

ADMINISTRATION ACT, 1903-1954.

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ADMINISTRATION.

No. 13 of 1903.

[As amended by Acts No. 29 of 1909 (a), No. 9 of 1918 (b), No. 13 of 1921 (c), No. 29 of 1922 (d), No. 28 of 1934 (e), No. 24 of 1939 (f), No. 26 of 1941 (g), No. 52 of 1941 (h), No. 55 of 1941 (i), No. 21 of 1942 (j), No. 39 of 1945 (k), No. 8 of 1949 (l), No. 55 of 1950 (m), No. 62 of 1953 (n), No. 81 of 1953 (o) and No. 30 of 1954 (p) and reprinted pursuant to the Amendments Incorporation Act, 1938.*]

AN ACT to consolidate and amend the law relating to Probate and Administration and the Duties on the Estates of Deceased Persons, and for other purposes.

[Assented to 31st December, 1903.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Administration Act, 1903-1954*, and shall be construed as one with

Short title, commencement, and divisions.
No. 13 of 1903, s. 1;
No. 28 of 1934, s. 2;
No. 30 of 1954, s. 1 (3).

- (a) Assented to 20th November, 1909.
- (b) Assented to 15th April, 1918: Proclaimed to come into operation on 1st July, 1918—See *Gazette* dated 7/6/1918, p. 813.
- (c) Assented to 15th November, 1921.
- (d) Assented to 7th December, 1922.
- (e) Assented to 28th December, 1934: Came into force on 1/1/35—See *Gazette* dated 28/12/34, p. 1983.
- (f) Assented to 22nd November, 1939.
- (g) Assented to 8th December, 1941: Came into operation on 1/7/42—See *Gazette* dated 26/6/42, p. 689.
- (h) Assented to 15th January, 1942.
- (i) Assented to 15th January, 1942: Came into operation on 1/7/42—See s. 8 of that Act.
- (j) Assented to 9th December, 1942.
- (k) Assented to 30th January, 1946.
- (l) Assented to 14th September, 1949.
- (m) Assented to 18th December, 1950.
- (n) Assented to 9th January, 1954.
- (o) Assented to 18th January, 1954.
- (p) Assented to 8th November, 1954.

* In this reprint

(a) references in the marginal- and foot- notes to

(i) the "1934 reprint" are references to the reprint of the *Administration Act, 1903-1934* printed in accordance with the provisions of s. 77 of Act No. 28 of 1934;

(ii) the "1943 reprint" are references to the reprint of the *Administration Act, 1903-1941*, contained in Vol. 2 of the Reprinted Acts of the Parliament of W.A. (1943);

(b) the numbering of Parts, sections, etc., as contained in the 1943 reprint is retained.

(c) the Rules contained in the Third Schedule incorporate the amendments thereto published in *Gazette* No. 20 dated 30th April, 1937; No. 32 dated 15th April, 1955 and No. 40 dated 11th May, 1955.

the Supreme Court Act, 1861¹, and all amendments thereof, and shall come into force on the first day of January, one thousand nine hundred and four.

It is divided into Parts as follows:—

PART I.—PRELIMINARY, ss. 1-3.

PART II.—PROBATE AND ADMINISTRATION,
ss. 4-60.

PART III.—FOREIGN PROBATES AND ADMINIS-
TRATION, ss. 61-62.

[Part IV. as enacted by No. 13 of 1903 repealed by
No. 9 of 1918.]

[Formerly
Pt. V.]

PART IV.—CAVEATS, ss. 63-64.

[Formerly
Pt. VI.]

PART V.—DUTIES ON DECEASED PERSONS'
ESTATES AND SUCCESSION DUTIES, ss. 65-
137.

[Formerly
Pt. VII.]

PART VI.—MISCELLANEOUS, ss. 138-148.

Repeal.
No. 13 of
1903, s. 2.

2. The Acts mentioned in the First Schedule are,
to the extent therein expressed, hereby repealed.

Interpreta-
tion.
No. 13 of
1903, s. 3.
Administra-
tion.

3. In this Act, unless the contrary appears,—

“Administration” includes letters of administra-
tion of the estate and effects of deceased
persons, whether with or without the will
annexed, and whether granted for general,
special, or limited purposes; and also
exemplification of letters of administration
with or without the will annexed and such
other evidence of letters of administration
purporting to be under the seal of a Court
of competent jurisdiction as in the opinion
of the Court is sufficient.

Adminis-
trator.

“Administrator” includes the Curator and any
other person to whom administration, as
hereinafter defined, is granted.

Court.

“Court” means the Supreme Court or any Judge
thereof.

Curator.

“Curator” means Curator of Intestate Estates.

Master.

“Master” includes Deputy Master.

¹ See now Supreme Court Act, 1935-1954.

"Personal estate" extends to leasehold estates and other chattels real, and also to all other property whatsoever which, prior to the coming into operation of the Real Estates Administration Act, by law devolved upon the executor or administrator, and to any share or interest therein.

Personal
Estate.

"Prescribed" means prescribed by this Act or the rules or regulations thereunder.

Prescribed.

"Probate" includes "exemplification of probate," and such other formal evidence of probate purporting to be under the seal of a Court of competent jurisdiction, as in the opinion of the Court is sufficient.

Probate.

"Real estate" extends to messuages, lands, rents, and hereditaments of freehold or 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.

Real Estate.

"Will" extends 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 the Imperial Act Twelfth Charles the Second, Chapter twenty-four, and to any other testamentary disposition.

Will.

PART II.—PROBATE AND ADMINISTRATION.

4. The jurisdiction and authority heretofore vested in or exercised by the Court in respect of the estates of deceased persons shall continue to be so vested and exercised.

Jurisdiction
of Court as
heretofore.
No. 13 of
1903, s. 4.

5. The Master shall, subject to the rules, perform such duties as heretofore in reference to proceedings in the ecclesiastical jurisdiction of the Court, and such other duties as may be prescribed by the rules.

Duties of
Master.
No. 13 of
1903, s. 5.

Power to grant probate and administration.

No. 13 of 1903, s. 6.

6. The Court shall have jurisdiction to grant probate of the will or administration of the estate of any deceased person leaving property, whether real or personal, in Western Australia.

Probate may be granted to one or more executors.

No. 13 of 1903, s. 7.

7. The Court may grant probate to one or more of the executors named in any will, reserving leave to the other, who has not renounced, to come in and apply.

Upon grant of probate or administration real and personal estate to vest.

No. 13 of 1903, s. 8.

8. Upon the grant of probate or administration, all real and personal estate which a deceased person dies seised, possessed of, or entitled to in Western Australia shall, as from the death of such person, pass to and become vested in the executor to whom probate has been granted, or administrator for all the estate and interest of the deceased therein, in the manner following, that is to say:—

in executor or.

(a) on testacy or on partial intestacy, in the executor or administrator with the will annexed; and

adminis-
trator.

(b) on intestacy, in the administrator.

Real estate to vest subject to trusts.

No. 13 of 1903, s. 9.

9. All real estate held by any person in trust shall vest as aforesaid, subject to the trusts and equities affecting the same.

Real and personal estate to be assets.

No. 13 of 1903, s. 10.

10. (1) The real as well as the personal estate of every deceased person shall be assets in the hands of the executor to whom probate has been granted, or administrator, for the payment of all duties and fees and of the debts of the deceased in the ordinary course of administration.

No right of retainer.

(2) No executor or administrator shall hereafter have or exercise any right of retainer.

Power to sell or lease real estate.

(3) An executor to whom probate has been granted or administrator may, for the purposes of administration, subject to the provisions of section eighteen hereof, sell or lease such real estate, or mortgage the same, with or without a power of sale, and assure the same to a purchaser or mortgagee in as full and effectual a manner as the deceased could have done in his lifetime.

11. Subject as aforesaid, the real estate of every deceased person shall be held by the executor to whom probate has been granted or the administrator with the will annexed according to the trusts and dispositions of such will.

Subject as aforesaid real estate to vest according to will.
No. 13 of 1903, s. 11.

12. The executor to whom probate has been granted, or administrator, shall have the same rights and be subject to the same duties with respect to the real estate of the deceased that executors or administrators respectively heretofore have had or been subject to with reference to personal assets.

Executor to have same rights and duties as to real estate as heretofore as to personal estate.
No. 13 of 1903, s. 12.

13. (1) Subject as aforesaid and to the provisions of the next five succeeding sections, the administrator on intestacy, or, in case of partial intestacy, the executor or administrator with the will annexed shall hold the real and personal estate vesting as aforesaid, and as to which any person dies intestate in trust for the persons who would be entitled thereto under the Statute of Distributions, and as to the real estate in trust for and as if the same had been devised to such persons as tenants in common.

Real and personal estate in case of intestacy.
No. 13 of 1903, s. 13.

(2) No executor, as such, shall be entitled to take beneficially any residue not expressly disposed of by the will of the testator, unless it appear by such will that he is intended so to take.

No executor entitled as such to undisposed of residue.

(3) Nothing herein contained shall affect or prejudice any right to which an executor would have been entitled if this Act had not been passed, in cases where there is not any person who would be entitled to the testator's estate in respect of any residue not expressly disposed of.

except where no person otherwise entitled.

14. (1) A husband or wife shall be entitled, on the death of the other, as to the property as to which he or she dies intestate, to the following shares only:—

Interests of husbands and wives in estates of the other of them.
No. 13 of 1903, s. 14, amended by No. 8 of 1949, s. 3; No. 62 of 1953, s. 2.

(a) where the net value of the property of the deceased does not exceed the specified sum referred to in subsection (4) of this section, to the whole of such property.

- (b) where the net value of such property exceeds the specified sum, to the specified sum absolutely, and also to one-half share of the residue where there is no issue surviving; and where such issue survives, the husband or wife shall be entitled to one-third share of the residue and such issue to the remaining two-thirds, the division among the issue being *per stirpes* and not *per capita*.

Subsec. (1A)
added by
No. 62 of
1953, s. 2 (a).

(1A) Notwithstanding anything contained in subsection (1) of this section, when after the coming into operation of the Administration Act Amendment Act, 1953, a person dies leaving—

- (a) a husband or wife, but no issue, parent, brother, sister, or issue of a brother or sister, the husband or wife shall be entitled to the whole of the property of the other, as to which he or she dies intestate;
- (b) a husband or wife and also one or more of the following, namely, a parent, a brother, a sister, or issue of a brother or sister, but leaves no issue, the husband or wife shall be entitled, as to the property of the other as to which he or she dies intestate—
 - (i) where the net value of the property of the deceased does not exceed the sum of five thousand pounds, to the whole of such property;
 - (ii) where the net value of such property exceeds the sum of five thousand pounds, to the sum of five thousand pounds absolutely, and also to one-half of the residue.

(2) Subject as aforesaid, the property of such deceased husband or wife shall be divisible amongst the next of kin.

(3) Any husband or wife so entitled to share in real property shall accept the value of such share in lieu of partition, if so desired by all the persons entitled jointly with him or her.

(4) In this section "the specified sum" means, where the death of the deceased husband or wife occurs—

Subsec. (4)
added by
No. 8 of
1949, s. 3.

- (a) before the coming into operation of the Administration Act Amendment Act, 1949, the sum of five hundred pounds;
- (b) after the coming into operation of that Act but before the coming into operation of the Administration Act Amendment Act, 1953, the sum of one thousand pounds.
- (c) after the coming into operation of the Administration Act Amendment Act, 1953, the sum of two thousand five hundred pounds.

Para. (c)
added by
No. 62 of
1953, s. 2 (c).

15. Notwithstanding anything contained in this Act to the contrary, when after the seventh day of December, one thousand nine hundred and twenty-two, any person dies intestate leaving—

Next of kin
of intestate
without
issue to
include
mother.
No. 29 of
1922, s. 2
inserted
as s. 15
pursuant to
No. 28 of
1934, s. 77
(3) (b).

- (a) both a father and mother but no issue, then if the whole or any part of the estate of such intestate would now by law be distributable to the father the same shall be distributed—

- (i) where the net value of the property of the deceased so distributable does not exceed the sum of £1,000 pounds, equally to and between the father and mother;
- (ii) where the net value of such property exceeds the sum of £1,000, as to the sum of £1,000 equally to and between the father and mother, and also in like proportions as to the residue then left if there are no brothers or sisters or children of deceased brothers or sisters surviving; and where such brothers or sisters or deceased brothers' or sisters' children survive, one half of such residue equally to and between the father and mother, and the remaining half equally to and between the brothers and sisters and children of deceased

brothers and sisters (such children taking *per stirpes* and not *per capita*); or

(b) a father only or a mother only but no issue, then the whole or any part of the estate of such intestate to which the intestate's widower or widow (if any) is not entitled shall be distributed—

- (i) where the net value of such property does not exceed the sum of £1,000, to the father or mother, as the case may be;
- (ii) where the net value of such property exceeds the sum of £1,000 to the father or mother, as the case may be, if there are no brothers or sisters or children of deceased brothers or sisters surviving; and where such brothers or sisters or deceased brothers' or sisters' children do survive, as to £1,000 and one half of the residue then left to the father or mother, as the case may be, and the remaining half of such residue equally to and between the brother's and sisters and children of deceased brothers and sisters (such children taking *per stirpes* and not *per capita*).

Courtesy and dower abolished. No. 13 of 1903, s. 15, renumbered as s. 16 in 1934 reprint.

16. No person shall become entitled to or take any estate by courtesy or right of dower, or any equivalent estate, after the coming into operation of this Act, out of real estate as to which any person dies intestate.

Court may deal with interest of infants in certain cases. No. 13 of 1903, s. 16, renumbered as s. 17 in 1934 reprint.

17. (1) Where the net value of the real and personal property of a deceased person heretofore or hereafter dying leaving infant issue does not exceed two thousand pounds, the Court may, on the application of any such infant, or of any person on his behalf, authorise the executor or administrator to expend the whole or any part of the share of such infant in his maintenance, advancement, or education.

(2) The net value of such property shall be ascertained by deducting from the gross value thereof all debts, funeral and testamentary expenses, and all other lawful liabilities and charges to which the said property may be subject.

18. (1) No real estate of which administration has been granted shall be leased for a longer term than three years, or sold or mortgaged without the written consent of all persons beneficially interested, or the order of the Court.

Conditions on which real estate may be leased or mortgaged. No. 13 of 1903, s. 17, renumbered as s. 18 in 1934 reprint; amended by No. 30 of 1954, s. 2.

(2) Notwithstanding the provisions of subsection (1) of this section any real estate of which administration has been granted,

Subsec. (2) added by No. 30 of 1954, s. 2 (b).

(a) the value of which is finally assessed by the Commissioner of Stamps for the purpose of Part V of this Act at not more than five hundred pounds; or

(b) which real estate forms part of an estate the gross value of which when finally so assessed for the purpose is less than two thousand pounds,

may be leased for a longer term than three years or sold or mortgaged without the written consent of all persons beneficially interested or the order of the Court, but no such real estate shall be sold without the order of the Court, if the persons resident within the jurisdiction entitled in distribution to such real estate or a majority in value of those persons require it to be held in accordance with the trust as provided in subsection (1) of section thirteen of this Act.

19. (1) Where the Court is satisfied that a partition of the real estate of a deceased person, or any part thereof, would be advantageous to the parties interested, the Court may appoint one or more arbitrators, or direct the Master to effect such partition.

Court may direct partition of real estate. No. 13 of 1903, s. 18, renumbered as s. 19 in 1934 reprint.

(2) The award of the arbitrators or order of the Master setting forth particulars of the land allotted to each party interested shall, when confirmed by

the Court and registered in the office of the Registrar of Deeds or Registrar of Titles, as the case may be, without the necessity of any further conveyance or transfer, vest in each allottee the land so allotted to him.

(3) In the case of land subject to the Transfer of Land Act, 1893¹, each allottee shall be entitled to have issued to him a certificate of title for the land so allotted.

(4) If any allotment be made subject to the charge of any money payable to any other party interested, for equalising the partition, such charge shall take effect according to the terms and conditions in regard to time and mode of payment, and otherwise, which shall be expressed in such award or order, without the necessity of any further instrument being made or executed; and in case of land subject to the Transfer of Land Act, 1893¹, the certificate of title shall issue subject to such charge.

Personal representative may relinquish trust.
No. 13 of 1903, s. 19, renumbered as s. 20 in 1934 reprint.

20. (1) A personal representative may at any time, by leave of the Court, and on such conditions as the Court may impose, relinquish his trust to such person as the Court may appoint.

(2) Notwithstanding any such order, such personal representative shall continue liable for all acts and neglects whilst he was acting as executor or administrator, but not otherwise or further.

Executor or administrator to represent real estate.
No. 13 of 1903, s. 20, renumbered as s. 21 in 1934 reprint.

21. In all proceedings concerning the real estate of a deceased person, his executor, to whom probate has been granted, or administrator, so long as such estate remains vested in him, shall represent such real estate and the persons intested therein in the same manner and to the same extent as in proceedings concerning personal estate.

22.* [Repealed by No. 26 of 1941, s. 3 (2).]

Pending probate or administration, estate of deceased to vest in Chief Justice.
No. 13 of 1903, s. 21, renumbered as s. 22 in 1934 reprint

¹ Now Transfer of Land Act, 1893-1950: See No. 17 of 1950, s. 4.

* See also s. 9 of Public Trustee Act, 1941-1953 (No. 26 of 1941, as amended.)

23. (1) In the administration of the estate of every deceased person, all the creditors of such person shall be treated as standing in equal degree, and be paid accordingly out of the assets, whether legal or equitable.

All creditors to stand in equal degree. No. 13 of 1903, s. 22. Re-numbered as s. 23 in 1934 reprint.

(2) Nothing herein contained shall prejudice or affect any mortgage, lien, charge, or security which any person may hold or be entitled to for payment of his debt.

except secured creditors.

(3) Nothing herein contained shall affect the provisions of any Act protecting life assurance or other policies against creditors.

and Acts dealing with life policies,

24. The practice hitherto in force with reference to granting administration of the estate of an intestate shall, save as hereby altered and subject to the rules, be applicable to administration granted hereunder; and administration of both real and personal estate may be granted in and by the same letters.

Administration in case of intestacy. No. 13 of 1903, s. 23, renumbered as s. 24 in 1934 reprint.

25. The Court may grant administration of the estate of a person dying intestate to the following persons (separately or conjointly) being of the full age of twenty-one years, that is to say to—

Persons entitled to administration. No. 13 of 1903, s. 24, renumbered as s. 25 in 1934 reprint.

(a) the husband or wife of the deceased or one or more of the next of kin; or

(b) any other person, whether a creditor or not, if there be no such person entitled as aforesaid resident within the jurisdiction and fit to be so entrusted, or if the person entitled as aforesaid fails, when duly cited, to appear and apply for administration.

26. (1) Except where the contrary is expressly enacted every person to whom administration is granted shall, previous to the issue of such administration, execute in the form prescribed by the Rules a bond, with one or two sureties conditioned for duly collecting, getting in, administering and distributing the real and personal estate of the deceased.

Bond to be executed. No. 13 of 1903, s. 25, renumbered as s. 26 in 1934 reprint; amended by No. 55 of 1941, s. 21; No. 30 of 1954, s. 3.

(2) No such bond shall be required from the Curator or any person obtaining administration to the use or for the benefit of His Majesty.

No bond required from Curator.

¹ Came into operation on 1st July, 1942: See No. 55 of 1941, s. 8.

Incorporated
company.

(3) The Court may dispense with a bond where the applicant for administration is a duly incorporated company, formed for the purpose of (amongst other things) administering the estates of deceased persons.

Penalty
of bond.
No. 13 of
1903 s. 26,
renumbered
as s. 27 in
1934 reprint.

