

1st Session, 4th Parliament, 16 Victoria, 1852.

BILL.

An Act to limit and define the Responsibilities of Executors, Administrators, Trustees and Guardians, in certain cases ; and to facilitate the settlement of their Accounts with the Estates of deceased persons and for other purposes therein mentioned.

Received and Read a first time, Thursday
22nd September, 1852.

Second Reading, Thursday 29th September,
1852.

MR. HARTMAN.

BILL.

An Act to limit and define the Responsibilities of Executors, Administrators, Trustees and Guardians, in certain cases; and to facilitate the settlement of their Accounts with the Estates of deceased persons, and for other purposes therein mentioned.

WHEREAS the Laws now in force in that part of this Province of ^{Preamble.} Canada, formerly known as Upper Canada, relating to Executors, Administrators, Trustees, and Guardians, and to the duration of their responsibilities, operate prejudicially to the advantageous administering of Estates, and prevent many persons from accepting the Trusts vested in them; and whereas parties having accepted such Trusts are obliged from time to time in the pursuit of their affairs, to absent themselves from this Province, thereby subjecting the Estates of deceased persons to much expense, and the several persons interested therein to great inconvenience. And whereas our Court of Chancery for Upper Canada hath now sole jurisdiction in such matters, and it hath become necessary to afford greater facilities for the more expeditious administering of justice in such matters to parties within the several Counties where they reside, by vesting authority in and giving the required jurisdiction in such matters to the several Judges of County Courts. And it is otherwise expedient to afford relief in the premises, and to limit and define the responsibilities of such Executors, Administrators, Trustees, and Guardians, and to vest the Trust in such other person or persons as may be appointed his or their successor or successors. And further, also to facilitate the settlement of the accounts of such Executors, Administrators, Trustees, and Guardians, in the matter of such Estates; Be it therefore enacted, &c.,

That from and after the passing of this Act, it shall and may be lawful for the Executors, Administrators, Trustees, and Guardians, or any one or more of them if he or they see fit so to do, and who may have at any time either before or at the time, or after the passing hereof, administered, or may administer, the Estate of any deceased person or persons, in virtue of his or their Last Will and Testament, or in virtue of any deed of Trust or letters of Guardianship, by petition setting forth the nature the Trust charged on him or them, and that he or they desire to be relieved from administering such Trust, and from all responsibility touching the management of such Estate, to apply to the Judge of the County Court, being the County wherein the Estate to be administered is situate, or wherein the party or parties in trust are living and residing, as well in term as in vacation; praying that the said Judge would grant his order for the fying of the accounts, vouchers, papers and other documents re-

Executors, &c., desiring to be relieved from Trust to apply to judge of County Court.

To file all documents, &c., touching trust, with Clerk of County or Division Court.

lating to said Estate or Trust, and the administration thereof by the party or parties so applying. And that thereupon it shall be lawful for the said Judge, and he is hereby empowered, authorized, and required to issue his order in writing, directing the party or parties making such petition to file in the office of the Clerk of the County Court, or of any one of the Clerks of the Division Courts of which he shall be the Judge, within such delay as to him the said Judge shall seem meet and reasonable, all accounts, vouchers, papers, and documents, of whatsoever nature, touching the said Estate or Trust, and the administration thereof by such Executor or Executors, Administrators, Trustees, or Guardians, or of any one or more of them as the case may be, there to remain in the custody of such Clerk, and to abide the further order of the said Judge in respect thereof.

Clerk to appraise Judge of receipt of such documents.

II. And be it enacted, That it shall be the duty of the said Clerk to receive the said accounts, vouchers, papers, and other documents, and to keep the same in safe and close custody, and forthwith upon receipt thereof, to apprise the Judge of such receipt by him; and the said Judge shall then proceed to appoint under his hand and seal some one or other experienced practical Accountant on behalf of said Estate, to audit the accounts of the said Executors, Administrators, Trustees or Guardians, conjointly with some, or other practical Accountant, to be named by the party or parties so petitioning the Judge as aforesaid or his or their behalf, who will then make report thereon to the said Judge within such further delay as the said Judge shall then fix and appoint for that purpose, not to exceed thirty days nor be less than eight days— with power to said Auditors to appoint a third Accountant as unapire, to act with them in the said matter either before proceeding to audit said accounts, or afterwards in case of difference of opinion between said two Auditors firstly named and appointed, as they shall think fit.

