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A

MANUAL OF THE PRACTICE

OF THE

COURT OF PROBATE.

BY

ALEXANDER STAVELEY HILL, D.C.L.,
FELLOW OF ST. JOHN'S COLLEGE, OXFORD, AND OF THE INNER TEMPLE, ESQUIRE,
BARRISTER-AT-LAW.

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TO

THE RIGHT HONORABLE

SIR CRESSWELL CRESSWELL, KNT.,

JUDGE OF HER MAJESTY'S COURT OF PROBATE, &c.,

THIS

MANUAL OF PRACTICE

IS,

WITH HIS LORDSHIP'S KIND PERMISSION,

RESPECTFULLY DEDICATED

BY

THE AUTHOR.

PREFACE.

In the following pages I have endeavoured to illustrate the system which the Legislature has provided for the distribution and administration of the effects of a deceased testator or intestate.

Carefully perusing Mr. Justice Williams's most useful work on "The Law of Executors and Administrators," a treatise that has scarcely its equal amongst the text-books of English law, I have not hesitated to extract where I could not venture an attempt to improve.

In explaining the practice of the Court, I have followed the plan adopted by Mr. Lush, in his excellent work on Common Law Practice.

I may, perhaps, be excused in drawing attention to those portions of my Commentary that treat of the practice of the District Registries and of the new jurisdiction given to the County Courts in matters testamentary; for assistance in the former I am greatly indebted to the learned Registrar for the Counties of Salop and Montgomery.

In concluding my labours I can but express the hope that, in thus bringing together the decisions of the Courts of Equity and of Law, of the learned Judges of the Courts whose jurisdiction is determined, and of

the Court of Probate, wherever those decisions affect the present practice, I may afford some small help in carrying out that system which, under the administration of the present learned Judge, bids fair to realize the highest expectations entertained with regard to this reform of our Law.

ALEX. STAVELEY HILL.

3, GARDEN COURT, TEMPLE,
July, 1859.

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Manual of the Practice

OF

THE COURT OF PROBATE.

20 & 21 Vict. Cap. 77.

An Act to amend the Law relating to Probates and Letters of Administration in England.

[25th August, 1857.]

Preamble.

WHEREAS it is expedient that all jurisdiction in relation to the grant and revocation of probates of wills and letters of administration in England should be exercised, in the name of her majesty, by one court: be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:—

Commencement of act.

I. This Act (except where otherwise specially provided) shall come into operation on such day, not sooner than the 1st day of January, 1858, as her majesty shall by order in council appoint, provided that such order shall be made one month at least previously to the day so to be appointed.

In citing this act it shall be sufficient to use the expression "The Court of Probate Act, 1857;" and in citing the Amendment Act (21 & 22 Vict. c. 95), "The Court of Probate Act, 1858."

By an Order in Council bearing date the 2nd day of December, 1857, it was ordered that the Court of Probate shall hold its ordinary sittings in any of the courts at Westminster Hall which can be conveniently used for the purpose, and shall have its principal registry in the city of London, in the building then used as the public registry of the Archbishop of Canterbury.

For the continuance of temporary powers to courts whose jurisdiction is determined by this act, see *inf.* ss. 85—88.

CONSTRUCTION.

Interpretation of terms.

II. In the construction of this Act, unless the context be inconsistent with the meaning hereby assigned—

(*a*) "Will" shall comprehend "Testament" and all other testamentary instruments of which probate may now be granted:

(*b*) "Administration" shall comprehend all letters of administration of the effects of deceased persons, whether with or without the will annexed, and whether granted for general, special or limited purposes:

"Matters and Causes Testamentary" shall comprehend all matters and causes relating to the grant and revocation of probate of wills or of administration:

(*c*) "Common Form Business" shall mean the business of obtaining probate and administration where there is no contention as to the right thereto, including the passing of probates and administrations through the Court of Probate in contentious cases when the contest is terminated, and all business of a non-contentious nature to be taken in the court in matters of testacy and intestacy, not being proceedings in any suit, and also the business of lodging caveats against the grant of probate or administration.

(*a*) Formerly the word "will" was used more particularly with regard to lands and tenements, "testament" with regard to chattels.[a]

A last will and testament has been well defined: "Voluntatis nostræ justa sententia de eo quod quis post mortem suam fieri velit."[b] "A solemn expression of that which a man would wish to be done after his death," to which we may add, "respecting personal estate." An instrument in any form, if the obvious purpose is not to take effect till after the death of the testator, operates as a will.[c] Thus, a deed-poll or an indenture;[d] a deed of gift;[e] a bond;[f] marriage settlements;[g]

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[a] Co. Litt. 111 a.

[b] Ff. 28, 1. 1.

[c] *Habergham* v. *Vincent*, 2 Ves. jun. 231; *Masterman* v. *Maberley*, 2 Hagg. 248.

[d] *Attorney-General* v. *Jones*, 3 Price, 368.

[e] *Thorold* v. *Thorold*, 1 Phillim. 1, *et cas. cit.*

[f] *Masterman* v. *Maberley*, *supra*.

[g] *Passmore* v. *Passmore*, 1 Phillim. 218.

letters;[h] drafts on a banker;[i] the assignment of a bond by indorsement, receipts for stock and bills indorsed;[k] the indorsement on a note, "I give this note to S. H.;"[l] promissory notes and notes payable by executors to avoid the legacy duty;[m] have all been held to be *testamentary instruments*, as being papers containing a disposition of the property to be made after death.[n] So papers referred to as "schedules" in will, but not executed until after will, admitted to probate as incorporated with will.[o] Not so, however, of unattested additions written subsequently to the will.[p] Now, however, by the rules for the district registrars (Reg. 18) no deed, paper, memorandum or other document can form part of a will or codicil unless it was in existence at the time that the will or codicil was executed.

(*b*) We may remark here, that there is a new *administration* created by this act, viz., an administration during the residence abroad of the original administrator, analogous to that given by 38 Geo. 3, c. 87, in the similar case of an executor. *Inf.* s. 84, note.

When the contest is over in cases within the jurisdiction of the county court, the district registrar is to make the grant (*inf.* s. 55). There is no such authority, however, given where the contest is conducted in the superior court, and the presumption is, that the grant must be made out of the principal registry, which is κατ' ἐξοχήν, the registry of the court so ordering it.

(*c*) As the expression "*common form business*" never once occurs in the act, it seems to have been scarcely worth while to have given so elaborate and at the same time illucid a definition of it. The words "*common form*" occur twice, viz. in s. 46 and s. 48, in which places they are used in the ordinary acceptation of the terms.

JURISDICTION.

Testamentary jurisdiction of ecclesiastical and other courts abolished.