27. Every bond shall be in a penalty equal to the gross amount under which the property of the deceased is sworn; but the Court may dispense with one or both sureties to any bond or reduce the amount of such penalty, or limit the liability of any surety to such amount as the Court thinks reasonable; or, in place of any such bond, the Court may accept the security of any incorporated company or guarantee society approved of by the Court.

Sureties to
bond may
be dispensed
with in
certain
cases.
No. 13 of
1903, s. 27A,
inserted by
No. 55 of
1941, s. 3¹
renumbered
s. 28 in
1943 reprint.

28. (1) Notwithstanding any other provision of this Act, in any case where a person dies leaving property not exceeding one thousand pounds in value and administration is granted to the husband or widow of the deceased, no surety or sureties shall be required to the administration bond.

(2) Notwithstanding any other provision of this Act, in any case where the claim of any creditor of the deceased or any portion of such claim is secured by a mortgage of real estate of the deceased, no surety or sureties shall be required to the administration bond in an amount exceeding a sum representing the difference between the amount of the gross value of the property of the deceased and the amount of the claim which such mortgage secures.

Court may

29. The Court may, at any time, upon the application of any person interested in the estate or of its own motion on the report of the Master—

revoke
administra-
tion or order
new or addi-
tional bond.
No. 13 of
1903, s. 27;
renumbered
as s. 28 in
1934 reprint
and as s. 29
in 1943
reprint:
amended by
No. 55 of
1941, s. 4¹;
No. 30 of
1954, s. 4.

(a) revoke the administration already granted, or

(b) order the administrator to execute a further or additional bond in such sum, with or without sureties, as the Court may direct; and upon default may remove the administrator and appoint another in his place,

¹ Came into operation on 1st July, 1942: See s. 8 of No. 55 of 1941.

with power to sue or be sued upon any contract made by the removed administrator;

- (c) order that the liability of any surety to any administration bond be reduced to such amount as the Court in the circumstances of the case thinks reasonable.

No. 55 of
1941, s. 4.

30. The Court may order the Master for and on behalf of His Majesty to assign any bond to some person to be named in such order, and such person, his executors or administrators, shall be entitled to sue upon the bond in his own name, and 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.

If condition
of bond
broken,
bond may be
assigned.

No. 13 of
1903, s. 28,
renumbered
as s. 29 in
1934 reprint
and as s. 30
in 1943
reprint.

31. If, upon the application of a surety to any bond, it appear to the Court that the estate is being or is in danger of being wasted, or that the surety is being or is in danger of being in any way prejudiced by the act or default of the person administering the estate, or that any surety desires to be relieved from further liability, the Court may grant such relief as it may think fit.

Court may
grant relief
if estate
being
wasted or
in danger.

No. 13 of
1903, s. 29,
renumbered
as s. 30 in
1934 reprint
and as s. 31
in 1943
reprint.

32. Where an executor renounces probate of the will, or dies without having taken probate, or where, being personally cited to take probate, he does not appear to such citation, the right of such executor in respect of the executorship shall wholly cease; and the representation to the testator and the administration of his estate shall go, devolve, and be committed in like manner as if such person had not been appointed executor.

In case of
renuncia-
tion or
failure to
take probate,
right
of executor
gone.

No. 13 of
1903, s. 30,
renumbered
as s. 31 in
1934 reprint
and as s. 32
in 1943
reprint.

33. (1) Where an infant is sole executor, administration with the will annexed may be granted to the guardian of such infant, or to such other person as the Court thinks fit, until such infant has attained the age of twenty-one years, with full or limited powers to act in the premises until probate has been granted to the said executor.

Where
infant is
executor,
etc.

No. 13 of
1903, s. 31,
renumbered
as s. 32 in
1934 reprint
and as s. 33
in 1943
reprint.

(2) The person to whom such administration is granted shall, unless otherwise ordered, have the same powers vested in him as any ordinary administrator with the will annexed.

Where person entitled to probate or administration is out of the jurisdiction. No. 13 of 1903, s. 32, renumbered as s. 33 in 1934 reprint and as s. 34 in 1943 reprint: amended by No. 21 of 1942, s. 2.

34. When an executor or any person entitled to probate or administration is out of the jurisdiction or is a member of the naval, military, or air forces of His Majesty the King (including a member of any medical corps nursing service attached to any of the forces aforesaid) who is within the jurisdiction, but has some person within the jurisdiction appointed under power of attorney to act for him, administration may be granted to such attorney, but on behalf of the person entitled thereto, and on such terms and conditions as the Court thinks fit.

Court may appoint a manager and receiver pending litigation. No. 13 of 1903, s. 33, renumbered as s. 34 in 1934 reprint and as s. 35 in 1943 reprint.

35. The Court may, pending any proceedings touching the validity of any will, or for obtaining, recalling, or revoking any probate or administration, appoint an administrator of the personal estate and a receiver of the real estate of any deceased person, at such remuneration and with such full or limited powers, and with or without a bond or sureties, as the Court may think fit.

Administration with the will annexed. No. 13 of 1903, s. 34, renumbered as s. 35 in 1934 reprint and as s. 36 in 1943 reprint.

36. Where a person dies leaving a will but without having appointed an executor, or leaving a will and having appointed an executor who is not willing and competent to take probate or is resident out of Western Australia, the Court may appoint an administrator of the estate of the deceased, or of any part thereof, upon his giving security as aforesaid, and such administration may be limited as the Court thinks fit.

Probate or administration if executor, etc. absent or neglects to obtain probate, etc. No. 13 of 1903, s. 35, renumbered as s. 36 in 1934 reprint and as s. 37 in 1943 reprint.

37. Where an executor neglects to obtain or to renounce probate within two months from the death of the testator or from the time of such executor attaining the age of twenty-one years, or where an executor is unknown or cannot be found, the Court may, upon the application of any person interested in the estate, or of any creditor of the testator, grant administration with the will annexed to the applicant, and such administration may be limited as the Court thinks fit.

38. (1) If, at the expiration of six months from the death of any person, the executor to whom probate has been granted, or the administrator, is residing out of the jurisdiction, the Court may, upon the application of any creditor or person interested in the estate, grant to the applicant special letters of administration of the estate of such deceased person, with limited or unlimited powers.

Special letters of administration if executor or administrator not within jurisdiction. No. 13 of 1903, s. 36, renumbered as s. 37 in 1934 reprint and as s. 38 in 1943 reprint.

(2) The applicant shall satisfy the Court that the executor or administrator is resident out of the jurisdiction, and that the applicant is thereby delayed in recovering or obtaining payment of moneys, or the possession of goods and chattels, or real estate to which he is by law entitled, or that the estate is liable to loss or waste.

39. (1) On the return within the jurisdiction of the executor to whom probate has originally been granted, or the administrator, he may apply to the Court to rescind such special grant; and the Court may make such order upon such terms and conditions as to the Court may seem fit, and thereafter the original probate or administration shall be and remain as valid and effectual as if such special grant had never been made.

On return of executor or administrator, special administration may be revoked. No. 13 of 1903, s. 37, renumbered as s. 38 in 1934 reprint and as s. 39 in 1943 reprint.

(2) Upon any order being made for the rescission of any special grant, the special administrator shall be bound to account to the original executor or administrator, and to pay over all moneys received by him and then remaining in his hands.

40. Should an executor or administrator neglect to apply for an order for the rescission of any special grant as aforesaid, he shall, until such special grant is rescinded, be liable to make good all claims and demands against the estate of the deceased to the extent of the assets which have come to his hands, or which might have come to his hands but for his wilful neglect or default, including the neglect herein mentioned.

Absent executor liable to account. No. 13 of 1903, s. 38, renumbered as s. 39 in 1934 reprint and as s. 40 in 1943 reprint.

Revocation pending litigation not to abate proceedings.
No. 13 of 1903, s. 39, renumbered as s. 40 in 1934 reprint and as s. 41 in 1943 reprint.

41. Where probate or administration is revoked or rescinded, pending any proceedings commenced by or against any executor or administrator lawfully acting as such, such proceedings shall be continued in the name of the executor or administrator appointed on such revocation or rescission as if the same had been originally commenced by or against such last-mentioned executor or administrator.

Devisee or legatee may apply to Court in certain cases.
No. 13 of 1903, s. 40, renumbered as s. 41 in 1934 reprint and as s. 42 in 1943 reprint.

42. If an executor who has obtained probate, or an administrator with the will annexed, after request in writing neglects or refuses to—

- (a) Execute a transfer or conveyance of land devised to a devisee, or
- (b) Transfer, pay, or deliver to the person entitled any bequest, legacy, or residuary bequest,

such devisee or person may apply for an order upon such executor or administrator to comply with such request, and the Court may make such order as it thinks fit.

Inventory and accounts.
No. 13 of 1903, s. 41, renumbered as s. 42 in 1934 reprint and as s. 43 in 1943 reprint.

43. (1) Every person to whom probate or administration is granted shall file an inventory of the estate of the deceased, and pass his accounts relating thereto within such time, and from time to time, and in such manner as may be prescribed by the rules or as the Court may order.

(2) The order of the Court allowing any account shall be *prima facie* evidence of the correctness of the same, and shall, after the expiration of three years from the date of such order, operate as a release to the person filing the same, except so far as it is shown by some person interested therein that a wilful or fraudulent error, omission, or entry has been made in such account.

If accounts not filed Master to give notice, etc.
No. 13 of 1903, s. 42, renumbered as s. 43 in 1934 reprint and as s. 44 in 1943 reprint.

44. (1) If an executor or administrator neglects to file an inventory or to pass accounts within one month after the expiration of the period fixed by the rules, the Master shall cause such executor or administrator to be notified of such neglect.

(2) In case of further neglect for the period of one month, the Master shall apply for an order upon such executor or administrator to file such inventory or exhibit such account forthwith.

(3) No proceedings under this section shall affect the liability of the executor or administrator to be proceeded against for an account and administration, or prevent the Court from ordering the assignment of any bond to any person with a view of enforcing the penalty thereof as hereinbefore mentioned.

45. (1) The Court may make such order with reference to any question arising in respect of any will or administration, or with reference to the distribution or application of any real and personal estate which an executor or administrator or Curator may have in hand, or as to the residue of the estate, as the circumstances of the case may require.

Court may settle all questions arising in administration.

No. 13 of 1903, s. 43, renumbered as s. 44 in 1934 reprint and as s. 45 in 1943 reprint.

(2) Such order shall bind all persons whether *sui juris* or not.

(3) No final order for distribution shall be made except upon notice to all the parties interested, or as the Court may direct.

46. (1) Where any probate or administration is revoked or rescinded, all payments *bona fide* made to the executor or administrator before the revocation or rescission shall be a legal discharge to the person making the same.

Payments made before revocation to be valid.

No. 13 of 1903, s. 44, renumbered as s. 45 in 1934 reprint and as s. 46 in 1943 reprint.

(2) The executor or administrator who has acted under any revoked or rescinded probate or administration may retain and reimburse himself, or shall be entitled to be reimbursed, in respect of all payments made by him before revocation or rescission, in the same manner as if such revocation or rescission had not taken place.

47. All persons making or permitting to be made any payment or transfer *bona fide* upon any probate or administration granted 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 administration not then known to such person.

Payments, etc., to be valid notwithstanding defect.

No. 13 of 1903, s. 45, renumbered as s. 46 in 1934 reprint and as s. 47 in 1943 reprint.

Executor may distribute after certain notice.

No. 13 of 1903, s. 46, renumbered as s. 47 in 1934 reprint and as s. 48 in 1943 reprint.

48. (1) Where an executor or administrator has given such notice as may be determined by the Court or a Master or by rules, or such or the like notice as would, in the opinion of the Court, have been given by the Court in an administration suit for creditors and others to send in their claims against the estate, such executor or administrator may, at the expiration of the time named in the last of such notices for sending in claims, distribute the assets of the deceased or any part thereof amongst the persons entitled thereto, having regard to the claims of which such executor or administrator has then notice.

(2) An executor or administrator shall not be liable for the assets, or any part thereof, so distributed to any person of whose claim he has not had written notice at the time of such distribution.

(3) An executor or administrator may apply to the Court *ex parte* to determine the length or nature of the notices to be given.

Executor, etc., may require claimant to establish claim.

No. 13 of 1903, s. 47, renumbered as s. 48 in 1934 reprint and as s. 49 in 1943 reprint.

49. (1) When an executor or administrator has given the notices in the last preceding section mentioned, and a claim against the estate is sent in, he may serve upon the person by whom or on whose behalf the claim was sent a notice calling upon him to take proceedings to enforce his claim within a period of three months, and to duly prosecute the same.

(2) If, at the expiration of such period, such person does not satisfy the Court that he is duly prosecuting his claim, the Court may make an order barring the claim.

Liability under lease.

No. 13 of 1903, s. 48, renumbered as s. 49 in 1934 reprint and as s. 50 in 1943 reprint.

50. (1) Where an executor or administrator liable as such under any lease or agreement for a lease or any conveyance on chief rents or rent charges or agreement for such conveyance granted or assigned to or made and entered into with the testator or intestate whose estate is being administered to—

- (a) the rents, covenants, or agreements contained in any such lease or agreement for a lease, or

(b) the rents, covenants, or agreements contained in any such conveyance or agreement for such conveyance, whether any such rent be by limitation of use, grant, or reservation, has—

- (i) satisfied all such liabilities under the said lease, or conveyance, or agreement for a lease or for a conveyance, as may have accrued due and been claimed up to the time of the assignment or conveyance hereinafter mentioned, and
- (ii) set apart a sufficient sum to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee or grantee to be laid out on the property demised or conveyed although the period for laying out the same may not have arrived, and
- (iii) assigned the lease or agreement for a lease, or conveyed such property, or assigned the agreement for such conveyance as aforesaid to a purchaser,

he may distribute the estate of the testator or intestate remaining in his hands amongst the parties entitled thereto respectively, without appropriating any part, or any further part thereof, as the case may be, to meet any future liability under any such lease or conveyance, or agreement for a lease or for a conveyance.

(2) An executor or administrator so distributing such estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under any such lease or conveyance, or agreement for a lease or for a conveyance.

51. Nothing in the last preceding section contained shall prejudice the right of any creditor or claimant or lessor or grantor, or those claiming under any lessor or grantor, to follow the assets or estate, or any part thereof, into the hands of the

Assets may be followed. No. 13 of 1903, s. 49, renumbered as s. 50 in 1934 reprint and as s. 51 in 1943 reprint.

persons, or any of them, among whom the same may have been distributed, or who may have received the same.

Power of executor or administrator as to debts.
No. 13 of 1903, s. 50, renumbered as s. 51 in 1934 reprint and as s. 52 in 1943 reprint.

52. An executor or administrator may—

- (a) pay any debts or claims upon any evidence that he may think sufficient, or
- (b) accept any composition or any security real or personal for any debts due to the deceased, or
- (c) allow any time for the payment of any such debts, or
- (d) compromise, compound, or submit to arbitration all debts, accounts, claims, and things whatsoever relating to the estate of the deceased, and

for any of the purposes aforesaid enter into, give, and execute such agreements, deeds, releases, and other things as he thinks expedient, without being responsible for any loss occasioned thereby.

Executor deemed to be resident in State.
No. 13 of 1903, s. 51, renumbered as s. 52 in 1924 reprint and as s. 53 in 1943 reprint.

53. (1) Every executor or administrator appointed under this Act, or named in any probate or letters of administration granted by any Court of competent jurisdiction in any portion of His Majesty's dominions, and making application under this Act for the sealing of such probate or administration, shall be deemed to be resident in Western Australia.

(2) Where not actually so resident he shall, before the issue or sealing of any probate or administration, file with the Master an address within the city of Perth at which notices and processes may be served upon him, and all services at such registered address shall be deemed personal service.

Court may appoint district agents.
No. 13 of 1903, s. 52, renumbered as s. 53 in 1934 reprint and as s. 54 in 1943 reprint: amended by No. 55 of 1941, s. 51.

54. (1) For the purpose of receiving applications for probate or administration under this Act, the magistrate of every Local Court held at a town beyond fifty miles from Perth shall be and is hereby appointed to act as a district agent for the Master.

¹ Came into operation on 1st July, 1942: See s. 8 of No. 55 of 1941.

(2) All district agents may, for the purposes of this part of this Act, administer oaths, take declarations and affirmations, and exercise any other powers which can be exercised by Commissioners of the Supreme Court.

55. In all cases where a person dies leaving property not exceeding one thousand five hundred pounds in value, application for probate or administration may be made direct to the Master; or if the fixed abode of the deceased at the time of his death has been more than fifty miles from Perth, then to the district agent for the Master nearest to such place of abode.

Where estate below £1,500, the Master or district agent may act.

No. 13 of 1903, s. 53, renumbered as s. 54 in 1934 reprint and as s. 55 in 1943 reprint; amended by No. 55 of 1941, s. 61, No. 55 of 1950, s. 3

56. (1) The Master or district agent shall, upon being satisfied as to the identity of the applicant, and his right to administer the estate of the deceased, and the value of such estate, furnish him, free of cost, with all necessary information for the purpose of enabling him to fill up the affidavits and documents necessary for obtaining probate or administration as the case may be.

Information to be furnished by Master or agent.

No. 13 of 1903, s. 54, renumbered as s. 55 in 1934 reprint and as s. 56 in 1943 reprint.

(2) The Master or district agent shall receive payment of all proper fees fixed by the Rules of the Court in connection with the application.

57. (1) The district agent shall forthwith transmit to the Master all fees, affidavits, documents, and things received by him; and, upon receipt of the probate or letters of administration, shall deliver the same to the applicant upon demand.

Applications to be transmitted by agent to Master.

No. 13 of 1903, s. 55, renumbered as s. 56 in 1934 reprint and as s. 57 in 1943 reprint; amended by No. 55 of 1950, s. 4.

(2) The Master shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed one thousand five hundred pounds in value, and that no caveat has been entered against the application, and that the fees have been duly paid, cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand, or shall forward the same to the district agent for delivery by him to the applicant.

¹ Came into operation on 1st July, 1942: See s. 8 of No. 55 of 1941.

(3) Such probate or administration shall be issued in the name and under the seal of the Court.

Master to refer matter back to agent if not satisfied.
No. 13 of 1903, s. 56, renumbered as s. 57 in 1934 reprint and as s. 58 in 1943 reprint.

58. (1) In any case where the Master is not satisfied, he shall state the matters in respect of which he is not satisfied, either to the applicant or to the district agent transmitting the application.

(2) Such agent shall then inform the applicant accordingly, and shall take such further steps as may be proper to enable the applicant to satisfy the Master in respect of such matters.

Application for probate, etc., to district agent in certain cases.
No. 13 of 1903, s. 57A, inserted by No. 55 of 1941, s. 71, renumbered s. 59 in 1943 reprint.

59. (1) If any person dies leaving property not exceeding one thousand pounds in value and the deceased at the time of his death had a fixed place of abode more than fifty miles from Perth, the person entitled to probate of the will or letters of administration of the estate of such deceased person may apply by his solicitor to the district agent nearest to such place of abode for a grant of such probate or such letters of administration.

(2) The district agent shall receive payment of all proper fees fixed by the Rules of the Court in connection with the application, and shall forthwith transmit to the Master all fees, affidavits, documents, and things received by him; and, upon receipt of the probate or letters of administration, shall deliver the same to the solicitor lodging such application, upon demand.

(3) The Master shall, upon being satisfied with the sufficiency of the evidence in support of the application, and that the estate does not exceed one thousand pounds in value, and that no caveat has been entered against the application, and that the fees have been duly paid, cause probate or letters of administration (as the case may be) to be issued, and shall forward the same to the district agent for delivery by him to the solicitor for the applicant.

(4) Such probate or administration shall be issued in the name and under the seal of the Court.

¹ Came into operation on 1st July, 1942: See s. 8 of No. 55 of 1941.