Auditors appointed.

Clerk on order of Judge to deliver up documents, &c., to Auditors.

III. And be it enacted, That it shall be the duty of the said Judge and he is hereby required, as soon as said Auditors shall have been named and appointed as aforesaid, to direct that the Clerk of the said Court do upon the demand of them, the said Auditors, deliver up to them all such accounts, vouchers, papers, and other documents touching said Estate, as may have been fyled with him, for the purpose aforesaid, taking the receipt of the said Auditors therefor, and entering minute of same upon the Record of proceedings had and to be had in the matter of such petition.

Auditors to examine and report thereon on oath.

IV. And be it enacted, That it shall then be the duty of the said Auditors Accountants to scrutinize and carefully examine the said accounts, vouchers, and papers, and to take such other evidence thereof as to them may seem just and equitable in support thereof, and thereafter, within such delay as the Judge may have fixed for that purpose, to make a report of them the said Auditors or of a majority of them in case of difference of opinion on oath, setting forth whether the said accounts be or be not correct, together with the balance or balances due by or to said Executors, &c. And the said Auditors will then file the said Report, and deliver the same either to the Judge or Clerk aforesaid, as may be most convenient. And for the better enabling the

Powers of Auditors.

said Auditors to ascertain the correctness of said accounts, be it also enacted that the said Auditors shall have full power to compel the attendance, as well of the petitioners as of any and every person whom they may see fit to summon before them, and to examine him or them 5 upon oath, (which said oath the said Auditors and each of them is and are hereby authorized to administer,) touching the said accounts, vouchers, papers, and other documents, and shall also have power to submit interrogatories to parties out of the County, or whether residing within or without the Province, directing a commission covering the 10 same to some person or persons of credit, residing in the place where the parties about to be interrogated may happen to be; provided always Proviso. that such person or persons so named in the said Commission, if without the Province, shall have all the powers hereby conferred upon such auditors accountants, to compel the attendance of such party or parties 15 to be examined in manner aforesaid, and to administer the necessary Proviso. oaths. And provided always that the answer to such interrogatories be in writing, signed by the party interrogated, and be forthwith transmitted by the party or parties named in such commission to the auditors accountants aforesaid.

20 V. And be it enacted, That whenever the said Report shall have been so made and filed in the office of the Clerk of any or either of the Courts aforesaid, it shall be the duty of the Judge to ratify and confirm the same under his hand and seal, there to remain upon the Records of such Court, and to be deemed and taken to be to all intents and purposes 25 whatsoever, final and conclusive in the matter of the said Estate; and the Judge shall then direct the Executors, Administrators, Trustees or Guardians, so applying as aforesaid to pay over all monies, if any, which may be ascertained by such accounts and report to be due by him or them to said Estate, and to do and perform all such act or acts as he the 30 said Judge shall deem necessary within such period as he the said Judge shall fix for that purpose, to and in favor of the person or persons who may be named and appointed in the manner hereinafter provided as the successor or successors of such Executors, Administrators, Trustees and Guardians, or of any one or more of them so applying, 35 to be relieved from such Trusts as aforesaid. Judge to confirm report.

VI. And be it enacted, That it shall be lawful for the said Judge, whenever said Report shall have been placed on Record as aforesaid, and he is hereby authorized, empowered and required to name and appoint 40 some one or more person or persons to succeed the party or parties applying to be relieved from the Trusts vested in them, in manner aforesaid, who will signify their acceptance of said Trust, and their willingness to administer such Estate or Trust—such signification to be made in writing, and to be lodged with the Clerk aforesaid, to be by him kept as forming part of the Record in the matter of such petition as aforesaid. 45 Whereupon they the said persons so named, as the successor or successors of the Executors, Administrators, Trustees and Guardians, or any one or more of them so relieved as aforesaid, shall assume the administration of said Estate, and receive from the Clerk in whose custody the same may be, all accounts, vouchers, papers, and other documents (not 50 being the account and vouchers in support thereof of the party or parties Judge empowered to appoint successors. Clerk to deliver up documents, &c.

