years, the undersigned registrar of the principal probate registry of this Division assigned the said L. M. guardian to the said infant for the purposes aforesaid.

Dated the day of .

(Signed) W. B.,
Registrar.

No. 214.—Order for Grant to Party cited.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.
W. *v.* C. and B.

Order for Grant to Party cited.

X. Y., the solicitor of D. B., the defendant in this cause, exhibited affidavit of , sworn on the day of , whereby it appeared that the said defendant, by a citation issued under seal of this court on the day of 19 , had been duly cited to accept or refuse the letters of administration of the estate of A. B., of , deceased, the deceased in this cause, and that the said defendant had entered an appearance to the said citation, and that notice of the entry of such appearance was on the day of duly served on the solicitor of the plaintiff, and that no summons has been served or other proceeding taken in this cause on behalf of the plaintiff since the service of the said notice. And the said , the solicitor of the defendant, alleged that the said defendant was willing to take upon him the said letters of administration: Wherefore the undersigned registrar on his application ordered that the said letters of administration should issue under seal of this Division to his said party, if entitled thereto, notwithstanding the caveat entered in the estate of the said deceased, by or on behalf of the plaintiff on his taking out the said citation.

Dated the day of .

(Signed) R. F.,
Registrar.

No. 215.—Order for Discontinuance of Proceedings Grant.

In the High Court of Justice. Probate, Divorce, and Admiralty
The Principal Probate

R. *v.* A.

Order for Discontinuance of Proceedings and Grant.

Upon hearing the and by consent, I do order that the tious proceedings in this , arising from cavoat No. , en the day of (and also from writ of summons issue day of), be discontinued, and that probate of the] of A. B., of , the deceased herein, be granted to , the [plaintiff *or* defendant] in this , if entitled th
Dated the day of .

(Signed) J. E.,
Reg

No. 216.—Order revoking Probate.

In the High Court of Justice. Probate, Divorce, and Admiralty
The Principal Probate

In the estate of A. B., deceased.

Order revoking Probate.

On reading the affidavit of , sworn on , whereby it that on the day of 19 , probate of the will of A , deceased, bearing date the day of 19 , was to C. D., the sole executor therein named; and that it has si discovered that the said deceased made and duly executed a bearing date the day of 19 , whereof he appoint and G. H. executors; and the said probate having been vo brought into and left in the probate registry, the und registrar of the principal probate registry, on the application of , revoked the said probate and declared the same to be void to all intents and purposes in the law whatsoever.
Dated the day of 19 .

(Signed) M. H. J.,
Reg

No. 217.—Order revoking Letters of Administratio

In the High Court of Justice. Probate, Divorce, and Admiralty
The Principal Probate

In the estate of A. B., deceased.

Order revoking Letters of Administration.

On reading the affidavit of E. B., sworn on the day o whereby it appeared that on the day of , letters of tration of the estate of the said A. B., of , deceased, were to C. D., the lawful second cousin of the said deceased, on the su that the said deceased died intestate, a widower, without child o brother or sister, uncle or aunt, nephew or niece, cousin-ge cousin-german once removed, and that he the said C. D. was on next-of-kin of the said deceased, and that it has since been di that the said deceased died intestate, a widower, without child o brother or sister, uncle or aunt, nephew or niece, but leaving

lawful cousin-german and only next-of-kin surviving him, and the said letters of administration having been voluntarily brought into and left in the probate registry, the undersigned registrar of the principal probate registry, on the application of the said E. B., revoked the said letters of administration granted to the said C. D. as aforesaid, and declared the same to be null and void to all intents and purposes in the law whatsoever.

Dated the day of 19 .

(Signed) F. K.,
Registrar.

No. 218.—Order for Notation of Domicile, after Probate granted.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Order for Notation of Domicile.

On reading affidavit of E. F., sworn on the day of , whereby it appeared that A. B., of , deceased, died on the day of 19 , domiciled in England; that on the day of 19 , probate of the will of the said deceased was granted at the principal probate registry to the said E. F.; that the gross value of the estate in the United Kingdom in respect of which the said grant was made was then sworn to be £ ; that part of the said estate amounting to £ (further particulars of which are set forth in the schedule annexed to the said affidavit) is in Scotland, the undersigned registrar, on the application of the said E. F., ordered that the usual notation be made on the said probate that the said A. B., deceased, died domiciled in England.

Dated the day of .

(Signed) G. B. S.,
Registrar.

No. 219.—Order to impound Grant.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.

In the estate of A. B., deceased.

Order to impound Grant.

On reading the affidavit of C. D. [*intended administrator*], sworn on , and the joint affidavit of E. F. and G. H. [*doctor and nurse*], sworn on , whereby it appeared that on the day of probate of the will of A. B., of , deceased, was granted by this court at the probate registry thereof to J. K., and that since taking upon himself the said probate he has become of unsound mind and incompetent to manage himself or his affairs, and that there is no committee or other person intrusted (under an order made in Lunacy) with the management of his estate, it is ordered by the undersigned registrar of the principal probate registry that letters of administration with the will annexed of the estate of the said A. B., deceased, be granted to the said C. D. for the use and benefit of the said J. K. during his lunacy, and until he shall become of sound mind, and that the said probate of the will of the said A. B., deceased, be brought into the said principal probate registry and impounded during the lunacy of the said J. K.

Dated the day of .

(Signed) J. H.,
Registrar.

No. 220.—Order for Subpœna to bring in a Script

In the High Court of Justice. Probate, Divorce, and Admiralty Di
The Principal Probate Re

In the estate of A. B., deceased.

Order for Subpœna to bring in a Script.

On reading the affidavit of C. D., sworn on the day of and filed in the principal probate registry, whereby it appeared certain paper writing, being or purporting to be testamentary, the last will and testament of A. B., of , deceased, bearin the day of 19 , is now in the possession, within the or under the control of E. F., of , and G. H., of , or them, it is ordered by the undersigned registrar of the principal registry, that a subpœna do issue under seal of this Division, re the said E. F. and G. H. to produce and bring into and leave in t principal registry of this Division [*or in a district registry*] the sai writing, under pain of the law, and the contempt thereof.

Dated the day of .

(Signed) W. V.,
Regis

No. 221.—Order for Grant in Default of Appearan Citation of an Executor who has intermeddled wit Estate of the Deceased.

In the High Court of Justice. Probate, Div rce, and Admiralty Di
(Probate.)

Before the Right Honorable Sir F. H. J., Knight, the Pre
sitting at the Royal Courts of Justice, Strand, in the
of Middlesex, on the day of 19 .

In the estate of S. G., deceased.

Order for Grant after Citation of an Intermeddling Executor.

On reading the statement filed on behalf of R. F. G., and the aff of the said R. F. G., sworn on the day of 19 (wit exhibits annexed), A. B., sworn on the day of 19 F. J. E., sworn on the day of 19 (with exhibit an and on hearing counsel thereon, in default of the appearance of A. it is ordered that the said A. W. H. do within fourteen days fro service of this order take probate as executor of the will dat 22nd July, 1892, and now in the registry, of S. G., deceased, a further ordered that the said A. W. H. do personally pay the costs of the said R. F. G. of this application.

(Signed) J. C. H.,
Regis

No. 222.—Order discharge Prisoner.

In the High Court of Justice. Probate, Divorce, and Admiralty Di
(Probate.)

Before the Right Honorable Sir F. H. J., Knight, the Pres
sitting at the Royal Courts of Justice, Strand, in the C
of Middlesex, on the day of 19 .

In the estate of A. B., deceased.
C. D. agalnst E. F.

Order to discharge Prisoner.

Upon hearing counsel for the (defendant) E. F., who alleged th said E. F. is a prisoner in [*state name of prison*] in the custody

sheriff of , under an attachment issued against him pursuant to the order dated, etc., for his contempt in not [*state the default*], and that the said (defendant) E. F. hath since [*state the compliance*] and upon hearing counsel for the plaintiff, and upon reading [*affidavits, if any*], this court doth order that the said (defendant) E. F. be discharged out of the custody of the said sheriff as to his said contempt; and it is ordered that the (defendant) E. F. do pay to the (plaintiff) C. D. his costs of this application.

(Signed) H. J.,
Registrar.

[See Seton's Forms.]

No. 223.—Order on Appointment of an Administrator and Receiver *pendente lite*.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

Order on Appointment of Administrator and Receiver.

Before the Right Honorable Sir John Gorell Barnes, Knight, the President, sitting at the Royal Courts of Justice, Strand, in the County of Middlesex, on the day of 19 .

In the estate of E. F., deceased.
A. B. against C. D. and another.

On reading the statement filed on behalf of the plaintiff and the affidavits of E. K., sworn on the day of 19 , and L. M., sworn on the day of , and on hearing counsel on behalf of the plaintiff and defendants, it is ordered that such person or persons as shall be agreed upon between the parties, or, in default of agreement, as shall be nominated by one of the registrars, be appointed the administrator, pending this action, of the personal estate of E. F., of , the deceased in this action, on exhibiting a declaration on oath of the particulars and value of the said personal estate and his sureties justifying. And that such person be also appointed to be the receiver, pending this action, of the rents and profits of the real estate of the said deceased, on his entering into a bond with two sufficient sureties, in a penal sum to be fixed by one of the registrars, for the faithful performance of the duties committed to him.

(Signed) A. M.,
Registrar.

No. 224.—Order for Service of Writ out of Jurisdiction.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

In the matter of an intended action.

In the estate of A. B., deceased.
Between M. N., Plaintiff,
and
P. Q., Defendant.

Order for Service out of Jurisdiction.

Upon reading the affidavit of M. N. I do order that the intended plaintiff be at liberty to issue a writ of summons against the intended defendant P. Q., of 119, Rue St. Honoré, Paris, in the Republic of France.

And I further order that the said intended plaintiff be at
to serve the said (*a*) writ on the said intended defendant P
119, Rue St. Honoré, aforesaid or elsewhere in the (Repu
France), and that the time for appearance to the said writ by
intend 1 defendant P. Q. be within [12 days] after the service
said (*a*) writ.

Dated the day of 19 .

NOTE.—(*a*) *If the intended defendant be a foreigner living in a country, insert "notice of."*

No. 225.—Order to bespeak Request for Service Abr (R. S. C., O. 11, r. 8).

In the High Court of Justice. Probate, Divorce, and Admiralty D
(Probate.)

In the estate of A. B., deceased.
C. D. against E. F.

Order to bespeak Request for Service Abroad.

Upon reading the [certificate, declaration, *or as the case describing the same*].

It is ordered that the plaintiff be at liberty to bespeak a requ substituted service of notice of the writ of summons heroin defendant at , or elsewhere in the [*name of countr* that the said defendant have days after such substituted within which to enter appearance.

Dated this day of 19 .

[R. S. C. (July) 1903.] [R. S. C., App. K., No.

No. 226.—Order for Substituted Service of Writ of Sum by Post (R. S. C., O. 10).

In the High Court of Justice. Probate, Divorce, and Admiralty D
(Probate.)

In the estate of A. B., deceased.
C. D. against E. F.

Order for Substituted Service.

Upon hearing and upon reading the affidavit of tho day of 19 , and

It is ordered that service of a copy of this order, and of a copy writ of summons in this action, by sending the same by a prepa letter, addressed to the defendant at , shall be go sufficient service of the writ.

Dated the day of 19 .

[See Seton, p. 4.] [R. S. C., App. K., No

No. 227.—Order for Renewal of Writ (O. 8, r. 1).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of A. B., deceased.

C. D. against E. F.

Upon hearing and upon reading the affidavit of , filed the day of 19 , and

It is ordered that the writ in this action be renewed for six months from the date of its renewal, pursuant to the Rules of the Supreme Court, Order VIII. Rule 1.

Dated the day of 19 .

Order for Renewal of Writ.

[See Seton, p. 1.]

No. 228.—Order to bring up Witness in Criminal Custody (16 & 17 Vict. c. 30, s. 9).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of A. B., deceased.

C. D. against E. F.

Upon reading the affidavit of .

It is ordered that the keeper of his Majesty's prison at shall have before , on the day of 19 , at o'clock in the forenoon, the body of , a prisoner in his custody (as it is said), then and there to testify the truth and give evidence in this , on behalf of , and so on from day to day until his attendance as such witness shall be no longer required, and thereupon he be taken back without delay to the said prison and there detained until he be discharged by due course of law.

Dated the day of 19 .

Order to bring up Witness in Criminal Custody.

[Chitty, F. 324.]

No. 229.—Order for Interim Injunction (Jud. Act, 1873, s. 25, sub-s. 8; O. 50, r. 6).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of A. B., deceased.

C. D. against E. F.

Upon hearing for the plaintiff and upon reading the affidavit of , filed the day of 19 ; and the plaintiff by his said undertaking to abide by any order of the court or a judge may make as to damages in case the court or a judge shall hereafter be of opinion that the defendant shall have sustained any by reason of this order which the plaintiff ought to pay.

It is ordered and directed that the defendant , his agents and servants , and every of them, be restrained, and an injunction is hereby granted restraining them and every of them from until after the trial of this action or until further order.

Dated the day of 19 .

Order for Interim Injunction.

[Chitty, F., 219; Seton, 518.]

No. 230.—Order for Security for Costs.

In the High Court of Justice. Probate, Divorce, and Admiralty Div
(Probate.)

In the estate of A. B., deceased.

C. D. against E. F.

Order for Security for Costs.

Upon hearing the solicitors on both sides, and reading affidavit of .

It is ordered that the plaintiff give security for the defendant's in this action to the satisfaction of the Registrar, and that in meantime all further proceedings be stayed.

And that the costs of such application be .

Dated the day of 19 .

No. 231.—Order on Summons for Directions.

In the High Court of Justice. Probate, Divorce, and Admiralty Div
(Probate.)

In the estate of A. B., deceased.

C. D. against E. F. and others.

Order on Summons for Directions.

Upon hearing the solicitors for the plaintiffs and defendant order

1. { Endorsement on writ to stand for statement of claim.
   { Statement of claim to be delivered in days from to-da

Statement of defence to be delivered in days from { to-day. / delivery of / ment of cl

Pleadings to be delivered with particulars, if necessary.

2. Affidavits of scripts of all parties to be filed within days to-day.

3. After delivery of statement of defence, affidavit of documents filed by either party within days from service of {notice: / receipt:} Inspe within days from filing affidavit.

4. Place of trial.
   Mode of trial.

5. Liberty to apply.

Dated the day of 19 .

(Signed)

Regist

No. 232.—Order for Delivery of Interrogatories (R. S. O. 31, r. 1).

In the High Court of Justice. Probate, Divorce, and Admiralty Div
(Probate.)

In the estate of A. B., deceased.

C. D. against E. F.

Order for Delivery of Interrogatories.

Upon hearing and upon reading the affidavit of , the day of 19 , and

It is ordered that the be at liberty to deliver to the

interrogatories in writing, and that the said do answer the interrogatories as prescribed by Order XXXI. Rules 8 and 26 of the Rules of the Supreme Court, and that the costs of this application be

Dated the day of , 19 .

[R. S. C. App. K., No. 16.]

No. 233.—Order for Affidavit as to Documents (R. S. C., O. 31, r. 12).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

In the estate of A. B., deceased.

C. D. against E. F.

Order for Affidavit as to Documents.

Upon hearing

It is ordered that the do, within days from the date of this order, answer on affidavit stating what documents are or have been in possession or power relating to the matters in question in this action, and that the costs of this application be

Dated the day of 19 .

[R. S. C., App. K., No. 17.]

NOTE.—*The order for affidavits as to documents is usually included in the order on summons for directions.*

No. 234.—Order to produce Documents for Inspection (O. 31, r. 14).

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

In the estate of A. B., deceased.

C. D. against E. F.

Order to produce Documents.

Upon hearing and upon reading the affidavit of , filed the day of 19 , and

It is ordered that the do, at all seasonable times, on reasonable notice, produce at [*insert place of inspection*], situate at , the following documents, namely , and that the be at liberty to inspect and peruse the documents so produced, and to take copies and abstracts thereof and extracts therefrom, at expense, and that in the meantime all further proceedings be stayed, and that the costs of this application be

Dated the day of 19 .

[See Seton, pp. 52–56.]

No. 235.—Order under the Bankers' Books Evidence A (42 & 43 Vict. c. 12, s. 7).

In the High Court of Justice. Probate, Divorce, and Admiralty
(Probate.)

In the estate of , deceased.

Order under Bankers' Books Evidence Act.

Upon hearing the solicitor of the defendant, and upon re affidavit of J. H. F., sworn the day of 19 .
I do order that the said defendant be at liberty to inspect copies of all entries in the books of the Bank, Ltd. (in the name of the above-named deceased, from the beginni year 19 to the day of 19 .
Dated this day of 19 .

(Signed) A. B. Re

NOTE.—*The application should be made by Registrar's sum ported by an affidavit, which must show the nature of the proce necessity for inspection, and the period over which the proposed is to be made. See further and as to* ex parte *application, notes to Order* 31, *rr.* 27 *and* 28, *in the "Yearly Practice."*

No. 236.—Order for Commission for Examination Witnesses.

In the High Court of Justice. Probate, Divorce, and Admiralty
(Probate.)

In the estate of A. B., deceased.
C. D. against E. F.

Order for Commission.

Upon hearing the solicitors for the parties.
I do order that a commission do issue under seal of this the examination of X. Y. and others, witnesses on behalf of the such commission to be addressed to G. H., of , and turned into the principal probate registry of this court depositions taken thereunder forthwith, and I do further or either party may be at liberty to take office copies of the said tion, and that the same may be read in evidence at the tria action, saving all just exception.
Dated the day of 19 .

(Signed) L. M., Reg

No. 237.—Order for *vivâ-voce* Examination of Witness within the Jurisdiction.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of A. B., deceased.
C. D. against E. F.

Order for Examination of Witness within the Jurisdiction.

On reading the affidavit of G. H., sworn the day of 19 , and of , sworn the day of 19 , and on hearing the solicitors for the parties.

I do order that R. S. and S. T., witnesses on behalf of the plaintiff, and now within the jurisdiction of this court, may be examined *vivâ voce* before K. L., of , Esq., barrister-at-law, as examiner, at such time and place as the said examiner shall think fit and cause to be notified to the parties four days at least before the time so appointed by him; and that the defendant shall be at liberty to cross-examine the said witnesses, and that the said witnesses may be further examined before the said examiner, if he shall think fit.

And I further order that it shall and may be lawful for the said examiner, and he is hereby required to make, if need be, a special report touching the said examination hereby directed, and that the said examination and other proceedings had before him shall be returned to the probate registry of this court, at Somerset House, Strand, certified under his hand and seal on or before the day of 19 .

And I further order that either party may be at liberty to take office copies of the said examination, and that the same may be read in evidence at the trial of this cause, saving all just exceptions.

Dated the day of 19 .

(Signed) L. M.,
Registrar.

No. 238.—Order for Appointment of Special Examiner to take Evidence Abroad.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of A.B., deceased.
Between A. F., Plaintiff,
and
F. G., Defendant.

Order for Appointment of Special Examiner.

Upon hearing the solicitors on both sides, and upon reading the affidavit of R. S., sworn the day of 19 .

It is ordered that J. R., of , Esq., barrister-at-law, be appointed as special examiner for the purpose of taking the examination, cross-examination, and re-examination, *vivâ voce*, on oath or affirmation, of H. M. and others, witnesses on the part of the plaintiff at aforesaid. The plaintiff's solicitors to give to the defendant's solicitors days' notice in writing of the date on which they propose to send out this order to for execution, and that days after the service of such notice the solicitors for the plaintiff and defendant respectively

do exchange the names of their agents at , to whom notice
lating to the examination of the said witnesses may be sent. And
days (exclusive of Sunday) prior to the examination of
witness hereunder notice of such examination shall be given by
agent of the party on whose behalf such witness is to be examined
the agent of the other party (unless such notice be dispensed wi
And that the depositions when so taken, together with any docume
referred to therein, or certified copies of such documents, or of extr
therefrom, be transmitted by the examiner, under seal, to the Se
Registrar of the Principal Probate Registry, Somerset House, Lond
on or before the day of next or such further or other da
may be ordered, there to be filed in the proper office. And that eit
party be at liberty to read and give such depositions in evidence on
trial of this action, saving all just exceptions. And that the trial
this action be stayed until the filing of such depositions. And t
the costs of and incident to this application and such examination
costs in the action.

Dated the day of 19 .

Registrar

PAYMENT.

No. 239.—Payment into Court (Authority for).

NOTE.—*If the lodgment is for security for costs of discovery
interrogatories, this form must be impressed with a* 1s. *stamp before t
money is lodged.*

In the High Court of Justice. Probate, Divorce, and Admiralty Divisio
(Probate.)

I. *Request for Authority for Lodgment.*

Authority for payment of Money into Court.

In the estate of A. B., deceased.
C. D. *v.* E. F.

To the REGISTRAR.

I request authority for the lodgment of £5 at the Bank
England; such lodgment being for security for costs of discover
[*or as the case may be*] [as directed by Order dated *].

G. H.,
Solicitor for the .

* *Strike out these words if the lodgment is for security for costs
discovery or interrogatories.*

II. *Authority for Lodgment.*

To the AGENT OF THE BANK OF ENGLAND (Law Courts Branch).

Please receive the above-stated sum, and place it to the accoun
of the Paymaster-General for the time being for and on behalf o
the Supreme Court of Judicature.

A. K.,
Registrar.

19 .

III. *Bank Certificate of Receipt.*

To the ASSISTANT PAYMASTER-GENERAL,

Bank of England, 19 .

The above-stated sum has been this day received.

L. M.

[Entd. No.]

No. 240.—Payment out of Court (Authority for).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of A. B., deceased.

C. D. against E. F. B407, 1900.

19 .

The Paymaster-General is hereby directed to make the payments specified below out of the money standing in his books to the credit of the above cause or matter. Authority for payment out of Court.

Name of person to whom, and also of the person (if any) upon whose authority, payment is to be made.		When lodged.	Amount to be paid.
Person to be paid (Christian name to precede surname).	Person (if any) to give authority for payment.		
G. H. of Solicitor for	—	14th September, 1900	£ 5

[*Total amount in words*] Five pounds.

A. K.,
Registrar.

POWERS OF ATTORNEY.

No. 241.—Power of Attorney to take Administration.

WHEREAS A. B., of , deceased, died on the day of 19 , at , intestate, leaving surviving him C. D., his lawful widow and relict: Power of Attorney to take Administration.

Now I, the said C. D., at present residing at , hereby nominate, constitute, and appoint E. F., of , to be my lawful attorney for the purpose of obtaining letters of administration of the estate of the said A. B., deceased, to be granted to him by the High Court of Justice for my use and benefit, and until I shall duly apply for and obtain letters of administration of the said estate to be granted to me; and I hereby promise to ratify and confirm whatever my said attorney shall lawfully do or cause to be done in the premises.

In witness whereof I have hereunto set my hand and seal
day of , in the year of our Lord 19 .
Signed, sealed, and delivered in the presence of } (Signed) C. D

NOTE.—*Powers of attorney of this and the like kind are ex stamp duty under 54 & 55 Vict. c. 39 (Schedule).*

No. 242.—Power of Attorney to take Administration (Executors).

Power of Attorney to take Administration (Will) (Executors).