(5) In any case where the Master is not satisfied, he shall state the matters in respect of which he is not satisfied to the district agent transmitting the application, and such district agent shall then inform the solicitor for such applicant accordingly, and such solicitor may take such further steps as may be proper to satisfy the Master in respect of such matters.

60. In no case shall the Master be under any obligation by reason of this Act to deal with any application which he may think proper to be dealt with by the Court or to be placed in the hands of a solicitor.

Master may refer to Court.
No. 13 of 1903, s. 57, renumbered as s. 58 in 1934 reprint and as s. 60 in 1943 reprint.

PART III.—FOREIGN PROBATES AND ADMINISTRATION.

61. (1) When any probate or administration heretofore or hereafter granted by any Court of competent jurisdiction, in any portion of His Majesty's dominions, is produced to and a copy thereof deposited with the Master by any person being the executor or administrator therein named, or by any person duly authorised by power of attorney in that behalf, under the hand and seal of such executor or administrator, such probate or administration may be sealed with the seal of the Court.

Foreign probates, etc., may be sealed.
No. 13 of 1903, s. 58, renumbered as s. 59 in 1934 reprint and as s. 61 in 1943 reprint.

(2) When so sealed, such probate or administration shall have the like force, effect, and operation in Western Australia, and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities as if such probate or administration had been originally granted by the Court.

(3) The Court may require any such executor or administrator, or person authorised as aforesaid, to give security for the due administration of the estate in respect of matters or claims in Western Australia.

Duties to be paid.
No. 13 of 1903, s. 59, renumbered as s. 60 in 1934 reprint and as s. 62 in 1943 reprint.

62. The seal of the Court shall not be affixed to any such probate or administration until such duties and fees have been paid, and bond entered into, by such executor or administrator or his attorney as aforesaid, as would have been payable or required if such probate or administration had been originally granted by the Court.

[Part IV., Curator of Intestate Estates, as enacted by No. 13 of 1903, was repealed by the Curator of Intestate Estates Act, 1918, No. 9 of 1918.]

[Numbered as Pt. V. in 1934 reprint and renumbered as Pt. IV. in 1943 reprint.]

PART IV.—CAVEATS.

Caveat.
No. 13 of 1903, s. 83, renumbered as s. 61 in 1934 reprint and as s. 63 in 1943 reprint.

63. (1) Any person may lodge with the Master a caveat against any application for probate or administration, or for the sealing of any probate or letters of administration under this Act, at any time previous to such probate or administration being granted or sealed.

(2) Every such caveat shall set forth the name of the person lodging the same, and an address within the city of Perth at which notices may be served on him.

Court may remove caveat.
No. 13 of 1903, s. 84, renumbered as s. 62 in 1934 reprint and as s. 64 in 1943 reprint.

64. (1) In every case in which a caveat is lodged the Court may, upon application by the person applying for probate or administration, or for the sealing of any probate or letters of administration, as the case may be, remove the same.

(2) Every such application shall be served on the caveator by delivering a copy of the same at the address mentioned in his caveat.

(3) Such application may be heard and order made upon affidavit or oral evidence, or as the Court may direct.

[See foot-note to heading of Pt. V. post.]

[Part VI. (ss. 85-126) as originally enacted by No. 13 of 1903 was repealed by No. 28 of 1934, s. 2.]

PART V.—DUTIES ON DECEASED PERSONS' ESTATES
AND SUCCESSION DUTIES.¹[Numbered
as Part VI.
in 1934
reprint.²](1)—*Interpretation.*

65. In this Part of the Act—

Interpreta-
tion.

“Commissioner” means such person as for the time being is appointed by the Governor to be the Commissioner of Stamps.

No. 28 of
1934, s. 4,
incorporated
in 1934
reprint as
s. 63 (See s.
77 (3) (c) of
No. 28 of
1934) and
in 1943
reprint
as s. 65.

“Duty” means estate, succession, or other duty under this Act.

“Final balance” means the balance appearing upon any statement certified by the Commissioner, and includes the sum on which an assessment is made by the Commissioner pursuant to section sixty-seven or section sixty-eight of this Act.

“Foreign company” means a foreign company as defined by section one of the Companies Act Amendment Act, 1897.³

“Prescribed” means prescribed by this Part of this Act or by the regulations made by the Governor.

“Probate” and “Administration” have the same meanings as ascribed to those words by section three of this Act, and a foreign grant of probate or administration when resealed under Part III. of this Act has the same force, effect, and operation and is subject to the provisions of this Part of this Act as if probate or administration had originally been granted in this State.

“Trustee” means the trustee or trustees of any settlement.

¹ This Part was enacted as Part II. of the Administration Act (Estate and Succession Duties) Amendment Act, 1934 (No. 28 of 1934). By section 3 of that Act it was enacted as follows:—

3. This Act shall apply in the case of any person dying after its commencement; but the provisions of Part VI. of the principal Act (i.e. ss. 85-126 as enacted by No. 13 of 1903) as hereby repealed shall apply to any person dying before the commencement of this Act (1st January, 1935).

It was inserted as Part VI. of the 1934 reprint and re-numbered as Part V. in the 1943 reprint: See also s. 77 (3) (c) of No. 28 of 1934.

² See footnote * on p. 1 of this reprint.

³ See now the Companies Act, 1943-1954.

(2)—*Ascertainment of Duty on Estates of Deceased Persons.*

Executor or administrator to file statement.

No. 28 of 1934, s. 5, incorporated in 1934 reprint as s. 64 and in 1943 reprint as s. 66².

cf. 1903, No. 13, s. 88, Victoria No. 3532 (1928), s. 152.

66. (1) Every executor and administrator to whom probate or administration may be granted shall file in the office of the Commissioner a statement specifying the particulars of—

- (a) the real and personal property in Western Australia of which the estate of the deceased person consisted at his death;
- (b) all property which, pursuant to the provisions of sections seventy-three to seventy-eight, inclusive, is deemed to be made chargeable with the payment of duty, or to form part of the estate of the deceased person for the purpose of estimating the duty payable under this Act;
- (c) the value of the property referred to in paragraph (a) or paragraph (b);
- (d) the debts and liabilities of the deceased person charged or chargeable on his estate;
- (e) the relationship (if any) to the deceased person of the person or persons entitled under the will or intestacy; and
- (f) such other matters as may be prescribed.

1903, No. 13, s. 88, 2nd par.

(2) In the case of probate or letters of administration limited to any particular property of a testator or intestate, the statement shall be limited to such particular property.

cf. 1903, No. 13, s. 88, 1st par.
See No. 26 of 1941, s. 19 (2).

(3) *Every statement shall be in the prescribed form, shall be verified by affidavit, and shall be filed within three months from the grant of probate or administration, or within such further time as the Commissioner may allow.

1903, No. 13, s. 90.

(4) The Commissioner may, subject to such conditions as may be prescribed, permit the executor or administrator to add to, alter, or vary a statement.

Ibid.

(5) When a statement, with such additions, alterations, or variations (if any) is approved by the Commissioner, he shall certify such approval in the prescribed form.

* See footnote * to s. 119 post.

² See also footnote ¹ to heading of Part V. ante.

(6) If any executor or administrator fails to file a statement as required by this section, the Court may, on the application of the Commissioner, order that such executor or administrator shall file such statement within a time to be named in the order, and may make such order as to costs as may seem just.

Of. s. 91.

67. If the Commissioner is dissatisfied with any statement filed in respect of the estate of a deceased person, or of any property derived from him, or in any other respect, or if probate or administration is not obtained in this State, or a foreign grant of probate is not resealed in this State in respect of the estate of any deceased person within six months after his death—

If statement not filed or Commissioner dissatisfied therewith, Commissioner may assess duty. No. 28 of 1934, s. 6, incorporated in 1934 reprint as s. 65 and in 1943 reprint as s. 67¹.

(a) the Court may, on the application of the Commissioner, order that such executor or administrator shall file such statement within a time to be named in the order, and may enforce the order as orders are now enforced by the Court and may make such order as to costs as seems just; or

Of. 1903, No. 13, s. 91; Victoria No. 3632, s. 153.

(b) the Commissioner may assess the duty payable on the estate of the deceased person.

68. (1) In any case where after the expiry of three months from his death probate of the will or letters of administration of the estate of a deceased person has not or have not been obtained, or resealment has not been effected in this State, the Commissioner, if he has reason to believe that duty would be payable in respect of the real or personal estate of such deceased person, may apply to a Judge in Chambers for a summons calling upon—

Further power of Commissioner as to filing statements. No. 28 of 1934, s. 7, incorporated in 1934 reprint as s. 66 and in 1943 reprint as s. 68¹. Victoria No. 3632, s. 155.

(a) the executor or any person having possession of a will of such deceased person; or

(b) a surviving wife or husband, or any one of the next of kin who would be entitled to a grant of letters of administration of the estate of the deceased person; or

¹ See also footnote ¹ to heading of Pt. V. ante.

- (c) the donee or other person in possession of property conveyed, assigned, or given by such deceased person,

to show cause—

- (i) why such executor, surviving wife or husband, next of kin, donee, or other person should not file the statement required by section sixty-six of this Act, as though probate or letters of administration had been duly granted to him; or, in the alternative,
- (ii) why the Commissioner should not be authorised to certify the final balance of the estate in such sum as in his judgment ought to be fixed, and why such executor, surviving wife or husband, next of kin, donee, or other person should not pay the duty calculated on such balance.

(2) Upon cause being shown, or, if the person so summoned does not appear, upon proof of service of the summons, it shall be lawful for a Judge to order that the person summoned shall file such statement, or that the Commissioner be authorised to certify the final balance of the estate, and to make such further order in the premises and as to costs as appears just.

(3) This section shall not affect the power to assess duty conferred on the Commissioner by the last preceding section.

69. Every executor and administrator or any person ordered to file the statement referred to in the last preceding section shall, in accordance with section seventy, but subject to the provisions of section sixty-nine A of this Act, pay to the Commissioner duty calculated and levied on the final balance of the real and personal estate of the testator or intestate as assessed under this Act. Such duty shall be at such rates as are declared by Parliament.

69A. (1) Where the whole or part of the estate of a deceased person consists of a dwelling house which at the date of the death of the deceased person was ordinarily used by the surviving spouse of the

Duty payable on estates of deceased persons. No. 28 of 1934, s. 8, incorporated in 1934 reprint as s. 67 and in 1943 reprint as s. 69¹ amended by No. 81 of 1953, s. 2.

Power to remit or postpone payment of duty in certain cases. S. 69A added by No. 81 of 1953, s. 3.

¹ See also footnote ¹ to heading of Pt. V. ante.

deceased person as his or her ordinary place of residence and the final balance, as assessed under this Act, of the estate of the deceased person, does not exceed five thousand pounds, the Treasurer, on written application being made to the Commissioner by or on behalf of the surviving spouse, may at the Treasurer's option, defer, subject to such conditions, if any, as the Treasurer thinks fit, payment of the whole, or such part of the duty as the Treasurer thinks fit, until the death of the spouse.

Cf. No. 18
of 1923.

(2) The provisions of sections one hundred and twenty-one and one hundred and twenty-two of this Act apply in respect of duty which has become chargeable notwithstanding that payment of the duty has been deferred under subsection (1) of this section.

Cf. ss. 121
and 122 post.

70. The duty payable as aforesaid, whether payment has or has not been deferred under section 69A of this Act, shall be deemed, for the recovery thereof, to be a debt of the testator or intestate to His Majesty (but not a debt of the deceased to which paragraph (d) of subsection (1) of section sixty-six applies), and shall be a charge upon the property derived from the deceased, and shall be paid by any executor or administrator out of the estate of the testator or intestate, subject to payment of the funeral and testamentary expenses in priority to all debts of the testator or intestate and subject to deferment, if any, under section sixty-nine A of this Act.

Duty a first
charge on
the estate.
No. 28 of
1934, s. 9,
incorporated
in 1934
reprint as
s. 68 and in
1943 reprint
as s. 70¹;
amended by
No. 81 of
1953, s. 4.
Cf. 1903, No.
13, s. 87;
Victoria No.
3632, s. 162.

Provided that nothing herein contained shall, except to the extent of a deferment, if any, under section sixty-nine A of this Act, prejudice the remedies of the Commissioner for the recovery thereof, and provided further, that the Commissioner may remit either wholly or in part any sum payable by way of interest under section one hundred and eight.

71. (1) No will or codicil of any deceased person shall be registered or receivable or admissible in evidence, except in criminal proceedings, or upon application for probate or letters of administration, or in proceedings relating to the validity of any such

No will to
be registered
or admissible
in evidence
until proved.
No. 28 of
1934, s. 10,
incorporated
in 1934
reprint as
s. 69 and in
1943 reprint
as s. 71¹.
Cf. 1903,
No. 13, s. 12¹.

¹ See also footnote ¹ to heading of Pt. V. ante.

will or codicil, or in proceedings under this Part of this Act, until probate or letters of administration in respect of the estate comprised therein shall have been issued or obtained.

Probate or letters of administration not to issue until duty paid.
Cf. 1903, No. 13, s. 92; Victoria No. 3632 (1928), s. 164.

(2) Subject to the proviso to subsection (4) no probate or letters of administration shall issue from the Master's Office until the Commissioner certifies in writing that the duty payable under this Act has been paid.

(3) After payment of the duty, and on the issue of probate or letters of administration, the Master shall certify by indorsement thereon that the duty has been paid, and the amount thereof.

(4) Subject as hereinafter provided, no probate or letters of administration shall be receivable in evidence in any court of justice unless it bears the indorsement that duty has been paid.

Provided that, if the duty is secured to the satisfaction of the Commissioner, or is in part paid and in part secured, the Master may issue the said probate or letters of administration on receiving a certificate from the Commissioner to that effect.

(5) Security for the payment of duty may be given by an executor or administrator by mortgage over the estate of the deceased or any portion thereof, or by bond with or without sureties, or in any other manner the Commissioner thinks fit.

Administration during minority or absence.
 No. 28 of 1934, s. 11, incorporated in 1934 reprint as s. 70 and in 1943 reprint as s. 72¹.
Cf. 1903, No. 13, s. 93; Victoria No. 3632 s. 169.

72. Every executor to whom probate is granted, or administrator with the will annexed to whom administration is granted during the minority or absence from the State of any person, shall file the statement required by section sixty-six of this Act, and pay the prescribed duty out of the estate of the testator or intestate which passes to such executor or administrator by virtue of any such grant in his favour.

¹ See also footnote ¹ to heading of Pt. V. ante.

73. (1) Property of any kind the subject-matter of a *donatio mortis causa* shall, on the death of a person making such gift, be deemed to form part of his estate for the purpose of estimating the duty thereon, and shall be chargeable with duty accordingly.

Donatio mortis causa.
No. 28 of 1934, s. 12, incorporated in 1934 reprint as s. 71 and in 1943 reprint as s. 73¹.
Cf. 1903, No. 13, s. 89; Victoria No. 3632, s. 176.

(2) Such property shall be included in the statement to be filed by the executor or administrator pursuant to section sixty-six, and shall vest in the executor or administrator until the duty has been paid and has been refunded by the donee to the executor or administrator.

74. (1) In this Part of this Act, "gift *inter vivos*" includes—

Gifts inter vivos.
No. 28 of 1934, s. 13, incorporated in 1934 reprint as s. 72, and in 1943 reprint as s. 74¹.
Cf. 1903, No. 13, ss. 95, 96; Victoria No. 3632, s. 173; Com., 1914, No. 22, s. 8, 44 & 45 Vict., c. 12, s. 38; 52 & 53 Vict., c. 7, s. 11; 57 & 58 Vict., c. 30, s. 2, and 10 Edw. VII., c. 8, s. 59 (Imp.).

(a) any gift absolute and every non-testamentary disposition of property of any kind, whether by way of conveyance, transfer, assignment, lease, appointment under power, by way of renunciation or disclaimer, by way of declaration or creation of any trust, by way of mortgage charge or incumbrance, by way of creation of any estate or interest in property, or by any means at law or in equity, whether subject to any limitation or not, and whether in writing or not, not being a settlement within the meaning of this Act, but does not include a disposition in favour of a *bona fide* purchaser, lessee, mortgagee, or incumbrancer for valuable consideration, except where any such disposition is made otherwise than for an adequate consideration in money or money's worth, when the disposition shall be deemed to be a gift to the extent of such inadequacy;

(b) without limiting the effect of the preceding provisions any contract, obligation, engagement or transaction entered into, whether with or without writing, and which is made without fully adequate consideration in money or money's worth so that the value

Cf. N.Z. 21 of 1921, ss. 38, 39, 40; N.S.W. 47 of 1920, s. 100.

¹ See also footnote ¹ to heading of Pt. V. ante.

of the estate of the maker may be directly or indirectly diminished, and the value of the estate of any other person increased shall be deemed a gift to the extent of such inadequacy;

- (c) without limiting the effect of the preceding provisions the release, discharge, surrender, forfeiture, or abandonment at law or in equity of any debt, contract, chose in action, or of any right, power, estate, or interest in or over any property shall be deemed a gift in the like circumstances and to the same extent as mentioned in the preceding provisions.

N.Z. No. 21
of 1921, s. 38.

(2) Every gift *inter vivos*—

- (a) if made within twelve months before the death or the person making the same; or
- (b) if made at any time, if such gift relates to property of which possession and enjoyment has not been *bona fide* assumed by the person taking under such gift forthwith thereafter, and thenceforward retained to the entire exclusion of the person making the same, and without any reservation to that person of any benefit to him by contract or otherwise,

shall be deemed to have made the property to which such gift relates chargeable, on the death after the commencement of this section of the person making the gift, with the payment of the duty payable under this Act, as though part of the estate of the person making the disposition.

Cf. 10 Edw.
VII., c. 8,
s. 59 (2)
(Imp.).

- (3) This section shall not apply to gifts which are proved to the satisfaction of the Commissioner not to have exceeded in the aggregate the sum of one hundred pounds in value, or which are proved to the satisfaction of the Commissioner to have been reasonable, having regard to the amount of his income or means at the date of such gift, when, except for this subsection, paragraph (a), (b), or (c) of subsection (1) would apply.

75. All property of any kind whatsoever which a person, having been absolutely entitled thereto, has voluntarily caused, or may cause, to be transferred to or vested in himself and any other person jointly, whether by disposition or otherwise (including 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, so that a beneficial interest therein, or in some part thereof, passes or accrues by survivorship on his death to such other person, shall, on the death of such person, after the commencement of this section, be deemed to the extent of such beneficial interest to form part of his estate for the purpose of estimating the duty payable under this Act, and shall be chargeable with duty thereon accordingly.

Joint transfers, investments, etc.
No. 28 of 1934, s. 14, incorporated in 1934 reprint as s. 73 and in 1943 reprint as s. 75¹.
Cf. Victoria No. 3632 s. 174.

76. In relation to any person dying after the commencement of this section, all real and personal estate—

Joint investments, etc..
No. 28 of 1934, s. 15, incorporated in 1934 reprint as s. 74 and in 1943 reprint as s. 76¹.
Cf. Tasmania, No. 23 of 1931, s. 5 (2) (IV.), (VI.), (VIII.) and (X.).

(a) held by such person as a joint tenant or joint owner with any other person to the extent of the interest accruing to that other person by survivorship, and in proportion to the amount, if any, paid on the property, or contributed or conferred by the person so dying, in or towards the purchase or investment whereby such joint tenancy was created; or

(b) in respect of which such person has given any power of appointment, unless it is proved—

(i) that the donee of the power has received the rents, dividends, interest, or other income from such property in good faith for his own use from the date when such power was given; and

(ii) such power was exercised by the donee not less than twelve months before the death of the donor; or

¹ See also footnote ¹ to heading of Pt. V. ante.