whom he or they may have relieved,) pertaining to said Estate, and shall also have all the powers which his or their predecessor may have had, and could of right have exercised under the Will and Testament, codicil, deed of Trust, or letter of Guardianship, in which he or they were named, and under which they may have administered, and shall continue to exercise all such powers during pleasure, and until he or they shall have been relieved in manner hereinbefore provided with respect to the original Executors, Administrators, Trustees and Guardians to said Estate; Provided always that such appointment shall be made under the hand and seal of the said Judge, and that the party or parties so named and appointed, and having accepted such Trust as aforesaid, shall during all the time he or they shall administer such Estate be subject and liable to the performance of the several duties, charges, and responsibilities by law now required of, or imposed on Executors, Administrators, Trustees and Guardians, in so far as the same be not inconsistent with the provisions of this Act, and shall account for his or their administration of such Estate until he or they shall have been relieved from such Trust in manner hereinbefore provided with regard to Executors, Administrators, Trustees or Guardians originally named by such deceased person or persons respectively, to administer his or their Estate as the case may be, or until the several conditions and requirements of the Will be fully carried out.

Proviso :
Successors to
be equally
responsible
with former
Executors.

Clerk to give
up documents,
&c., to parties
assuming
trust.

VII. And be it enacted, That it shall be the duty of the said Judge to direct the Clerk of the Court or Courts aforesaid, and he is hereby required upon the order in writing of the said Judge to be made in that behalf to deliver up all accounts, papers, and other documents relating to such Estate, of which he may for the time being have the custody, together with a certified copy of the account of the retiring Executors, Administrators, Trustees or Guardians of such Estate or either of them, and also a certified copy of the Report of the said auditors accountants, or of the majority of them thereon, to the party or parties named and appointed, and accepting the office and duty of Executor, Administrator, Trustee or Guardian in manner aforesaid, to be by him or them held in Trust as the law directs; for which copy or copies the said Clerk shall be allowed and shall receive from and out of the assets of such Estate the sum of three pence for each and every folio, together with the sum of two shillings and sixpence for each certificate so made and signed by him.

Retiring parties to be first paid.

VIII. And be it enacted, That in the event of its being ascertained from the Report of the Auditors aforesaid, that such Estate is indebted to the retiring Executors, Administrators, Trustees or Guardians, or to either or any one or more of them, it shall be lawful for the said Judge, by order in writing, which order he is hereby required to make, to direct the successor or successors of such Executors, Administrators; Trustees and Guardians, any one or more of them, to pay and reimburse the party or parties so retiring, from and out of the first money or moneys belonging to said Estate, which may come into his or their hands, the full amount found to be due to him or them; and his or their receipt and receipts to take for the same, to be produced with the account or accounts of such new Executors, Administrators, Trustees or Guardians, any one

or more of them, whenever he or they may be legally required or desire to make up and present the same.

IX. And be it enacted, That it shall be the duty of the said Judge, and he is hereby required, whenever (and within Judge to grant certificates to retiring parties. days after) the accounts and vouchers of such Executors, Administrators, Trustees or Guardians, one or more of them, so petitioning to be relieved as aforesaid shall have been ascertained to be satisfactory and correct, to grant him or them a certificate of discharge in the form A appended to this Act, which said certificate of discharge shall be final and conclusive in the matter of such petition to all intents and purposes, and shall have the force and effect of a full and perfect discharge for ever of him or them from all responsibility or liability in the matter of such Estate; and the said certificate of discharge made under the hand of the said Judge, and the seal of the County Court of which he shall be the Judge, or if the said Court shall have no seal, then under the seal of the said Judge, shall be received as evidence of such discharge in all courts of justice within the Province of Canada, and as such may be pleaded in law to any and all actions instituted against any such Executor, Administrator, Trustee or Guardian, or two or more of them, in the matter of the said Estate, and such evidence shall be judicially taken notice of by all Judges and Justices within the said Province; and upon production of such certificate of discharge, the said action or actions shall thenceforth be dismissed with costs against the plaintiff or plaintiffs named in such suit or action.