III. The voluntary and contentious jurisdiction and authority of all ecclesiastical, royal peculiar, peculiar, manorial and other courts and persons in England, now having jurisdiction or authority to grant or revoke probate of wills or letters of administration of the effects of deceased persons, shall in respect of such matters abso-

[h] *Habberfield* v. *Browning*, 4 Ves. 200; *In the goods of Dunn*, 1 Hagg. 488.

[i] *Bartholomew* v. *Henley*, 3 Phillim. 317.

[k] *Musgrave* v. *Down*, *Sabine* v. *Goate and Church*, cited in 2 Hagg. 247.

[l] *Chaworth* v. *Beech*, 4 Ves. 565.

[m] *Attorney-General* v. *Jones*, 3 Price, 368; *George* v. *Bank of England*, 7 Price, 646.

[n] *Glynn* v. *Oglander*, 2 Hagg. 428.

[o] *In the goods of Hunt, Clerk*, 2 Rob. Eccl. C. 622.

[p] *Haynes* v. *Hill*, 1 Rob. Eccl. C. 795.

lutely cease; and no jurisdiction or authority in relation to any matters or causes testamentary, or to any matter arising out of or connected with the grant or revocation of probate or administration, shall belong to or be exercised by any such court or person.

Here ends the whole question of *bona notabilia*, and the great difficulties continually arising as to which of the thousand and one ecclesiastical courts was the proper one wherein to prove the will, are now removed. Henceforth jurisdiction in all matters testamentary in England and Wales belongs wholly and solely to the Court of Probate. As to the necessity of introducing this court and that the varieties of jurisdiction existing up to this time may not be forgotten, see the note of Dr. Phillimore, in *Aughtie* v. *Aughtie*.[q]

Non-contentious business pending in any ecclesiastical court has now been transferred to the Court of Probate (21 & 22 Vict. c. 95, s. 14), and by s. 15, all oaths sworn and bonds given in reference to such business are to be considered as sworn before and are to enure to the benefit of the judge of the Court of Probate.

The judge of the Court of Probate has also the power of amending grants, &c. made before 11th January, 1858.

Testamentary jurisdiction to be exercised by a Court of Probate.

IV. The voluntary and contentious jurisdiction and authority in relation to the granting or revoking probate of wills and letters of administration of the effects of deceased persons now vested in, or which can be exercised by any court or person in England, together with full authority to hear and determine all questions relating to matters and causes testamentary, shall belong to and be vested in her majesty, and shall, except as hereinafter is mentioned, be exercised in the name of her majesty in a court to be called the Court of Probate, and to hold its ordinary sittings and to have its principal registry at such place or places in London or Middlesex as her majesty in council shall from time to time appoint.

It was formerly held that wills made in execution of a power not only need not, but ought not to be proved, and that the probate of such will was of no authority: it is now settled, however, that neither courts of law nor courts of equity will act upon such will if it has not been first proved.[r] The probate, however, does not preclude the necessity of establishing the will as an appointment upon any claim under it in a court of equity, for the Court of Probate only decides that the act is testa-

[q] *Aughtie* v. *Aughtie*, 1 Phillim. 201, note (*a*). See also *Denham* v. *Stephenson*, 1 Salk. 40.

[r] *Stevens* v. *Bagwell*, 15 Ves. 153.

mentary, and has no jurisdiction to determine whether the instrument is a good execution of a power.[s]

Where a feme covert makes a will under a power but does not appoint an executor, the later practice of the Prerogative Court was in accordance with the general rule, that the grant should follow the interest, to make the grant to the persons having an interest under the will and not to the husband.[t]

The important jurisdiction of the Courts of Chancery in certain cases seems to be untouched. Thus, a court of equity will still entertain a bill for a personal legacy or for the distribution of a testator's personal estate, and will compel an executor or administrator in the same way that it does an express trustee to discover and set forth an account of the assets and of his application of them.[u] "Matters and causes testamentary" are defined by s. 2 to comprehend all matters and causes relating to the grant and revocation of probates of wills or of administrations: all suits for subtraction of legacies or for an account to ascertain assets seem therefore to be now exclusively within the jurisdiction of the Court of Chancery. The courts of equity are henceforward the only courts of construction, as the new court is the only Court of Probate, for the old courts, and their powers as to legacies and the distribution of residues, are expressly abolished (*inf.* s. 23); and no power as to these suits or in matters of construction is given to the new court. The practice, however, of the Prerogative Court, where it had the discretion of a grant, was so to exercise it, even at the cost of departing from its usual practice, as to leave a question of construction to a court of equity.[v]

The exception referred to in the section is where the personalty is under the value of 200*l.* and the realty under the value of 300*l.*, in which cases the judge of the county court for the district in which the deceased at the time of his death had his fixed place of abode has the jurisdiction in cases of contention. *Inf.* ss. 54 *et seq.*

As to small properties excepted from the jurisdiction by certain acts, see *inf.* s. 54, note.

JUDGE OF COURT OF PROBATE.

Power to her Majesty to appoint a judge of the Court of Probate.

V. There shall be one Judge of her majesty's Court of Probate; and it shall be lawful for her majesty from time to time, by letters-patent under the great seal of the United Kingdom, to appoint a person, being or having been an advocate of ten years' standing, or a barrister at law of fifteen years' standing, to be such judge.

The judge of the High Court of Admiralty and the judge of

[s] *Watt* v. *Watt*, 3 Ves. 244; *Rich* v. *Cockell*, 9 Ves. 376; *Tappenden* v. *Walsh*, 1 Phillim. 352.

[t] Dean's Wills Acts, p. 69.

[u] *Howard* v. *Howard*, 1 Vern. 134; and *Hill* v. *Turner*, 1 Atk. 516.

[v] *Brow* v. *Nicholls*, 2 Rob. Eccl. C. 399.

the Court of Probate may sit for each other. 21 & 22 Vict. c. 95, s. 1.

Judge's tenure of office.

VI. The Judge of the Court of Probate shall hold his office during good behaviour, provided that it shall be lawful for her majesty to remove any such judge from his office upon an address of both houses of parliament.

Judge before acting to take the following oath.

VII. Every Judge of the Court of Probate shall, before executing any of the duties of his office, take the following oath, which the lord chancellor or the master of the rolls for the time being is hereby respectively authorized and required to administer:—

"I, A. B., do solemnly and sincerely promise and "swear, that I will duly and faithfully, and to the best of "my skill and power, execute the office of Judge of the "Court of Probate.

"So help me GOD."

Rank and precedence of judge who shall appoint a secretary and usher.

VIII. The judge shall have rank and precedence with the puisne judges of her majesty's superior courts of common law at Westminster according to the date of his appointment, and he shall have a secretary and usher, to be from time to time appointed and removed by him at his pleasure.

Salaries of judge, secretary and usher.

IX. There shall be paid to the judge the net yearly salary of four thousand pounds, and to his secretary the net yearly salary of three hundred pounds, and to his usher the net yearly salary of one hundred and fifty pounds.