- (c) which passes under any conveyance, or by means of any legal or equitable alienation made by or with the authority or direction of any such person within twelve months before his death, in consideration of annual or other periodical payments to be paid to such person, or to any other person nominated by him and terminating either before or after the death of such first person, and which are less than the annuity which the person so dying would reasonably expect to purchase for the amount of the assessed value of the property, if realty, or the market value, if personalty (such value to be taken at the time such conveyance or alienation was made) to the extent to which the aggregate amount of such payments is less than such value as aforesaid; or
- (d) which consists of money payable upon or after the death of any such person in respect of any policy of life assurance effected by him, and kept in force wholly or partially by him and assigned by him by way of gift within twelve months before his death; but where such policy has been only partially kept in force by such person, then such proportion only of such money as the premiums paid by such person bear to the total premiums paid in respect of such policy

shall, on the death of such person, be deemed to form part of his estate for the purpose of estimating the duty payable under this Act, and shall be chargeable with duty thereon accordingly.

General power of appointment. No. 28 of 1934, s. 16, incorporated in 1934 reprint as s. 75 and in 1943 reprint as s. 77¹. Cf. Victoria No. 3632, s. 175.

77. All property of any kind whatsoever over which a deceased person had at the time of his death a general power enabling him by will or deed to dispose thereof, shall upon his death, after the commencement of this section, if such power is exercised by his will, be deemed to form part of his estate for the purpose of estimating the duty payable under this Act, and shall be chargeable with duty thereon accordingly.

¹ See also footnote ¹ to heading of Pt. V. ante.

78. Any interest of a deceased person in any life estate, or determinable life estate, or in any lease determinable on life or any leasehold term, which was surrendered without consideration or adequate consideration in money or money's worth to any other person within twelve months before his decease, shall on the death of such person after the commencement of this section be deemed to form part of his estate for the purpose of estimating the duty payable under this Act:

Property comprised in a settlement, the life interest being surrendered, No. 28 of 1934, s. 17, incorporated in 1934 reprint as s. 76 and in 1943 reprint as s. 78¹. Cf. Com., 1914, No. 22, s. 8 (4); 1928, No. 47, s. 5.

Provided that the value which shall be assessed in respect of such interest shall be the total value or amount which the person who surrendered the interest might reasonably have expected to receive at the date of such surrender, less any consideration in money or money's worth actually received by him.

79. For the purpose of the assessment of duty payable, the sum of the value of all properties subject to duty under the provisions of the six last preceding sections, or any of them, shall be added to the value of the estate of the deceased, and duty shall be payable on the final balance so obtained, and at the percentage rate applicable to such final balance:

Estimating duty for purposes of the six last preceding sections. No. 28 of 1934, s. 18, incorporated in 1934 reprint as s. 77 and in 1943 reprint as s. 79¹. Cf. Victoria No. 3632, s. 176, 2nd par.

Provided that the executor or administrator shall not be responsible for payment of any duty in respect of any property to which sections seventy-three to seventy-eight apply, where the executor or administrator has distributed the estate, without notice, of any such property, and without any default or negligence on the part of such executor or administrator.

80. (1) Duty paid by an executor or administrator pursuant to the last preceding section with respect to property subject to the provisions of sections seventy-three to seventy-eight, both inclusive of this Act, and subject to the provisions of section ninety-six, shall be reimbursed by the donee or recipient under a *donatio mortis causa*, gift or other disposition to which those sections relate, or by the survivor in the case of a joint transfer, or invest-

Reimbursement of duty paid by executor or administrator in respect of non-testamentary dispositions of property. No. 28 of 1934, s. 19, incorporated in 1934 reprint as s. 78 and in 1943 reprint as s. 80¹.

¹ See also footnote 1 to heading of Pt. V. ante.

ment, or an appointee under a power exercised by a testator, and shall be recoverable by the executor or administrator by action in any Court of competent jurisdiction

Provided that any duty payable under the said sections shall, if the Commissioner thinks fit, and notwithstanding any judgment which the Commissioner may have obtained against any other party liable, be recoverable by him from the donee, survivor, appointee, or other person who acquired the property chargeable with such duty, as a debt due from such person to His Majesty, and, subject to the provisions of section one hundred and thirty-five, shall be a first charge on the property, subject to any existing encumbrance for moneys secured by or charged on such property before the non-testamentary disposition thereof.

Cf. 1903,
No. 13, s. 96,
3rd par.

(2) If on the death of a person who in his lifetime has made a disposition of property to which sections seventy-three to seventy-eight, both inclusive, or any of them apply, and the estate of the deceased is not solvent, or there would have been an abatement if the disposition had been made by the will of the deceased, the like duty shall be payable with respect thereto by the donee, survivor, appointee, or other person acquiring the property so disposed of, as if the value of such property and any other property so disposed of together constituted the final balance of the estate; and the proviso to the last preceding subsection shall apply.

Non-testa-
mentary
dispositions
with intent
to evade
duty.

No. 28 of
1934, s. 20,
incorporated
in 1934
reprint as
s. 79 and in
1943 reprint
as s. 81¹.

Cf. 1903,
No. 13, s.
106; Victoria
No. 3632,
s. 176.

81. (1) If any person has made, or hereafter makes, or is party or privy to any conveyance, assignment, demise, gift, delivery, transfer, declaration of trust, surrender, or other non-testamentary disposition, whether in writing or otherwise, of any property of any kind whatsoever, including money or securities for money, or has given or shall give any mortgage or encumbrance, or has incurred or shall incur any debt, with intent to evade the payment of duty under this Act, such disposition, mortgage, or encumbrance, or the incurring of such

¹ See also footnote ¹ to heading of Pt. V. ante.

debt, shall be deemed, so far as will admit, to be a gift under section seventy-four hereof, and any property accruing to any person thereunder shall be liable to duty as if the donor had died within twelve months from the date thereof, and sections seventy-three to seventy-eight, both inclusive, of this Act shall apply, but double duty shall be payable in respect of such property.

(2) In any case within this section the Court may, on the application of the Commissioner, by summons or petition, declare the disposition, mortgage, encumbrance, or debt in question to have been made, given, or incurred with intent to evade the payment of duty, and may also declare that double duty is payable in respect of the property accruing thereunder, and may order that some person shall file a statement in respect of such property, and pay such duty.

(3) Any non-testamentary disposition of property as aforesaid made in escrow or otherwise to take effect upon the death of the person making the same shall be deemed to have been made with intent to evade the payment of duty under this Act, and in such case this section shall apply.

Victoria
No. 3632,
s. 176.

(4) Subsection (1) of this section extends not only to sham or colourable transactions within the categories mentioned in that subsection, but extends also to any transaction carried out with the intent aforesaid and which is legally complete and binding.

(5) This section, subject to the provisions of section one hundred and thirty-five, shall not affect the operation of the preceding sections of this Part of this Act relating to duty on non-testamentary dispositions of property; and shall apply only where an intention to evade the payment of duty is alleged by the Commissioner and proved to the satisfaction of the Court.

(3)—Settlements.

Interpretation of "Settlement."

No. 28 of 1934, s. 21, incorporated in 1934 reprint as s. 80 and in 1943 reprint as s. 82¹.

Cf. 1903, No. 13, s. 94; Victoria No. 3632 (1928), s. 148 (2).

82. In and for the purposes of this Part of this Act—

"Settlement" includes every conveyance, transfer, appointment under power, declaration of trust, or other non-testamentary document, and every non-testamentary disposition of property, made by any person before or after the commencement of this section, containing trusts or dispositions, or being a disposition, to take effect, or which shall or may take effect, upon or after the death of such person, or of any other person, when the settlor or other person shall not have died before the first day of January, one thousand nine hundred and four; and

"Settlor" means any person by whom a settlement is made.

Settlements to be registered.

No. 28 of 1934, s. 22, incorporated in 1934 reprint as s. 81 and in 1943 reprint as s. 83¹.

Cf. 1903, No. 13, s. 98; Victoria No. 3632 (1928), s. 177.

83. Every settlement shall, upon the death of the settlor or other person upon or after whose death any trust or disposition takes effect, be registered within three months thereafter, or within such further time as the Commissioner or the Court may allow, in the office of the Commissioner, and no such trust or disposition shall be valid unless the settlement is so registered.

Statement to be filed¹

No. 28 of 1934, s. 22, incorporated in 1934 reprint as s. 82 and in 1943 reprint as s. 84¹.

Cf. 1903, No. 13, s. 101; Victoria No. 3632 (1928), s. 177.

84. No settlement shall be registered unless the trustee (if any), or some person interested under the settlement, has filed with the Commissioner a statement setting forth the nature of the property comprised in or disposed of by such settlement, and the value thereof, in such form and with such particulars and verified on oath by such person as the rules may prescribe.

Duty.

No. 28 of 1934, s. 24, incorporated in 1934 reprint as s. 83 and in 1943 reprint as s. 85¹.

Cf. 1903, No. 13, s. 96; Victoria No. 3632, s. 177.

85. (1) Subject as hereinafter provided, all property both real and personal, disposed of by settlement shall, with respect to trusts or dispositions to take effect on or after the death of the settlor or of some other person, be chargeable on

¹ See also footnote ¹ to heading of Pt. V. ante.

the death of the settlor or of such other person, as the case may be, with duty at such rates as are declared by Parliament.

(2) With respect to such trusts or dispositions—

- (a) duty shall be calculated as to its rate at the percentage applicable to the value of the whole of the property chargeable with duty to which the settlement relates, or, if there are more settlements than one by the same settlor, at the percentage applicable to the value of the whole of the property to which the several settlements relate, as stated in the statement or several statements, as the case may be, filed pursuant to the last preceding section and certified by the Commissioner; and
- (b) when property is disposed of in favour of more persons than one, the proportionate part of such duty chargeable to each beneficiary in respect of the portion or interest of or in the settled property acquired by him, shall be fixed as to the rate of duty by reference to the value of the whole of the property to which the settlement relates, or the several settlements relate.

86. If any settlement is not registered within the prescribed time, or such further time as the Commissioner may allow, the Commissioner may assess in the prescribed manner the duty payable under this Part of this Act in respect of such settlement, and if such duty is not paid within the prescribed time or such further time after the prescribed notice, the Commissioner or any person interested may apply to the Court, which may order that a sufficient part of the settled property may be sold and the proceeds applied in payment of the duty and of the costs and expenses of the order and sale and consequent thereon, and the provisions of sections ninety-two, ninety-three, and ninety-four shall apply with the necessary modifications.

Assessment of duty when settlement not duly registered. No. 28 of 1934, s. 25, incorporated in 1934 reprint as s. 84 and in 1943 reprint as s. 86¹. Cf. Victoria No. 3632, s. 177.

¹ See also footnote 1 to heading of Pt. V. ante.

Application of s. 78.
No. 28 of 1934, s. 26, incorporated in 1934 reprint as s. 85 and in 1943 reprint as s. 87¹.

87. This subdivision shall not affect section seventy-eight of this Act relating to the duty chargeable where the interest of any person in any life estate, terminable life estate, or any leasehold term determinable on life was surrendered by him before his death.

Settlement not admissible in evidence unless registered.
No. 28 of 1934, s. 27, incorporated in 1934 reprint as s. 86 and in 1943 reprint as s. 88¹.
Cf. 1903 No. 13, s. 128.

88. When the trusts or dispositions of any settlement within the meaning of this Act have taken effect, the settlement shall not be admissible or receivable in evidence, except in criminal proceedings, or in proceedings under this Part of this Act, until the same has been registered.

Recovery of duty.
No. 28 of 1934, s. 28, incorporated in 1934 reprint as s. 87 and in 1943 reprint as s. 89¹.

89. Duty payable under any settlement shall be a debt due to His Majesty, and shall be recoverable by the Commissioner from the trustee, if any, of the settlement or from the beneficiaries thereunder; and, in the case of trusts, or dispositions to take effect on the death of the settlor, or any other person, each beneficiary (if more than one) shall be liable for a proportionate part of the duty at the appropriate rate and apportioned to the value of the share or interest of the beneficiary of or in the settled property in the aggregate.

(4)—*Other Non-testamentary Dispositions of Property.*

Other non-testamentary dispositions.
No. 28 of 1934, s. 29, incorporated in 1934 reprint as s. 88 and in 1943 reprint as s. 90¹.
Cf. S.A. No. 1898 (1929), s. 32.

90. (1) Subject to and without affecting the operation of any of the preceding sections of this part of this Act, and, so far only as those provisions do not apply, succession duty shall be levied and paid, at such rate as is declared by Parliament, on the net present value of—

- (a) the increase of benefit accruing after the commencement of this section to any person by the extinction or determination of any charge, encumbrance, estate, or interest, determinable by the death of any person, or at any period ascertainable by reference to death, to which any property has become

¹ See also footnote ¹ to heading of Pt. V. ante.

subject by any non-testamentary disposition made before or after the commencement of this section;

- (b) the beneficial interest in any property vested in any persons jointly which thereafter accrues to the other or others of such persons by survivorship;
- (c) the beneficial interest in any money received under a policy of assurance effected on his life by any person dying after the commencement of this section where the policy was wholly kept up by him for the benefit of a donee, whether nominee or assignee, or a part of the said money proportionate to the premiums paid by him, where the policy was partially kept up by him for the benefit of a donee as aforesaid;
- (d) the beneficial interest in any money received under a policy of assurance effected by any person on the life of any other person who dies after the commencement of this section, where the premiums in respect of the policy were wholly paid by such secondly mentioned person, or if part only of the premiums were paid as aforesaid, then a part of the said money in the same proportion as the amount of the premiums paid as aforesaid bears to the whole of the premiums paid in respect of the said policy; S.A. No. 1981 (1930), s. 6.
- (e) any annuity or other interest purchased or provided by a person, either by himself alone, or in concert or by arrangement with any other person, to the extent of the beneficial interest accruing or arising therein by survivorship on or after the death of any person dying after the commencement of this section.

(2) The duty chargeable under this section shall be a first charge upon the property on which the same is imposed, and shall become chargeable upon S.A. No. 1893 (1929), s. 32 (2).

the said property immediately upon the accruing of the increase of benefit, beneficial interest, or property, as the case may be.

Ibid., s. 33.

(3) Duty shall not be chargeable in respect of the increase of benefit, or the beneficial interest accruing as mentioned in the paragraphs of subsection (1) of this section by reason only of a *bona fide* purchase from the person under whose disposition the benefit or interest accrues, nor in respect of the falling into possession of the reversion on any lease for lives, nor in respect of the determination of any annuity for lives, where the purchase was made, or the lease or annuity granted, for full consideration in money or money's worth to the vendor or grantor for his own use or benefit, or, in the case of a lease, for the use or benefit of any person for whom the grantor was a trustee.

Ibid., s. 37.

(4) The persons becoming beneficially entitled to any property chargeable with duty under this section, or any trustee, guardian, or committee in whom the property is vested, or such one or more of them as the Commissioner nominates, shall file a statement with the Commissioner, showing all such particulars as the Commissioner requires to enable him to assess the duty.

Such statement shall be filed within three months after the interest or benefit chargeable with duty has accrued.

(5) Immediately after the Commissioner has approved the said statement and assessed the duty, the person filing the statement shall (subject to the right of appeal under sections one hundred and three, one hundred and six, and one hundred and seven) pay the duty so assessed:

Provided that the Commissioner may extend the time for payment.

Ibid., s. 39.

(6) If the statement is not duly filed within the prescribed time, or if the Commissioner is dissatisfied with any such statement, the Commissioner may assess the duty payable in respect of the interest chargeable, subject to the right of appeal conferred by sections one hundred and three, one hundred and six, and one hundred and seven of this Act.

(5)—*Property on which Duty is payable under Non-testamentary Dispositions.*

91. Property comprised in a settlement or disposed of by any other non-testamentary disposition within the meaning of the preceding section ninety, shall be subject to duty under the provisions of this part of this Act, so far as such property is, or is portion of, or is payable out of—

- (a) real property in Western Australia (including real property over which the settlor or person making such non-testamentary disposition had a general power of appointment exercised by such settlement or other non-testamentary disposition).
- (b) personal property wheresoever the same shall be (including personal property over which the settlor, or person making such non-testamentary disposition had a general power of appointment exercised by him by such settlement or other non-testamentary disposition) if he was, at the time of the settlement, or other non-testamentary disposition, domiciled in Western Australia; or
- (c) personal property in Western Australia (including personal property over which the settlor, or person making such non-testamentary disposition had a general power of appointment exercised by him by such settlement or other non-testamentary disposition), including all debts, money, and choses in action receivable or recoverable by him in Western Australia, if he had not, at the time of the settlement or other non-testamentary disposition, a domicile within Western Australia:

Property on which duty is payable under non-testamentary disposition.
No. 28 of 1934, s. 30, incorporated in 1934 reprint as s. 89 and in 1943 reprint as s. 91¹.
Cf. 1903, No. 13, s. 97.

Provided that, with reference to paragraph (b), if the settlement or other non-testamentary disposition includes personal property not in Western Australia, but in some proclaimed reciprocating jurisdiction, and duty has been paid in respect thereof under the laws of that jurisdiction, then the

¹ See also footnote ¹ to heading of Pt. V. ante.

amount of such duty may be deducted from the duty to which the same property is liable under this Act.

In this section "proclaimed reciprocating jurisdiction" means any country or place the laws of which contain provisions substantially the same as this proviso, in the case of property situate in this State but dutiable under the laws of such jurisdiction, and which the Governor may from time to time declare by proclamation to be a reciprocating jurisdiction for the purpose of this section. Any such proclamation may from time to time be revoked by the Governor.

(6)—*Sales for non-payment of Duty.*

92. (1) The executor, administrator or trustee, or any person required to pay duty under this Act, may, if he requires the assistance of the Court in that behalf, apply to the Court for an order that the whole or a sufficient portion of any property subject to duty may be sold to pay the duty.

(2) If any duty is not paid, the Commissioner may apply to the Court for an order that a sufficient portion of any property subject to the duty may be sold.

(3) The Court may thereupon order that the whole or such portion of the said property as it thinks proper may be sold, at such time, in such manner, and subject to such terms and conditions, as it deems advisable, and may make such order as to the costs of and consequent upon the application as it thinks fit.

(4) The moneys arising from the sale shall be applied in the first place towards paying the costs and expenses, if so ordered, of and consequent upon any such application, and in the next place towards the payment of the duty, and the balance shall, subject to the provisions of the next following subsection, be paid to or be held or disposed of by the

Property may be ordered to be sold for non-payment of duty. No. 28 of 1934, s. 31, incorporated in 1934 reprint as s. 30 and in 1943 reprint as s. 92¹. Cf. 1903, No. 13, s. 108; S.A. No. 1895 (1929), s. 43.

¹ See also footnote ¹ to heading of Pt. V. ante.

executor, administrator, or trustee upon the same trusts as the property sold would have been held and disposed of.

(5) The Court may make any order that may seem just as to any such surplus moneys, and as to the disposal or investment thereof, and as to the person or persons to whom the same or the interest thereof shall be paid.

93. No purchaser from any person required to pay duty under this Act, or from any trustee, in any case where the said person or trustee shall make a sale purporting to be made under the last preceding section, and no purchaser at any sale purporting to be made under any order obtained under this Act, shall be bound or concerned to see or inquire whether the said trustee or person has power to sell, or as to the necessity of the sale, or whether the order was properly obtained or whether the sale is properly made, nor shall he be affected by notice to the contrary; and the remedy of any person aggrieved by an improper sale shall be in damages only against the person or Commissioner effecting the same.

Purchaser not bound to inquire.
No. 28 of 1934, s. 32, incorporated in 1934 reprint as s. 91 and in 1943 reprint as s. 93¹.
Cf. 1903, No. 13, s. 109.
S.A., No. 1895 (1929), s. 44.

94. (1) When any real or personal property is sold under any order of the Court obtained under this Act, the Court may make an order vesting the said property in such person in such manner and for such estate or interest as the Court thinks fit.

When land sold under order, Court may make vesting order.