X. And be it enacted, That whenever any devisee or legatee or other person having any beneficiary interest in or under any Last Will or Testament, codicil or codicils thereto, deed of Trust or letter of Guardianship, or if the next of kin or friend of such devisee or legatee, or other person having a beneficiary interest therein or thereunder, shall feel himself, herself or themselves (in the case of more than one) dissatisfied with the Executors, Administrators, Trustees or Guardians, or either of them, administering such Estate or Trust, he, she or they may, by their petition, setting forth such dissatisfaction, with the specific grounds of complaint, apply to the said Judge as hereinbefore provided, to have such Executors, Administrators, Trustees or Guardians, or either of them, removed and displaced, and a successor or successors in his or their place and stead to be named and appointed in the manner hereinbefore set forth; Provided always that every such petition shall be presented to the Judge of the County Court, wherein the party or parties in trust complained of be living or residing, and not elsewhere. Judge may remove incompetent parties complaint of interested parties. Proviso.

XI. And be it enacted, That upon the receipt of any such application or petition, it shall be lawful for the said Judge, and he is hereby required forthwith to issue or cause to be issued a summons under his hand directed to such Executors, Administrators, Trustees or Guardians, or any of them so complained of, requiring him or them, on a day to be named in such summons, (copy whereof shall be personally served upon him or them at least ten days before he or they shall be so required) to answer such matter of complaint and dissatisfaction, and to furnish all his accounts and vouchers in support thereof, and to name an Auditor Proceedings on complaint.

on his or their behalf to audit the said accounts and to make report thereon in manner hereinbefore provided, with respect to petitions at the instance of such Executors, Trustees or Guardians, or any one or more of them praying to be relieved from the Trust reposed in him or them as aforesaid.

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Judge to decide upon report of Auditors.

XII. And be it enacted, That it shall be the duty of the said Judge, and he is hereby required to examine into the truth of such matter of complaint and dissatisfaction, and for that purpose to summon before him any or all witnesses (whose names may be submitted to him by 10 either of the parties, complainant or respondent,) and to receive his or their testimony of and concerning the matter and matters in issue between the parties, and to adjudicate thereon. And if it shall appear to the said Judge that the said complaint and grounds of dissatisfaction is or are unfounded, he shall then dismiss the said complaint with costs to 15 be taxed by him against the complainant. And further also, it shall be lawful for the said Judge, if he so think fit, upon the dismissal of such complaint, and upon the Report of the Auditors in manner aforesaid, that the accounts and vouchers in support thereof, of such respondents, Executors, Trustees or Guardians, or any one of them is and are 20 correct, to continue him in such Trust; or if he or they so desire it, to accept of the resignation of such Executors, Administrators, Trustees and Guardians, or either or any one of them so complained against—and thereupon, as well as in the event of such complaint being satisfactorily proved before him the said Judge, to remove the party or parties 55 so complained of, and in either or both cases to proceed to the appointment of some one or more person or persons as his or their successor or successors, in his or their place and stead, to administer the Trust thereby vacated, in the manner hereinbefore set forth and provided in other cases; Provided always that the removal of the Executors, Adminis- 30 trators, Trustees and Guardians, or either one or more of them so complained of or against, shall not operate to discharge or relieve him or them from any responsibility touching his or their administration of such Estate or the misappropriation of the monies and assets thereof; and provided also, that the said Judge shall always give, and he is hereby 35 authorized, empowered and required to grant a discharge and certificate in the form B appended to this Act, to such one or more of the Executors, Administrators, Trustees or Guardians, whose resignation he may have accepted in manner aforesaid, which certificate and discharge shall have the same effect as that required to be given under the ninth Section 40 of this Act hereinbefore given.

Successors appointed.

Proviso : Executors, &c. on removal not freed from certain responsibility.