WHEREAS A. B., of , deceased, died on the da 19 , at , having made and duly executed his last will ment, bearing date the day of 19 , and thereof C. D. and E. F. executors:

Now we, the said C. D. and E. F., at present residing at hereby nominate, constitute, and appoint G. H., of , lawful attorney for the purpose of obtaining letters of admi (with the said will annexed) of the estate of the said A. B., de be granted to him by the High Court of Justice for our use an and until we shall duly apply for and obtain probate of the s be granted to us, and we hereby promise to ratify and confirm our said attorney shall lawfully do or cause to be done in the

In witness whereof we have hereunto set our hands and day of , in the year of our Lord 19 .
Signed, sealed, and delivered by the said C. D. and E. F. in the presence of } (Signed) C. D E. F

No. 243.—Power of Attorney to take Administration (Residuary Legatee).

Power of Attorney to take Administration (Will) (Residuary Legatee).

WHEREAS A. B., of , deceased, died on the day 19 , at , having made and duly executed his last will ment, with a codicil thereto, the said will bearing date the 19 , and the said codicil bearing date the day 19 , and in and by his said will nominated and appointed E. F. executors: And whereas the said C. D. and E. F. re died in the lifetime of the said deceased:

Now I, G. H., at present residing at , one of the legatees named in the said will, do hereby nominate, consti appoint I. K., of , my lawful attorney for the purpose of letters of administration (with the said will and codicil annex estate of the said A. B., deceased, to be granted to him by Court of Justice for my use and benefit, and until I shall duly and obtain letters of administration (with the said will an annexed) of the said estate to be granted to me, and I hereby to ratify and confirm whatever my said attorney shall lawfu cause to be done in the premises.

In witness whereof I have hereunto set my hand and seal th day of , in the year of our Lord 19 .
Signed, sealed, and delivered in the presence of } (Signed) G. H.

PLEADINGS.

No. 244.—Statement of Claim (R. S. C., O. 19, r. 5).

19 . [*Here put letter and number.*]

In the High Court of Justice,
Probate Division.

STATEMENT OF CLAIM.

Writ issued the of 19 .

In the estate of , deceased.
Between A. B., Plaintiff,
and
C. D., Defendant.

STATEMENT OF CLAIM.

No. 1.

Interest Suit.

The plaintiff is the cousin-german and one of the next-of-kin of M. N., late of No. 1, High Street, Putney, in the County of Surrey, grocer, who died on the day of 19 , a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece.

The plaintiff claims: A grant of letters of administration of the estate of the said deceased.

(Signed)

Delivered

NOTE.—*Under R. S. C., O. 21, r. 9, "Where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest."*

No. 2.

Probate in Solemn Form.

The plaintiff is the executor appointed under the will of C. T., late of Bicester, in the County of Oxford, gentleman, who died on the day of 19 , the said will bearing date the day of , and a codicil thereto the day of 19 .

The plaintiff claims: That the court shall decree probate of the said will and codicil in solemn form of law.

(Signed) .

Delivered

[*See note above to No. 1.*]

[*The above forms are inserted in App. C. to R. S. C. as an indication only. In both instances the indorsement on writ should be sufficient. For cases in which special averments are necessary, see pp.* 429 to 446.]

No. 245.—Statement of Defence (R. S. C., O. 19, r. 5).

19 . No. .

STATEMENT OF DEFENCE.

In the High Court of Justice,
Probate Division.

In the estate of A. B., deceased.
Between , Plaintiff,
and
, Defendant.

DEFENCE.

The defendant says that:—

Invalidity of will in solemn form.

1. The said will and codicil of the deceased were not duly executed according to the provisions of the statute 1 Vict. c. 26.

2. The deceased at the time the said will and codicil re purport to have been executed, was not of sound mind, me understanding.

3. The execution of the said will and codicil was obtain undue influence of the plaintiff [and others acting with h names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtain fraud of the plaintiff, such fraud, so far as is within the d present knowledge, being [*state the nature of the fraud*].

5. The deceased at the time of the execution of the said codicil did not know and approve of the contents thereof, [contents of the residuary clause in the said will [*as the case m*

6. The deceased made his true last will, dated the 1st day of 1873, and thereby appointed the defendant sole executor there

The defendant claims:—

Counterclaim.

1. That the court will pronounce against the said will a propounded by the plaintiff:
2. That the court will decree probate of the will of the dated the 1st of January, 1873, in solemn form of law

(Signed)

Delivered

[R. S. C., A

No. 246.—Reply (R. S. C., O. 19, r. 5).

REPLY.

19 . [*Here put the letter and nu*

In the High Court of Justice,
Probate Division.

In the estate of A. B., deceased.

Between , Plaintiff,
and
, Defendant.

REPLY.

The plaintiff as to the defence says—

1. That he joins issue upon the statement of defence of th dant as contained in the 1st, 2nd, 3rd, 4th, and 5th par thereof.

The plaintiff as to the counterclaim says—

1. That the said will of the said deceased, dated the 1st January, 1873, was duly revoked by the will of the 1st 1873, propounded by the plaintiff in his statement of c

(Signed)

Delivered

[R. S. C., App

RENUNCIATIONS.

No. 247.—Renunciation of Probate.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.
In the estate of A. B., deceased.

Renunciation of Probate.

WHEREAS A. B., of , deceased, died on the day of 19 , at , having made and duly executed his last will and testament, bearing date the day of 19 , and thereof appointed me, the undersigned C. D., sole executor:

Now I, the said C. D., do hereby declare that I have not intermeddled in the estate of the said deceased, and will not hereafter intermeddle therein with intent to defraud creditors, and I do hereby renounce all my right and title to the probate and execution of the said will.

Signed by the said C. D. this day of 19 , in the presence of } (Signed) C. D.

No. 248.—Renunciation of Administration.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.
In the estate of A. B., deceased.

Renunciation of Administration.

WHEREAS A. B., of , in the county of , deceased, died on the day of 19 , at , intestate, a widower; and whereas I, C. D., am his natural and lawful son and only next-of-kin:

Now I, the said C. D., do hereby renounce all my right and title to the letters of administration of the estate of the said deceased.

Signed by the said C. D. this day of 19 , in the presence of } (Signed) C. D.

No. 249.—Renunciation of Administration (Will).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The Principal Probate Registry.
In the estate of A. B., deceased.

Renunciation of Administration (Will).

WHEREAS A. B., of , deceased, died on the day of 19 , at , having made and duly executed his last will and testament, bearing date the day of 19 , and did not thereof appoint any executor, but therein appointed me, the undersigned C. D., residuary legatee:

Now I, the said C. D., do hereby renounce all my right and title to the letters of administration, with the said will annexed, of the estate of the said deceased.

Signed by the said C. D. this day of 19 , in the presence of } (Signed) C. D.

No. 250.—Renunciation of Guardianship of M

In the High Court of Justice. Probate, Divorce, and Admiral
The Principal Probate

In the estate of A. B., deceased.

Renunciation of Guardianship of Minor.

WHEREAS A. B., of , deceased, died on the d
19 , at , having made and duly executed his last wil
ment, bearing date the day of 19 , and therei
C. D. sole executor and residuary legatee and devisee; and
said C. D. is now a minor of the age of years only:
And whereas I, the undersigned E. F., am the natural
uncle and only next-of-kin of the said C. D.:
Now I, the said E. F., do hereby renounce all my right
and to the guardianship of the said minor.
Signed by the said E. F. this
day of 19 ,
in the presence of } (Signed)

No. 251.—Renunciation of Guardianship of Inf

In the High Court of Justice. Probate, Divorce, and Admiralt
The Principal Probat

In the estate of A. B., deceased.

Renunciation of Guardianship of Infant.

WHEREAS A. B., of , deceased, died on the da
19 , at , intestate, a widower, and not possessed of any
leaving him surviving C. B., his natural and lawful and on
only next-of-kin; and whereas the said C. B. is now an infan
of five years only; and whereas I, the undersigned E. F., am
grandfather and only next-of-kin of the said infant:
Now I, the said E. F., do hereby renounce all my right
and to the guardianship of the said infant.
Signed by the said E. F. this
day of 19 ,
in the presence of } (Signed)

No. 252.—Renunciation of Letters of Administrat
Guardian of Minor and Infant.

In the High Court of Justice. Probate, Divorce, and Admiralty
The Principal Probate

In the estate of A. B., deceased.

Renunciation of Letters of Administration by Guardian of Minor and Infant.

WHEREAS A. B., of , deceased, died on the day
19 , at , intestate, a widower, leaviug C. B., E. B., and
natural, lawful, and only children, only next-of-kin, and the on
entitled in distribution to his personal estate, the said C. B.
his heir-at-law; and whereas the said C. B. and E. B. are no
tively in their minority, to wit, the said C. B. of the age of e
and upwards, and the said E. B. of the age of seven
upwards, but respectively under the age of twenty-one years
said G. B. is now in his infancy, to wit, of the age of six ye
and whereas the said C. B. and E. B., the minors aforesaid, ha

by an instrument under their respective hands expressly elected me, the undersigned J. K., their lawful and only next-of-kin, to be their guardian for the purpose of renouncing in their names, and on their part and behalf, all their right, title, and interest in and to the letters of administration of the estate of the said deceased:

And whereas I have been duly assigned the guardian of the said G. B.:

Now I, the said J. K., do hereby, as guardian of the said minors and infant, renounce all their right, title, and interest in and to letters of administration of the said estate.

Signed by the said J. K. this day of 19 , in the presence of } (Signed) J. K.

No. 253.—Renunciation by Guardian of Infant.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Renunciation by Guardian of Infant.

WHEREAS A. B., of , deceased, died on the day of 19 , at , intestate, a widower, leaving C. B., his natural and lawful and only son and only next-of-kin and heir-at-law, the only person entitled to his personal estate; and whereas the said C. B. is now in his infancy, to wit, of the age of three years only; and whereas on the day of 19 , E. F., one of the registrars of the principal probate registry of this Division of the High Court of Justice, assigned G. H., the lawful grandfather and next-of-kin of the said infant, guardian to the said infant for the purpose of renouncing for him and on his part and behalf the letters of administration of the estate of the said deceased:

Now I, the said G. H., do hereby, as guardian of the said infant, renounce all his right, title, and interest in and to letters of administration of the said estate.

Signed by the said G. H. this day of 19 , in the presence of } (Signed) G. H.

No. 254.—Renunciation and Consent of Father.

In the High Court of Justice. Probate, Divorce, and Admiralty Division. The Principal Probate Registry.

In the estate of A. B., deceased.

Renunciation and Consent.

WHEREAS A. B., of , deceased, died on the day of 19 , at , intestate, a bachelor, leaving me, the undersigned C. B., of , his natural and lawful father and next-of-kin:

Now I, the said C. B., do hereby renounce all my right and title in and to the letters of administration of the estate of the said deceased, and I do also hereby consent that letters of administration of the said estate may be granted to E. B., my natural and lawful son.

Signed by the said C. B. this day of 19 , in the presence of } (Signed) C. B.

No. 255.—Retractation of Renunciation.

In the High Court of Justice. Probate, Divorce, and Admiralty Div
The Principal Probate Reg

In the estate of A. B., deceased.

Retractation.

WHEREAS A. B., of , in the county of , deceased, di
the day of 19 , at , having made and duly exe
his last will and testament, bearing date the day of
and thereof appointed C. D. executor, and me, the undersigned
residuary legatee and devisee; and whereas the said C. D. du
nounced the probate and execution of the said will, and I, the
E. F., also duly renounced letters of administration, with the sai
annexed, of the estate of the said deceased; and whereas lett
administration, with the said will annexed, of the said estate we
the day of granted by authority of this Division to
a creditor of the said deceased; and whereas the said G. H. died o
day of 19 , leaving part of the said estate unadminist
Now I, the said E. F., do hereby declare that I retract the renu
tion of the letters of administration, with the said will annexed, o
said estate, so as aforesaid by me heretofore made.

Signed by the said E. F. this
day of 19 ,
in the presence of } (Signed) E.

REQUESTS.

No. 256.—Letter forwarding Request for Service Abroa (R. S. C., O. 11, r. 8).

Letter forwarding Request for Service Abroad.

The President of the Division of the High Court of Ju
presents his compliments to His Majesty's Principal Secretary of S
for Foreign Affairs, and begs to enclose a notice of a writ of summ
issued in an action of *versus* , pursuant to order, out of
High Court of Justice in England for transmission to the Ministr
Foreign Affairs in [*name of country*], with the request that the s
may be served personally upon [*name of defendant to be served*], aga
whom proceedings have been taken in the English Court, and with
further request that such evidence of the service of the same upon
said defendant may be officially certified to the English Court
declared upon oath, or otherwise, in such manner as is consistent
the usage or practice of the Courts of the [*name of country*] in pro
service of legal process.

The President begs further to request that in the event of effort
effect personal service of the said notice of writ proving ineffectual
Government or Court of the said country be requested to certify
same to the English Court.

[R. S. C. (July) 1903, Sched

No. 257.—Request for Service Abroad (R. S. C., O. 11, r. 8).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of A. B., deceased.

C. D. against E. F.

Request for Service Abroad.

I (*or* we) hereby request that a notice of writ of summons in this action be transmitted through the proper channel to [*name of country*] for service (*or* substituted service) on the defendant [*naming him*] at [*address of defendant*] or elsewhere in [*name of country*].

And I (or we) hereby personally undertake to be responsible for all expenses incurred by His Majesty's Principal Secretary of State for Foreign Affairs in respect of the service hereby requested, and on receiving due notification of the amount of such expenses I (*or* we) undertake to pay the same to the Chief Clerk at the Foreign Office, and to produce the receipt for such payment to the proper officer of the High Court.

Dated, etc.

(Signature of Solicitor.)

[R. S. C. (July) 1903, Sched.]

No. 258.—Letter forwarding Request for Substituted Service (R. S. C., O. 11, r. 8).

Letter forwarding Request for Substituted Service.

The President of the Division of the High Court of Justice presents his compliments to His Majesty's Principal Secretary of State for Foreign Affairs, and begs to enclose a notice of a writ of summons in the case of *versus* , in which the plaintiff has obtained an order of the English High Court (which is also enclosed) giving leave to bespeak a request that the said notice of writ may be served by substituted service on the defendant at , in the [*name of country*].

The President requests that the said notice of writ and order may be forwarded to the proper authority in [*name of country*], with the request that the same may be transmitted by post addressed to the defendant at (the last known place of abode *or* the place of business) of the said defendant, or there delivered in such manner as may be consistent with the usage or practice of the Courts of [*name of country*] for service of legal process where personal service cannot be effected; and with the further request that the same may be officially certified to the English Court, or declared upon oath, or otherwise, in such manner as is consistent with the practice of the Courts of the [*name of country*] in proving service of legal process.

SUBPŒNAS.

No. 259.—Subpœna to bring in a Script.

EDWARD VII., by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith: To , of .

Subpœna to bring in a Script.

WHEREAS it appears by an affidavit of , sworn on the day of , and filed in the principal probate registry of the Probate, Divorce, and Admiralty Division of our High Court of Justice, that a certain original paper or script, being or purporting to be testamentary,

to wit [*here describe the paper*], bearing date the day of
is now in your possession, within your power, or under your cont
Now this is to command you, that within eight days after
hereof on you, inclusive of the day of such service, you do brin
and leave in the principal probate registry aforesaid the said
paper or script now in the possession, within the power, and un
control of you the said : And this you shall in nowise omit
pain of the law and contempt thereof. Witness, the Right Ho
Robert Threshie Baron Loreburn, Lord High Chancellor of
Britain, at our High Court of Justice, the day of 1
the year of our reign.

(Signed) E. F.,
Regis

Subpœna to bring in a script, A. B., Cursitor Street, London
solicitor.

N.B.—*The Principal Probate Registry of the Probate, Divor*
Admiralty Division of the High Court of Justice is at Somerset
Strand, in the County of Middlesex.

INDORSEMENT TO BE MADE OF THE SERVICE.

Indorsement to be made of the Service.

This subpœna was served by G. H. on , of , on the
day of 19 .

(Signed)

Præcipe for Subpœna.

In the High Court of Justice. Probate, Divorce, and Admiralty D
(Probate.)

In the estate of E. F., deceased.

A. B. *v.* C. D.

Subpœna for W. W. to bring into and leave in the principal
[*here accurately describe the script*] the day of 19 .

(Signed) $\left\{\frac{\text{A. B.}}{\text{C. D.}}\right\}$ *or* { P. A., plaintiff's [*or* defend
solicitor.

No 260.—Subpœna to bring in a Script decreed by the

(*g*) VICTORIA, by the Grace of God of the United Kingdom o
Britain and Ireland Queen, Defender of the Fai
, of .

Subpœna to bring in a Script decreed by the Court.

WHEREAS there is now proceeding in our Court of Probate a
business of proving in solemn form of law the last will and tes
of A. B. , late of , deceased, who died on or about

(*g*) *These are Forms Nos.* 21 *and* 22 *prescribed in the Rul*
Orders, Contentious Business; they have not been officially an
In adapting them for use under present circumstances they sh
headed as in Form No. 259, "*Edward VII.,*" *etc., to* "*Defende*
Faith," *and it is suggested that they should be tested in the n*
the Lord Chancellor (*R. S. C., O.* 37, *r.* 27). *It is further su*
that the preamble from "*whereas*" *to* "*as the case may be*" *sh*
altered, and the preamble to the form of "*Citation to see Proce*
No. 78, *substituted.*

, the said will bearing date the day of 19 , promoted by C. D., the sole executor [*or as the case may be*] therein named, against E. F., the natural and lawful brother and one of the next-of-kin of the said deceased [*or as the case may be*]: And whereas the right honorable the judge of our said court did, by his order made in the said cause, and bearing date , order and direct that a subpœna do issue, under seal of our said court, to the purport and effect hereinafter mentioned:

Now this is to command you, that, within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal registry of our said court, a certain original paper writing or script purporting to be testamentary, to wit [*here describe the script accurately*], if the same be now in your possession or under your control: or in case the said paper writing or script be not in your possession, or under your control, that you, within eight days after the service hereof on you, inclusive of the day of such service, do file in the principal registry of our said court an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said paper writing or script. And this you shall in nowise omit, under the penalty of £100. Witness [*insert the name of the judge*], at the Court of Probate, the day of 19 , in the year of our reign.

(Signed) E. F.,
Registrar.

[*Name of practitioner and address.*]

INDORSEMENT TO BE M.. AFTER SERVICE.

This subpœna was served by I. K. on the within-named , of , at , on the day of 19 .

(Signed) I. K.

No. 261.—Subpœna to a Witness to be examined touching a Testamentary Paper of which he is supposed to have Knowledge.

(*h*) VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith: To , of , greeting:

Subpœna to examine Witness as to his knowledge of a Will.

WE command you, that all other things set aside, and ceasing every excuse, you do appear before A. B., the judge of our Court of Probate, at our Court of Probate, at , on the day of 19 , by of the clock in the forenoon of the same day, and so from day to day until you be dismissed by our said judge, to testify the truth according to your knowledge [*or* to answer to certain interrogatories to be administered to you], touching a certain paper writing or script, being or purporting to be testamentary, to wit [*here describe the script, and give its date as accurately as possible*], of which said paper writing or script reasonable grounds have been furnished to our said judge for believing that you have knowledge. And this you shall in nowise omit, under the penalty of £100. Witness [*insert the name of the judge*], at the Court of Probate, the day of 19 , in the year of our reign.

E. F.,
Registrar.

[*Name of the practitioner and address.*]

(*h*) *See note* (*g*) *on opposite page.*

INDORSEMENT TO BE MADE AFTER SERVICE.

This subpœna was served by I. K. on the within-named the day of 19 . (Signed) I

Præcipe for Subpœna to a Witness to be examined touc a Testamentary Paper of which he is supposed to knowledge.

In the High Court of Justice. Probate, Divorce, and Admiralty Div (Probate.)

In the estate of A. B., deceased.

Subpœna for W. W. to testify respecting a paper writing or being or purporting to be testamentary, to wit [*describing it*], of he is supposed to have knowledge, on the part of , this of 19 .

(Signed) $\left\{\frac{\text{A. B.}}{\text{C. D.}}\right\}$ *or* $\left\{\begin{array}{l}\text{P. A., plaintiff's [}or\text{ defend}\\ \text{solicitor.}\end{array}\right.$

No. 262.—Subpœna *ad testificandum* (General Form) (R. S. C., O. 37, r. 27).

19 . [*Here put the letter and numb*

In the High Court of Justice. Probate, Divorce, and Admiralty Div (Probate.)

In the estate of A. B., deceased.

Between , Plaintiff,
and , Defendant.

Subpœna *ad testificandum.*

EDWARD VII., by the grace of God of the United Kingdo Great Britain and Ireland and of the British Domi beyond the Seas King, Defender of the Faith: To [*the n of three witnesses may be inserted*], greeting:

WE command you to attend before , at , on day of 19 , at the hour of in the noon, and so from day to until the above cause is tried, to give evidence on behalf of the pla [*or* defendant].

Witness. [R. S. C., App. J., No.

No. 263.—Subpœna *ducestecum* (R. S. C., O. 37, r. 27)

In the High Court of Justice. Probate, Divorce, and Admiralty Divi (Probate.)

In the estate of A. B., deceased.

Between , Plaintiff,
and , Defendant.

Subpœna *ducestecum.*

EDWARD VII., by the grace of God of the United Kingdo Great Britain and Ireland and of the British Domi beyond the Seas King, Defender of the Faith: To [*the n of three witnesses may be inserted*], greeting:

WE command you to attend at the sittings of the divisi our High Court of Justice for , to be holden at , on day the day of 19 , at the hour of o'clock in the noon, and so from day to day until the above cause is tried, to evidence on behalf of the , and also to bring with you and pro at the time and place aforesaid [*specify documents to be produced*].

Witness. [R. S. C., App. J., No.

SUMMONSES.

No. 264.—Summons for Directions (R. S. C., O. 30).

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

Summons for Directions.

Let all parties concerned attend one of the registrars at the Principal Probate Registry, Somerset House, Strand, London, on the day of , at o'clock of the noon, on the hearing of an application on the part of the , to show cause why an order for directions should not be made in this action as follows:—[N.B. *The applicant should specifically state in the summons what he applies for, and should strike out from the print what he does not apply for.*]

Pleadings.

Scripts.

Particulars.—That the delivered within days, particulars of , and that in default all further proceedings in this action be stayed until such particulars are delivered [or, *that the defendant be precluded from giving evidence in support thereof on the trial of the action*], and that the have days to deliver his after delivery of such particulars.

Admissions.

Discovery.—That the file an affidavit of documents in ten days.

Interrogatories.—For leave to interrogate the answers to be filed within ten days.

Inspection of documents.

Inspection of real or personal property.

Commissions.

Examination of witnesses.

Place of trial.

Mode of trial.

Any other interlocutory matter or thing.

Dated, etc.

This summons was taken out by, etc.

To .

[R. S. C., App. K., No. 3A.]

No. 265.—Notice under Summons for Directions.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
(Probate.)

In the estate of A. B., deceased.
C. D. against E. F.

Notice under Summons for Directions.

Take notice that the above-named plaintiff intends to apply to one of the registrars at the Principal Probate Registry of the High Court of Justice, at Somerset House, Strand, in the County of Middlesex, on the day of 19 , at 12 o'clock in the forenoon, for further directions in this action as to .

Dated the day of , 19 .