Her majesty's Court of Probate was opened on the 12th of January, A.D. 1858, there being a very numerous attendance of the bar of Doctors' Commons as well as of that of Westminster Hall.

Sir Cresswell Cresswell entered the court accompanied by two of the registrars, one of whom, Dr. Bayford, read the royal letters patent appointing him judge of the Court of Probate.

The queen's advocate (Sir John Harding) then addressed the learned judge as follows:—"My lord, in the name and on be-"half of the bar, whose organ I am, and whose numerous "attendance testifies its concurrence in the observations I am "about to offer, I beg to tender you our most sincere and hearty "congratulations upon your assumption of the office of Judge "of the Court of Probate and of the Court for Divorce and "Matrimonial Causes. Believe me, my lord, we esteem our-"selves most fortunate in finding ourselves under the guidance

" of a judge of such long experience and of such distinguished " ability as your lordship, and of one who is still in the full " vigour of his mental and physical powers. For that particular " branch of the profession of which I have the honour to belong " I can sincerely say that, although we look back to the past " with some emotions of natural regret and honest pride, we " look forward to the future with hope and confidence. Re- " moved, as we have been, somewhat unexpectedly (not, as we " are well aware, by your lordship's desire) from our ancient " habitation, we still find ourselves at home under the shadow " of that ancient hall which has so long been devoted to English " law and justice; and I trust we may say, with the fugitives " of old, 'Non erimus regno indecores.' We are deeply con- " scious that in a new court, with a new procedure, we have " much to learn, but we trust we have also something to im- " part. We shall gladly welcome our friends who belong to " the other branches of the profession, and we have no doubt " that we shall be received by them with courteous hospitality, " when, in exercise of the extended rights which have been " conferred on us, we practice in their courts. I trust we shall " all work cordially and harmoniously together for the purpose " of carrying to a successful issue the great experiment in juris- " prudence which has wisely been entrusted to your lordship's " experienced hands, and of lightening, as far as we can, the " serious weight of labour which has been cast on you. I need " hardly say, that in Doctors' Commons the most entire con- " fidence has ever prevailed in the intercourse between the " bench and the bar, and I trust that a similar feeling may " soon take root and may long flourish here between your " lordship and that profession in whose name I most heartily " and cordially bid you welcome."

Sir Cresswell Cresswell.—" I return you and those gentlemen, " on whose behalf you have addressed me, my most cordial " thanks for the kindness with which you have received me. I " assure you unfeignedly that I stand much in need of some " such encouragement as you have given me, for I cannot take " my seat in this court without feeling many anxious fears lest " I should prove unequal to the discharge of the duties which " I have taken upon myself. I am now fully assured of the " kind feeling of the bar. I also place the utmost confidence " in their learning and honour, and I am sure that their " learning will supply me with the information which is neces- " sary to enable me to discharge my duties, and that their " honour will prevent them from attempting to use their learn- " ing as a means of misleading me. You have alluded to the " long experience I have had in Westminster Hall, and to " the interest manifested by the large attendance of the bar " on this occasion. If I have had the good fortune to acquire " their goodwill and esteem in the exercise of my judicial office, " I can only ascribe it to their doing me the justice to believe " that I have ever been animated by an earnest desire to hold " the scales equally between all men, to show no preference or " personal feeling, but to deal even-handed justice to every one. " I hope I may, without presumption, promise that, during the

" rest of my judicial career, I shall pursue the same course, and " happy shall I be if, at the conclusion of the few years during " which I shall hold my present office, I shall be able to carry " with me the same good feeling which has been expressed " towards me to-day." 27 L. J., P. & M.

Judge of Court of Probate to be also judge of the Admiralty Court on the next vacancy.

X. Upon the next vacancy in the office of Judge of the High Court of Admiralty of England it shall be lawful for her majesty, if she so think fit, to appoint the person then being Judge of the Court of Probate to be also Judge of the said Court of Admiralty, or in case the office of Judge of the Court of Probate become vacant before the office of Judge of the Court of Admiralty, the Judge of the Court of Admiralty may, with his consent, be appointed to and hold also the office of Judge of the Court of Probate, and after the union of the said two offices they shall be thenceforth held by the same person.

As to increase of salary upon union of the two offices.

XI. From and after the union under this Act of the two offices of Judge of the Court of Probate and Judge of the Court of Admiralty in the same person, the said yearly salary of four thousand pounds, payable under this Act shall be increased to five thousand pounds, and the salary now payable to the Judge of the Court of Admiralty shall cease.

Retiring pensions of judges.

XII. Her majesty, by letters-patent under the great seal of the United Kingdom, may grant unto any person executing the office of Judge of her majesty's Court of Probate an annuity, not exceeding two thousand pounds, or if such person be also executing the office of Judge of the said Court of Admiralty, not exceeding three thousand five hundred pounds, to commence immediately after the day when the person to whom such annuity shall be granted shall resign the said office or offices, and to continue during his natural life; provided that her majesty may, in and by such letters-patent, limit the duration of payment of such annuity, or any part thereof, to such periods of time during the natural life of such person in which he shall not exercise any office of profit under her majesty, so that such annuity, together with the salary and profits of such other office, shall together not exceed in the whole the said sum of two thousand pounds or three

thousand five hundred pounds, as the case may be: provided also, that no annuity granted to any person having executed the office of judge under this Act, except the present Judge of the Prerogative Court, shall be valid unless such person shall have held such office for the period of fifteen years, or have held such office and any of the offices of judge in any of the superior courts of law or equity or the High Court of Admiralty for periods amounting together to fifteen years, or shall be afflicted with some permanent infirmity disabling him from the due execution of his office, which shall be distinctly recited in the said grant.

DISTRICT REGISTRARS.

XIII. There shall be established for each of the districts specified in Schedule (A) to this Act, and at the places respectively mentioned in such schedule, a public registry attached to and under the control of the Court of Probate, hereinafter referred to as "The District Registry." District registries to be established as in Schedule (A).

SCHEDULE (A).

Districts and Places of District Registries throughout England and Wales.

Districts.	Places of District Registries.	Names of District Registrars.
County of Northumberland[a]	Newcastle-on-Tyne	Mark Lambert Jobling.
County of Durham . . .	Durham . .	Joseph Davidson.
Counties of Cumberland and Westmoreland	Carlisle . . .	George Gill Mounsey.
West Riding of the county of York	Wakefield . .	John Bailey Langhorne.
North Riding ditto . .	York . . .	William Hudson & Joseph Buckfield.
East Riding ditto[b] including the city of York and Ainsty		
County of Lancaster, except the hundred of Salford and West Derby and the city of Manchester	Lancaster . .	John Sharp.

[a] Including the towns and counties of Newcastle-on-Tyne and Berwick-upon-Tweed.