(2) Every such order shall have the same effect as if the executor, administrator, trustee, Commissioner, or other person obtaining the order had been seized or possessed of or entitled to the real and personal property for the estate or interest vested in the said person or persons by the vesting order, and had been freed from all disability, and had duly executed all proper conveyances, transfers, assignments, and assurances of the said real and personal property for the said estate or interest.

No. 28 of 1934, s. 33, incorporated in 1934 reprint as s. 92 and in 1943 reprint as s. 94¹.
Cf. 1903, No. 13, s. 110.
S.A., No. 1895 (1929), s. 45.

(3) The Court may direct any conveyance or transfer of any property to be executed by such person as the Court shall direct.

¹ See also footnote ¹ to heading of Pt. V. ante.

(7)—*Adjustment of Duty.*

Duty to be deducted from beneficial interests. No. 28 of 1934, s. 34, incorporated in 1934 reprint as s. 93 and in 1943 reprint as s. 95¹. Cf. 1903, No. 13, s. 111.

95. (1) Subject to any special provision by a testator for the payment of the duty imposed by this Act, every executor and every administrator with the will annexed shall deduct from each and every devise, bequest, or legacy coming to any person under the will, an amount equal to the duty upon such devise, bequest, or legacy calculated at the same rate as is payable upon the estate of the deceased.

(2) In every case of intestacy, or partial intestacy, the administrator or the executor or administrator with the will annexed, as the case may be, shall deduct from each distributive share of the intestate's estate, an amount equal to the duty thereon, calculated at such rate as is payable upon the estate of the deceased.

(3) Every beneficiary under any non-testamentary disposition of property chargeable under sections seventy-three, seventy-four, seventy-five, seventy-six, seventy-seven, and seventy-eight of this Act, on the death of the person making the disposition with duty as though part of the estate of such deceased person, shall contribute to the duty payable on the final balance of the estate of the deceased person inclusive of the property so disposed of, in proportion to the value of the property acquired by such beneficiary.

Executor, administrator, or trustee may adjust duties. No. 28 of 1934, s. 35, incorporated in 1934 reprint as s. 94 and in 1943 reprint as s. 96¹. Cf. 1903, No. 13, s. 112.

96. (1) Subject to any specific direction appearing in any will or settlement to the contrary, every executor, administrator, or trustee, or person required to pay duty under this Act, shall adjust such duty and the incidence of any duty paid or payable by him, so as to throw the burden thereof upon the respective properties on which the same are ultimately chargeable.

(2) For the purpose of carrying such adjustment into effect, or for the purpose of raising money for the payment of any duty, the executor, and (subject to section eighteen of this Act) the administrator, or the trustee or other person required to pay duty

¹ See also footnote ¹ to heading of Part V. ante.

under this Act, may sell, or mortgage with a power of sale, all or any part of the real or personal property, chargeable with duty, upon such terms and conditions as in his discretion may seem proper.

(3) The executor, administrator, or trustee or person as aforesaid may also, for the purpose aforesaid, by any instrument in writing, impose any charge on any property in favour of any person, whether then ascertained or not, entitled contingently or otherwise to any other property. Any such charge as to land not under the provisions of the Transfer of Land Act, 1893,¹ may be in the prescribed form, and may contain a power of sale, and may be upon such terms and conditions as the executor, administrator, or trustee or person as aforesaid, may think proper. As to land under the provisions of the Transfer of Land Act, 1893¹, the charge may be effected by an instrument of mortgage under the said Act upon such terms and conditions as the executor, administrator, or trustee or person as aforesaid may think proper.

(4) The Court may, on application by summons or otherwise make any order which it may deem advisable for the purpose of adjusting the duties and the incidence of the duties payable under this Act.

97. Where by reason of the neglect of any executor or administrator or trustee, or of there being no trustee of any settlement or other non-testamentary disposition of property, or for any other reason, no adjustment of duties shall be made within a reasonable time, the Court may, upon the application of any person interested, by summons or otherwise, make such order as to the adjustment of duties and the incidence of duties, and as to the costs of the application and adjustment, and for sale or charge or encumbrance of any part of the real or personal property concerned, for the purpose of the said adjustment and for the payment of the said costs as shall be just.

Power of Court to make order when duties not adjusted. No. 28 of 1934, s. 36, incorporated in 1934 reprint as s. 95 and in 1943 reprint as s. 97². Cf. 1903. No. 13, s. 112.

¹ Now Transfer of Land Act, 1893-1950: See Act No. 17 of 1950, s. 4.

² See also footnote ¹ to heading of Pt. V. ante.

When limited interest taken, duty thereon payable out of corpus.

No. 28 of 1934, s. 37, incorporated in 1934 reprint as s. 96 and in 1943 reprint as s. 98.¹

S.A., No. 1898 (1929), s. 48.

98. Subject to any specific direction to the contrary in any will, or in any settlement or non-testamentary disposition of property made chargeable with duty under this Act, every executor, administrator, trustee, or other person, whose duty it is to adjust the incidence of any duties payable or paid by him shall, in carrying out such adjustment—

- (a) charge upon and pay out the corpus of any property in which any limited interest is taken under the said will, settlement, or non-testamentary disposition, all duties paid or payable in respect of the said limited interest and the remainders or the reversion expectant thereon, and the corpus so diminished shall thereafter, as between the respective persons entitled thereto, be deemed to be the property in which the said interests are taken;
- (b) charge the duty payable on any annuity on the property or fund out of which the same is derived, or which may be invested or may require to be invested, to produce the said annuity, and abate the annuity itself by the same percentage at which the duty in respect thereof is assessed.

Allowance for stamp duty paid.
No. 28 of 1934, s. 38, incorporated in 1934 reprint as s. 97 and in 1943 reprint as s. 99¹.

99. In the assessment of all duties payable under this Act there shall be deducted from the assessable duty the *ad valorem* stamp duty paid on any deed, instrument, or settlement in respect of any property becoming liable to duty: Provided that no deduction hereunder shall exceed the amount of the duty assessed or payable in respect of the property liable to such duty, and such deduction shall only be deducted or allowed in cases where the deed, instrument, or settlement relating to such property is produced to the Commissioner, or he is otherwise satisfied as to the payment of the *ad valorem* stamp duty thereon.

¹ See also footnote ¹ to heading of Pt. V. ante.

100. Subject to section one hundred and one of this Act in so far as beneficial interests pass to persons *bona fide* residents of and domiciled in Western Australia, and occupying towards a deceased person the relationship set forth in the Second Schedule to this Act, duty shall be calculated so as to charge only one half of the percentage or rate upon the property acquired by such first-mentioned persons:

Reduction of duty on beneficial interests passing to certain relatives.
No. 28 of 1934, s. 39, incorporated in 1934 reprint as s. 98; amended by No. 24 of 1939, s. 2; No. 52 of 1941, s. 2; renumbered as s. 100 in 1943 reprint¹.

Provided that this section shall not apply if and when the final balance of the estate of the deceased person, or the aggregate value of the property disposed of under settlement or settlements, or the value of the property disposed of under the non-testamentary disposition (as the case may be) in relation to which the beneficial interests aforesaid pass to such person exceeds the sum of six thousand pounds.

No. 24 of 1939, s. 2.

101. (1) In this section the expression "deceased person" means a person who at the time of his death was a member of the naval, military, or air forces of His Majesty the King or of any ally of Great Britain, or was a member of any medical corps nursing service attached to any of the forces aforesaid engaged on active service in connection with any war being waged between the Commonwealth of Australia and any other power, and whose death is the result of such person being engaged on such active service aforesaid.

Reduction of duty in certain special cases.
Inserted by No. 52 of 1941, s. 3, as s. 98A, renumbered s. 101 in 1943 reprint; amended by No. 21 of 1942, s. 3.

Where the question as to whether the death of any person is or is not the result of such person being engaged on such active service aforesaid has been finally determined for the purposes of the Australian Soldiers' Repatriation Act, 1920-1941², by an authority constituted under that Act, the certificate by that authority that such member has or has not so died shall, for the purposes of this Act, be conclusive evidence that the person has or has not so died, as the case may be.

¹ See also footnote ¹ to heading of Part V. ante.

² Now Repatriation Act, 1920-1953 (Commonwealth): See Commonwealth Act No. 69 of 1953, s. 1 (3).

(2) Notwithstanding anything to the contrary contained in section one hundred of this Act, the provisions hereinafter mentioned shall apply in respect of—

- (a) the final balance of the estate of a deceased person;
- (b) the property disposed of by any settlement or settlements made by a deceased person; and
- (c) the benefit accruing to or received by any person or any interest arising under any other non-testamentary disposition within the meaning of section twenty-nine of the Act No. 28 of 1934 made by a deceased person—

that is to say:—

- (i) when the final balance of the estate, or the aggregate value of the property disposed of by the settlement or settlements, or the value of the benefit or interest derived or arising under the non-testamentary disposition does not exceed one thousand pounds, the First, Second, and Third Schedules to the Death Duties (Taxing) Act, 1934-1941¹ (No. 29 of 1934, as amended), shall not apply and no duty shall be payable;
- (ii) when the final balance of the estate, or the aggregate value of the property disposed of by the settlement or settlements, or the value of the benefit or interest derived or arising under the non-testamentary disposition exceeds one thousand pounds, then, subject to subparagraph (iii) hereof, duty shall be calculated so as to charge one-half of the rates which but for this paragraph and section one hundred of the Act would ordinarily be payable; and
- (iii) when the final balance of the estate, or the aggregate value of the property disposed of by the settlement or settlements, or the

¹ Now Death Duties (Taxing) Act, 1934-1942: See No. 25 of 1942, s. 5.

value of the benefit or interest derived or arising under the non-testamentary disposition exceeds one thousand pounds, and in so far as any beneficial interest in such estate or property passes from the deceased person to any person occupying towards the deceased person the relationship set forth in the Second Schedule to this Act, who was at the date of the death of the deceased person a *bona fide* resident of and domiciled in Western Australia, duty in respect of such beneficial interest shall be calculated so as to charge one-quarter of the rates which but for this paragraph and section one hundred of this Act would ordinarily be payable.

(8)—*Miscellaneous Provisions.*

102. Whenever a question arises with regard to any statement for the assessment of duty under this Part of this Act, or any of the particulars thereof, the Commissioner may state a case for the opinion of the Court, and thereupon it shall be lawful for the Court to give its judgment thereon.

Power to state case for opinion of Court.
No. 28 of 1934, s. 40, incorporated in 1934 reprint as s. 99 and in 1943 reprint as s. 102¹.
Cf. Victoria No. 3632 (1928), s. 154.

103. (1) If the Commissioner is dissatisfied with the value put upon any real or personal property in any statement filed in accordance with this Part of this Act, he may appoint a valuer to value such property, or any part thereof, and communicate the valuation to the executor, administrator, trustee, or other person liable for the payment of duty.

Valuation.
No. 28 of 1924, s. 41, incorporated in 1934 reprint as s. 100 and in 1943 reprint as s. 103¹.
Cf. 1903, No. 13, s. 107; Victoria No. 3632, s. 157.

(2) If there is any difference between the value set forth in the statement and such valuation the Commissioner may—

- (a) agree with the executor, administrator, trustee, or other person upon the value to be adopted; or

¹ See also footnote ¹ to heading of Pt. V. ante.

- (b) summon before him the executor, administrator, trustee, or other person and his valuer, and the valuer appointed by the Commissioner, and such other persons as he may think fit.

(3) Every person so summoned shall be bound to attend as required by the summons and give evidence before the Commissioner in like manner as persons summoned on inquiries before the Master of the Supreme Court are bound to attend and give evidence, and the Commissioner may administer oaths and take evidence, and require the production of books, papers, accounts, and documents.

(4) The Commissioner shall upon the evidence taken as aforesaid determine the value of such real or personal property, and shall furnish the executor, administrator, trustee or any other person liable for the payment of the duty, on payment of the prescribed fee, with a copy of the notes of evidence taken by him on the hearing of such summons.

(5) Any executor, administrator, trustee, or other person as aforesaid who is dissatisfied with such determination may, within twenty-one days after such determination, lodge with the Commissioner an objection in writing thereto, and the Commissioner shall decide thereon, and communicate his decision in writing to the objector. If the objector is dissatisfied with the decision of the Commissioner on such objection, the objector may appeal against such determination; and, where no summons has been issued by the Commissioner, any executor, administrator, trustee, or other person as aforesaid who is dissatisfied with the valuation of the valuer appointed by the Commissioner may appeal to the Court against such valuation and the provisions of sections one hundred and six and one hundred and seven shall, with the necessary modifications, apply to such appeal.

(6) If on such appeal it is decided that the value upon which such duty has been paid as aforesaid is excessive, the Court shall direct the repayment of the duty paid in respect of such excess, together with such costs (if any) as the Court deems just.

But if on such appeal the value upon which duty has been paid as aforesaid is confirmed, the Court shall order the appellant to pay to the Commissioner the costs incurred by the Commissioner in relation to the appeal.

104. (1) If, within two years after any assessment of duty has been made, it is discovered that the duty thereby fixed is too small, or if after any statement has been filed it is discovered that it is in any way erroneous, and that any net value thereby shown is too small, the person by whom the statement was or should have been filed and the duty paid, or the person whose duty at the time of the discovery it would be, either with or without the direction of the Commissioner to file the said statement or pay the said duty if not already filed or paid, shall immediately upon such discovery being made, amend the statement, and shall pay such duty or additional duty as may be assessed by the Commissioner: Provided that there shall be no limit of time wherein the Commissioner may claim such additional duty, where payment of such duty was not made owing to fraud or gross negligence.

(2) If the Commissioner is dissatisfied on any ground with a statement filed (notwithstanding that such statement may have been approved by him), or discovers that any statement or assessment is in any respect erroneous, the provisions of the preceding subsection shall apply, and the Commissioner may amend the assessment which shall, to all intents and purposes, have effect as so amended.

(3) Provided that if any such discovery is made after the Commissioner has given his certificate of approval of a statement, any executor, administrator, trustee, or other person shall only be liable for such duty, or additional duty, to the extent of any property then under his control, or which can be applied by him for the payment of the duty, unless it is owing to any fraud or gross negligence on his part that the proper amount of duty was not paid at first, in which case he shall be personally liable for the said duty or additional duty.

Where too little duty assessed.
No. 28 of 1934, s. 42, incorporated in 1934 reprint as s. 101 and in 1943 reprint as s. 104¹.
Cf. 1903, No. 13, s. 117; S.A. No. 1898, s. 54.

¹ See also footnote ¹ to heading of Pt. V. ante.

Where too much duty paid.
 No. 28 of 1934, s. 43, incorporated in 1934 reprint as s. 102 and in 1943 reprint as s. 105¹.
 Cf. 1903, No. 13, s. 118; S.A., No. 1898, s. 55.

105. If at any time within two years, or within such further time as the Commissioner may allow, after any duty has been paid under this Act it is found that too much duty has been paid, the Commissioner upon being satisfied, by examination of the parties or otherwise, as he may think fit, that too much duty has been paid, shall order that the amount overpaid be returned to the person entitled to receive the same, and upon such order the Treasurer shall pay the same out of the Consolidated Revenue, together with interest at the rate of four pounds per centum per annum, calculated from the date when such duty was paid to the Commissioner.

Appeal from Commissioner.
 No. 28 of 1934, s. 44, incorporated in 1934 reprint as s. 103 and in 1943 reprint as s. 106¹.
 Cf. 1903, No. 13, s. 119; S.A., No. 1898 (1929)¹, s. 61; C. No. 22 of 1914, s. 24, as am. by 47 of 1928, s. 9.

106. Any executor, administrator, or trustee who is dissatisfied with any assessment of the Commissioner may, within twenty-eight days after service by post of the notice of assessment, or such further time as the Commissioner or Court may allow, lodge an objection in writing with the Commissioner against the assessment, setting out fully the grounds of objection.

The Commissioner shall consider the objection, and may either disallow or allow it wholly or in part.

The Commissioner shall give to the objector written notice of his decision on the objection.

Procedure on appeal.
 No. 28 of 1934, s. 45, incorporated in 1934 reprint as s. 104 and in 1943 reprint as s. 107¹.
 Cf. C. 22 of 1914, s. 24, as am. by 47 of 1928, s. 9.

107. (1) Any executor, administrator, or trustee who is dissatisfied with the decision of the Commissioner, on his objection may, upon payment of or furnishing security satisfactory to the Commissioner for the payment of the duty payable under the assessment within such time and in such manner as may be prescribed, appeal to the Court, and the Court may make such order upon such appeal as may seem just.

(2) If the assessment is altered on appeal a due adjustment shall be made, for which purpose amounts paid in excess shall be refunded, and amounts short paid shall be recoverable as duty unpaid.

¹ See also footnote ¹ to heading of Pt. V. ante.

(3) Interest shall be paid at the rate of four pounds per centum per annum upon the amounts so refunded from the date of payment of the same up to the date when the same are refunded, or upon the amounts so recovered from the date of the assessment appealed against up to the date when the same are recoverable, as the case may be.

108. Interest at the rate of four pounds per centum per annum shall be charged on all duty payable under this Act from and after the expiration of three months from the time when the duty first becomes chargeable until the duty is paid, and shall be deemed part of the duty imposed by this Act but where the payment of duty is, under section sixty-nine A of this Act, deferred for a period, interest shall not be charged on the duty during the period:

Interest on duty.
No. 28 of 1934, s. 46, incorporated in 1934 reprint as s. 105 and in 1943 reprint as s. 105¹; amended by No. 81 of 1953, s. 5. S.A., No. 1895 (1929), s. 51.

Provided that the Commissioner may postpone for such period as he thinks fit the date from which interest shall be charged.

109. (1) Duty when it becomes payable under this Act shall be deemed a debt due to His Majesty, and shall be payable to the Commissioner.

Duty a debt to the Crown.
No. 28 of 1934, s. 47, incorporated in 1934 reprint as s. 106 and in 1943 reprint as s. 109¹; amended by No. 81 of 1953, s. 6. S.A., No. 1895 (1929), s. 52.

(2) Any duty unpaid may be sued for and recovered under the provisions of the Crown Suits Act, 1898.²

Subsec. (3) added by No. 81 of 1953, s. 6.

(3) Where the payment of duty has, under section sixty-nine A of this Act, been deferred for a period, the duty does not become payable until the expiration of the period.

110. (1) In the valuation of the share or interest of any person in any partnership for the purpose of this Act, the share or interest of the partner concerned shall be that sum which bears the same proportion to the total capital of the partnership as his fractional share bears to the whole number of

Valuation of partnership interests.
No. 28 of 1934, s. 48, incorporated in 1934 reprint as s. 107 and in 1943 reprint as s. 110¹. Cf. N.S.W. 47 of 1920, s. 127.

¹ See also footnote ¹ to heading of Pt. V. ante.

² See now Crown Suits Act, 1947-1954 (No. 11 of 1947 as amended by No. 22 of 1954).

shares in the partnership. In this section total capital means the value of the assets of the partnership less the liabilities of the partnership:

(2) Provided that any legatee, beneficiary, donee, or other person to whom any share or interest in a partnership passes on the death of any other person shall be liable to pay to the person responsible for the payment of the duty on such share or interest under the provisions of this Act, any increase in duty which may be necessitated by valuing the share or interest of the deceased partner in accordance with this section.

(3) The person liable to pay such increase in duty shall have the same right of appeal as if he were the person responsible under this Act for the payment of the whole of the duty, and the provisions of sections one hundred and three, one hundred and six, and one hundred and seven shall apply accordingly, with the necessary modifications to any such appeal.

Non-domiciled persons with partnership interests in W.A.
No. 28 of 1934, s. 49, incorporated in 1934 reprint as s. 103 and in 1943 reprint as s. 111¹.

