



Administration of Estates Act 1925

1925 CHAPTER 23

PART II

EXECUTORS AND ADMINISTRATORS

General Provisions

4 Summons to executor to prove or renounce

The court shall continue to have power to summon any person named as executor in any will to prove or renounce probate of the will, and to do such other things concerning the will as have heretofore been customary.

5 Cesser of right of executor to prove

Where a person appointed executor by a will—

- (i) survives the testator but dies without having taken out probate of the will; or
- (ii) is cited to take out probate of the will and does not appear to the citation; or
- (iii) renounces probate of the will;

his rights in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his real and personal estate shall devolve and be committed in like manner as if that person had not been appointed executor.

6 Withdrawal of renunciation

- (1) Where an executor who has renounced probate has been permitted, whether before or after the commencement of this Act, to withdraw the renunciation and prove the will, the probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of and notices to any other personal representative who has previously proved the will or taken out letters of administration, and a memorandum of the subsequent probate shall be endorsed on the original probate or letters of administration.

Status: This is the original version (as it was originally enacted).

- (2) This section applies whether the testator died before or after the commencement of this Act.

7 Executor of executor represents original testator

- (1) An executor of a sole or last surviving executor of a testator is the executor of that testator.

This provision shall not apply to an executor who does not prove the will of his testator, and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on such probate being granted.

- (2) So long as the chain of such representation is unbroken, the last executor in the chain is the executor of every preceding testator.

- (3) The chain of such representation is broken by—

- (a) an intestacy; or
- (b) the failure of a testator to appoint an executor; or
- (c) the failure to obtain probate of a will;

but is not broken by a temporary grant of administration if probate is subsequently granted.

- (4) Every person in the chain of representation to a testator—

- (a) has the same rights in respect of the real and personal estate of that testator as the original executor would have had if living; and
- (b) is, to the extent to which the estate whether real or personal of that testator has come to his hands, answerable as if he were an original executor.

8 Right of proving executors to exercise powers

- (1) Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are by law conferred on the personal representative may be exercised by the proving executor or executors for the time being and shall be as effectual as if all the persons named as executors had concurred therein.

- (2) This section applies whether the testator died before or after the commencement of this Act.

9 Vesting of estate of intestate between death and grant of administration

Where a person dies intestate, his real and personal estate, until administration is granted in respect thereof, shall vest in the Probate Judge in the same manner and to the same extent as formerly in the case of personal estate it vested in the ordinary.

10 Discretion of court as to persons to whom administration is to be granted

In granting letters of administration the court shall have regard to the rights of all persons interested in the real and personal estate of the deceased person, or the proceeds of sale thereof, and in particular administration, with the will annexed, may be granted to a devisee or legatee; and in regard to land settled previously to the death

of the deceased, and not by his will, administration may be granted to the trustees of the settlement; and any such administration may be limited in any way the court thinks fit:

Provided that, where the deceased died wholly intestate as to his real and personal estate, administration shall—

- (a) unless by reason of the insolvency of the estate or other special circumstances the court thinks it expedient to grant administration to some other person, be granted to some one or more of the persons interested under this Act in the residuary estate of the deceased, if an application is made for the purpose;
- (b) in regard to land settled previously to the death of the deceased, be granted to the trustees, if any, of the settlement if willing to act.

11 Administration bonds

Probate rules may be made for dispensing with sureties to administration bonds when the grant is made to a trust corporation or to two or more individuals, or in any other proper case.

12 Provisions as to the number of personal representatives

- (1) Representation shall not be granted to more than four persons in regard to the same property; and administration shall, if any beneficiary is an infant or a life interest arises under the will or intestacy, be granted either to a trust corporation (with or without an individual) or to not less than two individuals:

Provided that the court in granting administration may act on such prima facie evidence, furnished by the applicant or any other person, as to whether or not there is a minority or life interest, as may be prescribed by probate rules.

- (2) If there is only one personal representative (not being a trust corporation) then, during the minority of a beneficiary or the subsistence of a life interest, and until the estate is fully administered, the court may on the application of any person interested or of the guardian, committee or receiver of any such person appoint in accordance with probate rules one or more personal representatives in addition to the original personal representative.
- (3) This section applies to grants of representation made after the commencement of this Act whether the testator or intestate died before or after such commencement.