X. Y., of ,
Solicitor for the Plaintiff.

To Y. Z.,
Solicitor for Defendant.

No. 266.—Summons (General Form).

In the High Court of Justice. Probate, Divorce, and Adm
(Probate.)

In the estate of A. B., deceased.

Summons (General Form).

Let all parties concerned attend one of the judges of thi
in Chambers at the Royal Courts of Justice [*or* one of the reg
the Principal Probate Registry, Somerset House], Strand, L
day the day of 19 , at o'clock in the
on the hearing of an application on the part of [*or*
cause why].

This summons was taken out by , of , solicitor f
To , solicitor for .

No. 267.—Summons to discontinue Proceedings

In the High Court of Justice. Probate, Divorce, and Admiralty
(Probate.)

In the estate of A. B., deceased.
C. D. against E. F.

Summons to discontinue Proceedings.

Let the defendant attend one of the registrars at the Principa
Registry of the High Court of Justice, at Somerset House
in the County of Middlesex, on [Tuesday], the day of
at [12] of the clock, to show cause why the [contentious] proce
this action [*or* matter, *if before writ of summons*] arising fro
No. , entered on the day of 19 , and a
writ of summons issued on the day of 19 , shou
discontinued and why [probate of the will dated the day of
of A. B., of , in the county of , the deceased therei
not be granted to C. D. the sole executor named in the s
the [plaintiff] in this action [*or* matter] if entitled thereto.

Dated day of 19 .
Summonses issued by X. Y.,
Solicitor for the plaintiff.

WARNING.

No. 268.—Warning to Caveat.

In the High Court of Justice. Probate, Divorce, and Admiralty D
The Principal Probate R

Dated the day of , 19 .
To C. D., of [*or* E. F., of , solicitor.]

Warning to Caveat.

You are hereby warned, within six days (exclusive of Sunda
the service of this warning upon you, inclusive of the day of such
to cause an appearance to be entered for you in the said principal
registry to the caveat entered by you in the estate of A. B., o
deceased, who died at , on or about the day of
and to set forth your [*or* your client's] in est.

And take notice that in default of you so doing the said co

proceed to do all such acts, matters, and things as shall be needful and necessary to be done in and about the premises.

Issued at the instance of H. I. F. [*add the interest of H. I. F. in the matter; and an address for service of notices within three miles*]. (Signed) J. H., Registrar.

WRITS.

269.—Writ of Summons.

19 . No. .

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate).

In the estate of C. D., deceased.

Between A. B., Plaintiff,

and

E. F., Defendant.

EDWARD VII., by the Grace of God of the United Kingdom of Great Britain and Ireland and of the British Dominions beyond the Seas King, Defender of the Faith: To E. F., of , in the county of [and , of].

Writ of Summons.

WE command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of A. B., and take notice that in default of your so doing, the said A. B. may proceed therein, and judgment may be given in your absence.

Witness, the Right Honorable [Robert Threshie Baron Loreburn], Lord High Chancellor of Great Britain, at the High Court of Justice in London, the day of 19 , and in the year of our reign.

N.B.—*This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards. Appearance is to be entered at the Central Office of the Royal Courts of Justice, London.*

INDORSEMENTS.

1.

By an executor or legatee propounding a will in solemn form.

The plaintiff claims to be executor of the last will, dated the day of , of C. D., late of , gentleman, deceased, who died on the day of , and to have the said will established. This writ is issued against you as one of the next-of-kin of the said deceased [*or as the case may be*].

2.

By an executor or legatee of a former will, or a next-of-kin, etc., of the deceased seeking to obtain the revocation of a probate granted in common form.

The plaintiff claims to be executor of the last will, dated the day of , of C. D., late of , deceased, who died on the day of , and to have the probate of a pretended will of the said deceased, dated the day of , revoked. This writ is issued against you as the executor of the said pretended will [*or as the case may be*].

3.

By an executor or legatee of will when letters of administration have been granted as in an intestacy.

The plaintiff claims to be executor of the last will of , deceased, who died on the day of , da day of .

The plaintiff claims that the grant of letters of administ estate of the said deceased obtained by you should be probate of the said will granted to him.

4.

By a person claiming a grant of administration as a next-of-kin of the deceased, but whose interest as next-of-kin is disputed.

The plaintiff claims to be the brother and sole next-of- of , deceased, who died on the day of , i to have as such a grant of administration to the estate intestate. This writ is issued against you because you ha caveat, and have alleged that you are the sole next-of-kin of [*or as the case may be*].

CERTIFICATE.

Principal Probat Somerset H

A sufficient affidavit in verification of the indorsement or authorise the sealing thereof has been produced to me this 19 .

This writ was issued by , of , solicitor for the by the plaintiff in person), who resides at .

No. 270.—Writ for Service out of the Jurisdiction Notice in lieu of Service is to be given out of diction (R. S. C., O. 2, r. 5).

19 . [*Here put the letter and*

In the High Court of Justice. Probate, Divorce, and Admiral (Probate.)

In the estate of G. H., deceased.

Between A. B., Plaintiff,

and

C. D. and E. F., Defendants.

EDWARD VII., by the Grace of God, [etc., *as in form* 269

To C. D., of .

Writ for Service out of Jurisdiction.

WE command you, C. D., that within [*here insert the numb directed by the court or judge ordering the service or notice*] da service of this writ [*or* notice of this writ, *as the case may b* inclusive of the day of such service, you do cause an appear entered for you in an action at the suit of A. B.; and take n in default of your so doing, the plaintiff may proceed th judgment may be given in your absence.

Witness, [etc., *as in Form No.* 269].

[*Indorsement to be made on the writ before the issue thereof.*

The plaintiff's claim is for, etc.

This writ [*or* notice of writ] is issued against you as .

N.B.—*This writ is to be served within twelve calendar month date thereof, or if renewed within six calendar months fro*

renewal, including the day of such date, and not afterwards. Appearance to be entered at the Central Office, Royal Courts of Justice, London.

This writ was issued by G. H., of , whose address for service is , agent for , of , solicitor for the said plaintiff, who resides at [*mention the city, town, or parish, and also the name of the street, and number of the house of the plaintiff's residence, if any*].

The writ [*or* notice of this writ] was served by me at on the defendant C. D. on the day of .

Indorsed the day of .

(Signed)

[*Address.*]

N.B.—*This writ is to be used where the defendant or all the defendants or one or more defendant or defendants is or are out of the jurisdiction. Where the defendant to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself, is to be served upon him.*

[R. S. C., App. A., No. 5.]

No. 271.—Notice of Writ in lieu of Service to be given out of the Jurisdiction (R. S. C., O. 2, r. 5).

19 . [*Here put the letter and number.*]

In the High Court of Justice. Probate, Divorce, and Admiralty Division. (Probate.)

In the estate of M. N., deceased,
Between A. B., Plaintiff,
and
C. D., E. F., and G. H., Defendants.

To G. H., of .

Take notice, that A. B., of , has commenced an action against you, G. H., in the Probate, Divorce, and Admiralty Division of His Majesty's High Court of Justice in England, by writ of that court, dated the day of , A.D. 19 ; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said court to the said action; and in default of your so doing, the said A. B. may proceed therein and judgment may be given in your absence. Notice of Writ.

You may appear to the said writ by entering an appearance personally or by your solicitor at the Central Office, Royal Courts of Justice, London.

This notice was served by me, , of , at , on the defendant on the day 19 .

Indorsed the day of 19 .

[*Signature and address of server.*]

N.B.—*This notice is to be used where the person to be served is not a British subject and is not in British Dominions.*

[R. S. C., App. A., No. 9.]

No. 272.—Writ of Attachment (R. S. C., O. 44).

In the High Court of Justice. Probate, Divorce, and Admiralty Divis
(Probate.)

In the estate of M. N., deceased.

Between A. B., Plaintiff,
and
C. D., Defendant.

EDWARD VII., by the Grace of God, [etc., *as in form No.* 269]
the sheriff of , greeting:

Writ of Attachment.

WE command you to attach C. D. so as to have him before us in
Probate Division of our High Court of Justice wheresoever the
court shall then be, there to answer to us, as well touching a conte
which he it is alleged hath committed against us, as also such o
matters as shall be then and there laid to his charge, and furthe
perform and abide such order as our said court shall make in
behalf, and hereof fail not, and bring this writ with you.

Witness, [etc., *complete as in form No.* 269].

[NOTE.—*A notice to the sheriff and endorsement have now been ad
to the form in official use under O.* 61, *r.* 33.]

Notice to Sheriff.—*This writ, if issued for default in payment of mo
is subject to the following limitation:—*

If under section 4 *of the Debtors Act*, 1869, *it does not authorise
prisonment for any longer period than* One Year.

Endorsement.—*This writ was issued by, etc., solicitor for the
who reside at , and was issued pursuant to order dated the
day of* 19 , *for such default as is therein mentioned* [*bein
default in payment of money under section* 4 *of the Debtors Act*, 1869
[*not being a default in payment of money*].

[R. S. C., App. H., No. 12

NON-CONTENTIOUS BUSINESS.

FORMS

FOR USE IN THE

DISTRICT PROBATE REGISTRIES.

A FEW specimens only of the forms used in the District Registries are given below.

For any others that may be required the practitioner is referred to the preceding forms, which are substantially the same as those used in the District Registries.

It is only necessary to point out that, in adapting the Principal Registry forms, for use in a District Registry, all oaths to lead the grant must contain a statement that "the deceased had at the time of his death a fixed place of abode at within the district of " (the probate district where the application is made).

No. 273.—Notice by District Registrar of Application for Grant of Probate.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The District Probate Registry at
day of 19 .

Notice is hereby given, that application has been made to me for a grant of probate of the will bearing date the day of 19 , of A. B., of , deceased, who died on the day of 19, at , having at the time of his death a fixed place of abode at , aforesaid, within the district of by of the executors named in the said will in the words following: Notice of Application for Grant of Probate

(Signed) T. H. O.,
District Registrar.

To the Registrars of the Principal Registry.

No. 274.—Notice by District Registrar of Application for Grant of Administration with the Will annexed.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The District Probate Registry at
day of 19 .

Notice is hereby given, that application has been made to me for a grant of letters of administration with the will annexed, the said Notice of Application for

Non-contentious Business.

Grant of Administration (Will).

will bearing date the day of 19 , of the estate of A
, deceased, who died on the day of 19 , at
having at the time of his death a fixed place of abode at
the district of by of the named in the said
in the words following:

(Signed) F. B. W.,
District Regi

To the Registrars of the Principal Registry.

No. 275.—Notice by District Registrar of Application Grant of Administration.

In the High Court of Justice. Probate, Divorce, and Admiralty D
The District Probate Registry a
day of

Notice of Application for Grant of Administration.

Notice is hereby given, that application has been made to m
grant of letters of administration of the estate of A. B., of
deceased, who died on the day of 19 , at , in
having at the time of his death a fixed place of abode at
said, within the district of by of the of t
intestate.

(Signed) H. A. J.,
District Regis

To the Registrars of the Principal Registry.

No. 276.—Notice of the Entry of a Caveat.

In the High Court of Justice. Probate, Divorce, and Admiralty D
The District Probate Registry at

To the Registrars of the Principal Probate Registry.

Notice of Entry of Caveat.

You are requested to take notice, that a caveat has been ent
the district probate registry of His Majesty's High Court of Ju
of the following tenor:

In His Majesty's High Court of Justice.
The District Registry at .
Let nothing be done in the goods of A. B., late of , de
who died on the day of 19 , at , and had at tl
of his death a fixed place of abode at , aforesaid, within the
of , unknown to , having interest.
Dated the day of 19 , this day of 19

(Signed) H. E. E.,
District Regis

No. 277.—Oath for an Executor.

In the High Court of Justice. Probate, Divorce, and Admiralty Di
The District Probate Registry at

In the estate of A. B., deceased.

Oath for Executor.

I, C. D., of , grocer, make oath and say, that I believe the
writing hereto annexed and marked by me to contain the tru
original last will and testament of A. B., of , formerly of

deceased, who died on the day of 19 , at , and that the said deceased had at the time of his death a fixed place of abode at , within the district of , and that I am the son of the said deceased and the sole executor named in the said will; and that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; and that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief. Non-contentious Business.

Sworn, etc. (Signed) C. D.

No. 278.—Oath—Administration with Will.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The District Probate Registry at .

In the estate of A. B., deceased.

I, C. D., of , widow, make oath and say, that I believe the paper writing hereto annexed and marked by me to contain the true and original last will and testament of , of , formerly of , deceased, who died on the day of 19 , at ; that the said deceased at the time of his death had a fixed place of abode at , within the district of ; that the said deceased did not in the said will name any executor; that I am the relict of the said deceased, and the residuary legatee named in the said will; that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief. Oath, Administration (Will).

Sworn, etc. (Signed) C. D.

No. 279.—Oath—Administration.

In the High Court of Justice. Probate, Divorce, and Admiralty Division.
The District Probate Registry at .

In the estate of A. B., deceased.

I, C. D., of , widow, make oath and say, that A. B., of , deceased, died on the day of 19 , at , intestate, and that at the time of his death the said deceased had a fixed place of abode at , within the district of , and that I am the lawful widow and relict of the said deceased; that I will administer according to law all the estate which by law devolves to and vests in the personal representative of the said deceased; that I will exhibit a true and perfect inventory of the said estate, and render a just and true account thereof whenever required by law so to do; and that the whole of the said estate amounts in value to the sum of £ and no more, to the best of my knowledge, information, and belief. Oath, Administration.

Sworn, etc. (Signed) C. D.

Non-contentious Business.

No. 280.—Exemplification of Probate or of Letters of Administration with Will annexed.

In the High Court of Ju Probate, Divorce, and Admiralty Di
The District Probate Registry

Exemplification (Probate on Administration Will).

BE IT KNOWN, th[illegible]on search being made in the district p registry attached to the High Court of Justice at , it appear on the day of , in the year of our Lord 19 , the la and testament with codicils of A. B., of , deceased, wh at , on the 19 , and had at the time of his death place of abode at , within the district of , was proved by the executor named therein [*or* letters of administration with th will and testament and codicils annexed of the estate of A. etc., were granted to C. D., as the], and which probate [*or* of administration] now remain of record in the said district re The true tenor of the said will and codicils is in the words foll to wit:

[*Here follow the will, codicils, and such affidavits as are registere*

In faith and testimony whereof these letters testimonial are iss

Given at as to the time of the aforesaid search, and the s of these presents, this day of , in the year of ou 19 .

(Signed) E. F.,
(L.S.) District Regist

No. 281.—Exemplification of Administration.

In the High Court of Justice. Probate, Divorce, and Admiralty Di
The District Probate Registry at

Exemplification (Administration).

BE IT KNOWN, that, upon search being made in the district p registry attached to the High Court of Justice at , it appear on the day of , in the year of our Lord 19 , lett administration of the estate of A. B., of , who died at the , and had, at the time of his death, a fixed place of at , within the district of , were granted to C. D., the [*or* one of the] of the said deceased, and which letters of adm tration now remain of record in the said district registry. The tenor of the said letters of administration is in the words follo to wit:

[*Here the letters of administration are to be recited verbatim.*]

In faith and testimony whereof these letters testimonial are issu

Given at as to the time of the aforesaid search, and the se of these presents, this day of , in the year of our 19 .

(Signed) E. F.,
(L.S.) District Regist

No. 282.—Bond—Administration.

Bond (Administration).

KNOW ALL MEN by these presents, that we, A. B., of , w C. D., of , banker, and E. F., of , jeweller, are jo and severally bound unto the Right Honorable Sir John C Barnes, Knight, the President of the Probate, Divorce, and Adm

Division of His Majesty's High Court of Justice, in the sum of £ of good and lawful money of Great Britain, to be paid to the said Sir John Gorell Barnes, or to the President of the said Division for the time being, for which payment well and truly to be made we bind ourselves and each of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of 19 .

Non-contentious Business.

The condition of this obligation is such, that if the above-named A. B., the lawful widow and relict of B. B., of , deceased, who died on the day of 19 , and the intended administratrix of all the estate which by law devolves to and vests in the personal representative of the said deceased, do, when lawfully called on in that behalf, make, or cause to be made, a true and perfect inventory of the said estate, which has or shall come to her hands, possession, or knowledge, or into the hands and possession of any other person for her, and the same so made do exhibit or cause to be exhibited into the district probate registry of His Majesty's High Court of Justice at , whenever required by law so to do: And the said estate, do well and truly administer according to law: And further do make, or cause to be made, a just and true account of her said administration, whenever required by law so to do. And if it shall hereafter appear that any last will and testament was made by the said deceased: And the executor or executors or other persons therein named do exhibit the same into the said division of the said court, making request to have it allowed and approved accordingly, if the said intended administratrix, being thereunto required, do render and deliver the letters of administration (approbation of such testament being first had and made) into the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

(Signed) A. B. (L.S.)
(Signed) C. D. (L.S.)
(Signed) E. F. (L.S.)

Signed, sealed, and delivered by the within-named A. B., C. D., and E. F., in the presence of H. P.

A Commissioner for Oaths.

No. 283.—Bond—Administration with Will.

Bond (Administration Will).

KNOW ALL MEN by these presents, that we, A. B., of , farmer, C. D., of , land agent, and E. F., of , horse dealer, are jointly and severally bound unto the Right Honorable Sir John Gorell Barnes, Knight, the President of the Probate, Divorce, and Admiralty Division of His Majesty's High Court of Justice, in the sum of £ of good and lawful money of Great Britain, to be paid to the said Sir John Gorell Barnes, or to the President of the said Division for the time being, for which payment well and truly to be made we bind ourselves and each of us for the whole, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals. Dated the day of , 19 .

The condition of this obligation is such, that if the above-named A. B., the residuary legatee [*or* devisee, *or* heir-at-law, *or as the case may be*], of G. H., of , deceased, who died on the day of 19 , and the intended administrator (with the will) of all the estate which by law devolves to and vests in the personal representative of the said deceased, do, when lawfully called on in that behalf, make,

Non-contentious Business.

or cause to be made, a true and perfect inventory of the sa
which has or shall come to his hands, possession, or knowledge
same so made do exhibit, or cause to be exhibited, into the
probate registry of the High Court of Justice at , V
required by law so to do: And the said estate do well a
administer according to law: And further do make, or cau
made, a just and true account of his administration when he
lawfully thereunto required, then this obligation to be void and
effect, or else to remain in full force and virtue.

(Signed) A. B.
(Signed) C. D.
(Signed) E. F.

Signed, sealed, and delivered by the within-named A. B., C. D., and E. F., in the presence of H. P.

A Commissioner for Oaths.

No. 284.—Caveat.

In the High Court of Justice. The District Probate Registry a

Caveat.

Let nothing be done in the estate of A. B., of , deceas
died on the day of 19 , at , and had at the
his death a fixed place of abode at aforesaid, within the di
unknown to of having interest.
Dated this day of 19 .

(Signed)

No. 285.—Notice by District Registrar to Irish P Registrar on transmitting English Grant to be R in Ireland.

In the High Court of Justice (Ireland). Probate and Matrimonial D
Principal R

NOTICE OF APPLICATION.

Notice of Resealing Irish Probate.

Application is made to reseal the enclosed grant of made
goods of , late of , by , on behalf of .
Dated this day of 19 .

(Signed)
District Registr
District Probate Registry

[*The notice with the other necessary documents should be addressed*
Registrars, Principal Registry, Probate and Matrimonial Di
Four Courts, Dublin.]

APPENDIX VI.

BILLS OF COSTS

IN COMMON FORM BUSINESS.

[*The following specimens of Bills of Costs are reprinted as guides only; and it must be observed that they are not copies of bills which have been "taxed."*]

No. 1.—For Probate.

	£	*s.*	*d.*
Drawing and engrossing oath of the executor and attending on his being sworn thereto [*ad valorem: see* p. 883 (*a*)].			
Paid commissioner	0	1	6
Drawing and engrossing affidavit for the Inland Revenue and attending on the executor being sworn thereto [*ad valorem: see* p. 883 (*b*)].			
Paid commissioner	0	1	6
Paid commissioner for marking will	0	1	0

For Probate.

(*a*) When there are two or more executors and they are not sworn at the same time, the practitioner will charge for each attendance after the first, on their being sworn to oath and affidavit, as follows, viz.:

	s.	*d.*
If the effects are sworn under £20	2	6
If the effects are sworn under £100	5	0
If the effects are sworn above £100	6	8

[*See* p. 884]

(*b*) By the "Customs and Inland Revenue Act, 1881," and the "Finance Act, 1894," an executor or administrator is required to give full details of the assets and their value and also the deductions therefrom allowed by these Acts. The collecting and arranging this information involves much trouble to the practitioner, which he did not incur before. No new scale of practitioner's fees has, however, been issued; but it is to be presumed that inasmuch as the old fee for the affidavit of property is now manifestly inadequate, the registrars will on a taxation allow at least for the schedules to the affidavit 1*s.* 4*d.* per folio of 72 words.

Registering, engrossing and collating the will (*c*). [*The charge is made up of the fee on registering the will, etc., viz.* 1*s.* 6*d. per folio of* 90 *words* (*see* p. 894), *and the practitioner's fee of the like amount* (p. 883); *e.g., if the will contains five folios the charge will be*] . . . . . .
Stamp on receipt . . . . . .
Search stamps [*see* p. 896].
Stamp on registrar's certificate on grant as to affidavit for Inland Revenue . . . . . .
Probate under seal, stamp duty (*d*), and court stamps. [*The charge is made up of the duty on the affidavit, the practitioner's fee on the grant, and the court fee stamps in respect of the grant*; *see* pp. 883, 893.]
Extracting [*ad valorem: see* p. 883].
Clerks [*ad valorem: see* p. 883].

N.B.—*If any affidavit, renunciation or other document has been the practitioner will charge for* instructions, drawing, engrossing and attendance on swearing or executing, *etc.* (*see* p. 892), *and will charge for stamps required on filing it. If any other extra or unusual work has been done he will also charge for it and the payment of the same as court fees. This remark will apply to all the other bills in non-contentious business.*

No. 2.—For Letters of Administration.

For Letters of Administration.

Drawing and engrossing oath, and attending on the administrator being sworn thereto, and on his executing the bond [*ad valorem: see* p. 885 (*c*)].
Paid commissioner . . . . . .
Drawing and engrossing affidavit for the Inland Revenue, and attending on the administrator being sworn thereto [*ad valorem: see* p. 885, *and note* (*b*), p. 1089].
Paid commissioner . . . . . .
Drawing and engrossing bond [*ad valorem: see* p. 886].
Stamp duty thereon (*f*).

(*c*) If the will is engrossed fac-simile, in addition to the 1 folio, 6*d.* per folio will be charged by the court [*see* p. 894] practitioner will make the like additional charge [*see* p. 884].

(*d*) If no stamp duty has been paid, omit the words "stamp

(*e*) Where there are two or more administrators, and they sworn at the same time, the practitioner will charge for each after the first on their being sworn to oath and affidavit, execution of the bond as follows:

	s.	*d.*
If the effects are under £20	3	4
If the effects are under £100	5	0
If the effects are above £100	10	0

[*See* p. 886.]

(*f*) The stamp is 5*s.* in all cases except where the estate exceed £100, or where the bond shall be given by the widow father, mother, brother or sister of any common seaman, m soldier dying in his Majesty's service. In the latter cases the stamp duty. See 54 & 55 Vict. c. 39, Schedule.