111. For the purpose of assessment of duty under this Part of this Act where any partnership is carried on by any person or persons in Western Australia or in Western Australia and elsewhere and one or more of the partners therein is domiciled out of Western Australia, the value of the share or interest of such non-domiciled partner shall be assessed on the value of the assets actually situate in Western Australia less the liabilities in Western Australia, and the duty payable under this Act is hereby charged on such assets.

Valuation of shares in proprietary companies.
No. 28 of 1934, s. 50, incorporated in 1934 reprint as s. 109 and in 1943 reprint as s. 112¹.
Cf. N.S.W. 47 of 1920, s. 100.

112. In the valuation of shares of a shareholder in any proprietary company, such shares shall be valued as if the company were a partnership and the shareholders were the constituent partners. In this section proprietary company means any company in which not more than five persons are entitled to at least two-thirds of the shares in the subscribed capital of the company.

¹ See also footnote ¹ to heading of Pt. V. ante.

113. For the purposes of this Act, the valuation of shares in any company other than a proprietary company as defined in the preceding section, whether incorporated in or out of Western Australia, shall be made upon the basis that the memorandum and articles of association or rules of the company satisfy the requirements prescribed by the committee or governing authority of the stock exchange at the place where the share register in respect of the shares is kept, so as to enable that company to be placed on the current official list of such stock exchange at the relevant time. No provision in the memorandum or articles or rules of any company whereby or whereunder the value of the shares of a deceased or other member is to be determined shall be applicable in determining the value of the shares for the purposes of this Act.

Valuation of shares in public companies.
No. 28 of 1934, s. 51, incorporated in 1934 reprint as s. 110 and in 1943 reprint as s. 113.¹
Cf. N.S.W. 47 of 1920, s. 127.

114. (1) Whenever after the commencement of this section a member domiciled in this State of any foreign company carrying on business in Western Australia dies, the shares or interest of such member in such company shall, for the purpose of assessment of duty under this Act, be considered as locally situated in Western Australia.

Duty on shares in foreign company on death of shareholders.
No. 28 of 1934, s. 52, incorporated in 1934 reprint as s. 111 and in 1943 reprint as s. 114.¹
Cf. Qd 4 Edw. VII., No. 17, s. 11; N.S.W. No. 30 of 1901.

(2) (a) Whenever after the commencement of this section a member domiciled out of Western Australia of any foreign company carrying on business in Western Australia dies, there shall be chargeable and payable under and subject to the provisions of this Act, and, except as hereinafter provided, without any deduction or exemption whatever, a duty, at such rate as Parliament may prescribe, on the net present value of the shares or stock in the company held by the member at the time of his death: Provided that—

- (i) the duty mentioned in this subsection shall not be payable where the net present value of the shares and stock in the company held by the member at the time of his death does not exceed one thousand pounds as ascertained by the next following paragraph;

¹ See also footnote 1 to heading of Pt. V. ante.

- (ii) where the company carries on business within and without Western Australia the duty payable by the company under this subsection shall be assessed on that part of the value of the shares of the deceased which bears the same proportion to the full value thereof as the assets of the company situate in Western Australia bear to the total assets of the company, wherever situate. In this subsection the term "assets" means the gross amount of all the real and personal property of the company of every kind, including things in action, and without making any deduction in respect of any debts or liabilities of the company;
- (iii) no duty shall be payable by a foreign company under this subsection where estate duty has been paid under this Act in respect of all shares or other interest in the company held by the deceased at the time of his death:

Provided further, that no duty shall be payable by any foreign company which the Treasurer certifies to be a *bona fide* railway, timber, mining, insurance, or developmental company: provided that the Treasurer may at any time revoke such certificate, if in his opinion any such company ceases to come within any of the categories hereinbefore mentioned.

(b) Duty shall be payable as aforesaid by the company, and may be recovered by the Commissioner at any time after the expiration of six months from the date when the company shall receive notice of the death of the deceased member.

(c) Any payment by the company of any duty imposed in respect of shares or stock in the company held by a member at the time of his death shall be deemed to be a payment on behalf of the estate of such member, and may be deducted by the company from any moneys payable by the company to

the personal representative of such member in respect of the shares or stock, or recovered by action from such representative.

(d) On receiving a notification of the death of any member, upon whose death the company would be liable to pay duty hereunder, the company shall cause to be delivered to the Commissioner a return giving the name and address of such member, the number, description, and value of the shares in the company held by such member at the time of his death.

Particulars
of shares
to be fur-
nished by
company.

(e) If any such return is not delivered in accordance with the provisions of this subsection, the company making default shall be liable to a penalty not exceeding fifty pounds: provided that it shall be a defence on the part of any such company if it be proved that it had no notice of the death of any such member.

115. (1) Where any option is given over any property which has to be valued for the purposes of this Act, and such option remains unexercised but capable of being exercised at the material date at which such property has to be valued, the option shall not be taken into account in valuing the property, but where at such material date the value of the property is greater than—

Outstanding
options not
to be taken
into account
in valuing
property.
No. 28 of
1934, s. 53,
incorporated
in 1934
reprint as
s. 112 and in
1943 reprint
as s. 115¹.

(a) the value at the time of the giving of the option; and

(b) the amount or value of the option consideration,

then, and in such event the value to be taken shall be the value at the time of the giving of the option, or the amount or value of the option consideration, whichever is the greater:

Provided that, in assessing the value at such material date for the purpose of this paragraph, the value of any improvements to the property, effected at the expense of the option-holder, shall be excluded.

¹ See also footnote ¹ to heading of Pt. V. ante.

(2) Nothing herein contained shall affect the operation of section one hundred and ten of this Act relating to the valuation of any share or interest in a partnership.

Valuation of shares in unadministered estates and trust estates.

No. 28 of 1934, s. 54, incorporated in 1934 reprint as s. 113 and in 1943 reprint as s. 116¹.

116. Where any person succeeds by virtue of any gift *inter-vivos*, testamentary disposition, intestacy, or non-testamentary disposition, within the meaning of section ninety, to a share or interest in any estate of a deceased person which is unadministered or in any trust estate then, notwithstanding that the personal representative or trustee may be domiciled out of the State of Western Australia, such person shall be deemed to have succeeded to a share in the assets locally situate in Western Australia which at the time of the succession constitute or form portion of the unadministered estate or trust estate. For the purpose of computing the value of such share or interest in Western Australia, any liabilities in Western Australia at the date of such succession may be set off against the value of the assets in Western Australia comprising or forming part of the said unadministered or trust estate, and such assets are hereby charged with the payment of such duty.

Duty on life policies forming part of a deceased person's estate.

No. 28 of 1934, s. 55, incorporated in 1934 reprint as s. 114 and in 1943 reprint as s. 117¹.

117. No exemption from liability for debts enacted by law in respect of any moneys payable under a policy of life assurance shall be deemed to exempt such moneys from payment of duty under this Act; and in case there is no final balance of the estate, or such final balance is less than the amount of the moneys payable under the policy of assurance, duty shall be chargeable on the moneys so payable under such policy as if such moneys constituted the final balance.

Valuation of interest of tenant in common.

No. 28 of 1934, s. 56, incorporated in 1934 reprint as s. 115 and in 1943 reprint as s. 118¹.

118. For the purpose of assessing duty in respect of the undivided share in any property of any tenant in common, the value of that share shall be taken to be that sum which bears the same ratio to the total value of the property (valued as if he were the sole owner) as the undivided share of such tenant in common bears to the total number of undivided shares in the property.

¹ See also footnote ¹ to heading of Part V. ante.

119.* (1) Subject to the provisions of section one hundred and thirty-nine of this Act, in any case where any shares, stock, debentures, money on fixed deposit, policy of life assurance, or policies of life assurance exceeding in value in the aggregate together with any bonuses or benefits payable thereunder the sum of two hundred pounds, or any other property stand in the books in Western Australia of any corporation, company, or society carrying on business in Western Australia, in the name of any deceased person, either alone or jointly with any other person as owner, no dealing with any such shares, stock, debentures, money on fixed deposit, policy of life assurance, or property shall be registered, recorded, or otherwise given effect to, or such policy satisfied by such corporation, company, or society having notice of the death of the deceased (whether pursuant to subsection (4) hereof or otherwise howsoever), unless the Commissioner certifies in writing in the prescribed form that all duties in respect of the said shares, stock, debentures, money on fixed deposit, policy of life assurance, or other property, whether payable in respect of the estate of the said deceased person or, as the case may be, payable by reason of any increase of benefit or any accruing of beneficial interest by reason of the said death, have been paid, or that proper security has been given for the payment thereof, or that the Commissioner consents to the proposed dealing.

Holding of assets by custodians, etc., pending payment of security for duty.

No. 28 of 1934, s. 57, incorporated in 1934 reprint as s. 116^a and in 1943 reprint as s. 119.^{a1}

Cf. S.A. No. 1981 (1930), s. 10.

No. 2094 (1932), s. 7.

N.S.W., No. 47 of 1920, s. 122.

(2) In any case where—

- (a) any safe deposit is held in the name of any deceased person, either alone or jointly, at the premises in Western Australia of any corporation, company, or society;
- (b) any property is deposited for safe custody in the name of any deceased person, either alone or jointly, at the premises in Western Australia of any corporation, company, or society,

* Section 19 (2) of No. 26 of 1941 enacts as follows:—

(2) The provisions of sections 64 (3) and 116 of the Administration Act, 1903-1939 (i.e., ss. 66 (3) and 119 of this reprint¹), shall not apply to estates administered by the Public Trustee.

¹ See also footnote ¹ to heading of Pt. V. ante.

the corporation, company, or society, if it has notice of the death of the deceased (whether pursuant to subsection (4) hereof or otherwise, howsoever) shall not allow or suffer the removal of any property or thing from such safe deposit, or of any property deposited for safe custody as aforesaid, unless the Commissioner certifies in writing in the prescribed form that all duties in respect of such property or thing payable in respect of the estate of the said deceased person, or payable by reason of any increase of benefit or any accruing of beneficial interest by reason of the said death, have been paid, or that proper security has been given for the payment thereof, or that the Commissioner consents to the proposed removal.

(3) Any corporation, company, or society to which this section applies, which acts in contravention of this section, shall be liable on summary conviction to a penalty not exceeding fifty pounds.

(4) Any executor or administrator who omits to give notice of the death of the deceased to any such corporation, company or society within three months from the grant of administration shall be liable on summary conviction to a penalty not exceeding twenty pounds: Provided that it shall be a defence to any charge under this subsection if such executor or administrator shows that he gave such notice within three months of the time when he first had knowledge of the interest of the deceased in any asset by reason of which he was required to give such notice.

120. At the end of each month, or within twenty-one days thereafter, a return shall be furnished in the prescribed form to the Commissioner by every Life Assurance Company or Society in Western Australia of all assets paid over by such company or society during such month, upon the death of any person in respect of any policy or policies exceeding in value in the aggregate together with any bonuses or benefits payable thereunder the sum of one hun-

Returns to be furnished by Life Assurance Companies. No. 26 of 1934, s. 58, incorporated in 1934 reprint as s. 117 and in 1943 reprint as s. 120¹. 156 Vic. 13, s. 10C, as amended by 9 Geo. V. 16, s. 4.]

¹ See also footnote 1 to heading of Pt. V. ante.

dred pounds on the life of such person, which policy is recorded on the books or register of such company or society in Western Australia or, if recorded elsewhere, where the premiums have been paid in Western Australia, or the deceased was domiciled or resident in Western Australia at the time of his death. In this section the word "policy" shall, without limiting the generality of the section, include an industrial policy and any policy held jointly by the deceased and any other person.

121. No person whose duty it is to register any document, or to make any entry, or to issue any certificate relating to the survivorship of any joint tenant in any property, shall make the same or do any act whereby the survivor is entitled or enabled to become registered as surviving owner, unless such person obtains a certificate that the duty payable under this Act has been paid or the written consent of the Commissioner.

Duty to be paid before registration of security.

No. 28 of 1934, s. 59, incorporated in 1934 reprint as s. 118 and in 1943 reprint as s. 121¹. Cf. N.S.W. 47 of 1920, s. 122 (7).

Penalty: Fifty pounds.

122. (1) Except for the purpose of any sale or disposition under sections ninety-two and ninety-six, after any duty has become chargeable upon any property there shall not be any disposition of that property, or any part of it, until the duty thereon has been paid, or the Commissioner consents thereto or certifies that he holds security for the payment of the duty sufficient to permit any specified part of the property to be disposed of.

Property not to be disposed of until duty paid.

No. 28 of 1934, s. 60, incorporated in 1934 reprint as s. 119 and in 1943 reprint as s. 122¹. S.A., No. 1898 (1929), s. 50.

(2) Any executor, administrator, trustees, or other person who disposes of any property in contravention of this section shall, without prejudice to the recovery of the duty by any other means, be personally liable for the duty.

123. Where, in the opinion of the Commissioner, any property shall be of such a nature, or so disposed of or circumstanced, that the value thereof is not fairly ascertainable under this Act, or where, from the complication of circumstances affecting the value of any property, or the assessment or recovery

Power to compromise duties.

No. 28 of 1934, s. 61, incorporated in 1934 reprint as s. 120 and in 1943 reprint as s. 123¹. Cf. 1903, No. 13, s. 116; S.A., No. 1898 (1929), s. 53.

¹ See also footnote 1 to heading of Pt. V. ante.

of the duty thereon, he shall think it expedient to exercise the power conferred on him by this section, he may compound the duty on that property upon such terms as he shall think fit, and may give a discharge to the executor, administrator, trustee, or any other person interested in the property, upon payment of the duty according to the said composition.

Ascertainment of duty where property given to an uncertain person or in uncertain event.
No. 28 of 1934, s. 62, incorporated in 1934 reprint as s. 121 and in 1943 reprint as s. 124¹.
Cf. 13 of 1903, s. 115.

124. (1) In case of any property disposed of by or accruing under any will, settlement, gift, or any non-testamentary disposition to an uncertain person, or on an uncertain event, duty shall be paid on the net present value of such property as if the same had been given by way of vested remainder to an ascertained person, and such duty shall be assessed on the highest scale applicable on any vesting under the will, settlement, gift or other non-testamentary disposition.

(2) Upon such property or any part thereof becoming actually vested in any person or persons who, if he or they had taken the same by way of vested remainder at the time when the duty became payable, would have been chargeable with a smaller duty than that actually paid, the Commissioner, upon being satisfied that such is the case, shall order the difference between the smaller duty aforesaid and the duty actually paid, with interest on such difference at the rate of four pounds per centum per annum calculated from the time of payment of the duty under this section, shall be paid to such person or persons, and upon such order the Treasurer shall pay the same out of the general revenue.

Inspection of documents.
No. 28 of 1934, s. 63, incorporated in 1934 reprint as s. 122 and in 1943 reprint as s. 125¹.
Cf. 1903 No. 13, s. 121;
C. No. 22 of 1914, s. 44.

125. The Commissioner, or any officer authorised by him in that behalf, shall at all times have full and free access to all lands, buildings, places, books, documents, and other papers, and to all registers of deeds or documents of title for the purpose of valuing or inspecting any estate, or of ascertaining the ownership thereof, or of inquiring into any matter

¹ See also footnote ¹ to heading of Pt. V. ante.

or thing relative to this Part of this Act, and for any of these purposes may make extracts from or copies of any such books, documents, or papers.

126. Any person who obstructs or hinders any officer acting in the discharge of his duty under this Act or the regulations shall be guilty of an offence.

Penalty: Fifty pounds.

127. The Commissioner, and any officer so authorised by the Commissioner, may for the purpose of verifying or checking any statement filed pursuant to this Act or any Act for which the provisions of this Act are substituted, inspect any returns, records, or other documents in the custody of the Commissioner of Taxation, and for the purposes aforesaid may make extracts from or copies of any such returns, records, or other documents, and use any such returns, records, or other documents in evidence in any proceedings under this Act.

128. (1) Any person may, on payment of the prescribed fee, inspect and obtain copies of or extracts from any statement filed for the purposes of this Part of this Act in the office of the Commissioner by any executor, administrator, or other person.

(2) A copy of or extract from any such statement may, on payment of the prescribed fee, be certified by the Commissioner to be a true copy or extract, and, when so certified, shall be, before all Courts and persons acting judicially, *prima facie* evidence of the facts therein stated.

129. If any person makes default in delivering any statement or account, or in adjusting any duties or the incidence of any duties, or in the performance of any duty imposed upon him by this Act, the Court may, on the application of the Commissioner, or any other person affected thereby, order that person to deliver the said statement or account, adjust the said duties or the incidence of the said duties, or perform the said duty.

Obstructing officers.

No. 28 of 1934, s. 64, incorporated in 1934 reprint as s. 123 and in 1943 reprint as s. 126¹.

Power to use taxation returns for verification purposes.

No. 28 of 1934, s. 65, incorporated in 1934 reprint as s. 124 and in 1943 reprint as s. 127¹.

S.A., No. 1898 (1929), s. 65.

Inspection of statements.

No. 28 of 1934, s. 66, incorporated in 1934 reprint as s. 125 and in 1943 reprint as s. 123¹.

Victoria No. 3632 (1928), s. 156.

Certified copies.

Ibid.

If any person makes default in delivering statement, etc., Court may order same to be done.

No. 28 of 1934, s. 67, incorporated in 1934 reprint as s. 126 and in 1943 reprint as s. 129¹.

Cf. 1903, No. 13, s. 122; S.A., No. 1898 (1929), s. 66.

¹ See also footnote ¹ to heading of Pt. V. ante.

Penalty for making a false statement or fraudulent alteration in a statement.

No. 28 of 1934, s. 68, incorporated in 1934 reprint as s. 127 and in 1943 reprint as s. 130¹.
 Cf. 1903, No. 13, s. 123;
 S.A., No. 1898 (1929), s. 74.

130. If any person shall make or assist in making any false or fraudulent statement, or any fraudulent alteration in any statement required to be made by the provisions of this Act or the regulations thereunder, with intent to evade the payment of duty, or to lessen the amount thereof, he shall be guilty of a misdemeanour, and shall be liable to imprisonment for any period not exceeding three years and to a fine not exceeding one hundred pounds.

Penalty for failing or omitting to file statements or accounts.

No. 28 of 1934, s. 69, incorporated in 1934 reprint as s. 128 and in 1943 reprint as s. 131¹.
 Cf. 1903, No. 13, s. 124;
 S.A., No. 1898 (1929), s. 75.

131. Any person who—

- (a) fails or neglects to file or amend any statement required to be filed or amended by him under this Act or any Act for which the provisions of this Act are substituted;
- (b) fails or neglects to pay any duty payable by him under this Act or any Act for which the provisions of this Act are substituted; or
- (c) fails or neglects to register any settlement or deed of gift requiring registration under this Act or any Act for which the provisions of this Act are substituted,

shall, for each offence, be liable to a penalty not exceeding five hundred pounds.

Commissioner to keep books and give receipts for duty.

No. 28 of 1934, s. 70, incorporated in 1934 reprint as s. 129 and in 1943 reprint as s. 132¹.
 Cf. 1903, No. 13, s. 120.

132. (1) Whenever any payment of duty shall be made under this Act, the same shall be entered in a book to be kept by the Commissioner for this purpose, and he shall give a receipt in the prescribed form.

(2) The Commissioner shall from time to time deliver to any person interested in any property affected by any such duty, on application to him, for any reasonable purpose, a certificate in the prescribed form of payment of duty as aforesaid, or that no duty is payable in respect of the property.

¹ See also footnote ¹ to heading of Pt. V. ante.

133. (1) Production of any assessment or of any document under the hand of the Commissioner purporting to be a copy of an assessment shall—

- (a) be conclusive evidence of the due making of the assessment; and
- (b) be conclusive evidence that the amount and all particulars of the assessment are correct, except in proceedings on appeal against the assessment, when it shall be *prima facie* evidence only.

Evidence of assessments.
No. 28 of 1934, s. 71, incorporated in 1934 reprint as s. 130 and in 1943 reprint s. 133¹.
S.A., No. 1898 (1929), s. 71.