Proviso ; Judge to grant certificate B to parties whose resignation is accepted.

Accountant Auditors appointed.

XIII. And be it enacted, That whenever the Executors, Administrators, Trustees or Guardians to the Estate of any deceased person, or any of them, administering the same shall so require it, it shall be the duty of the Judge, upon application to that effect, to name an Accountant Au- 45 ditor to act conjointly with such other Accountant Auditor, as may be named by and on behalf of such Executors, Administrators, Trustees and Guardians, or either of them, to examine into and to audit the accounts relating to said Estate, with the view to settle up the said Es- 50 tate, and to ascertain the best mode of effecting the same. And the said Auditors shall make report of such audit, and the best mode of winding

up such Estate, and present the same to the said Judge on the day named, and to be named for that purpose in the order of appointment of such Auditors aforesaid.

XIV. And be it enacted, That it shall be lawful for the said Judge, and he is hereby required, if he think fit, upon the report of the said Auditors, recommending that a portion or the whole of the then remainder of such Estate in the hands of the said Executors, Administrators, Trustees, or Guardians, administering the same, be sold for the payment of debts of said Estate, or for the support and maintenance, and education, or either, of the widow and family, where no provision has been made by the Testator in that behalf, to issue a decree, ordering the Executors, Administrators, Trustees, or Guardians, or any of them administering such Estate or Trust, to sell such portion, or the whole of the Estate, as recommended in such report; whereupon the said Executors, Administrators, Guardians, or Trustees, and any or either of them, may, and shall proceed to sell any portion, or all the said Estate, for the purposes aforesaid, either by private or by public sale, upon such terms as to him or them may seem most advantageous to the parties having any interest, right, claim or demand of, into, or out of such Estate aforesaid.

Judge may order sale of Estate.

XV. And be it enacted, That every sale of Real Estate, Freehold, or Leasehold, to be had under the authority of this Act, public notice thereof shall be inserted in two or more of the public newspapers, published in the County where such sale is to be had, at least three calendar months before the day fixed for such sale, and handbills be posted up at least once a month, in the several public or notable places within such County; and that such bills shall be posted up finally, not more than thirty days, nor less than eight days prior to such sale, so determined on as aforesaid.

Advertisements.

XVI. And be it enacted, That in every case of sale of Freehold Estate, or Leasehold Estate, for a term of years, such sale shall be submitted to the said Judge, for his approval and confirmation, before the same shall be finally closed, or conveyance thereof granted; and that all deeds, conveyances, and other documents to be made in pursuance of such sale, shall be signed by the Executors, Administrators, Trustees, or Guardians of such Estate, for the time being, or by a majority of them, or the only one of them, if such be the case, and shall be countersigned by the said Judge, approving of the same; whereupon such deed and conveyance, or other document transferring, or purporting to transfer such Estate, or a portion thereof, shall have the same effect, and be as valid to all intents and purposes whatsoever in the law, as if the testator or deviser, or grantor had been living, and had executed the same, any law, usage or custom to the contrary notwithstanding.

All documents connected with sale to be countersigned by the Judge.

XVII. And be it enacted, That nothing herein in any wise contained, shall operate or be construed to prevent the Executors, Administrators, Trustees or Guardians of any Estate from selling the property appertaining to said Estate, or any portion of the property upon time; and to give the purchaser such delay as he or they may see fit to grant for the

Executors may sell property of Estate.

payment of the purchase money or monies, the whole or in part, upon his or their receiving from the purchaser or purchasers security by way of mortgage, in fee or otherwise, however, for the due and punctual payment of the said purchase money or monies, or such portion or portions, instalment or instalments as may from time to time accrue and be remaining due thereon; Provided always, that the party or parties giving such mortgage or other security, do the same at his and their own proper costs and charges; and provided always that such mortgage or other security to be so given, be to the satisfaction of the Executors, Administrators, Trustees or Guardians, or any one or more of them making such sale; and provided also, that upon full payment and acquittance of the principal money and interest accrued thereon, till paid, discharge thereof be given by such Executors, Administrators, Trustees or Guardians, and any or either of them to the purchaser or purchasers (making and giving such mortgage or other security, and paying the same), in manner now or hereafter by law, in such case made and provided.