[b] Including the town and county of Kingston-on-Hull.

Districts.	Places of District Registries.	Names of District Registrars.
City of Manchester and hundred of Salford	Manchester	John Burder.
Hundred of West Derby in Lancashire	Liverpool	Charles Richard Ogden.
County of Chester[c]	Chester	Charles Thomas Wakefield Parry.
Counties of Carnarvon and Anglesea	Bangor	Hugh Beaver Roberts.
Counties of Flint, Denbigh and Merioneth	St. Asaph	Charles Walter Wyatt & Robert James Lisson.
County of Derby	Derby	John James Simpson.
County of Nottingham[d]	Nottingham	Benjamin Hawkridge.
Counties of Leicester and Rutland	Leicester	George Henry Nevinson & Thomas Nevinson.
County of Lincoln[e]	Lincoln	John Swan.
Counties of Salop and Montgomery	Shrewsbury	William Cope.
Northern division of Northampton, and counties of Huntingdon and Cambridge[f]	Peterborough	Henry Pearson Bates.
County of Norfolk[g]	Norwich	John Kitson.
Eastern division of the county of Suffolk and north division of the county of Essex	Ipswich	Charles Steward.
Western division of the county of Suffolk	Bury St. Edmunds	Charles Wodehouse.
County of Bedford and southern division of Northamptonshire[h]	Northampton	William Brooks Gates.
County of Warwick[i]	Birmingham	John Doherty.
County of Stafford[k]	Lichfield	William Fell.
Counties of Radnor, Brecknock and Hereford	Hereford	Theophilus Lane.
Counties of Cardigan, Carmarthen[l] and Pembroke,[m] with the deaneries of East and West Gower in the county of Glamorgan	Carmarthen	Valentine Davis.

[c] Including the city of Chester.
[d] Including the town of Nottingham.
[e] Including the city of Lincoln.
[f] Including the University of Cambridge.
[g] Including the city of Norwich.
[h] Including the town of Northampton.
[i] Including the city of Coventry.
[k] Including the city of Lichfield.
[l] Including the town of Carmarthen.
[m] Including the town of Haverfordwest.

Districts.	Places of District Registries.	Names of District Registrars.
Counties of Glamorgan (with the exception of the deaneries of East and West Gower) and Monmouth	Llandaff . .	Joseph Huckwell.
County of Worcester[n] . .	Worcester . .	John Hill Clifton & Alf. C. Hooper.
County of Gloucester[o], except the present Bristol County Court district	Gloucester . .	Thomas Holt.
Bristol and Bath present County Court districts	Bristol . . .	Charles Stewart Clarke.
Counties of Oxford[p], Berks, Bucks	Oxford . . .	John Marriott Davenport.
Eastern division of the county of Somerset, except the present Bath County Court district, and the part in Somersetshire of the present Bristol County Court district	Wells . . .	James John Roche.
Western division of the county of Somerset	Taunton . .	Robert Arthur Kinglake.
County of Devon[q]	Exeter . . .	Charles Henry Turner.
County of Cornwall . . .	Bodmin . . .	Preston Wallis.
County of Wilts	Salisbury . .	Fitzherbert Macdonald.
County of Dorset[r] . . .	Blandford . .	Edwin Augustus Smith & Francis Treg. Johns.
County of Hants[s]	Winchester. .	Charles Wooldridge.
Eastern division of the county of Sussex[t]	Lewes . . .	John Hooper & Bernard Husey Hunt.
Western division of the county of Sussex	Chichester . .	Edward W. Johnson.
East division of the county of Kent[u]	Canterbury .	William Henry Cullon.

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

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

The separate ordinary jurisdiction of the principal registers is therefore over the goods of all persons who at the time of their deaths have their fixed residence in the counties of Middlesex (including the city of London), Surrey and Hertford, the western division of the county of Kent, and the southern division of the county of Essex, and also over the goods of all persons residing out of England. The election of the jurisdiction of the district registry in preference to that of the principal registry is, however, at the option of the applicant. See *inf.* s. 59.

Appointment of officers of the Court of Probate.

XIV. There shall be three registrars, two record keepers, and one sealer for the principal registry of the Court of Probate, and there shall be one district registrar for each district registry hereinafter referred to as the district registrar, and there shall be so many clerks and other officers for the court and the principal registry as the judge of the court, with the sanction of the commissioners of her majesty's treasury, may from time to time think fit: provided, that if at any time it appear to her majesty in council that the duties of the registrars of the principal registry of the Court of Probate can be performed by two registrars, it shall be lawful for her majesty by order in council to direct that the number of registrars for such principal registry be reduced accordingly.

Power to appoint an additional registrar is given by 21 & 22 Vict. c. 95, s. 6. See *inf.* s. 18.

As to appointment of the first officers of the principal registry.

XV. Charles Dyneley, esquire, John Iggulden, esquire, and William F. Gostling, esquire, the present deputy registrars of the Prerogative Court of Canterbury, shall, if willing to accept the office, be the first registrars of the principal registry of the Court of Probate; Joseph Todd and John Smith, the present record keepers of the said Prerogative Court, shall, if willing to accept the office, be the first record keepers at the said principal registry; and William John Berry, the present sealer of the said Pre-

rogative Court, shall, if willing to accept the office, be the first sealer at the said principal registry; and George Jarvis Foster, clerk of the papers in the said Prerogative Court, shall, if willing to accept the office, be the first clerk of papers at the said principal registry.

Vacancies in the office of registrar are to be filled up according to seniority. 21 & 22 Vict. c. 95, s. 7.

OFFICERS OF THE COURT.

Clerks and officers of Prerogative Court to be transferred to like offices in Court of Probate.

XVI. The other clerks and officers now employed in the said Prerogative Court shall be transferred to such situations in the Court of Probate, and the principal registry thereof, as the lord chancellor may in that behalf direct, so that their duties may be such as, in the opinion of the said lord chancellor, may be as nearly as possible similar to those which they have heretofore discharged in the said Prerogative Court: provided always, that no such clerk or other officer shall be so transferred whom the said lord chancellor shall consider to be from age, infirmity or other cause, incompetent to the discharge of his duties.

Clerks having served five years in the principal registry of the court are eligible for the appointments of registrars or district registrars. 21 & 22 Vict. c. 95, s. 8.

Existing diocesan registrars to be entitled to be appointed district registrars at the same places.

XVII. The registrar or deputy registrar (as the case may be) now executing in person the duties of registrar of a diocesan or other court exercising testamentary jurisdiction at any place at which a district registry is to be established under this Act, or where there is more than one such registrar or deputy registrar so acting, such one of them as the judge shall select, shall be appointed the first district registrar for such district, save where the judge shall consider such registrar or deputy registrar, or all such registrars or deputy registrars if more than one, to be from age, infirmity or other cause, incompetent to the discharge of the duties of district registrar; provided that where there is now more than one such registrar or deputy registrar competent to the discharge of the duties, the judge may appoint them or more than one of them to

hold such office of district registrar jointly with benefit of survivorship (*a*).