13 Power to grant representation of real and personal estate separately or together

Representation may be granted in respect of the real estate of a deceased person or any part thereof, and either separately or together with his personal estate, and may also be granted in respect of real estate only where there is no personal estate, or in respect of a trust estate only, and a grant of letters of administration to real estate may be limited in any way the court thinks proper:

Provided that, where the -estate of the deceased is known to be insolvent, the grant of representation to the real and personal estate shall not be severed except as regards a trust estate.

14 Grant of representation to a trust corporation

- (1) Where a trust corporation is appointed an executor in a will, either alone or jointly with another person, the court may grant probate to such corporation either solely or jointly with another person, as the case may require, and the corporation may act as executor accordingly.
- (2) Administration may be granted to any trust corporation either solely or jointly with another person, and the corporation may act as administrator accordingly.
- (3) Representation shall not be granted to a syndic or nominee on behalf of any trust corporation.
- (4) Any officer authorised for the purpose by such corporation or the directors or governing body thereof may swear affidavits, give security, and do any other act or thing which the court may require on behalf of the trust corporation with a view to the grant of representation to the corporation, and the acts of such officer shall be binding on the corporation, and he shall be entitled to be kept indemnified by the corporation in regard to matters so authorised as aforesaid.
- (5) Where, at the commencement of this Act, any interest in real or personal estate is vested in a syndic on behalf of any trust corporation acting as the personal representatives of a deceased person, the same shall, by virtue of this Act, vest in the corporation, and the syndic shall be kept indemnified by the corporation in regard to any interest so vested.

This subsection does not apply to securities registered or inscribed in the name of a syndic, or to land or a charge registered under the Land Registration Act, 1925, in the name of a syndic, but any such securities, land or charge shall be transferred by the syndic to the corporation or as the corporation may direct.

- (6) This section has effect whether the testator or intestate died before or after the commencement of this Act; and no such vesting or transfer as aforesaid shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.

15 Executor not to act while administration is in force

Where administration has been granted in respect of any real or personal estate of a deceased person, no person shall have power to bring any action or otherwise act as executor of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked.

16 Administration pending litigation

- (1) While any legal proceeding touching the validity of the will of a deceased person, or for obtaining, recalling, or revoking any representation, is pending, the court may grant administration of the real and personal estate of the deceased to an administrator who shall have all the rights and powers of a general administrator, other than the right of distributing the residue of the real and personal estate, but shall be subject to the immediate control of the court and act under its direction.
- (2) The court may assign to any administrator appointed under this section reasonable remuneration out of the real and personal estate of the deceased, or the income thereof.

17 Continuance of legal proceedings after revocation of temporary administration

If, while any legal proceeding is pending in any court by or against an administrator to whom a temporary administration has been granted, that administration is revoked, that court may order that the proceeding be continued by or against the new personal representative in like manner as if the same had been originally commenced by or against him, but subject to such conditions and variations, if any, as that court directs.

18 Grant of special administration where personal representative is abroad

- (1) If at the expiration of twelve months from the death of a person, any personal representative of the deceased to whom representation has been granted is residing out of the jurisdiction of the High Court, the court may, on the application of any creditor or person interested in the estate of the deceased, grant to him special administration in the form prescribed by probate rules of the real and personal estate of the deceased.
- (2) The court may, for the purpose of any legal proceeding to which the administrator under the special administration is a party, order the transfer into court of any money or securities, belonging to the estate of the deceased person, and all persons shall obey any such order.
- (3) If the personal representative capable of acting as such returns to and resides within the jurisdiction of the High Court while any legal proceeding to which a special administrator is a party is pending, such representative shall be made a party to the legal proceeding, and the costs of and incidental to the special administration and any such legal proceeding shall be paid by such person and out of such fund as the court in which the proceeding is pending directs.

19 Administration with will annexed

Subject to the provisions of this Act as to settled land, administration with the will annexed shall continue to be granted in every case where such grant has heretofore been customary, and in such case the will of the deceased shall be performed and observed in like manner as if probate thereof had been granted to an executor.