	£	s.	d.
Attending the sureties to bond (*if they do not execute the bond at the same time as the administrator*) on their executing the same	0	6	8
Paid commissioner for attesting the bond (*g*)	0	1	6
Stamp on receipt	0	1	0
Search stamps [*see* p. 896].			
Stamp on registrar's certificate on grant as to affidavit for Inland Revenue	0	2	6
Letters of administration under seal, stamp duty and court stamps.			
[*This charge is made up of the duty on the affidavit, the practitioner's fee on the grant, and the court fee stamps in respect of the grant: see* pp. 885, 895.]			
Extracting [*ad valorem: see* p. 885].			
Clerks [*ad valorem: see* p. 885].			
[*See note at end of Bill No.* 1.]			
£			

No. 3.—For Letters of Administration (Will).

For Letters of Administration (Will).

	£	s.	d.
Drawing and engrossing oath of the administrator and attending on his being sworn thereto [*ad valorem: see* p. 883].			
Paid commissioner	0	1	6
Drawing and engrossing affidavit for the Inland Revenue, and attending on the administrator being sworn thereto [*ad valorem: see Bill No.* 1, *note* (*b*)].			
Paid commissioner	0	1	6
Paid commissioner for marking will	0	1	0
Drawing and engrossing bond, and attending on the administrator on executing same [*ad valorem: see* p. 884].			
Stamp duty on bond [*see note* (*f*), p. 1090].			
Attending the sureties to bond [*if they do not execute the bond at the same time as the administrator*] on their executing same	0	6	8
Paid commissioner for attesting the bond	0	1	6
Registering, engrossing, and collating the will [*vide Bill for Probate*].			
Stamp on receipt	0	1	0
Search stamps [*see* p. 896].			
Stamp on registrar's certificate on grant as to affidavit for Inland Revenue	0	2	6
Letters of administration (will) under seal, stamp duty, and court stamps [*vide Bill No.* 1].			
Extracting [*ad valorem: see Bill No.* 1].			
Clerks [*ad valorem: see Bill No.* 1].			
[*Vide note at end of Bill No.* 1.]			
£			

(*g*) If there be what is technically called a "leading" grant, *i.e.*, if the grant be taken by the administrator as the legal representative of another person deceased, the practitioner will charge, for obtaining a copy of the record of the leading grant, the 2nd, 3rd, 4th, and 5th items in Bill No. 6.

No. 4.—For Limited (*or* Special) Probate.

		£
For Limited (*or* Special) Probate.	Consulting fee	0
	Perusing and considering the will [*at 4d. per folio of 72 words*].	
	Perusing and abstracting deeds or other instruments, etc., *when necessary* [*at 4d. per folio of 72 words*].	
	Copy of same for the clerk of the seat [*at 4d. per folio*].	
	Drawing special oath [*at 1s. per folio of 72 words*].	
	Fair copy of the same for the clerk of the seat and registrar to settle [*at 4d. per folio*].	
	Attending the clerk of the seat therewith and thereon	0
	Paid stamps for registrar perusing and settling special oath folios. [*If 5 folios of 72 words, or under, 2s. 6d.; if above 5 folios, for each additional folio, 3d.; see* p. 901.]	
	Attending the clerk of the seat and obtaining same settled	0
	Engrossing same [*at 4d. per folio of 72 words*].	
	Attending the executor on being sworn to the oath	0
	Paid commissioner	0
	[*Repeat the last two items for each executor sworn, if sworn separately.*]	
	Drawing and engrossing affidavit for the Inland Revenue, and attending on the executor being sworn thereto [*see Bill No.* 1, *and note* (*b*), p. 1089].	
	Paid commissioner	0
	Paid commissioner for marking will	0
	Registering, engrossing and collating the will [*see Bill No.* 1].	
	Stamp on receipt	0
	[*Charge search stamps, stamp on certificate, etc.: see Bill No.* 1.]	
	Paid stamps on drawing and engrossing special grant [*see* p. 897].	
	Paid stamps on drawing and engrossing special act [*see ib.*].	
	Limited probate under seal, stamp duty, and court stamps [*see Bill No.* 1].	
	Extracting [*see Bill No.* 1].	
	Clerks [*see Bill No.* 1].	
		£

No. 5.—For Limited (*or* Special) Letters of Administrati

		£
For Limited (*or* Special) Letters of Administration.	Consulting fee	0
	Instructions for renunciation	0
	Drawing same [*1s. per folio of 72 words*].	
	Engrossing same [*4d. per folio*].	
	Attending on same being executed	0
	Instructions for nomination	0
	Drawing same [*1s. per folio of 72 words*].	
	Engrossing same [*4d. per folio*].	
	Attending on same being executed	0
	Perusing and abstracting deeds or other instruments, *when necessary* [*at 4d. per folio of 72 words*].	
	Copy thereof for the clerk of the seat [*at 4d. per folio*].	
	Drawing oath to lead limited (or special) letters of administration [*at 1s. per folio*].	
	Fair copy thereof for the clerk of the seat (and registrar) to peruse and settle [*at 4d. per folio of 72 words*].	

	£	s.	d.
Attending him therewith and thereon			
Paid stamps for registrar perusing and settling same [*see Bill No.* 4].	0	6	8
Attending the clerk of the seat, and obtaining back the special oath settled			
Engrossing same [*at 4d. per folio of 72 words*].	0	6	8
Attending the clerk of the seat, and obtaining special bond from him			
Paid stamps for drawing and engrossing same [*see* p. 897].	0	6	8
Attending Stamp Office, and procuring same to be stamped			
Paid duty on bond [*see note* (*f*), p. 1090].	0	6	8
Attending the administrator on being sworn to the oath and on execution of the bond [*see Bill No.* 2].			
Paid commissioner	0	1	6
Drawing and engrossing affidavit for the Inland Revenue, and attending on the administrator being sworn thereto [*see Bill No.* 1, *note* (*b*), p. 1089].			
Paid commissioner	0	1	6
Attending the sureties, reading over and explaining the bond to them and attending on their executing same	0	6	8
Paid commissioner for attesting the bond	0	1	6
Stamp on receipt	0	1	0
Stamp on filing renunciation	0	2	6
Stamp on filing nomination	0	2	6
[*Charge search stamps, stamp on certificate, etc.: see Bill No.* 2].			
Paid stamps for drawing and engrossing the special grant [*see* p. 897].			
The like for special act [*ib.*].			
Special (*or* limited) letters of administration under seal, stamp duty, and court stamps [*see Bill No.* 2].			
Extracting [*see Bill No.* 2].			
Clerks [*see Bill No.* 2].			
£			

No. 6.—For Cessate or Double Probate.

	£	s.	d.	
Attending at the registry, looking up and taking an account of the former grant, and bespeaking an office copy of the record thereof for the use of the clerk of the seat and registrar	0	6	8	For Cessate or Double Probate.
Paid for copy record and collating. [*If not exceeding five folios of ninety words, the sum paid will be 2s. 6d. Add 2d. per folio for the practitioner's charge for collating* (*see* p. 891).]				
Stamp on search	0	1	0	
Perusing and considering the will [*at 4d. per folio of 72 words*].				
Drawing and engrossing oath to be made by the substituted executor, and attending on his being sworn thereto (*h*).				
Paid commissioner	0	1	6	
Drawing and engrossing affidavit for the Inland Revenue, and attending on the executor being sworn thereto (*h*) [*see Bill No.* 1, *note* (*b*), p. 1089].				

(*h*) The practitioner will charge according to p. 883, where stamp duty is paid, and according to p. 887, where no stamp duty is paid.

Paid commissioner . . . . . .
Paid commissioner for marking will . . . . . .
Instructions for memorial to the Commissioners of Inland Revenue for a duty-paid stamp or certificate . . . .
Drawing and engrossing same [*ad valorem: see* p. 887].
Attending at the Stamp Office, procuring the denoting stamp or certificate on affidavit of property, and afterwards for same duly stamped or certified . . . . . .
Attending at the registry, and looking up the will and bespeaking the engrossment [*ad valorem: see* p. 890].
Stamp on search . . . . . .
Stamps on the engrossment [*see* p. 894].
Stamp on receipt . . . . . .
Stamp on filing original grant . . . . . .
Stamp on noting former grant (*i*) . . . . . .
Cessate probate under seal and court stamps. [*This charge is made up of the practitioner's fee on the grant and the court fee stamps in respect of the grant* (*k*)*: see* pp. 883, 887, 893.]
Extracting (*l*).
Clerks (*l*).

£

No. 7.—For Cessate Letters of Administration.

For Cessate Letters of Administration.

Attending at the registry, looking up and taking an account of the former grant, and bespeaking an office copy of the record thereof for the use of the clerk of the seat and the registrar
Paid for same and collating [*see Bill No.* 6].
Stamp on search . . . . . .
Drawing and engrossing oath, and attending on the administrator being sworn thereto and on executing the bond [*see* pp. 885, 889].
Paid commissioner . . . . . .
Drawing and engrossing affidavit for the Inland Revenue, and attention on the administrator being sworn thereto [*see* pp. 885, 889].
Paid commissioner . . . . . .
Drawing and engrossing same . . . . . .
Stamp duty on bond [*see* p. 1090, *note* (*f*)].
Attending the sureties, reading over and explaining the bond to them, and attending on their executing same . . . .
Paid commissioner for attesting the bond . . . . . .
Drawing and engrossing memorial to the Commissioners of Inland Revenue for a duty-paid stamp or certificate [*see* p. 889].

(*i*) If the former grant was taken out at a district registry, the on the notation will be 3*s.* 6*d.* instead of 2*s.* 6*d.*

(*k*) Where a duty-paid stamp or certificate has been obtained, t will be regulated by the scales at p. 887, and will never exceed 1 for the practitioner's fee and 12*s.* 6*d.* for the court fee; but whe duty is paid on the grant the practitioner's and court fees will *valorem* (as on a first grant).

(*l*) The practitioner will charge according to p. 883, where stam is paid, and according to p. 887, where no stamp duty is paid.

	£	s.	d.
Attending at the Stamp Office, procuring the duty-paid stamp or certificate on the affidavit of property, and afterwards attending for and obtaining same	0	13	4
Attending at the registry and depositing the papers for the grant	0	6	8
Stamp on receipt	0	1	0
Stamp on noting former grant	0	2	6
Stamp on registrar's certificate on grant	0	2	6
Cessate letters of administration under seal and court stamps. [*This charge is made up of the practitioner's fee on the grant and the court fees in respect of the grant: see* pp. 885, 889, 895, *and* 896.]			
Extracting [*ad valorem: see* pp. 885, 889].			
Clerks [*ad valorem: see* pp. 885, 889].			
	£		

No. 8.—For Letters of Administration *de bonis non*.

For Letters of Administration *de bonis non*.

	£	s.	d.
Attending at the registry, looking up and taking an account of the former grant, and bespeaking an office copy of the record hereof for the use of the clerk of the seat and registrar	0	6	8
Stamp on search	0	1	0
Paid for copy record and collating [*see Bill No.* 6].			
Drawing and engrossing oath, and attending on the administrator being sworn thereto, and on executing the bond [*see* pp. 885, 889].			
Paid commissioner	0	1	6
Drawing and engrossing affidavit for the Inland Revenue, and attending on the administrator being sworn thereto, and on his executing the bond [*see* pp. 885, 889, *and Bill No.* 1, *note* (*b*), p. 1089].			
Paid commissioner	0	1	6
Drawing and engrossing bond	0	6	8
Stamp duty on bond [*see* p. 1090, *note* (*f*)].			
Attending the sureties, reading over and explaining the bond to them and attending on their executing same	0	6	8
Paid commissioner for attesting the bond	0	1	6
Instructions for memorial to the Commissioners of Inland Revenue for a duty-paid stamp or certificate	0	6	8
Drawing and engrossing same [*ad valorem: see* p. 889].			
Attending at the Stamp Office, procuring the duty-paid stamp or certificate on the affidavit of property, and afterwards attending for and obtaining same	0	13	4
Attending at the registry and depositing the papers for the grant	0	6	8
Stamp on receipt	0	1	0
Stamp on noting former grant [*see note* (*i*), p. 1094]	0	2	6
Letters of administration *de bonis non* under seal and court stamps. [*This charge is made up of the practitioner's fee on the grant and court fee stamps in respect of the grant: see* pp. 885, 889, 895, 896.]			
Extracting [*ad valorem: see* pp. 885, 889].			
Clerks [*ad valorem: see* pp. 885, 889].			
	£		

No. 9.—For Letters of Administration (Will) *de bonis non*

For Letters of Administration (Will) *de bonis non.*

	£	s.
Attending at the registry, looking up and perusing the will and taking an account of the former grant, and bespeaking an office copy of the record thereof for the use of the clerk of the seat and registrar	0	6
Stamp on search	0	1
Paid for copy record and collating [*see Bill No.* 6]		
Perusing and abstracting the will [*at 4d. per folio*].		
Drawing and engrossing oath, and attending on the administrator being sworn thereto, and on executing the bond [*see* pp. 883, 889].		
Paid commissioner	0	1
Drawing and engrossing affidavit for the Inland Revenue and attending on the administrator being sworn thereto [*see* pp. 883, 889, *and Bill No.* 1, *note* (*b*), p. 1089].		
Paid commissioner	0	1
Paid commissioner for marking will	0	1
Drawing and engrossing bond	0	6
Stamp duty on bond [*see* p. 1090, *note* (*f*)].		
Attending the sureties, reading over and explaining the bond to them, and attending on their executing same	0	6
Paid commissioner for attesting the bond	0	1
Instructions for memorial to the Commissioners of Inland Revenue for a duty-paid stamp or certificate	0	6
Drawing and engrossing same [*ad valorem: see* p. 889].		
Attending at the Stamp Office, procuring the duty-paid stamp or certificate to be impressed or made on the affidavit of property, and afterwards attending for and obtaining same	0	13
Attending in the registry, and looking up the will and bespeaking engrossment thereof	0	6
Stamp on search	0	1
Stamps on the engrossment (*see* p. 894].		
Stamp on receipt	0	1
Stamp on filing original grant	0	2
Stamp on noting former grant [*see note* (*i*), p. 1094]	0	2
Letters of administration with the will annexed, *de bonis non* under seal and court stamps. [*This charge is made up of the practitioner's fee on the grant and the court fee stamps in respect of the grant: see* pp. 883, 889, 893].		
Extracting [*ad valorem*: *see* pp. 883, 889].		
Clerks [*ad valorem: see* pp. 883, 889].		
£		

No. 10.—For Notation of further Security.

For Notation of further Security.

	£	s.	d.
Instructions for affidavit	0	6	8
Drawing and engrossing affidavit [1*s.* 4*d. per folio of* 72 *words*].			
Attending on the administrator being sworn thereto	0	6	8
Paid commissioner	0	1	6
Drawing and engrossing bond	0	6	8
Stamp duty [*see* p. 1090, *note* (*f*)].			
Attending the administrator and sureties, reading over and explaining the bond, and attending on their executing same	0	6	8

	£	s.	d.
Paid commissioner	0	1	6
Attending the clerk of notations and instructing him to make the notation and grant, a certificate of further security having been given	0	6	8
Stamp on filing the bond	0	2	6
Stamp on filing the affidavit	0	2	0
Attending the record keeper, looking up the first (or original) bond	0	6	8
Stamp on search	0	1	0
Attending at the registry on the clerk of notations when he returned the letters of administration duly noted and gave the certificate of further security	0	6	8
Stamp on the notation [*see* p. 896]	0	5	0
Stamp on the certificate [*see* p. 896]	0	1	0
	£		

No. 11.—For Rescaling an Irish Grant.

For Rescaling an Irish Grant.

	£	s.	d.
Instructions for affidavit	0	6	8
Drawing same, folios [1*s. per folio of 72 words*].			
Engrossing same [4*d. per folio*].			
Drawing two schedules [1*s. per folio of 72 words*].			
Engrossing same [4*d. per folio* of 72 *words*].			
Attending the executor [*or* administrator] on being sworn to his affidavit	0	6	8
Paid commissioner	0	1	6
Attending at the Stamp Office, submitting the affidavit and grant, and applying for the certificate for the court	0	13	4
Copy of the grant to file [4*d. per folio of 72 words*].			
Attending at the registry and lodging the papers	0	6	8
Stamp on receipt	0	1	0
Stamps for collating the copy [*see* p. 898].			
Stamp on filing certificate of the Commissioners of Inland Revenue	0	2	6
Stamp on filing the copy grant	0	2	6
Stamp on the fiat	0	5	0
Stamp on search.			
Fees of rescaling the grant in respect of the testator's personal estate in England. [*This charge is made up of the practitioner's fee as on an original grant (see Bills No. 1 or No. 2) and the corresponding court stamps in respect of the grant: see* p. 897].			
Extracting [*ad valorem, as on a grant*].			
Clerks [*ad valorem, as on a grant*].			
	£		

[*In the case of letters of administration the same charges will be made, with the addition of a fee stamp of* 2*s.* 6*d. for filing Irish Registrar's certificate as to bond.*]

No. 12.—For Resealing a Scotch Grant.

For Resealing a Scotch Grant.

	£
Copy of grant to file [*4d. per folio of 72 words*].	
Attending at the registry and depositing the grant, the copy thereof	0
Stamp on receipt	0
Stamps for collating copy grant [*see* p. 898].	
Stamp on filing same	
Stamp on resealing [*see* p. 897]	0
Extracting [*ad valorem, as on a grant*].	1
Clerks [*ad valorem, as on a grant*].	
	£

No. 13.—For obtaining Revocation of a Grant by Consen

For obtaining Revocation of a Grant by Consent.

	£	s.
Instructions for affidavit to lead the revocation to be made by the present administrator	0	6
Drawing same, folios [*1s. per folio of 72 words*].		
Engrossing same [*4d. per folio of 72 words*].		
Attending on the executor [*or* administrator] being sworn thereto	0	6
Paid commissioner	0	1
Attending the registrar with the affidavit perfected, and conferring with him upon the subject of revoking the grant, when he directed that it should be revoked	0	6
Drawing and engrossing order to that effect	0	6
Attending the registrar with the same	0	6
Stamp on filing affidavit	0	2
The like on grant	0	2
The like on order	0	5
Attending in the registry and bespeaking office copy of the order to file	0	6
Paid for same and collating [*see Bill No. 6*]	0	3
Attending in the registry and obtaining same	0	6
Fee stamp on noting	0	2
If a district registry grant, 1s. extra for notice.		
	£	

No. 14.—For obtaining an Exemplification of a Probate or Letters of Administration (Will).

For obtaining an Exemplification of a Probate or Letters of Administration (Will).

	£	s.
Attending at the registry, searching for and looking up the original will, and bespeaking an exemplification of the probate [*or letters of administration (will)*] and obtaining parchment for stamping	0	6
Stamp on search	0	1
Attending at the Stamp Office, paying the duty on the exemplification leaving parchment to be stamped, and afterwards attending for and obtaining same duly stamped	0	13

	£	s.	d.
Exemplification under seal, stamp duty and court stamps (this charge is made up of the £3 stamp duty on the exemplification, £1 1s. paid to the officers of the court for the exemplification [*see* p. 894], and £1 1s., the practitioner's fee [*see* p. 888]	5	2	0
Paid stamps for engrossing will for exemplification (4s. 6d. if three folios or under, and 1s. 6d. per folio afterwards).			
Extracting [*see* p. 888]	0	6	8
Clerks [*see* p. 888]	0	2	6
£			

No. 15.—For Exemplification of Letters of Administration.

[*Same as above, except the stamps paid for engrossing will.*]

APPENDIX VII.

RULES AND FEES.

RULES AND ORDERS OF 1863, ETC.

RULES, Orders and Instructions for the DISTRICT REG
TRARS of her Majesty's Court of Probate made under
provisions of the Statutes 20 & 21 *Vict. c.* 77, *and* 21 &
Vict. c. 95, *in respect of*

NON-CONTENTIOUS BUSINESS.

Dated this 27*th January*, 1863.

All Rules, Orders, and Instructions heretofore made and issu
for the District Registrars of her Majesty's Court
Probate in respect of non-contentious business shall
repealed on and after the second day of March, 186
except so far as concerns any matters or things done
accordance with them prior to the said day.

The following Rules, Orders, and Instructions in respect
non-contentious business shall take effect on and afte
the second day of March, 1863.

NON-CONTENTIOUS BUSINESS shall include all common form
business as defined by the Court of Probate Act, 1857
and the warning of caveats.

1. Application for probate or letters of administration may
be made at the principal registry in all cases. Application
may also be made at a district registry in cases where the
deceased, at the time of his death, had a fixed place of abode

within the district in which the application is made, and not otherwise. Non-contentious Business.

2. Such applications may be made through a proctor, solicitor, or attorney, or in person by executors and parties entitled to grants of administration.

3. The district registrar, before he entertains any application for probate or letters of administration, must ascertain that the deceased had, at the time of his death, a fixed place of abode within his district.

4. The district registrar is not to allow probate or letters of administration to issue until all the inquiries which he may see fit to institute have been answered to his satisfaction, and this refers more particularly to applications made in person by executors and others. The district registrar is notwithstanding to afford as great facility for the obtaining grants of probate or administration as is consistent with a true regard to the prevention of error or fraud.

5. No district registrar or clerk in a district registry shall directly or indirectly transact business for himself or as the proctor or solicitor of any other person in the district registry to which he has been appointed.

As to Probate of Wills and Codicils and Letters of Administration, with the Will [or Will and Codicils] annexed, where the Wills and Codicils are dated after 31*st December,* 1837.

Execution of a Will.

6. Upon receiving an application for probate or letters of administration with the will annexed, the district registrar must inspect the will and each codicil, and see whether by the terms of the attestation clause (if any) it is shown that the same have been executed in accordance with the provisions of statutes 1 Vict. c. 26, and 15 Vict. c. 24.

7. If there be no attestation clause to a will or codicil presented for probate, or if the attestation clause thereto be insufficient, the district registrar must require an affidavit from at least one of the subscribing witnesses, if they or either of them be living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 Vict. c. 24, in reference to the execution, were, in fact, complied with; and such affidavit must be engrossed and form part of the probate. See amended Rules 7 and 7A, p. 1113.

8. If on perusing the affidavits of both the subscribing witnesses it appear that the requirements of the statute were not complied with, the district registrar must refuse probate.

Non-contentious Business.

9. If on perusing the affidavit or affidavits setting forth t facts of the case, it appear doubtful whether the will or codi has been duly executed, the district registrar must transmit statement of the matter to the registrars of the princip registry, who may require the parties to bring the matt before the judge on motion.

[Rules Nos. 10, 11, 12, 13, 14, 15, 16, and 17 are identic with Rules Nos. 7, 8, 9, 10, 11, 12, 13, and 14 of the princip registry, and the practitioner is referred to these latter pp. 796, 797, *ante*.]

Married Woman's Will.

Repealed April, 1887. See *ante*, p. 818, for amended Rule.

18. In granting probate of a married woman's will mad by virtue of a power, or administration with such will annexe the power under which the will purports to have been mad must be specified in the grant.

Codicils.

19. The above Rules and Orders respecting wills appl equally to codicils.

Doubtful Cases.