(2) The production of any document under the hand of the Commissioner purporting to be a copy of or extract from any statement or assessment shall, for all purposes, be sufficient evidence of the matter therein set forth, without the production of the original.

134. No duty shall be payable under this Act in respect of any gift, devise, bequest, legacy, or settlement made or given to or in trust for—

- (a) any public hospital within the meaning of the Hospitals Act, 1927;²
- (b) the maintenance of a free ward in any hospital;
- (c) any public educational institution in the State which is wholly or in part dependent on any State grant, aid, or subsidy;
- (d) any incorporated public body in the State the main object of which is to dispense or provide voluntary aid to indigent, aged, sick, blind, halt, deaf, dumb, or maimed persons;
- (e) any publicly subscribed medical service or fund in the State, the main object of which is the relief of the sick, or any public medi-

Legacies to certain public bodies exempt from duty.
No. 28 of 1934, s. 72, incorporated in 1934 reprint as s. 131 and in 1943 reprint as s. 134¹.

¹ See also footnote ¹ to heading of Part V. ante.

² Now Hospitals Act, 1927-1953: See No. 16 of 1953, s. 1 (3).

cal service or fund in the State which is assisted by any Government grant or subsidy.

Protection of bona fide purchasers. No. 28 of 1934, s. 73, incorporated in 1934 reprint as s. 132 and in 1943 reprint as s. 135¹. Cf. 1903, No. 13, s. 114.

135. The title of a *bona fide* purchaser, transferee, or mortgagee for valuable consideration, whether holding the legal estate or not, shall not be prejudiced by the non-payment of any duty imposed by this Act.

Exemption of duty payable on a further occasion in the case of certain beneficiaries. No. 28 of 1934, s. 74, incorporated in 1934 reprint as s. 133 and in 1943 reprint as s. 136¹.

136. If property, in respect of which any duty has been chargeable and duly paid under this Act on any occasion becomes liable on a further occasion to duty hereunder by reason of the death of any person within a period of two years from the date when such first-mentioned duty became chargeable, the duty with which such property would otherwise be chargeable on such further occasion shall not be payable in any case where such property passes to the widow or widower, or any parent or issue of any such person who dies.

Regulations. No. 28 of 1934, s. 75, incorporated in 1934 reprint as s. 134 and in 1943 reprint as s. 137¹.

137. The Governor may make regulations for carrying into effect the provisions of this Part of this Act, and may prescribe the forms to be used, and the fees to be paid thereunder, and may impose a penalty not exceeding fifty pounds for the breach of any regulation.

PART VI.*—MISCELLANEOUS.

Affidavits may be sworn before a justice of the peace under certain circumstances. No. 13 of 1921, s. 3; see No. 28 of 1934, s. 77 (3) (a), incorporated in 1934 reprint as s. 135 and in 1943 reprint as s. 138.

138. Any affidavit required by this Act to be sworn before a commissioner of affidavits may be sworn before a justice of the peace where the deponent resides more than ten miles from the residence or place of business of the nearest Commissioner for Affidavits.

¹ See also footnote ¹ to heading of Pt. V. ante.

* This Part was formerly Part VII.

139. On the death of any person leaving a sum of money not exceeding fifty pounds standing to his credit in any bank, if no probate or administration is produced to such bank within three months of the death of such person, and no notice in writing of any will, or of an intention to apply for administration, is given to the bank within the said period, the bank may, after notice in writing to the Curator, pay such sum of money to any person who appears to the satisfaction of the manager of the bank to be the husband, widow, parent, or child of such deceased person, and payment of such sum of money accordingly shall be a valid discharge to the bank against the claims of any other person whomsoever.

Deposits not exceeding fifty pounds in any bank may be paid to widow or next of kin without probate or administration.
No. 13 of 1903, s. 129, renumbered as s. 136 in 1934 reprint and as s. 139 in 1943 reprint.

140. (1) The Master shall cause entries to be made in a book to be kept for that purpose of—

- (a) all grants of probate and administration, and all orders to collect;
- (b) the filing, passing, and allowance of the accounts of all executors and administrators, and of
- (c) any special order extending the time for passing such accounts.

Records of grants, etc.
No. 13 of 1903, s. 130, renumbered as s. 137 in 1934 reprint and as s. 140 in 1943 reprint.

(2) Such book shall set forth—

- (a) the dates of such grants;
- (b) the names of the testators or intestates;
- (c) the place and time of death;
- (d) the names and description of the executors or administrators;
- (e) the sworn value of the estates;
- (f) the dates of the filing, passing, allowance of, and special orders with reference to the said accounts.

141. (1) Where an executor to whom probate has been granted, or an administrator, resides out of or is absent from Western Australia, temporarily or otherwise, or is a member of His Majesty's naval, military, or air force (including a member of any medical corps nursing service attached to any of the forces aforesaid) who is resident or present within

Absent executor may appoint an attorney.
No. 13 of 1903, s. 131, renumbered as s. 138 in 1934 reprint and as s. 141 in 1943 reprint.
Amended by No. 21 of 1942, s. 4.

Western Australia, he may, by leave of the Court, appoint any person resident in the State to act as his attorney, and to have and exercise such powers, duties, and discretions as he may think fit and the Court by such leave allow.

Inserted by
No. 21 of
1942, s. 4.

(2) Where any such executor or administrator is a member of His Majesty's naval, military, or air force (including a member of any medical corps nursing service attached to any of the forces aforesaid) and is a prisoner of war or posted as missing or otherwise is unable or able only with great difficulty to appoint an attorney, the Court may on the application of a co-executor or a beneficiary or a creditor or any next of kin appoint such co-executor or some other person resident in the State to have and exercise all or such of the powers, duties, and discretions of such first-mentioned executor or administrator and for such period or periods as the Court shall deem proper.

Payment of
balance of
estate to
Curator of
State or
colony
where
deceased
was
domiciled.
No. 13 of
1903, s. 132,
renumbered
as s. 139 in
1934 reprint
and as s. 142
in 1943
reprint.

142. (1) Where the Curator has obtained administration of the estate of any person who at the time of his death was domiciled in any other part of the Commonwealth or in New Zealand, and whose estate is being administered by the Curator of the State or colony in which the deceased was domiciled, the balance of the estate, after payment of local creditors, commission fees, and expenses, may be paid over to such last-named Curator.

Curator may
receive any
part of
estate from
outside the
State.

(2) Where any part of the estate or a deceased person, whose estate is being administered by the Curator, is situated outside the limits of Western Australia, the Curator may receive any part of such estate so situated, and, when received, the same shall be dealt with according to the law of Western Australia.¹

Remuneration of
administrator.
No. 13 of
1903, s. 133,
as amended
by No. 13 of
1921,
renumbered
as s. 140 in
1934 reprint
and as
s. 143 in
1943 reprint.

143. The Court may, by way of remuneration, allow to an administrator or executor for the time being, on passing his accounts, such commission, not exceeding five pounds per centum on the assets collected by such administrator or executor, including rents and income, as the Court thinks just. No

¹ See section 16 of the Public Trustee Act, 1941 (No. 26 of 1941).

allowance shall be made to any administrator or executor who omits to pass his account pursuant to any order of the Court.

143A. Interest payable on legacies shall be computed after the rate of five pounds per centum per annum unless any other rate of interest is directed by the will or under a judgment or order of a Court directing an account of legacies in which event the rate of interest shall be computed according to such will or as directed under or pursuant to such judgment or order.

Rate of interest payable on legacies. S. 143A added by No. 39 of 1945, s. 2.

144. (1) The rules and forms in the Third Schedule to this Act until altered, added to or revoked by rules made under this Act, shall regulate the practice and procedure to which they relate.

Rules of Court. No. 13 of 1903, s. 134, renumbered as s. 141 in 1934 reprint and as s. 144 in 1943 reprint. Amended by No. 30 of 1954, s. 5.

(2) Except where otherwise provided, the practice and rules and scales of fees heretofore in force shall apply.

(3) The Judges of the Supreme Court may make and prescribe all such rules, forms and fees as may be necessary or convenient to carry out the objects and purposes of this Act and in particular but without prejudice to the foregoing power may by rules—

Subsec. (3) added by No. 30 of 1954, s. 5 (b).

(a) alter, add to or revoke any of the rules or forms contained in the Third Schedule or the Appendix to the Schedule or any fees prescribed and in force at the coming into operation of the Administration Act Amendment Act, 1954;

(b) prescribe what part of the business which may be transacted and of the jurisdiction which may be exercised by a Judge in Chambers, may be transacted or exercised by the Master or other officer of the Court but the jurisdiction of the Master or other officer in and about the granting of probate and administration and the making of orders at the instance of the Public Trustee shall be limited by the rules to estates the gross value of which as sworn for the pur-

pose of duty being assessed under Part V of this Act does not exceed five thousand pounds.

Regulations.
No. 13 of
1903, s. 135,
renumbered
as s. 142 in
1934 reprint
and as
s. 145 in
1943 reprint.

145. The Governor may from time to time make, alter, and revoke any regulations for the following purposes, or any of them, that is to say:—

- (a) prescribing the duties of all persons employed in the administration of this Act;
- (b) regulating the security to be given by any such persons;
- (c) prescribing tables and rules for fixing values of any property;
- (d) prescribing forms and contents of statements, and modes of adjustment of duties and the incidence of duties under this Act, and providing for verification of statements by oath or declaration;
- (e) for the compulsory examination under oath or declaration of persons for obtaining information to aid in carrying out the objects of this Act;
- (f) for carrying out the objects and purposes of this Act, and to meet any particular case that may arise;
- (g) imposing a penalty not exceeding fifty pounds for a breach of any regulation.

Fines and penalties, how recovered.
No. 13 of
1903, s. 136,
renumbered
as s. 143 in
1934 reprint
and as
s. 146 in
1943 reprint.

146. All fines and penalties for any offence against this Act or the regulations may be recovered before any two justices of the peace in a summary way under the provisions of the Justices Act, 1902-1936.¹

On non-payment of penalties, etc., justices may imprison.
No. 13 of
1903, s. 137,
renumbered
as s. 144 in
1934 reprint
and as
s. 147 in
1943 reprint.

147. In every case of the imposition of a fine or pecuniary penalty under this Act, and of the non-payment thereof, any two justices of the peace may commit the person making default in payment to any prison in the said State for any time not exceeding six calendar months, the imprisonment to cease

¹ Now Justices Act, 1902-1948: See No. 20 of 1948, s. 2.

on payment of the sum due and the costs of such proceedings as may have been taken for the recovery thereof.

148. Whenever any amendment is made in this Act, all copies thereof printed by the Government Printer after the amendment shall be so printed as to set forth the actual provisions of the Act after omitting all repealed provisions or words, and embodying all newly enacted or substituted provisions or words, and reference shall be made in the margin to the section of the amending Act by which any such amendments are made.

Printing
amend-
ments.
No. 13 of
1903, s. 138:
renumbered
as s. 145 in
1934 reprint
and as
s. 145 in
1943 reprint.

SCHEDULES.

FIRST SCHEDULE.

Sec. 2.

Date.	Title.	Extent of Repeal.
3 & 4 William IV., c. 104	An Act to render Freehold and Copyhold Estates assets for payment of simple contract debts	The whole.
14 Victoria, 12	An ordinance for the disposal of Balances of Estates of Deceased Persons remaining unclaimed in the hands of the Public Administrator	The whole.
24 Victoria, 15	The Supreme Court Ordinance, 1861	Sections 6, 7, 8, 9.
34 Victoria, 12	An Act to abolish the distinction as to priority of payment which now exists between the Specialty and Simple Contract Debts of Deceased Persons	The whole.
43 Victoria, 5	The Foreign Probate Act	The whole.
47 Victoria, 20	The Deceased Persons Estate Act, 1883	The whole.
57 Victoria, 9	The Real Estates Administration Act, 1893	The whole
59 Victoria, No. 18	The Duties on Deceased Persons Estates Act	The whole.

SECOND SCHEDULE.*

Sec. 100.

Formerly
Third
Schedule.

Parent, issue, husband, wife, and issue of husband or wife.

* Formerly Third Schedule. The Second Schedule to the principal Act as amended by No. 29 of 1909 was repealed by Section 2 of the Act No. 28 of 1934, subject to Section 3 thereof. See footnote ¹ to heading of Part V. ante.

[Formerly
Fourth
Schedule.]

Sec. 144.

THIRD SCHEDULE.

RULES.*

Preliminary.

1. These Rules shall come into force on the 1st January, 1904. All Rules heretofore made and established in the Probate Jurisdiction of the Court shall be rescinded.

2. These Rules may be cited as "The Probate and Administration Rules," and shall be read with the Supreme Court Rules for the time being. Where no other provision is made, the practice and procedure heretofore in force shall apply so far as the circumstances permit.

R. 3 repealed
and new r.
inserted by
Gazette No.
32 dated
15/4/55,
p. 707.¹

3.¹ In these Rules—

(i) "The Act" means the Administration Act, 1903-1954.

(ii) "The Registry" means the Probate Office of the Supreme Court.

Powers of the Master.

R. 4 repealed
and new r.
inserted by
Gazette No.
32 dated
15/4/55,
p. 707.¹

4.¹ The Master may exercise the powers of the Court in and about the granting of probate and administration of, and all orders at the instance of the Public Trustee in reference to, wills and estates in cases where the gross value of the estate as sworn for the purposes of duty being assessed under Part V. of the Act does not exceed Five thousand pounds, in and about the passing and allowance of the accounts of executors and administrators, and the costs in connection therewith, where no commission is applied for, and in and about the dispensation with or reduction of bonds for the due administration of such estates:

Provided that the Master shall, where any person interested may so desire, and may, in cases where any doubt or difficulty arises, refer the matter to the Court.

Probate and Administration Generally.

5. Application for probates and administration may be made by *ex parte* application at any time after 14 days from the death of the deceased, and all papers in support thereof shall be filed in the Registry.

6. Such applications may be made through a solicitor, or in person by executors and parties entitled to grants of administration; but personal application will not be received by letter nor through the medium of any agent.

* These Rules incorporate the amendments thereto published in *Gazette* No. 20 dated 30th April, 1937; No. 32 dated 15th April, 1955 and No. 40 dated 11th May 1955. See also the Probate (Non-contentious Costs) Rules, 1949, published in *Gazette* dated 6/1/50, page 6, and amended by Rules published in *Gazette* dated 2/7/54, page 1190.

¹ Came into force on 15th April, 1955: See direction on p. 707 of *Gazette* No. 32 dated 15/4/55.

7.¹ All applications for probate or for letters of administration with the will annexed shall be supported by an affidavit (accompanied by the will and any other instrument of a testamentary nature) setting forth—

R. 7 repealed and new r. inserted by Gazette No. 32 dated 15/4/55, p. 708.¹

- (i) That the applicant (if a natural person) is of full age of twenty-one years.
- (ii) The death of the testator, and the date and place of his decease.
- (iii) That he has left a will, the date thereof, and that such will is unrevoked, and whether there is any codicil thereto.
- (iv) That the testator was of the full age of twenty-one years at the date of the execution of the will and has not married since that date.
- (v) The names of the executors or executor and of the subscribing witnesses to the will and the true place of abode (if reasonably ascertainable) of each of them at the time the affidavit is sworn.
- (vi) That the testator left estate within Western Australia and that the gross value of such estate exceeds or does not exceed (as the case may be) the sum of five thousand pounds.
- (vii) That the executor or administrator with the will, if given a grant, will well and truly administer the estate.
- (viii) That so far as the deponent is aware no application for probate or administration in the matter has theretofore been made, or if there has been a previous application, the full particulars thereof.
- (ix) In the case of an application for Letters of Administration with the will annexed, the reason why the executor (if any) does not apply and the character in which the person making the application claims to be entitled.

8.¹ Application for administration shall be supported by a bond in the form numbered 1 in the Appendix hereto and by an affidavit setting forth:—

R. 8 repealed and new r. inserted by Gazette No. 32 dated 15/4/55, p. 708.¹

- (i) That the applicant (if a natural person) is of the full age of twenty-one years.
- (ii) The death of the intestate and the date and place of death and the status of the intestate, that is whether leaving a wife or husband, or dying a bachelor, widower, spinster, widow, or divorced person.
- (iii) That the deceased died intestate.
- (iv) That the applicant has made careful search and inquiry to ascertain whether there is a will.
- (v) That the intestate left estate within the jurisdiction and that the gross value of such estate

¹ Came into force on the expiration of one month from 15th April, 1955: See direction on p. 707 of Gazette No. 32 dated 15/4/55.

exceeds or does not exceed (as the case may be) the sum of five thousand pounds.

- (vi) That the applicant is the husband, widow, or next of kin (or as the case may be) and the names of any person or persons having a right to the administration prior to or equal with himself.
- (vii) The names, addresses, and ages of the persons entitled in distribution to the estate of the intestate, and whether the deceased had adopted any child.
- (viii) That the applicant if given a grant will well and truly administer the estate.
- (ix) That no application for probate or administration in the matter has theretofore been made, or if there has been a previous application the full particulars thereof.

R. 8A added
by *Gazette*
No. 32 dated
15/4/55,
p. 708¹

8A.¹ Where the omission is deemed to be of no consequence the Court or (if the grant is within the powers of the Master) the Master, may dispense with full compliance with the requirements of either of the last two preceding rules.

R. 8B added
by *Gazette*
No. 32 dated
15/4/55,
p. 709.¹

8B.¹ Any document of a testamentary character purporting to be of the deceased, if alleged to be invalid for any reason other than revocation shall be brought into the Registry with the application, unless production is dispensed with by order of a Judge.

R. 8C added
by *Gazette*
No. 32 dated
15/4/55,
p. 709.¹

8C.¹ Every applicant for a first grant of probate or letters of administration must produce a certificate of the death of the deceased, or give a reason, to the satisfaction of the Master or the Judge, for the non-production thereof.

9. In all cases where a creditor shall intend to apply for administration he shall, previous to such application, issue a citation calling upon the husband or widow and next of kin of the deceased to appear and show cause why administration should not be granted to him, and shall, before the return day of such citation, prove his debt before the Master, and enter into a bond in the form No. 1 in the Appendix hereto.

R. 10
repealed and
new r.
inserted by
Gazette No.
32 dated
15/4/55,
p. 709.²

10.² (1) In every order under section 10 of the Public Trustee Act, 1941-1953, to administer the estate of a deceased person, there shall be reserved to the Court the right to grant probate or letters of administration to any person who shall apply therefor, and who might have obtained the same if the order to administer had not been made.

(2) Applicants for probate or administration when an order to administer the estate of any deceased person has already been granted to the Public Trustee, shall give seven days notice in writing to the Public Trustee of the intended application.

¹ Came into force on the expiration of one month from 15th April, 1955: See direction on p. 707 of *Gazette* No. 32 dated 15/4/55.

² Came into force on 15th April, 1955: See direction on p. 707 of *Gazette* No. 32 dated 15/4/55.

11. On all applications for probate or letters of administration a notice of an address, within one mile of the Registry or of the office of the district agent, as the case may be, where all notices may be served shall be filed, and service at such address shall be deemed sufficient service of any notification, summons, or other proceeding under the Act.

Interlineations and Alterations.

12. When interlineations, erasures, alterations, or obliterations appear in the will or codicil (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, and are evidenced by the initials of the attesting witnesses.

Deeds, etc., referred to in a Will or Codicil.

13. If a will or codicil contains 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 or codicil, the production of such deed, paper, memorandum, or other document will be required, with a view to ascertain whether it be entitled to probate; and, if not produced, its non-production must be accounted for.

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.

14A.¹ If a sheet of a will or codicil is not signed by the testator and by the attesting witnesses, affidavit evidence shall be supplied establishing that such sheet formed part of the will or codicil as executed by the testator unless in any particular case such evidence is dispensed with by order of a Judge.