20 Administration during minority of executor

- (1) Where an infant is appointed or becomes sole executor of a will, administration with the will annexed shall be granted to his guardian, or to such other person as the court thinks fit, until the infant attains the age of twenty-one years; at which time, and not before, probate of the will may be granted to him.
- (2) The appointment in a will by a testator of an infant to be an executor shall not operate to transfer any interest in the property of the deceased to the infant or to constitute him a personal representative for any purpose unless and until probate is granted to him after he has attained full age.

21 Rights and liabilities of administrator

Every person to whom administration of the real and personal estate of a deceased person is granted, shall, subject to the limitations contained in the grant, have the same rights and liabilities and be accountable in like manner as if he were the executor of the deceased.

Special Provisions as to Settled Land

22 Special executors as respects settled land

- (1) A testator may appoint, and in default of such express appointment shall be deemed to have appointed, as his special executors in regard to settled land, the persons, if any, who are at his death the trustees of the settlement thereof, and probate may be granted to such trustees specially limited to the settled land.

In this subsection " settled land " means land vested in the testator which was settled previously to his death and not by his will.

- (2) A testator may appoint other persons either with or without such trustees as aforesaid or any of them to be his general executors in regard to his other property and assets.

23 Provisions where, as respects settled land, representation is not granted to the trustees of the settlement

- (1) Where settled land becomes vested in a personal representative, not being a trustee of the settlement, upon trust to convey the land to or assent to the vesting thereof in the tenant for life or statutory owner in order to give effect to a settlement created before the death of the deceased and not by his will, or would, on the grant of representation to him, have become so vested, such representative may—

- (a) before representation has been granted, renounce his office in regard only to such settled land without renouncing it in regard to other property;
- (b) after representation has been granted, apply to the court for revocation of the grant in regard to the settled land without applying in regard to other property.

- (2) Whether such renunciation or revocation is made or not, the trustees of the settlement, or any person beneficially interested thereunder, may apply to the High Court for an order appointing a special or additional personal representative in respect of the settled land, and a special or additional personal representative, if and when appointed under the order, shall be in the same position as if representation had originally been granted to him alone in place of the original personal representative, if any, or to him jointly with the original personal representative, as the case may be, limited to the settled land, but without prejudice to the previous acts and dealings, if any, of the personal representative originally constituted or the effect of notices given to such personal representative.

- (3) The court may make such order as aforesaid subject to such security, if any, being given by or on behalf of the special or additional personal representative, as the court may direct, and shall, unless the court considers that special considerations apply, appoint such persons as may be necessary to secure that the persons to act as representatives in respect of the settled land shall, if willing to act, be the same persons as are the trustees of the settlement, and an office copy of the order when made shall be furnished to the Principal Probate Registry for entry, and a memorandum of the order shall be endorsed on the probate or administration.

- (4) The person applying for the appointment of a special or additional personal representative shall give notice of the application to the Principal Probate Registry in the manner prescribed.

- (5) Rules of court may be made for prescribing for all matters required for giving effect to the provisions of this section, and in particular—

- (a) for notice of any application being given to the proper officer;
- (b) for production of orders, probates, and administration to the registry;
- (c) for the endorsement on a probate or administration of a memorandum of an order, subject or not to any exceptions;
- (d) for the manner in which the costs are to be borne;
- (e) for protecting purchasers and trustees and other persons in a fiduciary position, dealing in good faith with or giving notices to a personal representative before notice of any order has been endorsed on the probate or administration or a pending action has been registered in respect of the proceedings.

24 Power for special personal representatives to dispose of settled land

- (1) The special personal representatives may dispose of the settled land without the concurrence of the general personal representatives, who may likewise dispose of the other property and assets of the deceased without the concurrence of the special personal representatives.
- (2) In this section the- expression " special personal representatives" means the representatives appointed to act for the purposes of settled land and includes any original personal representative who is to act with an additional personal representative for those purposes.

Duties, Rights, and Obligations

25 Duty of personal representative as to inventory

The personal representative of a deceased person shall, when lawfully required so to do, exhibit on oath in the court, a true and perfect inventory and account of the real and personal estate of the deceased, and the court shall have power as heretofore to require personal representatives to bring in inventories.