20. If it be doubtful whether any will or codicil be entitled to probate, or whether any interlineation, alteration, erasure, or obliteration ought to prevail, or whether any deed, paper, memorandum, or other document ought to form part of a will or codicil, or if any doubt arises in consequence of the appearance of the paper, or on any other point, the district registrar must communicate with the registrars of the principal registry.

Letters of Administration with Will annexed.

21. The right of parties to letters of administration with the will annexed, and letters of administration with the will annexed *de bonis non*, depends so entirely upon the circumstances of each particular case taken in connexion with the wording of the will, that no general rules, other than those which have obtained a judicial sanction, can be laid down for the guidance of the district registrars. Whenever the right of the party applying is at all questionable, a statement of the case, accompanied by a copy of the will, must be transmitted to the registrars of the principal registry, who will advise thereon.

As to Probate of Wills, Codicils, and Testamentary Papers relating to Personalty, and dated before the 1st January, 1838.

[Rules and Orders Nos. 22, 23, 24, 25, 26, 27, and 28 are identical with Rules and Orders Nos. 17, 18, 19, 20, 21, 22, and 23 of the principal registry, at pp. 798, 799, *ante*.]

Appearance of Paper.

29. Any appearance of an attempted cancellation of a testamentary paper by burning, tearing, obliteration, or otherwise, and every circumstance leading to a presumption of abandonment or revocation of such a paper on the part of the testator, must be accounted for or explained by affidavits. In such cases the testamentary paper and the evidence taken in support of it should be transmitted to the registrars of the principal registry.

[Rules Nos. 30, 31, and 32 are identical with Rules Nos. 25, 26, and 27 of the principal registry : see *ante*, pp. 799, 800.]

As to Letters of Administration.

33. The duties of the district registrar in granting letters of administration are in many respects the same as in cases of probate. In both cases he must ascertain the time and place of the deceased's death, and the value of the property to be covered by the grant, and see that the applicant has been sworn as required by statute 55 Geo. III. c. 184.

[Rules and Orders Nos. 34, 35, 36, 37, and 38 are identical with Nos. 28, 29, 30, 31, and 32 of the principal registry : see *ante*, p. 800.]

Grants of Administration to Guardians.

39. Grants of administration may be made to guardians of minors and infants for their use and benefit, and elections by minors of their next-of-kin or best friend, as the case may be, will be required ; but proxies accepting such guardianships and assignments of guardians to minors will be dispensed with.

40. In all cases of infants (*i.e.*, under the age of seven years) a guardian must be assigned by order of the judge or of one of the registrars of the principal registry ; the registrar's order is to be founded on an affidavit showing that the proposed guardian is either *de facto* next-of-kin of the infants, or that their next-of-kin *de facto* has renounced his or her right to the

Non-contentious Business.

guardianship, and is consenting to the assignment of the posed guardian, and that such proposed guardian is read undertake the guardianship.

41. Where there are both minors and infants, the guar elected by the minors may act for the infants without b specially assigned to them, by order of the judge or a regis of the principal registry, provided that the object in view i take a grant. If the object be to renounce a grant, guardian must be specially assigned to the infants by orde the judge or of a registrar of the principal registry.

42. In all cases where grants of administration are to made for the use and benefit of minors or infants, the admi trators are to exhibit a declaration on oath of the perso estate and effects of the deceased, except when the effects sworn under the value of twenty pounds, or when the admi trators are the guardians appointed by the High Court Chancery, or other competent court, or are the testament guardians of the minors or infants.

Administrator's Oath.

43. The oath of administrators, and of administrators w the will, is to be so worded as to clear off all persons havin prior right to the grant, and the grant is to show on the f of it how the prior interests have been cleared off, and set forth, when the fact is so, that the party applying is only next-of-kin, or one of the next-of-kin, of the deceas In all administrations of a special character the recitals in oath and in the letters of administration must be framed accordance with the facts of the case.

Administration Bonds.

44. Administration bonds are to be attested by an officer the principal registry, by a district registrar or his chief cle or by a commissioner or other person now or hereafter to authorised to administer oaths under 20 & 21 Vict. c. 77, a 21 & 22 Vict. c. 95, but in no case are they to be attested the proctor, solicitor, attorney, or agent of the party w executes them. The signature of the administrator or admin tratrix to such bonds, if not taken in the principal or distr registry, must be attested by the same person who administe the oath to such administrator or administratrix.

45. In ordinary cases two sureties are to be required, b when the property is *bonâ fide* under the value of fifty poun one surety only may be taken to the administration bond.

46. In all cases of limited or special administration t

sureties are to be required to the administration bond (unless the administrator be the husband of the deceased or his representative, in which case but one surety will be required), and the bond is to be given in double the amount of the property to be placed in the possession of or dealt with by the administrator by means of the grant. The alleged value of such property is to be verified by affidavit if required.

47. The administration bond is, in all cases of limited or special administrations, to be prepared in the district registry.

48. The district registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.

Justification of Sureties.

49. When any person takes letters of administration in default of the appearance of persons cited, but not personally served with the citation, and when any person takes letters of administration for the use and benefit of a lunatic or person of unsound mind, unless he be a committee appointed by the Court of Chancery, a declaration of the personal estate and effects of the deceased must be filed in the registry, and the sureties to the administration bond must justify (*a*)

General Rules and Orders for the District Registrars.

Last Wills.

50. The district registrar is not, in any case in which a will apparently duly executed has been produced to him for probate or for administration with the will annexed, to grant probate of any former will, or administration with any former will annexed, or administration to the deceased, as having died intestate, without an order of the judge, or of one of the registrars of the principal registry, showing that the last will is not entitled to probate. In the absence of such order the district registrar is to communicate with the registrars of the principal registry.

Time of issuing Grant.

51. No probate or letters of administration with the will annexed shall issue until after the lapse of seven days from

(*a*) Where the court makes an order for a grant to issue on the presumption of the death of the deceased, it is subject to these two requirements.

Non-contentious Business.

the death of the deceased, unless under the direction of th judge, or by order of one of the registrars of the princip registry.

52. No letters of administration shall issue until after th lapse of fourteen days from the death of the deceased, unles under the direction of the judge, or by order of one of th registrars of the principal registry.

53. In every case where probate or administration is, for th first time, applied for after the lapse of three years from th death of the deceased, the reason of the delay is to be certifie by the practitioner to the district registrar. Should the cer tificate be unsatisfactory, or the case be one of personal appli cation, the district registrar is to require an affidavit, or t communicate with the registrars of the principal registry.

Filling up Grant.

54. Every grant of probate or of letters of administratio issued from a district registry is to be filled up therein, an any former grant which has been revoked or has ceased is t be cleared off therein.

Notices of Applications.

55. Notices of applications for grants of probate or adminis tration with the will annexed, transmitted by the distric registrar to the registrars of the principal registry, are t contain (in addition to the particulars specified in section 4 of the Court of Probate Act, 1857) an extract of the words o the will or codicil by which the applicant has been appointe executor, or of the words (if any) upon which he founds hi claim to such administration.

56. Notices of application are to set forth the names an interests of all persons who, according to the practice of th court, would have a prior right to the applicant, and to show how such prior rights are cleared off. In case the persons o any of them have renounced, the date of his or her renunciation must be stated. If the applicant claims as the representative of another person, the date and particulars of the grant to him must appear.

Oath of Executors and Administrators.

57. The usual oath of administrators, as well as that o executors and administrators with the will, is to be subscribed and sworn by them as an affidavit, and then filed in the registry.

Non-contentious Business.

58. The draft oaths to lead grants of special or limited probate or administration, with or without the will annexed, are to be transmitted by the district registrar to the registrars of the principal registry, in order to their being settled, and no special or limited grant is to issue until the draft oath to lead the same has been settled by a registrar of the principal registry.

Identity of Parties.

59. The district registrars may, in cases where they deem it necessary, reqnire proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant.

Testamentary Papers to be marked.

60. Every will, copy of a will, or other testamentary paper, to which an executor or administrator with the will is sworn, must be marked by such execntor or administrator and by the person before whom he is sworn.

Renunciations.

61. No person who renounces probate of a will or letters of administration of the personal estate and effects of a deceased person in one character is to be allowed to take a representation to the same deceased in another character.

Revocation and Alteration of Grants.

62. Grants of probate or letters of administration can only be revoked by order of the jndge or of one of the registrars of the principal registry.

63. No grant of probate or letters of administration is to be altered by a district registrar, without an order of a registrar of the principal registry having been previously obtained. In case the name of the testator or intestate requires alteration, the notice of the application must be renewed, and the alteration ordered is not to be made by the district registrar until the nsnal certificate on such notice has been received from the principal registry.

Affidavits.

64. Every affidavit is to be drawn in the first person, and the addition and true place of abode of every deponent making it is to be inserted therein.

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*These two Rules amended March, 1882. See p. 820.

*65. In every affidavit made by two or more persons, names of the several persons making it are to be written the jurat.

*66. No affidavit will be admitted in any matter in Court of Probate of which any material part is written on erasure, or in the jurat of which there is any interlineation erasure.

67. Where an affidavit is made by any person who is bli or who, from his or her signature or otherwise, appears to illiterate, the district registrar, commissioner, or other author before whom such affidavit is made is to state in the jurat t the affidavit was read in the presence of the person making same, and that such person seemed perfectly to understand same, and also made his or her mark, or wrote his signature, in the presence of the district registra missioner, or other authority before whom the affi made.

68. No affidavit is to be deemed sufficient which sworn before the party on whose behalf the same is offer before his proctor, solicitor, or attorney, or bef parti clerk of his proctor, solicitor, or attorney.

69. Proctors, solicitors, and attorneys, an their c respectively, if acting for any other proctor solicitor, attorney, shall be subject to the rules in act of taki affidavits which are applicable to those in wh ad they acting.

70. In every case where an affidavit is made by a subscribi witness to a will or codicil, such subscri witness sh depose as to the mode in which the sa or codicil w executed and attested.

71. The district registrars are not to allow a affida to be filed (unless with the concurre the registrars the principal registry) which is not fairly and legibly writte or in which there is any interlineation, the extent of whi at the time the affidavit was made is not clearly shown by t initials of the commissioner or other person before whom was sworn.

Caveats.

72. Any person intending to oppose the issuing of a gra of probate or letters of administration may either personal or by his proctor, solicitor, or attorney enter a caveat in t principal registry, or in the proper district registry.

73. A caveat shall bear date on the day it is entered, a shall remain in force for the space of six months only, a then expire and be of no effect; but caveats may be renew from time to time

Non-contentious Business.

74. The district registrar shall, immediately upon a caveat being entered, send a copy thereof to the registrars of the principal registry, and also to the registrar of any other district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

75. No caveat shall affect any grant made on the day on which the caveat is entered, or on the day on which notice is received of a caveat having been entered in the principal registry.

76. Caveats shall be warned from the principal registry only.

77. After a caveat has been entered, the district registrar is not to proceed with the grant of probate or administration to which it relates until it has expired or been subducted, or until he has received notice from the principal registry that the caveat has been warned and no appearance given, or that the contentious proceedings consequent on the caveat have terminated.

78. The further rules in respect to caveats will be found in the "Rules, Orders, and Instructions for the Registrars of the Principal Registry."

Citation and Subpœnas.

79. Citations and subpœnas can be issued from the principal registry only, and the rules applicable to them will be found in the "Rules, Orders, and Instructions for the Registrars of the Principal Registry."

80. No grant is to issue from a district registry after a citation without production of an office copy of the decree or order of the Judge or of one of the registrars of the principal registry authorising the same.

Blind and Illiterate Testators.

81. The district registrars are not to allow probate of the will, or administration with the will annexed, of any blind or obviously illiterate or ignorant person, to issue, unless they have previously satisfied themselves that the said will was read over to the testator before its execution, or that the testator had at such time knowledge of its contents. When such information is not forthcoming, the district registrars are to communicate with the registrars of the principal registry.

Alterations in Grants, etc.

82. Whenever the value of the personal estate and effects of a deceased person is re-sworn under a different amount or

Non-contentious Business.

alteration is made in a grant, or a renunciation is filed, noti of such re-swearing, alteration, or renunciation is witho delay to be forwarded by the district registrar to the registra of the principal registry, but no fee shall be payable in respe of any such notice.

Lists of Grants.

83. The lists of grants of probate and administration requir to be furnished by the district registrars under section 51 The Court of Probate Act, 1857, are to be furnished on t first and every other Thursday in the month, and are contain the name of the registry in which each grant w made; and the Christian and surname of each testator a intestate.

84. Every such list of grants furnished by the distri registrar is to be accompanied by a copy of the record of ea grant mentioned in it. The record, besides stating t necessary particulars of the grant to which it refers, is contain the place and time of death of the testator or intestat the names and description of each executor or administrato the date of each grant; and the sum under which the val of the personal estate and effects is sworn, and in cases administrations the names and description of the sureties.

85. Within four days from the end of each month ea district registrar is to forward to the principal registry a retur arranged alphabetically, of all grants of probate or letters administration passed at his district registry during t preceding month.

Grants for Property in the United Kingdom, etc.

86. Whenever a grant of probate or letters of administratio is made under statute 21 & 22 Vict. c. 56, for the whol personal estate and effects of a deceased within the Unite Kingdom, it must appear by the affidavit made for the Inlan Revenue Office that the testator, or intestate, died domiciled i England, and that he was possessed of personal estate i Scotland other than that excluded by 22 & 23 Vict. c. 80 (*b*) and the value of such personal estate must be separately state in such affidavit. In case any portion of the personal estat be in Ireland, a separate affidavit and schedule must also b filed. Upon all such grants a note or memorandum must als be written and signed by the district registrar to the effec that the testator or intestate died domiciled in England.

87. Grants of probate and administration made in Ireland

(*b*) Apparently a mistake for 23 & 24 Vict. c. 80.

and confirmations granted in Scotland must be taken to the principal registry, and not to a district registry, to be sealed with the seal of the Court of Probate, in order to the same having force and effect in England.

Notices to Queen's Proctor.

88. In all cases where application is made for letters of administration (with or without a will annexed) of the goods of a bastard dying a bachelor or a spinster, or a widower or widow without issue, notice of such application is to be given to her Majesty's procurator-general (or in case the deceased died domiciled within the duchy of Lancaster, to the solicitor for the duchy in London), in order that he may determine whether he will interfere on the part of the Crown; and no grant is to be issued until the officer of the Crown has signified the course which he thinks proper to take.

89. In the case of persons dying intestate without any known relation, a citation must be issued from the principal registry against the next-of-kin, if any, and all persons having or pretending to have any interest in the personal estate of the deceased. See the "Rules, Orders, and Instructions for the Registrars of the Principal Registry."

Transmission of Papers.

90. When motions are to be made before the judge in court, with regard to any application for probate or administration at a district registry, the district registrar is to transmit all original papers and documents to the principal registry, and the same, after the directions of the court have been taken, will, on the application of the parties, be returned to the district registrar together with an office copy of the decree of the judge.

91. Original papers are also to be forwarded to the principal registry whenever an inspection of them is necessary, in order to enable the registrars to answer the questions submitted to them by the district registrar.

92. Original papers and documents may be transmitted by the district registrars to the registrars of the principal registry through the post office. Such letters or packets are to be superscribed with the words "On her Majesty's Service," and may be registered, if thought necessary.

Probate Copies of Wills.

93. The district registrar is to take care that the copies of wills and affidavits to be annexed to the probate or letters of

Non-contentious Business.

administration are fairly and properly written, and is reject those which are otherwise.

Office Copies.

94. Office copies of wills, and other documents furnished a district registry, will not be collated with the original wil other document, unless specially required. Every copy required to be examined shall be certified under the hand of district registrar to be an examined copy.

95. The seal of the court is not to be affixed to any of copy of a will, or other document, unless the same has b certified to be an examined copy.

Attendances with Documents.

96. If a will or other document filed in a district registry required to be produced at any place within three miles that registry, application must be made for that purpo not later than the day previously to that named for production.

97. If a will or other document filed in a district registry required to be produced at any place beyond the abo distance, application must be made for that purpose sufficient time to allow for making and examining a copy such will or other document to be deposited in its place.

Doubtful and Difficult Cases.

98. The district registrars are in every case of doubt difficulty to communicate with the registrars of the princip registry.

Taxing Bills of Costs.

99. All bills of costs are to be referred to the registrars the principal registry for taxation, and no special order shall b required for the purpose.

100. The rules in respect to taxing bills of costs will b found in the "Rules, Orders, and Instructions for th Registrars of the Principal Registry."

AMENDED RULES AND ORDERS

for the District Registrars of her Majesty's Court of Probate, in respect of

NON-CONTENTIOUS BUSINESS.

Dated the 14th day of January, 1871.

In place of Rule 7 of the Rules, Orders, and Instructions for the District Registrars of her Majesty's Court of Probate, it is ordered that—

7. If there be no attestation clause to a will or codicil presented for probate, or if the attestation clause thereto be insufficient, the district registrar must require an affidavit from at least one of the subscribing witnesses, if they or either of them be living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 Vict. c. 24, in reference to the execution, were in fact complied with.

7A. The practice of registering affidavits shall be discontinued, and, in lieu thereof, a note signed by the district registrar shall be inserted on the engrossed copy will or codicil annexed to the probate or letters of administration, and registered, to the effect that affidavits of due execution, of domicil, or as the case may be, have been filed; Provided, that in cases presenting difficulty the affidavits themselves may still be registered with the consent of a registrar of the principal registry.

FORMS of NOTES to be used in the DISTRICT REGISTRIES when applicable.

Affidavits of due execution filed.

C. D.,
District Registrar.

Affidavits of identity of Will (*or* Codicil *or* Memorandum) filed.

C. D.,
District Registrar

Affidavits of domicil and law filed.

C. D.,
District Registrar.

Non-contentious Business.

N.B.—*Rules* 65 *and* 66 *were repealed by order of the Pres* (*Sir James Hannen*), *dated* 21*st March*, 1882, *and the follo* *Rules substituted* :—

65. In every affidavit made by two or more deponents names of the several persons making the affidavit shal inserted in the jurat, except that if the affidavit of all deponents is taken at one time by the same officer, it shal sufficient to state that it was sworn by both (or all) of "above-named" deponents.

66. No affidavit having in the jurat or body thereof interlineation, alteration, or erasure shall be filed or made of, unless the interlineation or alteration other than by era if authenticated by the initials of the officer taking the affida nor, in the case of an erasure, unless the words or fig appearing at the time of taking the affidavit to be written the erasure are re-written and signed or initialled in the mar of the affidavit by the officer taking it. (See also p. 819.)

For amended Rule 18 (Married Woman's Will), see pendix II., p. 818.

For Rule 101 (Certificate as to Value of Estate and D on Grant), see Appendix II., p. 825.

For Rule 102 (Resealing English Grants in Ireland), Appendix II., p. 826.

For Rule 103 (Land Transfer Act, 1897), see Appendix p. 829.

FORMS.

Specimens of Forms for use in the District Registries a given at the end of Appendix V., p. 1083.

In addition to the Ordinary Fees to be taken in the District Registries attached to the Court of Probate

IN NON-CONTENTIOUS BUSINESS,

The FEES to be taken in cases of Personal Applications are the same (with slight verbal alterations) as those taken in Personal Applications at the Principal Registry. Vide ante, p. 902.

Non-contentious Business.

FEES

To be allowed Proctors, Solicitors and Attornies practisi
in the District Registries of the Court of Probate.

(February 5th, 1874.)

In respect of Probates,

Including Double or Cessate Probates or Letters of Administration w
will annexed, de bonis non or cessate, upon which Stamp Dut
payable in respect of the personal estate of the testator.

Effects sworn under	Oath of Executor and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn.	Engrossing & collating the Will, 3 folios of 90 words or under, including parchment.	Probate under Seal.	Extracting.	Clerk
£	s. d.	s. d.	s. d.	£ s. d.	s. d.	£ s.
5	2 6	2 6	4 6	0 1 0	1 0	—
20	2 6	2 6	4 6	0 1 0	3 4	0 1
100	5 0	5 0	4 6	0 1 0	6 8	0 2
200	6 8	6 8	4 6	0 3 0	6 8	0 2
300	10 0	10 0	4 6	0 7 6	6 8	0 2
450	10 0	10 0	4 6	0 12 0	6 8	0 2
600	10 0	10 0	4 6	0 16 6	6 8	0 2
800	10 0	10 0	4 6	1 2 6	6 8	0 2
1,000	10 0	10 0	4 6	1 13 0	6 8	0 2
1,500	10 0	10 0	4 6	2 5 0	6 8	0 5
2,000	10 0	10 0	4 6	3 0 0	6 8	0 5
3,000	10 0	10 0	4 6	3 15 0	13 4	0 5
4,000	10 0	10 0	4 6	4 10 0	13 4	0 5
5,000	10 0	10 0	4 6	4 15 0	13 4	0 7
6,000	10 0	10 0	4 6	5 0 0	13 4	0 7
7,000	10 0	10 0	4 6	5 5 0	13 4	0 7
8,000	10 0	10 0	4 6	5 10 0	13 4	0 7
9,000	10 0	10 0	4 6	5 15 0	13 4	0 7
10,000	10 0	10 0	4 6	6 0 0	13 4	0 7
12,000	10 0	10 0	4 6	6 5 0	13 4	0 7
14,000	10 0	10 0	4 6	6 10 0	13 4	0 7
16,000	10 0	10 0	4 6	6 17 6	13 4	0 7
18,000	10 0	10 0	4 6	7 5 0	13 4	0 7
20,000	10 0	10 0	4 6	7 12 6	13 4	0 7
25,000	10 0	10 0	4 6	8 2 6	13 4	0 7
30,000	10 0	10 0	4 6	8 15 0	13 4	0 7
35,000	10 0	10 0	4 6	9 7 6	13 4	0 7
40,000	10 0	10 0	4 6	10 6 3	13 4	0 7
45,000	10 0	10 0	4 6	11 5 0	13 4	0 7
50,000	10 0	10 0	4 6	12 3 9	13 4	0 7
60,000	10 0	10 0	4 6	13 2 6	13 4	0 7
70,000	10 0	10 0	4 6	15 0 0	13 4	0 7
80,000	10 0	10 0	4 6	16 17 6	13 4	1 1

Effects sworn under	Oath of Executor and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn.	Engrossing & collating the Will, 3 folios of 90 words or under, including parchment.	Probate under Seal.	Extracting.	Clerks.	Non-contentious Business.
£	s. d.	s. d.	s. d.	£ s. d.	s. d.	£ s. d.	
90,000	10 0	10 0	4 6	18 15 0	13 4	1 1 0	
100,000	10 0	10	4 6	20 12 6	13 4	1 1 0	
120,000	10 0	10	4 6	21 11 3	13 4	1 1 0	
140,000	10 0	10 0	4 6	23 8 9	13 4	1 1 0	
160,000	10 0	10 0	4 6	25 6 3	13 4	1 1 0	
180,000	10 0	10 0	4 6	27 3 9	13 4	1 1 0	
200,000	10 0	10 0	4 6	29 1 3	13 4	1 1 0	
250,000	10 0	10 0	4 6	30 18 9	13 4	1 1 0	
300,000	10 0	10 0	4 6	35 12 6	13 4	1 1 0	
350,000	10 0	10 0	4 6	40 6 3	13 4	1 1 0	
400,000	10 0	10 0	4 6	41 17 6	13 4	1 1 0	
500,000	10 0	10 0	4 6	43 8 9	13 4	1 1 0	

	£ s. d.
In addition to the above, for all second or subsequent grants of probate or letters of administration with will annexed, the same fees for looking up the will and bespeaking engrossment as on similar grants upon which no stamp duty is payable.	
And for every additional £100,000, or any fractional part of £100,000, under which the personal estate is sworn, in addition to the above fees, a further fee for probate, under seal, of	3 2 6
For engrossing and collating the will, if more than three folios of ninety words each, per folio, including parchment . .	0 1 6
When there are two or more executors, and they are not sworn at the same time, for each attendance after the first on their being sworn to oath and affidavit—	
If the effects are sworn under £20	0 2 6
If the effects are sworn under £100	0 5 0
If the effects are sworn above £100	0 6 8

In respect of Letters of Administration with Will annexed.