(*a*) Their duties to be executed jointly as by the three registrars in the principal registry.*

As to appointment to offices.

Salaries of officers.

XVIII. The registrars, district registrars and other officers of the Court of Probate, except as herein provided, shall be appointed by the judge: There shall be paid to the several officers mentioned in Schedule (B) to this Act the several salaries set opposite to their respective titles in the same schedule, and the said district registrars shall, for the performance of their duties under this Act, including the services of any clerks they may employ, be entitled to take in respect of the business in their respective district registries such fees as shall be fixed as hereinafter provided; and, except as aforesaid, there shall be paid to the several clerks and other officers appointed under this Act such salaries or other remuneration as the judge, with the consent of the commissioners of her majesty's treasury, shall from time to time in each case direct.

SCHEDULE (B).	Annual Salary.
The Three Registrars in London, each . .	£1,500
The Record Keepers, each	600
The Sealer	300

A power to appoint a fourth registrar given by 21 & 22 Vict. c. 95, s. 6, and upon such appointment the salaries are fixed—

Senior Registrar	£1,600
Second „	1,400
Third „	1,200
Fourth „	1,000

Tenure of office of officers.

XIX. The registrars and district registrars shall hold their offices during good behaviour, subject to be removed by order of the lord chancellor for some reasonable cause, to be in such order expressed; and the other officers of the court may be removed by the judge, with the sanction of the lord chancellor.

Qualification of registrars and district registrars.

XX. No person shall be appointed a registrar or district registrar who shall not be or have been an advocate,

* *Reg.* v. *Wake*, 27 L. J., Q. B. 11; *S.C.* 4 Jur., N. S. 68.

barrister at law, proctor, solicitor or attorney at law, unless at the time of the passing of this Act he is performing in person the duties of registrar or deputy registrar of some ecclesiastical court in England, or is acting as articled clerk or paid clerk to a proctor in Doctors' Commons, or as officer or clerk in the office of the said Prerogative Court, or of the Prerogative Court of York, or of any diocesan court.

Amended by 21 & 22 Vict. c. 95, s. 9. See *supra*, s. 16, n. p. 13.

Officers of the court to execute their offices in person. Registrars, &c. not to act as proctors, &c.

XXI. All registrars, district registrars, officers and clerks of the Court of Probate shall execute their respective offices in person and not by deputy; and no registrar of the principal registry of the court, nor any officer or clerk in the principal registry thereof, shall during the time of his holding such office, directly or indirectly practise as an advocate, barrister, proctor, solicitor or attorney, or receive or participate in the fees of any other person so practising.

SEALS OF THE COURT.

Power to judge to cause seals of the court to be provided.

XXII. The judge shall cause to be made seals for the Court of Probate, that is to say, one seal to be used in its principal registry, and separate seals to be used in the several district registries, and may cause the same respectively from time to time to be broken, altered, and renewed at his discretion; and all probates, letters of administration, orders, and other instruments, and exemplifications and copies thereof respectively, purporting to be sealed with any seal of the Court of Probate, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

Previously to this act the seal of the Ecclesiastical Court on the probate was held to prove itself.[x]

Where the probate was lost, it was not the practice of the Ecclesiastical Court to grant a second probate, but only an exemplification or office copy, which would be evidence of the proving of the will.[y] The exemplification must be on a £3

[x] *Kempton* v. *Cross*, Hardw. 108.

[y] *Shepperd* v. *Shorthose*, 1 Stra. 412.

stamp (56 Geo. 3, c. 184, Sched. Part 2). The exemplification of letters of administration *de bonis non*, reciting the former grant of administration, is required to be stamped only as an exemplification of a single proceeding.[1]

The seal of the Court of Probate will now be recognized in Scotland. It will be remembered that the 8 & 9 Vict. c. 113, which, in this manner facilitated the admission in evidence of certain official and other documents, does not extend to Scotland.

POWERS OF THE COURT.

The court to have throughout all England the same powers as the Prerogative Court within the province of Canterbury.

XXIII. The Court of Probate shall be a court of record, and such court shall have the same powers, and its grants and orders shall have the same effect, throughout all England, and in relation to the personal estate in all parts of England of deceased persons, as the Prerogative Court of the Archbishop of Canterbury and its grants and orders respectively now have in the province of Canterbury, or in the parts of such province within its jurisdiction, and in relation to those matters and causes testamentary and those effects of deceased persons which are within the jurisdiction of the said Prerogative Court; and all duties which, by statute or otherwise, are imposed on or should be performed by ordinaries generally, or on or by the said Prerogative Court, in respect of probates, administrations, or matters or causes testamentary within their respective jurisdictions, shall be performed by the Court of Probate: provided that no suits for legacies, or suits for the distribution of residues, shall be entertained by the court, or by any court or person whose jurisdiction as to matters and causes testamentary is hereby abolished.

Suits for legacies or distribution not to be entertained.

By the Probate Act for Ireland (20 & 21 Vict. c. 79), it is provided, ss. 94 & 95, that all probates and letters of administration granted by the Irish Court shall, upon being resealed by the English Court, take effect as if granted in England; and all those granted in England, upon being rescaled in Ireland, as if granted in Ireland. In both cases copies must be lodged in the registry of the court where they are resealed.

As to suits for legacies and the distribution of residues, see *supra*, s. 4, note, p. 5.

The personal estate and effects of deceased persons until letters of administration are now vested in the judge of the

[1] *Doe* d. *Edwards* v. *Gunning*, 7 Ad. & E. 243.

Court of Probate, and in cases of larceny, &c., must be laid as his property (21 & 22 Vict. c. 95, s. 19).

Power to examine witnesses.

XXIV. The Court of Probate may require the attendance of any party in person, or of any person whom it may think fit to examine or cause to be examined in any suit or other proceeding in respect of matters or causes testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may, either before or after or with or without such examination, cause them or any of them to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may be; and the court may by writ require such attendance, and order to be produced before itself or otherwise, any deeds, evidences, or writings, in the same form, or[a] nearly as may be, as that in which a writ of *subpœna ad testificandum*, or of *subpœna duces tecum*, is now issued by any of her Majesty's superior courts of law at Westminster; and every person disobeying any such writ shall be considered as in contempt of the court, and also be liable to forfeit a sum not exceeding one hundred pounds.

As to production of deeds, &c.

The powers of the court, as to obtaining evidence, may be thus summed up—

1. *Before Action brought* (s. 26).—It may, upon motion or petition, direct any persons to bring into the registry any papers therein described, and may cause such person to be examined, either vivâ voce, or upon interrogatories touching such papers.

