



Executors (Scotland) Act 1900

1900 CHAPTER 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 :

1 Short title.

This Act may be cited as the Executors (Scotland) Act, 1900.

2 Executors nominate to have the powers and privileges of trustees.

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.

3 Who may be confirmed executors nominate.

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 donee or universal legatee or residuary legatee appointed by such testator, shall be held to be his executor nominate, and entitled to confirmation in that character.

4 Powers &c. of executors dative where more than one.

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.

5 Confirmation to contain inventory.

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.

6 Transmission of trust funds by executors of sole or last surviving trustee.

When any sole or last surviving trustee or executor nominate has died with any funds in Scotland standing or invested in his name as trustee or executor, confirmation by his executors nominate (if any) to the proper personal estate of such trustee or executor nominate, or the probate granted in England or Ireland: to his executors, and produced and certified by the commissary clerk of Edinburgh shall, whether granted before or after the passing of this Act, be valid, and available to such executors for recovering such funds, and for assigning and transferring the same to such person or persons as may be legally authorised to continue the administration thereof, or, where no other act of administration remains to be performed, directly to the beneficiaries entitled thereto, or to any person or persons whom the beneficiaries may appoint to receive and discharge, realise and distribute the same, provided always that a note or statement of such funds shall have been appended to any inventory or additional inventory of the personal estate of such deceased trustee or executor nominate given up by his executors nominate in Scotland, and duly confirmed; and provided further that nothing herein contained shall bind executors of a deceased trustee or executor nominate to make up title to such funds, nor prejudice or exclude the right of any other person to complete a title to such funds by any proceedings otherwise competent.

7 Where confirmation ad non executa may be granted.

Where any confirmation has become inoperative by the death or incapacity of all the executors in whose favour it has been granted, no title to intrude with the estate confirmed therein shall, otherwise than in the circumstances and to the extent authorised by the preceding section, transmit to the representatives of any such executors whatever may be the extent of their beneficial interest therein, but it shall be competent to grant confirmation ad non executa to any estate contained in the original confirmation which may remain un-uplifted or untransferred to the persons entitled thereto, and such confirmation ad non executa shall be granted to the same persons, and according to the same rules as confirmations ad omissa are at present granted, and shall be a sufficient title to continue and complete the administration of the estate contained therein, provided always that nothing herein contained shall be held to affect the rights and preferences at present conferred by confirmation on executors creditors.

8 Before whom oaths may be taken.

Oaths and affirmations to inventories of personal estate given up to be recorded in any sheriff court and to revenue statements appended thereto may be taken before the sheriff or sheriff-substitute, or any commissioner appointed by the sheriff, or before any commissary clerk or his depute, or where 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.

9 Amendment of Small Estates Acts.

- (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 expedite 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.