	£ s. d.
In addition to the above fees, for preparing and attendance on the execution of the bond if the effects are—	
Under £20	0 2 6
£20 and under £100	0 6 8
£100 and upwards	0 10 0
For engrossing and collating a will or codicil for a grant of probate or letters of administration with the will annexed, when there are pencil-marks in the will or codicil, or when the will or codicil is to be registered fac-simile, in addition to any other fee for engrossing and collating the same—	
If the pencil-marks in the will or codicil, or the part or parts thereof to be registered fac-simile, are two folios of ninety words in length or under	0 1 0
If exceeding two folios, for every additional folio or part of a folio of ninety words	0 0 6

Non-contentious Business.

In respect of Letters of Administration.

Including Letters of Administration de bonis non or cessat
which Stamp Duty is payable in respect of the personal e
the intestate.

Effects sworn under	Oath of Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office and attendance on Administrator being sworn.	Letters of Administration under Seal.	Extracting.	
£	s. d.	s. d.	£ s. d.	s. d.	£
5	2 6	2 6	0 1 0	1 0	
20	3 4	2 6	0 1 0	3 4	0
50	5 0	5 0	0 1 6	4 8	0
100	6 8	6 8	0 3 0	6 8	0
200	10 0	6 8	0 4 6	6 8	0
300	13 4	10 0	0 12 0	6 8	0
450	13 4	10 0	0 16 6	6 8	0
600	13 4	10 0	1 2 6	6 8	0
800	13 4	10 0	1 13 0	6 8	0
1,000	13 4	10 0	2 5 0	6 8	0
1,500	13 4	10 0	3 7 6	6 8	0
2,000	13 4	10 0	4 10 0	13 4	0
3,000	13 4	10 0	4 18 9	13 4	0
4,000	13 4	10 0	4 17 6	13 4	0
5,000	13 4	10 0	5 5 0	13 4	0
6,000	13 4	10 0	5 12 6	13 4	0
7,000	13 4	10 0	6 0 0	13 4	0
8,000	13 4	10 0	6 7 6	13 4	0
9,000	13 4	10 0	6 15 0	13 4	0
10,000	13 4	10 0	7 2 6	13 4	0
12,000	13 4	10 0	7 10 0	13 4	0
14,000	13 4	10 0	7 17 6	13 4	0
16,000	13 4	10 0	8 8 9	13 4	0
18,000	13 4	10 0	9 0 0	13 4	0
20,000	13 4	10 0	9 11 3	13 4	0
25,000	13 4	10 0	10 6 3	13 4	0
30,000	13 4	10 0	11 5 0	13 4	0
35,000	13 4	10 0	12 3 9	13 4	0
40,000	13 4	10 0	13 11 3	13 4	0
45,000	13 4	10 0	15 0 0	13 4	0
50,000	13 4	10 0	16 7 6	13 4	0
60,000	13 4	10 0	17 16 3	13 4	0
70,000	13 4	10 0	20 12 6	13 4	0
80,000	13 4	10 0	23 8 9	13 4	1
90,000	13 4	10 0	26 5 0	13 4	1
100,000	13 4	10 0	29 1 3	13 4	1
[illegible]00	13 4	10 0	30 9 6	13 4	1
[illegible]00	13 4	10 0	33 5 9	13 4	1
160,000	13 4	10 0	36 2 0	13 4	1
180,000	13 4	10 0	38 18 3	13 4	1
200,000	13 4	10 0	41 14 6	13 4	1
250,000	13 4	10 0	44 10 9	13 4	1
300,000	13 4	10 0	46 17 6	13 4	1
350,000	13 4	10 0	49 4 6	13 4	1
400,000	13 4	10 0	51 11 3	13 4	1
500,000	13 4	10 0	53 18 3	13 4	1

	£	s.	d.	Non-contentious Business.
And for every additional £100,000, or any fractional part of £100,000, under which the personal estate is sworn, in addition to the above fees, a further fee for letters of administration, under seal, of	4	13	6	
When there are two or more administrators, and they are not sworn at the same time, for each attendance after the first on their being sworn to oath and affidavit and on execution of the bond—				
If the effects are under £20	0	3	4	
If the effects are under £100	0	5	0	
If the effects are above £100	0	10	0	

In addition to the above fees, for preparing bond if the effects are—				
Under £20	0	1	8	
£20 and under £50	0	3	4	
£50 and under £100	0	5	0	
£100 and upwards	0	6	8	

Non-contentious Business.

In respect of Double or Cessate Probates, upon which no Stamp Duty is payable.

If the effects are sworn under	Attendance in the Registry, and looking up the Will and bespeaking the engrossment.	Oath of the Executor and attendance on his being sworn.	Affidavit for Inland Revenue Office, and attendance on the Executor being sworn.	Drawing and copying statement in support of application for the duty-paid Stamp.	Attending the Commissioners of Stamps and procuring the duty-paid Stamp.	Double or Cessate Probate under Seal.	Extracting.	Clerks.
£	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*	*s. d.*
5	3 4	2 6	2 6	—	—	1 0	1 0	—
20	3 4	2 6	2 6	—	—	1 0	3 4	1 0
100	6 8	5 0	5 0	6 8	13 4	1 0	6 8	2 0
200	6 8	6 8	6 8	6 8	13 4	3 0	6 8	2 0
300	6 8	10 0	10 0	6 8	13 4	7 6	6 8	2 0
450	6 8	10 0	10 0	6 8	13 4	12 0	6 8	2 0
600	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
800	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1,500	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
2,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
3,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
4,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
5,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	7 6
Above 5,000	The fees to be taken are the same as above, except the clerk's fee, which, if the effects are of the value of £70,000 or upwards, is £1 1*s.*							

	£	*s.*	*d.*
The above fees for drawing and copying the statement in support of application for the duty-paid stamp is to be taken when the statement is five folios of seventy-two words or under. If the statement exceeds five folios, for each additional folio of seventy-two words			
When there are two or more executors to be sworn, and they are not sworn at the same time for [illegible] first, on their [illegible]	0	1	4

Non-contentious Business.

Exemplification of Probate or Letters of Administration with or without Will annexed.

	£	s.	d.
Attending in the district registry, looking up the grant of probate and original will or grant of administration, and bespeaking exemplification	0	6	8
Exemplification under seal and stamp	1	1	0
Extracting	0	6	8
Clerks	0	2	6

In respect of Duplicate and Triplicate Probates or Letters of Administration with or without Will annexed.

	£	s.	d.
Attending in the district registry, looking up the will, and bespeaking duplicate or triplicate of a grant and engrossment	0	6	8
Drawing and copying statement in support of application to the Inland Revenue Office for the duty-paid stamp: The same fee as on a double or cessate probate.			
Attending at the Inland Revenue Office and procuring the duty-paid stamp	0	13	4
Duplicate or triplicate probate or letters of administration with or without the will annexed. If the personal estate is under £450, or any smaller sum, the same fee as on the original grant.			
If the personal estate is of the value of £450 and upwards	0	12	6
Extracting	0	6	8
Clerks	0	2	6

	£	s.	d.
The above fees for drawing and copying the statement in support of application for the duty-paid stamp is to be taken when the statement is five folios of seventy-two words or under. If the statement exceeds five folios, for each additional folio of seventy-two words	0	1	4
When there are two or more executors to be sworn, and they are not sworn at the same time, for each attendance after the first, on their being sworn, the same fee as on a first grant under the same sum.			

Non-contentious Business.

Letters of Administration with or without Will annexed, de bonis non or cessate, upon which no Stamp Duty is payable.

If the effects are sworn under	Attending in the Registry, looking up and perusing the Will, and taking an account of the former Grant.	Oath of the Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office and attendance on Administrator being sworn.	Drawing and copying Statement in support of application to the Inland Revenue Office for the duty-paid Stamp.	Attending at the Inland Revenue Office and procuring the duty-paid Stamp.	De bonis or cessate administration with or without Will under Seal and duty-paid Stamp.	Extracting.	Clerks.
£	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
5	0 6 8	0 5 0	0 2 6	—	—	0 1 0	0 1 0	—
20	0 6 8	0 5 0	0 2 6	—	—	0 1 0	0 3 4	0 1 0
50	0 6 8	0 6 8	0 5 0	—	—	0 1 6	0 4 8	0 2 0
100	0 6 8	0 10 0	0 6 8	0 5 0	0 6 8	0 3 0	0 6 8	0 2 0
200	0 6 8	0 13 4	0 6 8	0 6 8	0 13 4	0 4 6	0 6 8	0 2 0
300	0 6 8	0 16 8	0 10 0	0 6 8	0 13 4	0 12 0	0 6 8	0 2 0
450	0 6 8	0 16 8	0 10 0	0 6 8	0 13 4	0 12 6	0 6 8	0 2 0
Above 450	The fees to be taken are the same as above, except the extracting fee, which, if the effects are £1,500 and upwards, is 13*s.* 4*d.*, and the clerk's fee, which, if the effects are £600 and upwards, is 5*s.*							

	£	s.	d.
If there has been more than one previous grant, for each grant looked up after the first, a further fee of	0	5	0
The above fee for drawing and copying the statement in support of application to the Inland Revenue Office for the duty-paid stamp is to be taken if the statement is five folios of seventy-two words or under. If it exceeds five folios, for each additional folio	0	1	4
In addition to the above fees: for preparing the bond, and for each attendance after the first on the administrators being sworn, and on execution of the bond when there are two or more administrators and they are not sworn at the same time, the same fees			

Non-contentious Business.

In respect of Probates, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Affidavit for Inland Revenue Office, and attendance on the executor being sworn thereto:—The same fee as on ordinary probates.			
Drawing special oath of executor, per folio of seventy-two words	0	1	0
Fair copy of the oath for the district registrar, per folio of seventy-two words	0	0	4
Attending the district registrar thereon	0	13	4
Engrossing same, per folio of seventy-two words	0	0	4
Attendance on the executor being sworn	0	6	8
Engrossing and collating the will	The same fees as on ordinary probates.		
Special or limited probate under seal			
Extracting			
Clerks			

In respect of Letters of Administration with or without Will annexed, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Perusing and abstracting deeds or other instruments, when necessary, at per folio of seventy-two words	0	0	4
Proxy of nomination	0	13	4
Affidavit for Inland Revenue Office, and attendance on the administrator being sworn thereto:—The same fees as on ordinary grants of letters of administration.			
Drawing special oath of the administrator, per folio of seventy-two words	0	1	0
Fair copy of the oath for the district registrar to peruse, per folio of seventy-two words	0	0	4
Attending the district registrar thereon	0	13	4
Engrossing same, per folio of seventy-two words	0	0	4
Attendance on the administrator being sworn, and on execution of the bond	0	6	8
Engrossing and collating the will	The same fees as on ordinary grants of letters of administration, with or without the will annexed.		
Letters of administration, under seal and stamp			
Extracting			
Clerks			

Office Copies of, or Extracts from, Records, Wills, and other Documents.

	£	s.	d.
For attendance in the district registry and searching for a record, will, or other document, or for a grant of probate, or letters of administration, with or without a will annexed, for five years, or any period less than five years, *including* the ordering of a copy	0	5	0
For every five years after the first five years	0	3	4

The above fee for drawing and copying the statement in support of application to the Inland Revenue Office for the duty-paid stamp is to be taken if the statement is five folios of seventy-two words or under. If it exceeds five folios, for each additional folio 0 1 4

In addition to the above fees: for preparing the oath for each attendance after the first on the administrators being sworn, and on execution of the bond when there are two or more administrators and they are not sworn at the same time, the same fees as on ordinary grants of letters of administration.

		£	s
Non-contentious Business.	For the perusal of a record, will, or other document, when necessary, for the purpose of ordering extracts or for any other purpose, including the ordering of extracts, per folio of ninety words	0	0
	For collating an office copy or extract of a record, will, or other document, with the original, or a registered copy thereof, including extracting fee, per folio of ninety words	0	0
	For collating an office copy of the act on granting probate or administration with the original entry thereof, including extracting fee	0	1

Caveats.

	For attendance in the district registry and entering or subducting a caveat	0	6
	For service of warning to a caveat, and copy	0	5

Affidavits other than the Affidavits and Oaths included in the Fees of Probate and Letters of Administration; and Declarations of Personal Estate and Effects.

		£	s.
	For taking instructions for every affidavit or declaration of personal estate and effects	0	6
	For drawing and fair copy of the same, per folio of seventy-two words	0	1
	For every attendance on the deponents or declarants being sworn or affirmed to such affidavits or declarations	0	6

Instruments of Renunciation and Consent, Letters of Attorney, and other Documents.

		£	s.
	For taking instructions for every instrument of renunciation or consent, letters of attorney, or other document	0	6
	For drawing and fair copy thereof, per folio of seventy-two words	0	1

For Commissioners of the Court.

	For each oath administered to each deponent by a commissioner, surrogate, or other person authorised to administer oaths in the Court of Probate	0	1
	For marking each exhibit	0	1
	For each occasion of superintending and attesting the execution of a bond	0	1

Proctors, Solicitors, and Attornies are not entitled to any costs in addition to those allowed by the foregoing tables in respect of the business comprised therein; but in case of their transacting any business not therein provided for, they will be allowed as follows:— Non-contentious Business.

	£	s.	d.
For instructions for any original instrument prepared by them	0	6	8
For perusing every document which it is necessary to peruse as instructions, per folio of seventy-two words	0	0	4
For drawing and fair copy of any original instrument, per folio of seventy-two words	0	1	4
For every plain copy of a document, per folio of seventy-two words	0	0	4
If the same, or any part thereof, is to be copied fac-simile, for the part or parts to be so copied, per folio of seventy-two words, in addition to the above	0	0	2
For every necessary attendance on counsel, or on any practitioner or party other than their own parties	0	6	8

Non-contentious Business.

FEES

To be taken in the District Registries of the Court of Probate.

(March 2nd, 1874.)

Probates or Letters of Administration with Will annexed,

Including double or cessate probates or letters of administration w will annexed, de bonis non or cessate, upon which stamp duty payable in respect of the value of the personal estate of the testat

If the personal estate is sworn to be—	£	s.
Under the value of £5	0	1
20	0	1
100	0	1
200	0	3
300	0	7
450	0	12
600	0	16
800	1	2
1,000	1	13
1,500	2	5
2,000	3	0
3,000	3	15
4,000	4	10
5,000	4	15
6,000	5	0
7,000	5	5
8,000	5	10
9,000	5	15
10,000	6	0
12,000	6	5
14,000	6	10
16,000	6	17
18,000	7	5
20,000	7	12
25,000	8	2
30,000	8	15
35,000	9	7
40,000	10	6
45,000	11	5
50,000	12	3
60,000	13	2
70,000	15	0
80,000	16	17
90,000	18	15
100,000	20	12
120,000	21	11
140,000	23	8
160,000	25	6

[NOTE.—*The basis of these fees is the* NET *value of the personalty.*]

If the personal estate is sworn to be—	£	s.	d.	Non-contentious Business.
Under the value of £180,000	27	3	9	
200,000	29	1	3	
250,000	30	12	9	
300,000	36	12	6	
350,000	40	6	3	
400,000	41	17	6	
500,000	43	8	9	
For every additional £100,000, or any fractional part of £100,000, a further and additional fee of	3	2	6	

DOUBLE OR CESSATE PROBATE, ETC.

For every double or cessate probate, or letters of administration with the will annexed, *de bonis non* or cessate, upon which no stamp duty is payable, when the personal estate is under £450, or any smaller sum, the same fee as on a first grant under the same sum.			
When the personal estate is of the value of £450 and upwards	0	12	6
For every duplicate and triplicate probate, or letters of administration with the will annexed, when the personal estate is under £450 or any smaller sum, the same fee as on a first grant under the same sum.			
When the personal estate is of the value of £450 and upwards	0	12	6

EXEMPLIFICATIONS.

For every exemplification of a probate, or letters of administration with the will annexed, in addition to the fees for engrossing and collating the will and other documents registered with the same	1	1	0

REGISTERING AND COLLATING OR ENGROSSING AND COLLATING WILLS.

For registering and collating or engrossing and collating wills and other documents, if three folios of ninety words each, or under, including parchment	0	4	6
If above three folios of ninety words each, per folio	0	1	6
In cases of grants for Queen's pay or prize money (the effects being under £100), without reference to the length of the will	0	4	6
If there are pencil marks in a will or codicil, or if a will or codicil, or any part thereof, is to be or has been registered fac-simile, in addition to any other fee for registering and collating, or for engrossing and collating the same:			
If the part or parts to be registered or engrossed fac-simile are two folios of ninety words in length, or under	0	1	0
If exceeding two folios, for every additional folio or part of a folio of ninety words	0	0	6

CODICILS TO WILLS ALREADY PROVED.

For every probate of a codicil or codicils, or letters of administration with a codicil or codicils annexed, being a codicil or codicils to a will already proved, the same fees respectively as on a duplicate probate or duplicate letters of administration with will annexed.

Non-contentious Business.

Letters of Administration (*a*).

Including letters of administration de bonis non or cessate, upon wh
stamp duty is payable in respect of the personal estate of an intest

If the personal estate is sworn to be—	£	s
Under the value of £5	0	1
20	0	1
50	0	1
100	0	1
200	0	4
300	0	12
450	0	16
600	1	2
800	1	13
1,000	2	5
1,500	3	7
2,000	4	10
3,000	4	13
4,000	4	17
5,000	5	5
6,000	5	12
7,000	6	0
8,000	6	7
9,000	6	15
10,000	7	2
12,000	7	10
14,000	7	17
16,000	8	8
18,000	9	0
20,000	9	11
25,000	10	6
30,000	11	5
35,000	12	3
40,000	13	11
45,000	15	0
50,000	16	7
60,000	17	16
70,000	20	12
80,000	23	8
90,000	26	5
100,000	29	1
120,000	30	9
140,000	33	5
160,000	36	2
180,000	38	18
200,000	41	14
250,000	44	10
300,000	46	17
350,000	49	4
400,000	51	11
500,000	53	18
For every additional £100,000, or any fractional part of £100,000, a further additional fee of	4	13

(*a*) See footnote to p. 1126.

DUPLICATE AND TRIPLICATE LETTERS OF ADMINISTRATION, ETC.

	£	s.	d.
For every duplicate and triplicate letters of administration when the personal estate is under £300, or any sum less than £300, the same fee as on a first grant of letters of administration under the same sum.			
For every duplicate and triplicate letters of administration when the personal estate is of the value of £300 and upwards	0	12	6

EXEMPLIFICATIONS.

For every exemplification of letters of administration . .	1	1	0

ADMINISTRATION DE BONIS NON OR CESSATE.

For every grant of letters of administration de bonis non or cessate, upon which no stamp duty is payable, when the personal estate is under £300 or any smaller sum, the same fee as on a first grant under the same sum.			
When the personal estate is of the value of £300 and upwards	0	12	6

ADDITIONAL SECURITY.

For noting on the grant of letters of administration with or without will annexed, and on the act, that additional security has been given	0	5	0
For every certificate for the Inland Revenue Office, that additional security has been given	0	1	0

ARTICLES TO PAY PRO RATA.

For articles entered into by administrators to pay creditors *pro rata*, per folio of seventy-two words each . . .	0	2	0
For the bond for the performance of the articles, or for payment of creditors *pro rata*, per folio of seventy-two words .	0	2	0

SEARCHES AND INSPECTION OF WILLS, ETC.

For every search for will or grant of letters of administration or any document filed in a district registry, including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an administration act	0	1	0
For every third will or administration act looked up in addition to the above	0	1	0
For looking up and inspecting an original will after the same is registered in addition to the fee for the search . . .	0	1	0
For looking up and producing any document filed in a district registry other than an original will or administration act .	0	1	0
For a search for a will or grant of letters of administration, and for reading the will when the party applying is unable or unwilling to search for or read the same:			
For the search for each year or part of a year . . .	0	0	6
For reading the will:			
If twenty folios of ninety words each or under . .	0	1	0
For every additional twenty folios or part of twenty folios of ninety words each	0	1	0

Non-contentious Business.

	£	s.	d.
SEARCHES FOR FORMER GRANTS.			
For every search by an officer of the principal registry, or by an officer of a district registry, in order to ascertain whether any probate or grant of letters of administration has already issued, or any application has been made for a grant of probate or administration, as under:—			
For every full year or part of a year which has elapsed since the deceased's death	0	0	6
In case it be requisite to extend the search to one or more other district registries, a similar additional fee for the search in each of such registries.			
SPECIAL AND LIMITED GRANTS.			
For every special or limited grant of probate or letters of administration with or without will annexed, in addition to the ordinary fees, as under:—			
If the personal estate is under the value of £20, 1*s.* per folio of seventy-two words each on the bond, on the act, and on the grant of probate or letters of administration.			
If the personal estate is of the value of £20 and upwards, 2*s.* per folio of seventy-two words each on the bond, on the act, and on the grant of probate or letters of administration.			
Whenever the personal estate to be placed in possession of, or dealt with by, the executor or administrator, by means of a special or limited grant of probate or letters of administration, exceeds in value the sum of £20, the fee of 2*s.* per folio of seventy-two words shall be payable on the bond, on the act, and on the grant, although the personal estate be sworn under £20.			
NOTATION OF DOMICILE.			
For noting on a probate or on letters of administration, with or without will annexed, that the testator or intestate died domiciled in England	0	5	0
OFFICE COPIES AND EXTRACTS.			
For every office copy or extract of a will, or probate or administration act, or of any document filed or deposited in a district registry, if five folios of ninety words or under .	0	2	6
If exceeding five folios of ninety words, for every additional folio or part of a folio	0	0	6
If the will or other document is 200 years old, and five folios of ninety words or under	0	5	0
If exceeding five folios of ninety words, for every additional folio or part of a folio	0	0	9
If the office copy of a will or any part of a will or other document is required to be made fac-simile, and such will or part of a will or other document is two folios of ninety words in length or under, in addition to the fee for the copy	0	1	0
If exceeding two folios of ninety words, for every additional folio or part of a folio	0	0	6
For copies of wills and other documents in foreign languages made by persons specially employed for that purpose, the charges of the persons so employed will be taken in addition			

	£	s.	d.
to any other fees which may be payable in respect of such copies.			
If a copy is required to be printed (in addition to a manuscript copy for the printer, at 6*d.* per folio of ninety words, and collating):—			
If twenty folios of ninety words or under	0	10	0
For every additional folio or part of a folio . . .	0	1	0
For office copy of a will, minute, order, decree, or any document under seal of the court for which no other fee is payable:—			
For the seal, in addition to the fee for the copy and collating	0	5	0
For copies of plans, drawings, and armorial bearings, etc., such fees as shall be determined by the district registrar in each particular case.			