2. *Before Issue joined* (ss. 24 & 26).—It may order an examination, vivâ voce or by interrogatories, as under the Common Law Procedure Act, so as to give parties to actions the power to procure information as to facts relevant to the action from the opposite side, not only with a view to secure evidence for the trial, but also for the purpose of determining in the existing suit the real question in controversy between the parties.

3. *After Issue joined* (s. 31).—The parties to the suit may verify their cases by affidavit, subject to an oral examination and re-examination of the witnesses in open court. It has thus, perhaps, the largest powers of obtaining evidence that have ever obtained in the practice of any court.

We may add also to this the power given to the court by s. 32, to issue a commission to examine witnesses residing out of the jurisdiction, and to order the examination of those resident within its jurisdiction, whom it is not thought advisable to bring into court.

[a] Sic in orig.

Interrogatories.—As no rules have been laid down as to the time at which interrogatories are to be delivered, it is presumable that in this, as in other respects with regard to them, the court will be guided by the decisions of the superior courts of common law at Westminster, acting under the 17 & 18 Vict. c. 125, ss. 51, 54.

Interrogatories may be delivered by the plaintiff with his petition, or by the defendant with his plea, by order of the court, and at any other time by the leave of the court, and a plaintiff may deliver interrogatories after plea with a special affidavit.[a]

It has been held, that a party to an action has a right to interrogate his adversary, in order to establish his own case when he has a specific case which he wishes to set up, and some of the materials for making out which, are in the possession of his adversary, but not when his object is to discover how his adversary is going to shape his case, or when they are of a fishing kind, for the purpose of enabling him to set up some defence, or when the object is to contradict a written instrument.[b]

The Court of Exchequer entirely disallowed the interrogatories where they had travelled into irrelevant matter.[c]

Where the answers given did not disclose a liability to be sued at all, the Court of Exchequer refused an oral examination, as in the case of an omission to answer sufficiently written interrogatories under s. 53 of the Common Law Procedure Act, 1854.[d]

The Court of Queen's Beach ordered the plaintiff, though a foreigner resident abroad, to answer interrogatories.[e]

The costs of inspection and examination are in the discretion of the judge at the time of his making the order, but are not costs in the cause.[f]

Any objection to the interrogatories that an answer tends to criminate the party answering must be to the particular question which the party interrogated believes will have that effect.[g]

In the case of an examination of a will taking place without a commission, it has been decided in Chancery that the parties may agree upon a person to be named; if they do not, the court will make the appointment.[h]

The words "*or with*" in this section seem somewhat superfluous. It is difficult to imagine the interrogatories occupying the relative position of "before or after," where the examination does not exist.

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[a] *James* v. *Barnes*, 25 L. J., C. P. 182.

[b] *Moor* v. *Roberts*, 26 L. J., C. P. 246; *Zarifi* v. *Thornton*, 26 L. J., Exch. 214. See also *Whately* v. *Crawford*, and *Carew* v. *Davis*, 25 L. J., Q. B. 163; *Flitcroft* v. *Fletcher*, 25 L. J., Exch. 94.

[c] *Robson* v. *Cooke*, 27 L. J., Exch. 151; *S. C.* 4 Jur., N. S. 75.

[d] *Swift* v. *Nun*, 26 L. J., Exch. 365; *Turk* v. *Syne*, 27 L. J., Exch. 54.

[e] *Pohl* v. *Young*, 25 L. J., Q. B. 23.

[f] *Smith* v. *Great Western Railway Company*, 25 L. J., Q. B. 279.

[g] *Thöl* v. *Leask*, 10 Exch. 704; *Osborne* v. *The London Docks Company*, 10 Exch. 698.

[h] *Crofts* v. *Middleton*, 9 Hare, App. 18.

For proceedings where the person is in contempt of court, see *inf.* s. 25.

Notice to produce.—If a document intended to be given in evidence is in the possession of a third person, who holds it in a character independent of the opposite party, the party requiring it must compel its production by a *subpœna duces tecum*; this may be issued by a registrar of the principal registry, whether any cause is or is not pending. 21 & 22 Vict. c. 95, s. 23.

If, however, it is in the possession or under the control of the opposite party, as the latter is not compellable to furnish evidence against himself, it is sufficient that he have notice of the intention of the other to adduce the same in evidence, and then, if he fail to produce it, secondary evidence may be given of its contents. Such secondary evidence may be procured, if necessary, by obtaining an order to be allowed to take an examined copy, after inspecting the original. The notice should be properly entitled in the court and cause, and should specify with reasonable certainty the particular documents required, so as to convey with precision the required information. For further particulars of the practice of the courts of common law on the subject of subpœnas, see Lush's Pr. 2nd edit. p. 367.

Powers of the court to enforce orders.

XXV. The Court of Probate shall have the like powers, jurisdiction and authority for enforcing the attendance of persons required by it as aforesaid, and for punishing persons failing, neglecting, or refusing to produce deeds, evidences, or writings, or refusing to appear or to be sworn, or make affirmation or declaration, or to give evidence, or guilty of contempt, and generally for enforcing all orders, decrees, and judgments made or given by the court under this Act, and otherwise in relation to the matters to be inquired into and done by or under the orders of the court under this Act, as are by law vested in the High Court of Chancery for such purposes in relation to any suit or matter depending in such court.

The practice of the Court of Chancery, if a witness neglects to attend or refuses to be sworn, is to commit him for contempt.[1] For this purpose, an affidavit of the service of the subpœna and notice of the non-attendance of the witness must be made and filed, and an office copy obtained, upon which counsel moves, "That F. S. may be ordered to attend the examination *in four days, at his own expense*, or be committed to the Queen's prison, and that he must pay the costs of this application." The order is drawn up by the registrar in the usual way, after which a copy must be served upon the witness personally, and the original order produced to him.

[1] *Hinnegal* v. *Evance*, 12 Ves. 201; *Brook* v. *Biddale*, 2 Eq. Rep. 637.

If the witness neglect to attend at the time stated, the practice is to obtain a certificate from the examiner of non-attendance, and make an affidavit of the service of the order, and, upon motion, as of course, an order will be granted for his committal.

If a peer or a member of parliament refuses to attend as a witness, the practice of the Court of Chancery is to proceed against him by sequestration.

If a witness is confined in the Queen's prison, he may either be brought up by *habeas corpus* to be examined, or the examiner may attend to swear him; but an order must be obtained for either purpose.

The power of the ecclesiastical courts over persons in contempt was, by 53 Geo. 3, c. 127, by a writ *de contumace capiendo*, that statute had substituted this writ for that *de excommunicato capiendo*. On that statute, it has been decided that the ecclesiastical courts had no power over a trustee, and, therefore, a writ styling the defendant a trustee was quashed and the defendant discharged.[k]

By the 24th section, a person in contempt of the court is also rendered liable to a penalty of 100*l.*

Order to produce any instrument purporting to be testamentary.