Notice to other Next of Kin.

15. When administration is applied for by one or some only of the persons entitled to administration other than the Public Trustee, there being another or other next of kin equally entitled thereto, or a husband or widow of the deceased within the jurisdiction, their consent duly verified must be filed, or evidence must be adduced of their having been served with notice of the application, or that they cannot be found. But where the husband or widow of the deceased shall apply, then notice of the application shall be given to all the next of kin of the deceased of full age within the jurisdiction, or evidence must be adduced that they cannot be found.

R. 14A added
by Gazette
No. 32 dated
15/4/55,
p. 709.¹

R. 15
amended by
Gazette No.
32 dated
15/4/55
p. 709.¹

¹ Came into force on 15th April, 1955: See direction on p. 707 of Gazette No. 32 dated 15/4/55.

Grants of Administration to Guardians.

16. Grants of administration *durante minore ætate* may be made to guardians of infants for their use and benefit, subject to such limitations or conditions as the Court may order.

17. Infants above the age of seven years may elect a guardian, but in other cases a guardian must be assigned by the Court, and upon any application for administration by such guardian, evidence of his election or assignment must be produced.

18. In a family where there are infants both above and under the age of seven years an elected guardian may act for all the infants without special assignment.

Administrator's Oath.

19. [*Deleted by Gazette No. 32 dated 15/4/55, p. 709.¹*]

Administration Bonds.

20. Administration bonds shall be attested by a Commissioner or other person now or hereafter to be authorised to administer oaths; but in no case by the solicitor or agent of the party who executes them. Such administration bonds shall be in the form numbered one in the Appendix hereto, unless otherwise ordered by the Judge.

21. In all cases of administration, except in the case of a Guarantee Company, approved by the Court, or in the case of the Public Trustee or a company authorised by statute to obtain a grant, or where the person applying is solely entitled in distribution, or unless otherwise ordered, two sureties shall be required to the administration bond, and the bond given in the amount of property to be placed in the possession of or dealt with by the administrator by means of the grant. And in every case the sureties to the bond shall justify by affidavit, to the satisfaction of the Registrar.

22. All applications for any modification or alteration of the usual administration bond, or for any other modification of the practice under Rule 21, shall be supported by affidavits of the facts relied on.

Time of Issuing Grants.

23. In every case where probate or administration is, for the first time, applied for after the lapse of six months from the death of deceased, the reason of the delay is to be explained by affidavit when the application is made.

Testamentary Papers to be Marked.

24. Every will, copy of a will, or other testamentary paper to which an executor or administrator with the will annexed is sworn, must be marked by such executor or administrator, and by the person before whom he is sworn, and filed with the affidavit.

¹ The deletion of r. 19 came into force on the expiration of one month from 15th April, 1955: See direction on p. 707 of *Gazette No. 32* dated 15/4/55.

² Came into force on 15th April, 1955: See direction on p. 707 of *Gazette No. 32* dated 15/4/55.

Renunciations.

25. No person who renounces probate of a will or letters of administration of the estate and effects of a deceased person in one character, will be allowed to take a representation to the same deceased in another character.

Citations.

26. No citation shall issue under the seal of the Court until an affidavit, in verification of the averments it contains, has been filed in the Registry, or shall be made returnable in less than seven days from the service thereof, unless otherwise ordered by the Court.

27. Citations must be served personally when that can be done. Personal service shall be effected by leaving a true copy of the citation with the party cited, and showing him the original, if required by him so to do.

Substituted Service.

28. If personal service of citations or other proceedings cannot be effected by reason of the absence from the State of the person to be served, or if the Judge or Master is satisfied by affidavit or other evidence on oath that such person is keeping out of the way to avoid such service, or that for any other cause prompt personal service cannot be effected, he may order substituted service to be made of the delivery of the proceedings to some adult inmate of his usual or last known residence or place of business, or by registered letter, or in such other manner as the Judge may direct.

Notices to Crown Solicitor.

29.¹ In all cases where application is made for administration, either with or without a will annexed, of the estate of a bastard who has died a bachelor or a spinster, or who has died a widower or widow without issue, notice of such application shall be given to the Crown Solicitor.

R. 29
repealed and
new r.
inserted by
Gazette No.
32 dated
15/4/55,
p. 709.¹

Citation to bring in Testamentary Papers.

30. Any person bringing in a will or testamentary paper, in obedience to a citation or order, shall deposit it at the Registry, and may require a receipt therefor.

31. Any person served with a citation to bring in a testamentary paper may enter an appearance, on payment of the usual fees, if he thinks fit to do so.

Motions for Sale, etc., of Real Estate.

32. All applications under section 18 of the Act shall be supported by affidavits; and notice of such application shall (unless the Judge shall otherwise order), and unless their verified consent to the application be filed, be served on all parties interested of full age, and the sureties to the administration bond, and in cases where any of the persons interested are infants, then service shall be made as directed by the Court.

¹ Came into force on the expiration of one month from 15th April, 1955: See direction on p. 707 of Gazette No. 32 dated 15/4/55.

Applications under the Act.

33. All applications shall, except as herein otherwise provided, be made to a Judge in Chambers.

34. All such applications shall be supported by affidavits setting out fully the circumstances of the case and the grounds upon which the order is applied for.

Personal applications for Grants of Probate or Letters of Administration.

35. Persons wishing to obtain grants of Probate or Letters of Administration, without the intervention of a solicitor, must apply in person, but not by letter.

36. Applications which have in the first instance been made through a solicitor will not be entertained as personal applications.

37. Whenever, in the opinion of the Master, it becomes necessary, in the course of a personal application, to obtain the directions of the Court, the application will not be further proceeded with as a personal one except by leave of the Court.

38. [*Deleted by Gazette No. 32 dated 15/4/55, p. 709.*¹]

Taxing Bills of Costs.

39. The Taxing Master shall tax all Bills of Costs referred to him for taxation.

Filing and Passing Accounts.

40. Every executor and administrator shall, within twelve months after the grant of probate or administration, file in the Registry his accounts relating to the estate of the deceased, together with a plan of distribution where there is any balance available therefor, unless he shall obtain a special order from the Court extending the time for filing such accounts, and shall at the time of filing the said accounts take out an appointment for passing the same.

41. Notice of the filing of the accounts of any executor or administrator (in the form numbered 2 in the Appendix hereto), and of the day fixed for passing the same, shall be inserted in one Perth daily newspaper, and if the person resided more than thirty miles from Perth, in a newspaper published and circulating in the district where the deceased was residing at the time of his death, fourteen days at least before the day fixed for passing the same, and if the said administrator intend to apply for commission, notice shall also be given of such intention.

42. In the case of an administrator, notice of the filing and of the application to pass his accounts shall also be served on the sureties of the administration bond.

¹ The deletion of r. 38 came into force on the expiration of one month from the 15th April, 1955: See direction on p. 707 of *Gazette No. 32 dated 15/4/55*.

43. Any person wishing to object to the passing of the accounts of any executor or administrator, or the granting of commission, shall file with the Master, on or before the day fixed for the passing of such accounts, a notice of his intention to object, and also an affidavit stating his interest and the nature and grounds of his objection.

44. Upon the taking of such accounts, the Master may make such order as to service upon any of the parties interested as he may think fit.

45. Any person interested may attend before the Master upon the taking of such accounts.

46. The Master shall give his certificate as to the correctness of the said accounts, and also as to the amount on which commission is allowable.

47. Within fourteen days after the signing of the certificate by the Master, the accounting party shall, if he desires to be allowed commission, enter such accounts for allowance by the Court, and for allowance of commission.

48. If the accounting party or any person who has filed a notice of objection under Rule 43, desires to appeal from the finding of the Master on the passing of the accounts, he shall, within seven days from the signing of the certificate by the Master, file a notice in the Registry, setting forth the nature and grounds of his appeal.

Caveat.

49. Any person having any interest in an estate in which application is being made for probate or administration, and intending to oppose the same, shall either personally or by his solicitor enter a caveat in the Registry; such caveat shall be in the form numbered 3 in the Appendix hereto, and shall state fully the nature of the interest of the caveator, and an address in Perth where documents or notices may be served.

50. A caveat shall remain in force for the space of six months only from the day it is entered and then expire and be of no effect, unless otherwise ordered.

51. If the applicant for probate or administration does not see fit to obtain an order under section 64 of the Act, he shall, within one month, or such extended time as a Judge may allow after notice of the entry of the caveat, commence contentious proceedings by issuing a writ against the caveator and proceeding thereunder in the ordinary manner.

R. 51
amended by
Gazette No.
32 dated
15/4/55,
p. 709.¹

¹ Came into force on 15th April, 1955: See direction on p. 707 of Gazette No. 32 dated 15/4/55.

52. A caveator may, if no step is taken by the executor or applicant for administration within a period of one month after notice of the entry of the caveat, apply to the Court for an order directing the executor or applicant to proceed with his application, and the Court may make such order upon such terms as to it may seem meet.

53. When a defendant enters his appearance to a writ issued under Rule 51 he shall file a memorandum to the effect either that he disputes the plaintiffs claim, or that he merely intends to cross-examine the witnesses produced in support of the due attestation of the will.

54. Where any defendant duly served with a writ or statement of claim does not enter an appearance or deliver a defence thereto within the time limited, the plaintiff may apply for a decree or order against the defendant in his absence.

55. In a suit for probate, the statement of defence shall consist of the following defences alone, unless by leave of the Court, obtained on summons:—

- (1) That the paper writing, bearing date, etc., and alleged by the plaintiff (or defendant) to be the last will and testament (or codicil to the last will and testament) of A.B., late of, etc., deceased, was not duly executed as required by law, in manner and form as alleged, stating particulars.
- (2) That A.B., the deceased in this cause, at the time his alleged will (or codicil) bears date, to wit, on the, etc., was not of sound mind, memory, and understanding.
- (3) That the deceased, at the time of the execution of the said alleged will (or codicil), did not know and approve of the contents thereof.
- (4) That the execution of the said alleged will (or codicil) was obtained by the fraud of C.D., and others acting with him (setting out the fraud alleged).
- (5) That the execution of the said alleged will (or codicil) was obtained by the undue influence of C.D., and others acting with him.

And if the defendant desires to propound another will, he may, by leave of the Judge, do so by way of counter claim.

Suits for the Revocation of Probate and Administration.

56. Proceedings for the revocation of probate or administration shall be commenced by the issue of a citation against the party to whom the grant was made, requiring him to bring in and deposit the grant in the Registry; and within fourteen days after notice of such deposit the party

issuing the citation shall issue a writ, and thereafter proceed against the party cited, who shall be the defendant in the suit, and all subsequent proceedings shall be had and taken as in an ordinary action.

Forms.

57. The forms in the Appendix hereto shall be followed in all proceedings under the Act, with such variations as the nature and circumstances of each particular case may require. All proceedings shall be intituled "In the Supreme Court."

Scale of Fees.

58. The following shall be the scale of fees chargeable:—

R. 58
amended by
No. 9 of
1918, s. 2.

	£	s.	d.
Search	0	1	0
Filing executor's or administrator's oath	0	1	0
Filing affidavits	0	2	6
Filing exhibit	0	1	0
Filing every other document not specified (duplicate and triplicate)	0	2	6
Letters of administration (duplicate)	0	12	6
Double probates	0	12	6
Registering and collating wills, per folio of 90 words	0	1	6
With minimum of	0	4	6
Office copies, per folio	0	0	6
With minimum of	0	2	6
Marking copies as office copies, per folio	0	0	3
With minimum of	0	2	6
Filing <i>caveat</i>	0	1	0
Filing withdrawal	0	1	0
Deposit of will of deceased person	0	10	0
Every <i>flat</i>	0	5	0
Settling advertisements, per folio	0	0	3
With minimum of	0	2	6
Noting revocation or alteration in grants	0	2	6
Noting same in record	0	2	6
Noting renunciations or other necessary matter in grants	0	2	6
Order revoking grant	0	5	0
Every certificate of registrar	0	2	6
Citation	0	5	0
Appearance to same	0	2	6
Amending appearance	0	2	6
On every application under regulation 35	1	0	0

On every grant of probate or administration the *ad valorem* fees shall be charged as heretofore.

For matters not herein provided for, the Scale of Fees prescribed by the Rules of Court shall apply.

[Rules 59 to 66¹ and Rule 68¹ in this Schedule were repealed by No. 9 of 1918, s. 2.]

59. The Forms Nos. 10, 11, and 12 in the Appendix, or forms to the like effect, shall be used where applicable. Formerly
r. 67.

¹ For substituted provisions see now Supreme Court Rules, Order No. 76, published in *Gazette* on 23rd October, 1942.

Formerly
r. 69.

R. 61 (a),
(b) and (c)
added. See
G.G. dated
30/4/1937,
p. 649.¹

60. The Master may direct that every applicant for probate or administration shall lodge a duplicate copy on parchment or paper of the prescribed weight and quality of the Probate or Letters of Administration in such form and size as he may deem necessary for the purpose of filing.

61.¹ (a) Motions for grants and resealing filed at the Probate Office shall be typed or written on strong light-coloured paper of a quality and form suitable for providing a durable cover for the Probate Office file and motions not complying with this requirement may be rejected by the Master.

(b) All grants of probate and letters of administration with or without the will annexed, exemplifications, and sealed certified copies shall be typed or written on special probate paper prepared by the Government Printer, or on paper of the like weight, quality, size and form.

(c) This rule shall apply to all motions filed at, and all such grants and documents issued out of the Probate Office on and after the first day of September, one thousand nine hundred and thirty-seven.

Appendix to Third Schedule.

No. 1.*

Administration Bond.

Form No. 1
amended by
Gazette No.
32 dated
15/4/55,
p. 709;
No. 40 dated
11/5/55,
p. 1051.

Know all men by these presents that we
of in the State of Western Australia,
..... of in the said State
and of in the said State
..... are jointly and severally held and firmly
bound unto Her Majesty the Queen her heirs and successors,
in the sum of pounds of lawful money to be paid
to her said Majesty, her heirs and successors, for the due
payment whereof we bind ourselves, and each and every of
us, and for the whole, our heirs, executors, administrators,
and assigns by these presents.

Dated this day of, one thousand
nine hundred and

The conditions of the abovewritten bond or obligation
are such, that if the above bounden the intended
administrator of all and singular the estate and effects of
..... late of in the said State
..... shall well and truly collect, get in,
administer, and distribute according to law, the estate and
effects of the said deceased at the time of his death, and
all other the estate and effects of the said deceased which
at any time hereafter shall come into the hands or possession
of the said, as such administrator or as

¹ Came into force on 1st September, 1937: See direction on p. 649 of *Gazette* No. 20 dated 30/4/37.

* This form came into force on 1st June, 1955: See direction on p. 1051 of *Gazette* No. 40 dated 11th May, 1955.

a trustee or into the hands or possession of any other person or persons for him; and further shall make or cause to be made a true and perfect account of..... administration within twelve months of the date of the grant of letters of administration herein, and afterwards from time to time as shall be lawfully required; and all the rest and residue of the said estate and effects which shall be found from time to time remaining upon the said administration account (the same being first examined and allowed by the Supreme Court of Western Australia) shall and do pay dispose of and distribute in accordance with his duty as administrator or trustee of the said estate, or in such manner as the said Court shall direct; then the above-written bond or obligation to be void and of no effect, otherwise to be and remain in full force and virtue.

No. 2.

Notice of filing Accounts.

In the Estate of
Notice is hereby given that the accounts and plan of distribution in the above estate have this day been filed in my office, and all persons having any claim on the said estate, or being otherwise interested therein, are hereby required to come in before me at my said office on or before the
day of at o'clock in the
noon and inspect the same, and if they shall think fit object thereto; otherwise if the said accounts be not objected to, the same will be examined by me and passed according to law.

Dated this day of , 19 .

Master.

No. 3.

Caveat.

Take notice that I [*name of caveator in full*] of [*address and description in full*] claiming interest [*state relationship or particulars of interest*] in the estate of [*or under the will of—set out full description*] do hereby demand that nothing be done therein without notice to me.

Dated this day of , 19 .

(*Signature of Caveator or his Solicitor.*)

Witness.

Administration.

[Forms Nos. 4, 5, 6 and 7 are obsolete.*]

No. 8.

Affidavit of attesting witness (where requisite).

In the matter of the Will of _____, late of
deceased.
I, _____, of _____, in the State of Western Aus-
tralia, being duly sworn, make oath, and say as follows:—

1. I am one of the subscribing witnesses to the last will and testament of the said _____, late of _____, deceased, bearing date the _____ day of _____, 19____, and hereunto annexed, marked "A."

2. 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 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 by the deponent, this _____ day of _____, 19____, at _____, before me,—

[Form No. 9 is obsolete.§]

No. 10.

Administration with the Will annexed.

In the Will and Estate of _____, late of _____, in the State of Western Australia, deceased.

BE IT KNOWN that _____, late of _____, who died on the _____ day of _____, one thousand nine hundred and _____, at _____, in the State of _____, made and duly executed her last Will and Testament (a copy whereof is hereunto annexed), and did therein name _____, of _____, in the State of _____, sole executor of her said Will; AND BE IT FURTHER KNOWN that the said _____ did, by renunciation, dated the _____ day of _____, renounce Probate of the Will of the said _____ without having intermeddled with the deceased's estate, AND BE IT ALSO FURTHER KNOWN that on the _____ day of _____ Letters of Administration, with the said Will annexed, of all and singular the real and personal estate of the said deceased were granted by the Supreme Court of the said State of Western Australia

* Rules 60, 61 and 62 invoking Forms Nos. 4, 5, 6 and 7 were repealed by No. 9 of 1918, s. 2. [See substituted Forms Nos. 1-4 in Appendix to Schedule of that Act.] No. 9 of 1918 was repealed by Public Trustee Act, 1941. For substituted Forms see now Supreme Court Rules, Order No. 76, published in *Gazette* on 23rd October, 1942.

§ Rule 63 invoking Form No. 9 was repealed by No. 9 of 1918, s. 2. [See substituted Form No. 5 in Appendix to Schedule of that Act.] No. 9 of 1918 was repealed by Public Trustee Act 1941. For substituted Forms see now Supreme Court Rules, Order 76, published in *Gazette* dated 23rd October, 1942.

to _____, of _____, one of the lawful children and next of kin of the said deceased, he having been first sworn well and faithfully to administer the same.

Given at _____, in the said State of Western Australia, this _____ day of _____.

By the Court,

Master.

No. 11.

Administration.

In the Estate of _____, late of _____, in the State of Western Australia, deceased, intestate.

BE IT KNOWN that on the _____ day of _____, one thousand _____, Letters of Administration of all and singular the real and personal estate of _____, late of _____, in the State of _____, deceased, who died on the _____ day of _____, one thousand nine hundred _____, at _____ aforesaid, intestate, were granted by the Supreme Court of the said State to _____, of _____, the lawful Widow of the said deceased, she having been first sworn well and faithfully to administer the same.

Given at _____, in the said State of Western Australia, this _____ day of _____.

By the Court,

Master.

No. 12.

Probate.

In the Will of _____, late of _____, in the State of Western Australia, deceased.

BE IT KNOWN that on the _____ day of _____, one thousand nine hundred _____, the Last Will and Testament (a copy whereof is hereunto annexed) of _____, deceased, who died on the _____ day of _____, one thousand nine hundred and _____, at _____, in the said State of Western Australia, was proved, approved, and registered in the Supreme Court of the said State at Perth; and that administration of the real and personal estate of the said deceased was granted by the aforesaid Court to _____, of _____, named in the said Will, he having been first sworn well and faithfully to administer the same.

By the Court,

Master.

[Form No. 13.—Advertisement by Curator under section 69 is obsolete, s. 69 of Act No. 13 of 1903 having been repealed by Act No. 9 of 1918, s. 2.]