Non-contentious Business.

COLLATING DOCUMENTS.

For collating copy of a probate and will, or copy of letters of administration with or without the will annexed, or any other instrument to be filed or deposited in a district registry, or for collating any copy or instrument with an original document already filed or deposited in a district registry, including the district registrar's certificate in verification thereof:—			
If ten folios of ninety words each, or under . . .	0	2	6
If above ten folios of ninety words each, per folio . .	0	0	3
If there is any pencil-writing copied, or the copy or any part thereof is fac-simile, in addition to the above fees:			
If such pencil-writing or fac-simile copy is two folios of ninety words in length or under	0	0	6
For every additional folio or part of a folio . . .	0	0	3

ATTENDANCES (*b*).

For attendance with any book or original document within three miles of the district registry	1	1	0
For the second and each subsequent attendance at the same place within fourteen days	0	10	6
For attendance with books or original documents within three miles of the district registry, when more than one book or document are required, for each book or document besides the first	0	5	0
For the second and each subsequent attendance at the same place within fourteen days, for each book or document besides the first	0	2	6
For each day's attendance with any book or original document beyond the distance of three miles from the district registry, exclusive of travelling expenses	1	1	0
For each day's attendance with books or original documents beyond the distance of three miles from the district registry, exclusive of travelling expenses, when more than one book or document are required, for each book or document besides the first	0	5	0
The travelling expenses to be advanced and paid to the messenger attending with books or original documents shall include all other necessary expenses which are to be or may have been incurred by such messenger.			

(*b*) See footnote, p. 898.

Non-contentious Business.

DISTRICT REGISTRAR'S MINUTE.

	£	s.
For every district registrar's minute	0	2

FILING.

[N.B.—The filing fee on an affidavit is now 2s., and no fee is charged for an exhibit.]

For filing every affidavit and other document brought into and deposited in a district registry, except the oaths for executors, administrators, or administrators with the will, the first administration bond and the testamentary papers in respect of which probate or administration with will annexed is granted	0	2
For filing every exhibit	0	1
For filing in a district registry any notice required to be sent there from the principal registry	0	0
For filing in the principal registry any notice required to be sent there by a district registrar	0	0

CAVEATS.

For the entry of every caveat	0	1
For each notice of such caveat to the principal or to any district registry	0	1
For subducting a caveat	0	1
For notice to the principal registry or to any district registry to which notice of a caveat has been sent of its having been subducted	0	1

RECEIPTS FOR PAPERS.

For every receipt for documents left in a district registry	0	1
For every receipt for a document or documents delivered out of a district registry	0	1

DEPOSIT OF WILLS.

For depositing every will of a person deceased in a district registry for safe custody	0	10	0

BONDS.

For superintending and attesting the execution of a bond	0	1	6
If not completed on one occasion, for each subsequent attestation	0	1	0

OATHS.

[The fee for an oath is now 1s. 6d.]

For every oath administered by a district registrar or by a commissioner authorised to administer oaths in the district registry to each deponent	0	1 0
For marking each exhibit	0	1 0

ALTERATIONS IN GRANTS.

For making alterations in grants of probate or letters of administration in pursuance of an order of one of the registrars of the principal registry	0	2	6

	£	s.	d.	Contentious Business.
NOTATIONS.				
For noting alterations in and revocations of grants on the record of the same	0	2	6	
For noting second and subsequent grants on the record of the first grant	0	2	6	
For noting renunciations, or any other necessary matter on the record of a grant	0	2	6	
CERTIFICATES.				
For every certificate under the hand of a district registrar for which no other fee is payable	0	2	6	
FIATS.				
For the fiat of a district registrar as to the form in which any will or codicil is to be registered	0	5	0	
For noting on a testamentary paper that probate thereof is refused	0	5	0	
NOTICES.				
For every notice required to be sent to the principal registry for which no other fee is payable, except notices required by Rule 82	0	1	0	
PERUSAL OF DEEDS, ETC.				
For perusing deeds or other documents when necessary, for every folio or part of a folio of 72 words	0	0	3	

Non-contentious Business.

RULES, ORDERS, AND INSTRUCTIO

AS TO

PERSONAL APPLICATIONS

For Grants of Probate or Letters of Administration in District Registries attached to the Court of Probate.

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1. Persons wishing to obtain grants of probate or let administration without the intervention of a proctor, so or attorney, must apply at the district registry in perso not by letter.

2. No such application will be received through an ag any kind (whether paid or unpaid).

3. The applications of parties who are attended by a acting or appearing to act as their adviser in the matt not be entertained.

4. All fees are to be paid in advance in Probate stamps.

5. An application which has in the first instance been through a proctor, solicitor, or attorney, cannot be after treated as a personal application.

6. Applications for grants of probate or administrati cases which have already been before the court (on mot otherwise) will not be entertained as personal application must be made through a proctor, solicitor, or attorney.

7. Whenever it becomes necessary in the course of pr ing with a personal application, to obtain the directions c court, the application will not be proceeded with, but mu placed in the hands of a proctor, solicitor, or attorney.

8. The papers necessary to lead the grant applied for w prepared in the district registry. An applicant is, howev liberty to bring such papers, or any of them, filled up, *b sworn to*, and the same, if correct, may be received (the fee for perusal being charged). All further papers which be required will be drawn in the district registry. Testame papers once deposited in the district registry will not be out unless under special circumstances, and by permission registrar of the principal registry.

Non-contentious Business.

9. When it is necessary to administer an oath or take an affirmation, the party shall be sworn or affirmed before some proper authority of the principal registry, or of a district registry, unless otherwise permitted by the district registrar.

10. Every applicant for a first grant of probate or letters of administration must, if required by the district registrar, produce a certificate of the death or burial of the deceased, or give a satisfactory reason for the non-production thereof.

11. The district registrar may require in any case he sees fit a reference to some person of position or character, to establish the identity of the applicants.

12. The engrossments of wills and testamentary papers are to be made in the district registry, from which the grant is to issue.

13. Every applicant for a grant of probate or letters of administration shall give under his or her hand a schedule of the property to be affected by the grant in the form hereunto annexed, marked A. (The necessary forms will be provided in the district registry.)

14. Legal advice is not to be given to applicants, either with respect to the property to be included in the above-mentioned schedule, or upon any other matter connected with the application, and the district registrar is only to be held responsible for embodying in a proper form the instructions given to him, but he will, as far as practicable, assist applicants by giving them information and directions as to the course which they must pursue.

15. A receipt or acknowledgment of each application will be handed to the applicant, and the production of such receipt will be required of the person who attends to obtain the grant when completed.

16. No clerk or officer of the district registry is to become surety to any administration bond.

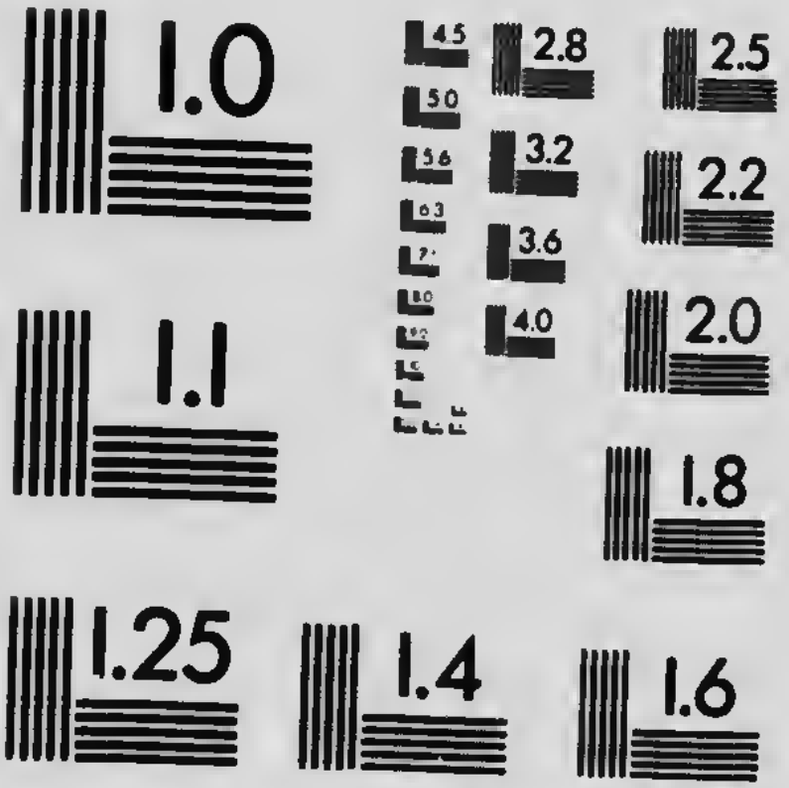
17. All administration bonds in cases of personal applications are to be executed in the district registry making the grant, or in some other registry belonging to the Court of Probate, unless otherwise permitted by the district registrar.

(A.) *An Account of the Personal Estate and Effects of , deceased.*

NOTE.—This form is obsolete. The one now in use is similar to the account annexed to the Inland Revenue affidavit.

MICROCOPY RESOLUTION TEST CHART

(ANSI and ISO TEST CHART No. 2)



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APPENDIX VIII.

RULES

IN THE

COURT OF PROBATE.

RULES and Orders for Her Majesty's Court of Probate, made 30th July, 1862, under the Provisions of the Statutes 20 & 21 Vict. c. 77, and 21 & 22 Vict. c. 95, in respect of

CONTENTIOUS BUSINESS (*a*).

1. All rules and orders heretofore made and issued in respect of contentious business shall be repealed on and after the first day of September, 1862, except so far as concerns any matters or things done in accordance with them prior to the said day.

2. The following Rules and Orders in respect of contentious business shall take effect on and after the first day of September, 1862.

CONTENTIOUS BUSINESS.

3. All proceedings in the Court of Probate or in the registries thereof in respect of business not included in the "Court of Probate Act, 1857," under the expression "Common Form business," except the warning of caveats, shall be deemed to be contentious business.

Parties to Causes.

4. Executors or other parties who, previously to the passing of the "Court of Probate Act, 1857," might prove wills in solemn form of law, shall be at liberty to prove wills under similar circumstances, and with the same privileges, liabilities, and effect, as heretofore.

IMPORTANT.—(*a*) These rules are only in force so far as they have not been altered or annulled by any rules of court made after the commencement of the Judicature Acts; they must not, therefore, be relied upon as governing the present practice unless referred to or embodied in the text.

Contentious Business.

5. Next-of-kin and others who, previously to the passing of the said Act, had a right to put executors or parties entitled to administration with will annexed upon proof of a will in solemn form of law, shall continue to possess the same rights and privileges, and be subject to the same liabilities with respect to costs, as heretofore.

6. Parties who previously to the passing of the said Act had a right to intervene in a cause may do so, with leave of the judge or one of the registrars, obtained by order on summons, subject to the same limitations and the same rules with respect to costs as heretofore.

Caveats.

7. Caveats may be entered in the principal registry of the Court of Probate or in a district registry thereof; if in the principal registry the person entering the caveat must insert the name of the deceased in the index to the caveat book.

8. A caveat shall bear date on the day it is entered, and shall remain in force for the space of six months, and then expire and be of no effect, but may be renewed from time to time.

9. Caveats shall be warned from the principal registry. The warning is to be served by leaving the same or a true copy thereof at the place mentioned in the caveat as the address of the person who entered it.

10. It shall be sufficient for the warning of a caveat that a registrar send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.

11. The warning to a caveat is to state the name and interest of the party on whose behalf the same is issued, and if such person claims under a will or codicil, is also to state the date of such will or codicil, and must be accompanied by an address within three miles of the General Post Office at which any notice requiring service may be left. The form of warning will be supplied in the registry.

12. Upon an appearance being entered in answer to the warning of a caveat, the matter shall be entered as a cause in the court book, and the contentious business shall thereupon be held to commence, and the expenses of the entry of such caveat and the warning thereof shall, upon taxation, be considered as costs in the cause.

Citations.

13. Citations can only be extracted from the principal registry, and no citation is to issue under seal until an affidavit

Contentious Business.

in verification of the averments it contains has been filed in registry.

14. When a party proposes to prove a will or codicil solemn form of law, and no caveat has been entered, or a cav has been entered and no appearance given to the warn thereof, the contentious business shall be held to comme with the extracting of a citation in the Forms Nos. 1 and 2 in some similar form.

15. Before a citation is signed by the registrar a caveat s be entered against any grant being made in respect of estate and effects of the deceased to which such citation rela and notice thereof shall be sent to the registrar of any dist in which the deceased appears to have had a residence at time of his death. Such caveat is to be renewed from tim time, so as to be kept in force so long as the proceedings i ing from the service of the citation are pending. This ru not to apply to citations to exhibit an inventory, and to re an account, nor to citations to show cause why a bond sh not be assigned in order to its being enforced against sureties.

16. Citations to see proceedings may be extracted from registry, on the application of any party to the cause. A f is given, No. 4.

17. Every citation shall be written or printed on [pa ment], and the party extracting the same, or his proc solicitor, or attorney, shall take it, together with a præcip form of which is given, marked No. 5, to the registry, there deposit the præcipe, and get the citation signed sealed. The address given in the præcipe must be wi three miles of the General Post Office.

18. Citations are to be served personally when that ca done, the party cited being resident in Great Britain or Irel but if personal service cannot be effected the direction of judge or registrars as to the mode of service must be obtai Personal service shall be effected by leaving a true copy of citation with the party cited, and showing such party original, if required by him so to do.

19. Citations may be served upon parties resident ou Great Britain and Ireland by the insertion of the same o an abstract thereof, settled and signed by one of the regist as an advertisement, in such of the morning and eve London newspapers, and if necessary in such local newspa and at such intervals as the judge or a registrar may dir provided that in any case the judge or a registrar may dir citation to be served personally. If the party cited be ab having an agent resident in England, such agent mus served with a true copy of the citation.

20. Before a party can proceed after the service of a citation, an appearance must have been entered by or on behalf of the party cited, or an affidavit of personal service, and of non-appearance, must, together with the citation, have been filed in the registry, or if personal service has not been duly effected, the order of the judge, or of one of the registrars in his absence, founded on an affidavit, and giving leave to proceed, must have been obtained. In case the citation has been advertised, the newspapers containing the advertisement, together with the citation and an affidavit of non-appearance, must be filed in the registry.

21. The above rules so far as they relate to the service of citations are to apply to the service of all other instruments requiring personal service.

22. If contentious proceedings arise from the service of a citation, the expense of the citation and service thereof shall, upon taxation, be considered as costs in the cause.

Suits in Formâ Pauperis.

23. Any person desirous of prosecuting a suit *in formâ pauperis* is to lay a case before counsel, and obtain an opinion that he or she has reasonable grounds for proceeding.

24. No person shall be admitted to prosecute a suit *in formâ pauperis* without the order of the judge; and to obtain such order, the case laid before counsel, and his opinion thereon, with an affidavit of the party, or of his or her proctor, solicitor, or attorney, that the said case contains a full and true statement of all the material facts, to the best of his or her knowledge and belief, and an affidavit by the party applying that he or she is not worth £25 after payment of his or her just debts, save and except his or her wearing apparel, shall be produced at the time such application is made.

25. Where a pauper omits to proceed to trial, pursuant to notice, he or she may be called upon by summons to show cause why he or she should not pay costs, though he or she has not been dispaupered, and why all future proceedings should not be stayed until such costs are paid.

Appearances.

26. All appearances are to be entered in the principal registry in a book provided for the purpose, and kept by the clerk of the papers. The entry must set forth the interest which the person on whose behalf it is entered has in the estate and effects of the deceased.

27. The entry of the appearance of a party shall be

Contentious Business.

accompanied by an address within three miles of the Ge Post Office.

Default.

29. In case the party cited does not appear within the limited in the citation, the cause shall proceed in defa nevertheless the party cited may enter an appearance at time before a proceeding has been taken in default, or a wards by leave of the judge or of one of the registrars.

Affidavits as to Scripts.

30. In testamentary causes the plaintiff and defend within eight days of the entry of an appearance on the of the defendant, are respectively to file their affidavit to scripts, whether they have or have not any script in possession.

31. Every script which has at any time been made b under the direction of the testator, whether a will, co draft of a will or codicil, or written instructions for the s of which the deponent has any knowledge, is to be specifi his affidavit of scripts; and every script in the custod under the control of the party making the affidavit is t annexed thereto, and deposited therewith in the registry.

32. No party to the cause, nor his proctor, solicito attorney, shall be at liberty, except by leave of the judg of one of the registrars of the principal registry, to inspec affidavit as to scripts, or the scripts annexed thereto, file any other party to the cause, until his own affidavit as to sc shall have been filed.

The Declaration.

33. In ordinary cases it belongs to the plaintiff to de the declaration and to the defendant to deliver the plea; the party propounding the alleged last will and testame the deceased shall, in all cases, even if defendant in the deliver the declaration, and the party opposing the deliver the plea.

34. The declaration is to be delivered to the opposite p and a copy thereof filed in the registry on one and the day, and within one month from the entry of appearanc the defendant; but the party whose duty it is to bring i declaration shall not be compelled to deliver it or to file after the expiration of eight days after the other party filed his affidavit as to scripts.

35. In case of proving a will in solemn form of law

party whose duty it is shall declare in the Form No. 6, or as near thereto as the circumstances of the case admit. Contentious Business.

36. In case of proceedings in default, the plaintiff shall file his declaration in the registry within eight days from the last day allowed in the citation for the appearance of the defendant.

Interest of Party opposing Will.

37. In a testamentary cause after delivery of the declaration the interest of the party to whom it has been delivered cannot be disputed by the party declaring, except by leave of the judge.

The Plea.

38. A party desirous of pleading, must deliver his plea to the other party within eight days after the service of the declaration, and file a copy thereof in the registry on one and the same day, otherwise he will not be permitted to plead, except with the permission of the judge, or of the registrars of the principal registry in the absence of the judge.

Further Pleadings.

39. Either of the parties may, within eight days of the service upon him of the last previous pleading, give in a replication, rejoinder, sur-rejoinder, rebutter, or demurrer, as he may be advised. The form of the declaration and plea will, it is presumed, be a sufficient guide as to the form of any further pleadings.

General Rules as to Pleadings.

40. If one party propounds a will or testamentary script in his declaration, and the adverse parties, or either of them, desire to propound another will or testamentary script, the adverse parties must, with their pleas, deliver to the opposite party and file in the registry a declaration propounding such other will or testamentary script, to which the opposite party shall plead; and the form of declaration, and the pleadings and proceedings arising therefrom, shall be the same as are directed by the rules and orders of this court in respect to the original declaration delivered and filed in the cause. [Nos. 40 and 40A are amended Rules, dated Dec. 29th, 1865.

40A. The party or parties pleading to a declaration propounding a will or testamentary script shall be allowed to plead only the pleas hereunder set forth, unless by leave of the judge, to be obtained on summons.

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1. That the paper writing bearing date, etc., and alleged
the plaintiff [*or* defendant] to be the last will
testament [*or* codicil to the last will and testament]
A. B., late of, etc., deceased, was not duly execu
according to the provisions of the Statute 1 Vict. c.
in manner and form as alleged.
2. That A. B., the deceased in this cause, at the time
alleged will [*or* codicil] bears date, to wit, on the, c
was not of sound mind, memory, and understanding
3. That the execution of the said alleged will [*or* codi
was obtained by the undue influence of C. D.
others acting with him.
4. That the execution of the said alleged will [or codi
was obtained by the fraud of C. D. and others acti
with him.
5. That the deceased at the time of the execution of the s
alleged will [or codicil] did not know and approve
the contents thereof.

Any party pleading the last of the above pleas shall therew
(unless otherwise ordered by the judge) deliver to the adve
parties and file in the registry particulars in writing, stati
shortly the substance of the case he intends to set up the
under; and no defence shall be available thereunder wh
might have been raised under any other of the said pleas, unl
such other plea be pleaded therewith.

41. In all cases the party opposing a will may, with his pl
give notice to the party setting up the will that he mer
insists upon the will being proved in solemn form of law, a
only intends to cross-examine the witnesses produced in su
port of the will, and he shall thereupon be at liberty to do
and shall be subject to the same liabilities in respect of costs
he would have been under similar circumstances according
the practice of the Prerogative Court.

42. Either party desiring to alter or amend a pleading m
apply to the court upon motion; but if the alteration
amendment required be merely verbal or in the nature o
clerical error it may be made by order upon summons.

43. When a pleading has been ordered to be altered
amended, the time for filing the next pleading shall commen
from the time of the order having been complied with.

44. If a party in any cause fail to deliver, or file a copy
the declaration, plea, or other pleading within the time specif
in these rules, or within such extended time as may have be
allowed, the party to whom such declaration, plea, or oth
pleading ought to have been delivered shall not be bound
receive it, and the copy of such declaration, plea, or oth
pleading shall not be filed, unless by direction of the judge,

by order of the registrars of the principal registry, obtained on summons. The expense of every application for such direction or order shall fall on the party who has caused the delay, unless the judge or registrars shall otherwise direct.

45. When in any cause a conditional order is made, the party entitled to proceed in default must, before he can take the next step, obtain an order of the registrars, or, if required, an order of the judge upon summons, or on motion in court.

The Issue.

46. Within fourteen days after the delivery of the last pleading in the cause, the party who brought in the declaration is to deliver to the other parties in the cause the issue in the Form No. 11, or in a form as near thereto as the circumstances of the case will admit, but the issue is not to be filed.

The Mode of Trial.

47. The party who delivers the issue shall therewith give notice to the other parties to the cause, that, after the expiration of eight days, he intends on a day to be specified in the notice to apply to the court to try the questions at issue before itself, either with or without a jury, or to direct an issue to be tried before a judge of assize, as the case may be; and if he do not give such notice with the issue, or within sixteen days from the day on which the issue was delivered, the other party may give a similar notice to him. A form of notice, No. 12, is subjoined.

48. A copy of every such notice shall be filed in the registry with the case for motion as to mode of trial.

49. In each case the judge shall, after hearing the parties upon motion in court, direct in what mode the cause shall be tried or heard.

The Record.

50. After the direction of the judge has been obtained as to the mode in which the cause is to be tried or heard, the party who delivered the declaration shall, within eight days, deposit the record of the cause in the registry. The record is to conclude with a statement of the mode in which the judge has directed the cause to be tried or heard, as in the Form No. 13.

51. In default of the appearance of defendants, being parties cited, a record, as in Form No. 14, or as near thereto as can be, shall be deposited in the registry.

Contentious Business.

Trial by Jury.

52. If the cause be directed to be tried by a jury, the questions at issue between the parties are to be prepared by the party declaring from the record, and settled by one of the registrars of the principal registry. A form is given, No. 15, and a copy of such questions so settled is to be served on all the other parties to the cause.

53. After the questions have been so settled, any party in the cause shall be at liberty to apply to the judge on summons to alter or amend the same, and his decision shall be final and binding on the parties.

Setting down the Cause for Trial or Hearing.

54. The party who has deposited the record shall set down the cause for trial or hearing, and upon the day on which he so sets it down shall give notice of his having done so to each party for whom an appearance has been entered; but if he delay setting down the cause for trial or hearing for the space of one month after the court has directed the mode in which the questions at issue shall be tried or heard, either of the other parties may set the cause down for trial or hearing, and give a similar notice. A copy of every such notice shall be filed in the registry; and the cause, unless the judge shall otherwise direct, shall come on in its turn.