26 Rights of action by and against personal representative

- (1) For any debt (including arrears of rent) due to a deceased person, and for any injury to or right in respect of his personal estate in his lifetime, his personal representative shall have the same right of action as the deceased would have had if alive.
- (2) The personal representative of a deceased person may maintain for any injury committed to the real estate of the deceased within six months before his death any action which the deceased could have maintained, but the action must be brought within one year after his death, and any damages recovered in the action shall be part of the personal estate of the deceased.
- (3) A personal representative may distrain, for arrears of a rentcharge due or accruing to the deceased in his lifetime on the land affected or charged therewith, so long as the land remains in the possession of the person liable to pay the rentcharge or of the persons deriving title under him, and in like manner as the deceased might have done had he been living.
- (4) A personal representative may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living.

Status: This is the original version (as it was originally enacted).

Such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made—

- (a) within six months after the termination of the lease or tenancy;
- (b) during the continuance of the possession of the lessee or tenant from whom the arrears were due.

The statutory enactments relating to distress for rent apply to any distress made pursuant to this subsection.

- (5) An action may be maintained against the personal representative of a deceased person for any wrong committed by the deceased within six months before his death to another person in respect of his property, real or personal, but the action shall be brought within six months after the personal representative of the deceased has taken out representation.

Any damages recovered in the proceedings shall be payable as a simple contract debt incurred by the deceased.

- (6) Nothing in this section affects any right of action conferred by the Fatal Accidents Act, 1846, as amended by any subsequent enactment.

27 Protection of persons acting on probate or administration

- (1) Every person making or permitting to be made any payment or disposition in good faith under a representation shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the representation.
- (2) Where a representation is revoked, all payments and dispositions made in good faith to a personal representative under the representation before the revocation thereof are a valid discharge to the person making the same; and the personal representative who acted under the revoked representation may retain and reimburse himself in respect of any payments or dispositions made by him which the person to whom representation is afterwards granted might have properly made.

28 Liability of person fraudulently obtaining or retaining estate of deceased

If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives or holds any real or personal estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the real and personal estate received or coming to his hands, or the debt or liability released, after deducting—

- (a) any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death; and
- (b) any payment made by him which might properly be made by a personal representative.

29 Liability of estate of personal representative

Where a person as personal representative of a deceased person (including an executor in his own wrong) wastes or converts to his own use any part of the real or personal estate of the deceased, and dies, his personal representative shall to the extent of the

available assets of the defaulter be liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

30 Provisions applicable where administration granted to nominee of the Crown

- (1) Where the administration of the real and personal estate of any deceased person is granted to a nominee of the Crown (whether the Treasury Solicitor, or a person nominated by the Treasury Solicitor, or any other person), any legal proceeding by or against that nominee for the recovery of the real or personal estate, or any part or share thereof, shall be of the same character, and be instituted and carried on in the same manner, and be subject to the same rules of law and equity (including, except as otherwise provided by this Act, the rules of limitation under the statutes of limitation or otherwise), in all respects as if the administration had been granted to such nominee as one of the persons interested under this Act in the estate of the deceased.
- (2) An information or other proceeding on the part of His Majesty shall not be filed or instituted, and a petition of right shall not be presented, in respect of the real or personal estate of any deceased person or any part or share thereof, or any claim thereon, except within the same time and subject to the same rules of law and equity within and subject to which a proceeding for the like purposes might be instituted by or against a. subject.
- (3) The Treasury Solicitor shall not be required, when applying for or obtaining administration of the estate of a deceased person for the use or benefit of His Majesty, to deliver, nor shall the Probate, Divorce and Admiralty Division of the High Court or the Commissioners of Inland Revenue be entitled to receive in connexion with any such application or grant of administration, any affidavit, statutory declaration, account, certificate, or other statement verified on oath; but the Treasury Solicitor shall deliver and the said Division and Commissioners respectively shall accept, in lieu thereof, an account or particulars of the estate of the deceased signed by or on behalf of the Treasury Solicitor.
- (4) References in sections two, four, six and seven of the Treasury Solicitor Act, 1876, and in subsection (3) of section three of the Duchy of Lancaster Act, 1920, to " personal estate " shall include real estate.

31 Power to make rules

Provision may be made by rules of court for giving effect to the provisions of this Part of this Act so far as relates to real estate and in particular for adapting the procedure and practice on the grant of letters of administration to the case of real estate.