XXVI. The Court of Probate may, on motion or petition, or otherwise, in a summary way, whether any suit or other proceeding shall or shall not be pending in the court with respect to any probate or administration, order any person to produce and bring into the principal or any district registry, or otherwise as the court may direct, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person; and if it be not shown that any such paper or writing is in the possession or under the control of such person, but it shall appear that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the court may direct such person to attend for the purpose of being examined in open court, or upon interrogatories respecting the same, and such person shall be bound to answer such questions or interrogatories, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories, or not bringing in such paper or writing, as he would have been subject to in case he had been

[k] *R.* v. *Jenkins*, 3 D. R. 41; *S. C.* 1 B. & C. 655.

a party to a suit in the court and had made such default; and the costs of any such motion, petition, or other proceeding shall be in the discretion of the court.

Under the head of papers or writings, purporting to be testamentary, may be included all those papers referred to in the testator's will, such as a deed whose provisions he declares are to be followed in his will;[l] the will of another person,[m] even when revoked;[n] a former will of the same testator;[o] schedules or catalogues, *supra*, p. 3.[p] So, the opinions of counsel, where a case had been submitted to them, not as a guidance to the court, but as probably mentioning papers which might otherwise be suppressed.[q] Neither witness nor party in a cause is, at common law, compelled to produce documents, the contents of which may render him liable to punishment, or expose him to penalties, unless the documents are of a public nature, or are directed by some statute to be kept and produced. If then, upon examination on interrogatories, the party examined admits the possession of documents material to the issue, but declines to produce them, the other side, though they cannot compel an inspection, &c., under s. 51 of the Common Law Procedure Act, 1854, may have inspection and copies by applying to the judge or the court, provided that the application be made on the affidavit of the party himself.[r]

A person making default is in contempt of the court, and subject to a penalty not exceeding 100*l.*, *supra*, s. 24, p. 17.

When a subpœna to bring in a will is disobeyed, the court will issue an attachment, to lie in the registry eight days after notice to defendants.[s]

For form of subpœna, see C. Forms 22 & 23, App.

POWERS OF THE REGISTRARS.

Registrars, &c. to have power to administer oaths.

Power to appoint, also, commissioners to administer oaths, &c.

XXVII. The registrars and district registrars shall respectively have full power to administer oaths; and all persons who at the commencement of this Act shall be acting as surrogates of any ecclesiastical court, and any other persons whom the judge shall, under the seal of the court, from time to time appoint, shall respectively have full power to administer oaths and perform such other duties in reference to matters and causes testamentary as

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[l] *Thomas Dickins*, 1 Notes of Cases, 399.

[m] *Emma Darby*, 4 *ibid.* 428.

[n] *Countess of Durham*, 1 *ibid.* 365.

[o] *J. G. Duff*, 4 *ibid.* 474.

[p] *In the goods of Hunt, Clerk*, 2 Rob. Eccl. C. 622, *sup.* p. 3.

[q] Vin. Abr. 62.

[r] *Scott* v. *Zygomalas*, 1 Jur., N. S., pt. 1, p. 63; *Hirschfield* v. *Clark*, 2 Jur., N. S., pt. 1, p. 239.

[s] *Simmons* v. *Dean and another*, 27 L. J., P. & M. 103.

may be assigned to them from time to time by the rules and orders under this Act; and the persons so appointed shall be styled "Commissioners of her Majesty's Court of Probate:" provided, that any party required to be examined, or any person called as a witness or required or desiring to make an affidavit or deposition under or for the purposes of this Act, shall be permitted to make his solemn affirmation or declaration instead of being sworn in the circumstances and manner in which a person called as a witness or desiring to make an affidavit or deposition would be permitted so to do under the Common Law Procedure Act, 1854, in cases within the provisions of that Act; and any person who shall wilfully give false evidence, or who shall wilfully swear, affirm, or declare falsely in any affidavit or deposition before the Court of Probate, or before any registrar, district registrar, or commissioner of the court, shall be liable to the penalties and consequences of wilful and corrupt perjury.

The section referred to is s. 20 of the 17 & 18 Vict. c. 125, which enacts, that "If any person called as a witness, or required or desiring to make an affidavit or deposition, shall refuse or be unwilling, from alleged conscientious motives, to be sworn, it shall be lawful for the court or judge or other presiding officer, or person qualified to take affidavits or depositions, upon being satisfied with the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following: videlicet, "I, A. B., do solemnly, sincerely, and truly affirm and declare, that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare, &c."

Which solemn affirmation and declaration shall be of the same force and effect as if such person had taken an oath in the usual form.

The power of appointing commissioners is extended to the appointment of solicitors practising in the Isle of Man or in the Channel Islands, to be commissioners for the purpose of administering oaths and taking declarations or affirmations; and the Court of Probate recognizes as such commissioners any commissary, ecclesiastical judge, or surrogate in those islands, authorized to administer oaths at the time of the passing of this Act; and any affidavits, &c., to be used in the Court of Probate, may be sworn in any country out of England, and within her Majesty's dominions, before any court, judge, notary, or person lawfully authorized, (21 & 22 Vict. c. 95, ss. 30—32). Any person making such oath, &c. falsely, is liable to the pains and penalties of perjury, (*ibid.* s. 34).

The court and its officers will take judicial cognizance of any such seal or signature, (*ibid.*)

Penalty on forging or counterfeiting seals or signatures of officers.

XXVIII. If any person forge the signature of any registrar, district registrar, or commissioner for taking oaths, or forge or counterfeit any seal of the Court of Probate, or knowingly use or concur in using any such forged or counterfeit signature or seal, or tender in evidence any document with a false or counterfeit signature of such registrar, district registrar, or commissioner, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit, every such person shall be guilty of felony, and shall upon conviction be liable to penal servitude for the term of his life or any term not less than seven years, or to imprisonment for any term not exceeding three years, with or without hard labour.

Any person forging any seal or signature allowed under the Amendment Act, in matters relating to the Court of Probate, is made liable to the same penalty, (21 & 22 Vict. c. 95, s. 33).

PRACTICE OF THE COURT.

Practice of the court.

XXIX. The practice of the Court of Probate shall, except where otherwise provided by this Act, or by the rules or orders to be from time to time made under this Act, be, so far as the circumstances of the case will admit, according to the present practice in the Prerogative Court.

Rules and orders to be made for regulating the procedure of the court.