Proviso.

This Act to apply to Trustees, &c., appointed by law.

XVIII. And be it enacted, That the several provisions and clauses of this Act, and every of them, so far as the context will admit, shall apply and be taken to apply to Administrators, Trustees and Guardians, named and appointed, or to be hereafter named and appointed, by any court or courts of law, justice or equity, in this Province, or by any one or more Judge or Judges thereof; and every proceeding had, or to be had, in respect to such Administrators, Trustees and Guardians, or any of them, and made in pursuance of, and under the authority of this Act, shall have the same effect as if he or they had been appointed, and did administer such Estate, under and in virtue of any Last Will and Testament, deed of Trust, or Letter of Guardianship as first hereinbefore set forth, any law, usage or custom to the contrary notwithstanding.

Executors only liable for their own individual acts.

XIX. And be it enacted, That nothing herein contained shall be construed to render any Executor, Administrator, Trustee or Guardian, liable for any other than the individual acts of him the said Executor, Administrator, Trustee or Guardian, or in any wise responsible for other than such portion of the Estate or Trust as was administered by him, or actually came into his possession, or of right should have been administered; any law, usage or custom to the contrary in any wise notwithstanding.

Executors, &c., may be sued for monies due estate, by them.

XX. And be it enacted, That in the event of any money or monies being reported by the Auditors, or by a majority of the Auditors aforesaid, and found to be due to any such Estate by any Executor, Administrator, Trustee or Guardian, such sum of money or sums of money shall be deemed, and taken to be a debt due by the said Executor, Administrator or Guardian, to such Estate, and as such may be recovered of, and from him or them by action of debt, in the same manner as other debts are by law now recovered, and that the production of such report, or of a certified copy shall be taken and received by all Courts, and Judges or Justices thereof, as evidence of such debt, any law, usage, or custom to the contrary in any wise notwithstanding.

Report of Auditors to be taken as evidence.

XXI. And be it enacted, That in the event of the removal or resignation of any such Executor, Administrator, Trustee or Guardian, in the manner aforesaid, such removal shall have no effect to discharge, or to relieve him from any responsibility of, or concerning, or touching the administration of such Estate by such Executor, Administrator, Trustee or Guardian aforesaid, until all such money and monies found to be due to said Estate by him shall have been fully paid and satisfied; provided always that upon such payment and satisfaction, the said Judge shall, and he is hereby required to grant the said Executor, Trustee or Guardian, his certificate of discharge in the form B appended to this Act, to have the same force and effect to all intents and purposes, as if granted to him or them at the time of such removal or resignation, as aforesaid.

Executors, &c., not entitled to discharge until all monies due estate by them are paid.

XXII. And be it enacted, That whenever any Executor, Administrator, Trustee or Guardian, shall have already, before the day of the date of this Act coming into effect, passed his accounts touching such Estate or Trust, before any Court or Courts of Record, or before any Master of the Chancery Court, in this Province, having competent jurisdiction, such accounts, or so much of them as shall have been passed, shall be deemed, and taken to have been audited, and such audit and passing thereof shall have the same force and effect to all intents and purposes as if the same had been audited, reported upon by Auditors, and such report confirmed by the Judge, under the authority of this Act. And upon the production of a duly certified copy of such account or accounts, or so much thereof as shall have been passed by the said Court or Courts, or by a Judge or Judges thereof, or before any Master of the Chancery Court, (and which copy and certificate the Clerk of the said Court, or the Master of the Chancery Court, before whom said accounts were passed, is hereby required to furnish under his hand and the seal of the Court of which he may be the Clerk, or a Master in Chancery, upon payment to him by such Executor or other person, of the sum of three pence per folio for such copy, and the further sum of two shillings and six pence for the certificate at foot thereof,) it shall be lawful for the Judge aforesaid (if required) to grant such Executor, Administrator, Trustee or Guardian, a certificate of discharge *pro tanto* in the form A hereunto appended, and which certificate of discharge *pro tanto* shall have all the force and effect of a certificate of discharge granted under the ninth Section of this Act, in so far as relates to the said accounts, any law; usage or custom to the contrary in any wise notwithstanding.