55. No cause is to be called on for trial or hearing until after the expiration of ten days from the day when the same has been set down for trial or hearing, and notice thereof has been given, save with the written consent of all parties to the suit, previously filed in the registry.

Demurrer.

56. All demurrers are to be set down for hearing in the same manner as causes, and will come on in their turn with other causes to be heard by the judge without a jury.

The Hearing.

57. The hearing of the cause shall be conducted in court, and the counsel shall address the court, subject to the same rules and regulations as now obtain in the courts of common law.

58. After the conclusion of the trial or hearing, the registrar shall enter on the record the finding of the jury, or the decision of the judge, in a form corresponding as near as may be with those given, Nos. 25 and 26, and shall sign the same.

New Trial.

59. An application for a new trial of an issue tried before a jury may be made to the court by motion within fourteen days from the day on which the issue was tried if the court be then sitting, if not, on the first motion day after the expiration of the fourteen days.

60. An application for a rehearing of a cause heard before the judge without a jury, and in which evidence has been given *viva voce*, may be made by motion within fourteen days from the day on which the same was heard, if the court be then sitting, if not, on the first motion day after the expiration of the fourteen days.

Interest Causes.

61. In interest causes, as heretofore, each party shall be at liberty to deny the interest of the other; and in such cases both parties may, with and subject to the permission of the judge, adduce proof on one and the same trial of their interests respectively.

62. In interest causes the pleading of each party must show on the face of it that no other person exists having a prior interest to that of the claimant.

63. Forms of the declaration and plea in an interest cause are given, No. 7 and No. 9.

Proceedings by Petition.

64. Any question arising in a cause, and not being one of interest, domicile, or other matter usually brought before the court by declaration and plea, may be brought before the court by petition.

65. The party desiring to proceed by petition is to give notice thereof in writing to all the other parties in the cause, and such notice is to set forth the question intended to be raised for the decision of the court, and a copy of such notice is to be filed in the registry.

66. In proceedings by petition the plaintiff shall, within eight days after he has given notice, deliver his petition to the defendant, and file a copy thereof in the registry upon one and the same day.

67. The defendant shall, within eight days after the delivery of the petition, deliver his answer to the plaintiff, and file a copy thereof in the registry upon one and the same day; and the same course shall be pursued with respect to the reply rejoinder, etc., until the petition is concluded.

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68. When the defendant raises the question to be heard by petition, and gives notice thereof to the plaintiff, the plaintiff shall, within eight days from the receipt of such notice, file a petition; otherwise the defendant shall be at liberty to do so.

69. Both plaintiff and defendant shall, within eight days from the day upon which the petition is concluded, file in the registry such affidavits and other proofs as may be necessary in support of their several averments therein. A form of petition is given, No. 28.

70. After the time for filing the affidavits and other proofs has expired, the petitioner is to set down the petition for hearing in the same manner as a cause.

Subpœnas.

71. Every subpœna shall be written or printed on parchment, and may include the names of any number of witnesses. The party, or his proctor, solicitor, or attorney, shall take it, together with a præcipe, to the registry, and there get it signed and sealed, and deposit the præcipe. Forms are given, Nos. 16, 17, 18, and 19.

Admission of Documents.

72. Any party in a cause may call upon the other party or parties, by notice in writing in the form given, No. 20, to admit any document, saving any just exceptions; and in case of refusal or neglect to admit the same, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial or hearing the judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed as costs in the cause except in cases where the omission to give the notice was, in the opinion of the registrar, a saving of expense.

Production of Wills, etc.

73. Applications for an order for the production of papers or writings purporting to be testamentary, may be made to the judge, by motion or by summons when a suit is pending, and by motion upon affidavit when no suit is pending. If it can be shown that a testamentary paper is in the possession, within the power, or under the control of any person, a subpœna for the production of the same may be obtained by a registrar's order, founded on an affidavit. Forms of subpœnas applicable to these cases are given, Nos. 21 and 22, and Forms of Præcipe, Nos. 23 and 24.

Guardians to Minors.

74. A minor may elect a guardian for the purpose of carrying on, defending, or intervening in a suit, in the same manner and subject to the same rules as in respect of non-contentious business, and without having such guardian assigned to him; but guardians are to be assigned to infants (under the age of seven years) for the above purposes by the judge, or by an order of one of the registrars, founded on an affidavit to the effect required for such assignment in non-contentious business.

Pencil Writing on Will, &c.

75. When any pencil writing appears on a will, script, or other document filed in the registry, a facsimile copy of the will, script, or other document, or of the pages or sheets thereof, containing the pencil writing, must also be filed with those portions written in red ink which appear in pencil in the original. Such copy must be examined by an examiner in the registry.

Inventories.

76. In contentious business, inventories, and not merely declarations of the personal estate and effects of the deceased, are to be filed, unless by order of the judge or of a registrar. The form of inventory is given, No. 27.

Notices.

77. All notices required by these rules, or by the practice of the court, are to be in writing.

Real Estate.

78. Any person proceeding to prove a will in solemn form, or to revoke the probate of a will, may, if the will affects real estate, apply to the judge, or to a registrar in his absence, for an order authorising him to cite the heir or heirs-at-law or other person or persons having or pretending interest in such real estate to see proceedings; and the judge or registrar, on being satisfied by affidavit that the will in question does affect or purport to affect the real estate, will make an order authorising the person applying to cite the heir or heirs-at-law or other such person or persons as aforesaid: Provided always, that the judge may give any special directions as to the persons to be cited which he may think the justice of the case requires.

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Receiver of Real Estate.

79. A receiver of real estate pending suit is to give bond
the form given, No. 29, or in a form as near thereto as t
circumstances of the case will admit of, with two sureties, a
in a penalty of such an amount as may be directed by t
judge.

Affidavits.

80. Every affidavit is to be drawn in the first person, a
the addition and true place of abode of every person making
affidavit is to be inserted therein.

81. In every affidavit made by two or more persons, t
names of the several persons making it are to be written in t
jurat.

82. No affidavit will be admitted in any matter dependi
in the Court of Probate any material part of which is writt
on an erasure, or in the jurat of which there is any interline
tion or erasure.

83. When an affidavit is made by any person who is blind,
who, from his or her signature or otherwise, appears to
illiterate, the registrar, commissioner, or other person befo
whom such affidavit is made is to state in the jurat that t
affidavit was read in the presence of the party making t
same, and that such party seemed perfectly to understan
the same, and also that such party made his or her ma
thereto, or wrote his or her signature thereto, in the presen
of the registrar, commissioner, or other person before who
the affidavit was made.

84. No affidavit is to be deemed sufficient which has be
sworn before the party on whose behalf the same is offered,
before his proctor, solicitor, or attorney, or before the partn
or clerk of his proctor, solicitor, or attorney.

85. Proctors, solicitors, and attorneys, and their clerk
respectively, if acting for any other proctor, solicitor, or attorne
shall be subject to the rules in respect of taking affidavits whic
are applicable to those in whose stead they are acting.

86. Where a special time is limited for filing affidavits,
affidavit filed after that time shall be used in court, unless b
leave of the judge.

Appeals.

87. Application for leave to appeal against any interlocutor
decree or order of the Court of Probate, must be made withi
a month of the delivery of the decree or order appealed from
or within such extended time as the judge shall direct, an

notice of such application must be given to the party in whose favour such order or decree has been made, and filed in the registry. A form of notice is given, No. 29.

88. Parties may proceed to carry into effect the decision of the Court of Probate, notwithstanding any notice of appeal, or of application for leave to appeal, unless the judge shall otherwise order; and the judge may order the execution of his decree or order to be suspended, upon such terms as he sees fit.

Time fixed by these Rules.

89. The judge shall in every case in which a time is fixed by these rules for the performance of any act have power to extend the same to such time, and with such qualifications and restrictions, and on such terms, as to him may seem fit.

90. To prevent the time fixed for the performance of any act from expiring before application can be made to the judge for an extension thereof, any one of the registrars may, upon reasonable cause being shown, extend the time, provided that such time shall in no case be extended beyond the day upon which the judge shall next sit in chambers, or in court to hear motions.

91. The time fixed in these rules for bringing in pleadings and for other proceedings shall in all cases be exclusive of Sundays, Christmas Day, and Good Friday.

Taxing Bills of Costs.

92. All bills of costs in contentious business are referred to the registrars of the principal registry for taxation, and may be taxed by them without any special order for that purpose. Such bills are (unless by leave of the judge or a registrar) to be filed in the registry two days at least before the day appointed for the taxation. An appointment for taxation will be made at the time of filing the bill.

93. The party who has obtained an appointment to tax his bill of costs shall give the other party or parties to be heard on the taxation thereof at least one clear day's notice of such appointment, and shall at the same time deliver to him or them a copy of the bill to be taxed.

94. When an appointment has been made by a registrar of the principal registry for taxing any bill of costs, and any of the parties to be heard on the taxation do not attend at the time appointed, the registrar may nevertheless proceed to tax the bill, after the expiration of a quarter of an hour, upon being satisfied by affidavit that the parties not in attendance had due notice of the time appointed.

95. If more than one-sixth is deducted from any bill of costs

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taxed as between practitioner and client, no costs incurred in the taxation thereof shall be allowed as part of such bill.

Accounts of Administrators and Receivers pending Suit.

96. Every administrator *pendente lite* and receiver of real estate shall exhibit an inventory and render an account of the property of the deceased which comes to his hands, and the accounts of every such administrator and receiver shall be referred to the registrars of the principal registry for investigation and report, before the same are allowed by the court, unless the judge shall otherwise direct; and the foregoing rules and orders respecting the taxation of costs shall, so far as the same are applicable, be observed with respect to the investigation of such accounts, and any other accounts referred to the registrars for examination.

Paying Money out of Court.

97. Persons applying for payment of money out of the registry must give forty-eight hours notice of such application to the clerk of the papers. Such notice is to be in writing, and to set forth the day on which the money applied for was paid into the registry—the minute entered on receiving the same—the date and particulars of the order for payment to the applicant—and if the same be in payment of costs, the date of filing the bill for taxation and of the registrar's certificate. During the summer vacation money can only be paid out on certain days, to be fixed by the registrars, notice whereof will be given in the registry.

SUMMONSES.

98. A summons may be taken out by any person in any matter, whether contentious or non-contentious, in which there is no rule or practice requiring a different mode of proceeding.

99. A printed form must be obtained and filled up with the object of the summons, and a proper fee stamp affixed. It must then be taken to the clerk of the papers, who will insert in the blank left in the printed form the time when the summons is to be made returnable, and get the summons signed by a registrar.

100. The clerk of the papers is then to enter the name of the cause or matter and of the agent taking out the summons in the summons book, and return the summons (with the stamp cancelled), signed, to the applicant, who is to serve a

copy on the party summoned. This copy must be served on the party summoned one clear day at least before the summons is returnable, and before 7 p.m. On Saturdays the copy of the summons is to be served before 2 p.m.

101. On the day and at the hour named in the summons the party issuing the same is to present himself with the original at the judge's chambers.

102. Both parties will be heard by the judge, who will make such order as he may think fit, and a note of such order will be made by the registrar in the summons book.

103. If the party summoned do not appear after the lapse of half an hour from the time named in the summons, the party taking out the summons shall be at liberty to go before the judge, who will thereupon make such order as he may think fit.

104. An attendance on behalf of the party summoned for the space of half an hour, if the party taking out the summons do not during such time appear, will be deemed sufficient, and bar the party taking out the summons from the right to go before the judge on that occasion.

105. If a formal order is desired, the same may be had on the application of either party, and for that purpose the original summons, or the copy served on the opposite party, must be filed in the registry. An order will thereupon be drawn up, and delivered to the person filing such summons or copy. The clerk of the papers before giving out the order is to see that the proper stamp has been affixed to it, and is to cancel such stamp.

106. If a summons is brought to the clerk of the papers, with a consent to an order endorsed thereon, signed by the party summoned, or by his proctor, solicitor, or attorney, an order will be drawn up without the necessity of going before the judge: Provided that the order sought is in the opinion of the registrars one which, under the circumstances, would be made by the judge.

ADDITIONAL RULES AND ORDERS, DATED DECEMBER 29TH, 1865.

Writs of Attachment and other Writs.

107. Applications for writs of attachment, and also for writs of *fieri facias* and of sequestration, must be made to the judge by motion in court.

108. Such writs, when ordered to issue, are to be prepared by the party at whose instance the order has been obtained, and taken to the registry, with an office copy of the order, and, when approved and signed by one of the registrars, shall

Contentious Business.

be sealed with the seal of the court, and it shall not be n
sary for the judge to sign such writs.

109. Any person in custody under a writ of attachment
apply for his or her discharge to the judge if the court be
sitting; if not, then to one of the registrars, who for
cause shown shall have power to order such discharge.

ADDITIONAL RULES AND ORDERS TO TAKE EFFECT AFT
MARCH 2ND, 187[illegible].

Service of Notices, etc.

110. It shall be sufficient to leave all notices and copie
pleadings and other instruments which by the rules and or
of the court are required to be given or delivered to the o
site parties in a cause, or to their proctors, solicitors, or a
neys, and personal service of which is not expressly requi
at the address furnished, by such parties respectively.

111. When it is necessary to give notice of any motion t
made to the court, such notice shall be served on the o
parties who have entered an appearance four clear days
viously to the hearing of such motion, and a copy of the no
so served shall be filed in the registry with the case for mot
but no proof of the service of the notice will be requi
unless by direction of the judge, or of the registrars in
absence.

112. If an order be obtained on motion without due no
to the opposite parties, such order will be rescinded, on
application of the parties upon whom the notice should h
been served; and the expense of and arising from the rese
ing of such order shall fall on the party who obtained it, un
the judge shall otherwise direct.

113. When it is necessary to serve personally any orde
decree of the court, the original order or decree, or an o
copy thereof, under seal of the court, must be produced to
party served, and annexed to the affidavit of service marke
an exhibit by the commissioner or other person before wh
the affidavit is sworn.

Change of Proctor, Solicitor, or Attorney.

114. A party may obtain an order to change his or
proctor, solicitor, or attorney upon application by summon
the judge, or to the registrars in his absence.

115. In case the former proctor, solicitor, or attorney n
lects to file his bill of costs for taxation at the time requi
by the order served upon him, the party may, with the sanct

and by order of the judge or of the registrars, proceed in the cause by the new proctor, solicitor, or attorney, without previous payment of such costs.

Order for the immediate Examination of a Witness.

116. Application for an order for the immediate examination of a witness who is within the jurisdiction of the court is to be made to the judge, or to one of the registrars in his absence, by summons, or if on behalf of a plaintiff proceeding in default of appearance of the parties cited or warned in the cause without summons before one of the registrars, who will direct the order to issue, or refer the application to the judge, as he may think fit.

117. Such witness shall be examined *vivâ voce*, unless otherwise directed, before a person to be agreed upon by the parties in the cause, or to be nominated by the judge or by the registrar to whom the application for the order is made.

118. The parties entitled to cross-examine the witness to be examined under such an order shall have four clear days notice of the time and place appointed for the examination, unless the judge or the registrar to whom the application is made for the order shall direct a shorter notice to be given.

Commissions and Requisitions for Examination of Witnesses.

119. Application for a commission or requisition to examine witnesses who are out of the jurisdiction of the court is to be made by summons, or if on behalf of a plaintiff proceeding in default of appearance without summons, before one of the registrars, who will order such commission or requisition to issue, or refer the application to the judge, as he may think fit.

120. A commission or requisition for examination of witnesses may be addressed to any person to be nominated and agreed upon by the parties in the cause, and approved of by one of the registrars, or for want of agreement to be nominated by the registrar to whom the application is made.

121. The commission or requisition is to be drawn up and prepared by the party applying for the same, and a copy thereof shall be delivered to the parties entitled to cross-examine the witnesses to be examined thereunder two clear days before such commission or requisition shall issue, under seal of the court, and they or either of them may apply to one of the registrars by summons to alter or amend the commission or requisition, or to insert any special provision therein, and the registrar shall make an order on such application, or refer the matter to the judge. Form of a commission and requisition is given in the Appendix No. 31.

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122. Any of the parties to the cause may apply to one registrars by summons for leave to join in a commiss requisition, and to examine witnesses thereunder; a registrar to whom the application is made may dire necessary alterations to be made in the commission or r tion for that purpose, and settle the same, or refer the a tion to the judge.

123. After the issuing of a summons to show cause party to the cause should not have leave to join in a co sion or requisition, such commission or requisition sha issue under seal without the direction of one of the regis

Cases for Motion.

124. Cases for motion are to set forth the style and obj and the names and descriptions of the parties to, the ca proceeding before the court; the proceedings already the cause, and the dates of the same; the prayer of the on whose behalf the motion is made, and briefly, th ci stances on which it is founded.

125. If the cases tendered are deficient in any of the particulars, the same shall not be received in the registry ont permission of one of the registrars.

126. On depositing the case in the registry, and giving of the motion, the affidavits in support of the motion, original documents referred to in such affidavits, or to ferred to by counsel on the hearing of the motion, must left in the registry; or in case such affidavits or docu have been already filed or deposited in the registry, th must be searched for, looked up, and deposited with the clerk, in order to their being sent with the case to the ju

127. Copies of any affidavits or documents to be read o in support of a motion are to be delivered to the other to the suit who are entitled to be heard in opposition th

As to Costs.

128. In all cases in which the court at the hearing of condemns any party to the suit in costs, the proctor, sol or attorney of the party to whom such costs are to be pai forthwith file his bill of costs in the registry, and obt appointment for the taxation, provided that such taxatio not take place before the time allowed for moving for trial or re-hearing shall have expired; or, in case a ru should have been granted, until the rule is disposed of, the judge shall, for cause shown, direct a more speedy ta

Review of Taxation.

129. Application for a review of taxation is to be made to the judge on summons.

Recovery of Costs.

130. Upon the registrar's certificate of costs being signed, he shall at once issue an order of the court for payment of the amount within seven days, unless a summons be taken out for a review of the taxation, in which case the order for payment shall be suspended until the summons is disposed of.

131. This order shall be served on the proctor, solicitor, or attorney of the party liable [or if it is desired to enforce the order by committal on the party himself], and if the costs be not paid within the seven days a writ of *fieri facias* or writ of sequestration or a writ of elegit shall be issued as of course in the registry, upon an affidavit of service of the order, and nonpayment.

As to Subpœnas.

132. The issuing of fresh subpœnas in each term shall be abolished, and it shall not be necessary to serve more than one subpœna upon any witness.

NOTE.—Forms for use in Contentious Business will be found in Appendix V.

ADDITIONAL AND AMENDED RULES AND ORDERS, DATED MARCH 1ST, 1874.

133. All summonses heretofore heard by the registrars at the principal registry in the absence of the judge shall hereafter be heard by one or more of the registrars at the principal registry during the period appointed for the sittings of the court at Westminster, as well as in the judge's absence.

134. All rules and orders in respect to summonses now heard before the judge in chambers at Westminster shall, so far as the same are applicable, be observed in respect of the summonses heard before one or more of the registrars at the principal registry.

135. The registrar before whom the summons is heard will

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direct such order to issue as he shall think fit, or refer the matter at once to the judge.

136. Any person heard on the summons objecting to the order so issued under the direction of the registrars may, subject to any order as to costs, apply to the judge on summons to rescind or vary the same.

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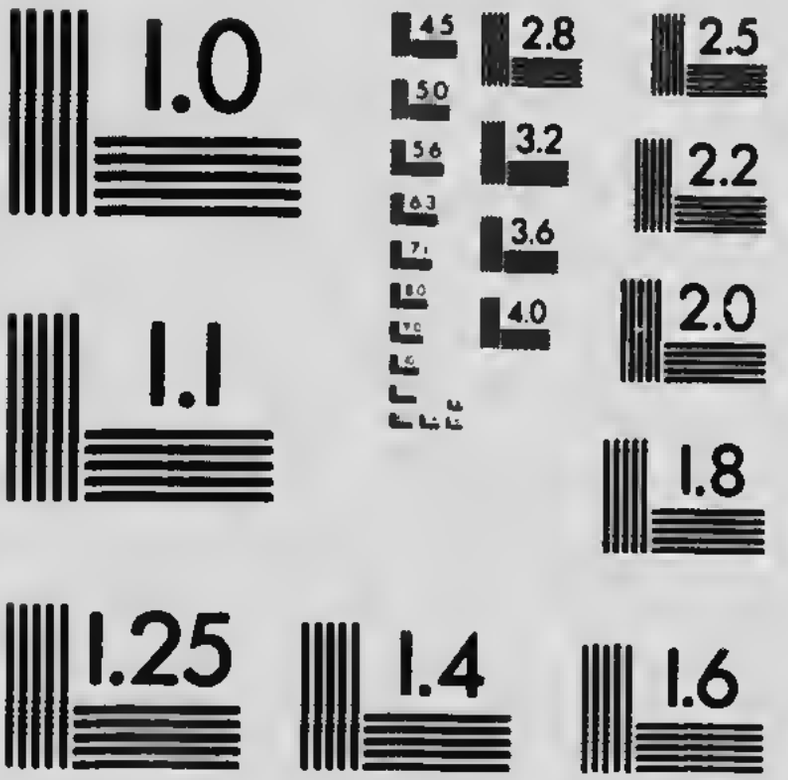

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PRINTED BY
WILLIAM CLOWES AND SONS, LIMITED,
LONDON AND BECCLES.

PARCEL POST TABLE OF W 3HTS AND RATES.

Weight in Pounds	Zones								
	Local	1st Up to 50 miles	2nd 50 to 150 miles	3rd 150 to 300 miles	4th 300 to 600 miles	5th 600 to 1,000 miles	6th 1,000 to 1,400 miles	7th 1,400 to 1,800 miles	8th Over 1,800 miles
1	$0.05	$0.05	$0.05	$0.06	$0.07	$0.08	$0.09	$0.11	$0.12
2	.06	.06	.06	.08	.11	.14	.17	.21	.24
3	.06	.07	.07	.10	.15	.20	.25	.31	.36
4	.07	.08	.08	.12	.19	.26	.33	.41	.48
5	.07	.09	.09	.14	.23	.32	.41	.51	.60
6	.08	.10	.10	.16	.27	.38	.49	.61	.72
7	.08	.11	.11	.18	.31	.44	.57	.71	.84
8	.09	.12	.12	.20	.35	.50	.65	.81	.96
9	.09	.13	.13	.22	.39	.56	.73	.91	1.08
10	.10	.14	.14	.24	.43	.62	.81	1.01	1.20
11	.10	.15	.15	.26	.47	.68	.89	1.11	1.32
12	.11	.16	.16	.28	.51	.74	.97	1.21	1.44
13	.11	.17	.17	.30	.55	.80	1.05	1.31	1.56
14	.12	.18	.18	.32	.59	.86	1.13	1.41	1.68
15	.12	.19	.19	.34	.63	.92	1.21	1.51	1.80
16	.13	.20	.20	.36	.67	.98	1.29	1.61	1.92
17	.13	.21	.21	.38	.71	1.04	1.37	1.71	2.04
18	.14	.22	.22	.40	.75	1.10	1.45	1.81	2.16
19	.14	.23	.23	.42	.79	1.16	1.53	1.91	2.28
20	.15	.24	.24	.44	.83	1.22	1.61	2.01	2.40

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