Accounts passed before this Act coming into effect before any Court, &c., to be deemed audited.

Certificate of discharge to be granted as by Sect. 9.

XXIII. And be it enacted, That every wilful disobedience or contravention of the provisions of this Act, or of any one of them, shall be construed as a misdemeanor, and shall be punishable as such; and every such misdemeanor shall be prosecuted before any Court of Record, County Court, or summarily before the Judge of the County Court, where the offence hath been committed, or where the party offending may be; and every person convicted thereof may be punished by fine or imprisonment, and either or both, in default of non-payment of such fine as may be imposed on him or them, with costs, at the option of the Court or Judge trying the same, or before which, or before whom he or they shall be convicted, such term of imprisonment not to exceed in any

Contravention of this Act to be deemed a misdemeanor.

Penalties.

case three months, nor be less than thirty days, any law, usage or custom to the contrary notwithstanding.

Commission
allowed to
Executors, &c.

XXIV. And be it enacted, That it shall be lawful for the said Judge or the said Auditors in his or their discretion, to allow to any Executor Administrator, Trustee or Guardian, a commission not exceeding five per cent, on the gross amount of monies which may have actually passed through his hands whilst administering said Estate, for which commission he may take credit in his accounts with the Estate, or in the event of monies being already due by said Estate to such Executor, Administrator, Trustee or Guardian, may claim and recover such commission of and from the said Estate or the person or persons administering the same; provided always that whenever two or more shall have conjointly administered such Estate, the commission to be allowed as aforesaid, shall be equally divided between them, or in such proportions as the Judge of any such County Court, before whom any such petition may have been brought, as the said Auditors shall think fit.

Interpretation
Act.

XXV. And be it enacted, That the interpretation Act shall apply to this Act, and to all, each, and every the clauses, provisions, matters and things herein contained in so far as the same can be made applicable thereto.

Contrary Acts,
&c., repealed.

XXVI. And be it enacted, That every law, usage or custom, and every Act, or provision of any Act or ordinance contrary to, or making provision other than in this Act contained, in so far as relates to the several matters and things hereinbefore contained, and every provision, Act, law, or ordinance, inconsistent herewith, shall be, and the same is hereby repealed.

Jurisdiction
vested in
Judges of
County
Courts.

XXVII. And be it enacted, That from and after the passing of this Act, our Chancery Court of Upper Canada, and every, the Chancellor, Vice-Chancellor, Justice and officer thereof shall cease to have any jurisdiction in the several matters hereinbefore provided for; and that the sole jurisdiction in such matters shall be, and vest in the several Judges of the County Courts in Upper Canada, to whom and to each of whom full power and authority is hereby given to make any and every such order and such tariff of fees as he or they may deem fit for the more complete carrying out of each and every provision of the Act; and he or they the said Judge or Judges, are hereby authorized and empowered to issue a warrant under the hand and seal of him or them, for the arrest of any person or persons refusing or neglecting to obey his or their summons, in order that the party or parties may be brought before him, and the said Judge or Judges may if he or they think fit fine and imprison any such person or persons so refusing to obey his or their summons and order; such fine not to exceed the sum of ten pounds nor be less than five shillings for each offence, and in case of non-payment of such fine, to imprison the said party so refusing to obey such summons and fine, for a period of not more than thirty days nor less than one day as to the said Judge may seem fit, any law, usage or custom to the contrary notwithstanding.

XXVIII. And be it enacted, That this Act shall apply to Upper Canada only. To apply to
Upper Canada

XXIX. And be it enacted, That this Act shall be deemed, and taken to be, and is hereby declared to be a Public Act. Public Act

SCHEDULE A.

In the County of

To all to whom these presents shall come, I, W. S., Judge of
the County Court of the County of

send Greeting :

Whereas A. B., of the of in the County of
and Province of Canada, hath duly made known unto me
by petition, that he was named and appointed Executor, Administrator,
Trustee or Guardian, (as the case may be) to the Estate of C. D.,
in his lifetime of in the County of in the said Pro-
vince deceased, under and in virtue of the Deed of Trust,
Last Will and Testament, (or otherwise as the case may be) of the said
C. D., and hath duly administered the Estate, and doth by his said
petition pray to be discharged and relieved from all responsibility touch-
ing his administration of said Trust. And whereas he the said A. B.,
hath duly accounted for his administration of said Estate, Now know
ye that I, the said Judge, in virtue of the power and authority vested in
me, in and by an Act of the Parliament of Canada, passed in the
year of the Reign of Her Most Gracious Majesty, chapter
do in consideration of the premises, grant the prayer of his said petition
and do hereby for ever exonerate, acquit, relieve and discharge him the
said A. B., from the office and duty of Executor, Administrator,
Trustee or Guardian, (as the case may be) to the Estate of the said late C.
D. And I do hereby further, in virtue of the powers vested in me
as aforesaid, for ever acquit and discharge him the said A. B.,
as such Executor, or otherwise, as the case may be, his heirs, Execu-
tors, Administrators, of and from all liability, and from all manner of
suit or suits, action or actions, or causes of action, that may be
brought against him or them, touching the administration of such Estate
or Trust, by him, the said A. B., as such Executor (or otherwise,
as the case may be), as aforesaid.

As witness, my hand and seal, (or the seal of the said County Court,
if such there be), at in the said County of the
day of 18

W. S.,

Judge, County Court of

[L. S.]

Y. Z.,
Clerk of the County Court
of

SCHEDULE B.

In the County of

To all to whom these presents shall come, I, W. S., Judge of
the County Court of the County of

send Greeting:

Whereas A. B., of the in the County of
and Province of Canada, one of the Legatees or Deviseses (*or friend of
C. D., one of the Legatees or Deviseses*) named in the last Will and Tes-
tament, Deed of Trust, (*or otherwise, as the case may be,*) of E. F., in
his lifetime of in the County of and Province
aforesaid, deceased, hath by his petition duly presented to
me, complained of G. H., &c., Executor, Administrator, Trustee or
Guardian to said Estate, named in last Will and Testament, Deed of
Trust, (*or otherwise as the case may*), and praying that the said G. H.,
&c., be compelled to account for his administration of such Estate and
Trust, and that he be dismissed or relieved from said office of Executor,
Administrator, Trustee or Guardian, as the case may be. And whereas
proceedings have been duly had thereon before me, under and by virtue
of a certain Act of the Parliament of Canada, passed in the
year of Her Most Gracious Majesty, chapter And whereas
it doth appear to me that the said G., H. hath rightly and faithfully (*or
hath improperly and negligently*) administered said Trust, and hath (*or
hath not*) accounted for his administration thereof, and for the assets
and monies pertaining to said Estate, (*or that the said G. H. is largely
indebted to said Estate and hath no visible means of paying the said
debt.*) Now know ye, that I, the said W. S., Judge of the County
Court, for the County of as aforesaid, in virtue of the
powers and authority vested in me, in virtue of the hereinbefore recited
Act, do for ever acquit and discharge, (*or dismiss and discharge as the
case may*), the said G. H., of and from the office and duty of Executor,
Administrator, Trustee and Guardian, or otherwise (*as the case may be*)
to said Estate and Trust, (*and in the case of the said G. H. having
rightly administered said Estate add.*) And I do hereby further, for
ever acquit and discharge him, the said A. B., as such Executor, his
heirs, executors, administrators and assigns, of and from all liability,
and from all manner of suit or suits, action or actions, or causes of
action, that may be brought against him or them, touching the adminis-
tration of the said Estate or Trust, by him, the said G. H., as such Ex-
ecutor, (*or otherwise as the case may be,*) as aforesaid. As witness, my
hand and seal, (*or the seal of the County Court, if such there be,*)
at in the County of the day of

18

W. S.,
Judge County Court
of

Y. Z.,
Clerk of the County Court
of

[L. S.]