XXX. And to the intent and end that the procedure and practice of the court may be of the most simple and expeditious character, it shall be lawful for the lord chancellor, at any time after the passing of this Act, with the advice and assistance of the lord chief justice of the Court of Queen's Bench, or any one of the judges of the superior courts of law to be by such chief justice named in that behalf, and of the judge of the said Prerogative Court, to make rules and orders, to take effect when this Act shall come into operation, for regulating the procedure and practice of the court, and the duties of the registrars, district registrars, and other officers thereof, and for

determining what shall be deemed contentious and what shall be deemed non-contentious business, and, subject to the express provisions of this Act, for fixing and regulating the time and manner of appealing from the decisions of the said court, and generally for carrying the provisions of this Act into effect; and after the time when this Act shall come into operation it shall be lawful for the judge of the Court of Probate from time to time, with the concurrence of the lord chancellor and the said lord chief justice, or any one of the judges of the superior courts of law to be by such chief justice named in this behalf, to repeal, amend, add to, or alter any such rules and orders as to him, with such concurrence as aforesaid, may seem fit.

It will be observed that the practice prescribed to the new court, except where otherwise provided, is that of the *Prerogative* Court, and by this appears to be meant the Prerogative Court of Canterbury. By the rules and orders for contentious business, however, and by the forms issued with them, the practice of the Court of Probate is very much assimilated to that of the other courts at Westminster, and few, comparatively, of the peculiar features of the practice of the ecclesiastical courts, now remain.

1. *Who may be parties to a Suit.*—The general law upon this branch of the subject is clearly enunciated by Lord Stowell.[a] "The civil suit is open to every one showing an interest." He must show some interest, however small. This is sufficient to entitle him to appear either as plaintiff or defendant.

Minors may bring suits by their guardian, elected for that purpose by the Court; *lunatics* by their committee, appointed by the Court of Chancery; and *a married woman* may, in certain cases, bring suit *alone*, as for a legacy bequeathed to her separate use. As to cases in which a person may sue *in formâ pauperis*, see a note of Dr. Phillimore's of a MS. judgment of Sir Wm. Scott, in *Barham* v. *Barham*.[b]

Interveners.—The doctrine of the civil and canon law is—"Tertius intervenire potest pro interesse suo in omni causâ quæ tangit bona aut personam suam." In testamentary causes it has been said that interveners must take the cause in which they intervene as they find it at the time of such their intervention; hence, they can only of right do what they might have done had they been parties in the first instance, or had their intervention occurred in an earlier stage of the cause. The court

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[a] *Turner* v. *Meyers*, 1 Consist. 415, n.; *Bascomb* v. *Harrison*, 2 Rob. 118; *Kipping and Barlow* v. *Ash and others*, 1 Rob. 270; 4 Notes of Cases, 177.

[b] *Lowdin and others* v. *Edwards and others*, 1 Phillim. 184.

might, however, allow them to do so *e gratiâ*.[u] The heir at law and other parties interested in the real estate may intervene for their respective interests, and become defendants even where they have not been cited, *inf.* s. 61.

The right to intervene remains unchanged by the new act, and is subject to the same limitations and rules with respect to costs as heretofore (C. 4). They will depend, therefore, on the particular merits of each case. See *Burgoyne* v. *Showler*, 1 Rob. 5; *Shaw* v. *Marshall*, 1 Sw. & Tr. 129. A summons may be taken out by *any* person in *any* matter, whether contentious or non-contentious. (Amended Rules as to Summonses, 1.)

PRACTICE OF THE COURT OF PROBATE.

The business of the Court of Probate and of its officers consists in—

1. The grant of letters of administration to the goods of an intestate.

2. The grant of probate of a will to administrators where there are no executors therein named or where all the executors therein named renounce (which is termed administration with the will annexed), or grant of probate to the executors, where executors are named, in *common form*.

3. The grant of probate to the same respectively in *solemn form*, or the revocation of a grant made in common form.

A concise view of the practice of the court on each of these heads will, it is believed, be useful to the practitioner.

Before we proceed, however, we will consider a few preliminary acts, which apply equally to all cases.

Preliminary Acts with regard to the Deceased.—No sooner is the breath out of John Style's body than the interesting questions at once arise: What property did he leave, to whom did he leave it, and who is to distribute it?

And, firstly, any person may see that he is buried in a suitable manner, for his estate is liable for funeral expenses before any debt or duty whatsoever, according to his degree and quality and the estate that he leaves behind him. As to what are reasonable funeral expenses, see Wms. Ex. & Ad. Pt. III. Bk. 2, Ch. 1, s. 1.

Any person taking possession of and in any manner administering any part of the personal estate and effects of the deceased, without obtaining probate or letters of administration within six calendar months of the decease, or within two months of any suit respecting such probate, &c., is liable to very heavy penalties, 55 Geo. 3, c. 184, s. 37.

The Time when the Estate of an Executor or Administrator vests.—The administrator is the officer of the court, and his powers and liabilities commence with his appointment by the grant and date therefrom; he has no title until the letters of administration are granted and the property of the deceased vests in him only from the time of the grant.[v]

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[u] *Clement* v. *Rhodes and another*, 3 Add. 40.

[v] *Woolley* v. *Clark*, 5 B. & A. 745.

With regard to the executor, on the contrary, his powers and liabilities date from the day of the death of the testator, and the law knows no interval between the testator's death and the vesting of the right in his representative.[w] It has been well said by an old writer that "a will is the only bed in which an executor can be begotten and conceived." The author might have carried this analogy further, and have shown how that a perfect act of engendering, in an observance of the formalities requisite to the due making of the will is necessary to the final full development of the offspring; still, when all this has been done, and the parent has fallen in the fatal birth, the executor is born into the world naked and helpless until such time as he has been clothed by the court with the authority necessary to give him power of sustenance and action. Though he may commence an action before proving the will, he cannot declare until he has taken out probate:[x] his right to this, however, is almost indefeasible,[y] he is *potior jure*, as it is said, and takes a title paramount to that of all others interested in the goods of the deceased.

I.—*The Grant of Letters of Administration of the Goods of an Intestate.*

As to the person or persons entitled to letters of administration, see *inf.* s. 73, note.

In the case of a will made under a power, see *sup.* s. 4, note, p. 4.

As to the administration of the goods of seamen, and of certain small estates, see s. 54, note, and s. 92, note.

Where no will is found, the person or persons entitled to administration apply for a grant through a proctor or attorney, if the application be made to the principal registry, or in person also if it be made to the registry of the district where deceased lived.

The applicant makes an affidavit of his interest, and that he will duly administer, in the form given (N. C. Form 6). This oath is to be so worded as to clear off all persons having a prior right to the grant. Where it appears from the affidavit that there is another next of kin equally entitled with the applicant to the grant, the registrar will require proof that notice of the application has been given to him or them.

This affidavit, when subscribed and sworn, is filed in the registry, and the registrar may, when he deems it necessary, require proof of the identity of the deceased and of the party applying for the grant.

Limited administrations (see s. 73, note) will not be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, except under the direction of the judge.

All affidavits must be written fair, without interlineations or erasures. They must contain the addition and true place of

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[w] *Whitehead* v. *Taylor*, 10 A. & E. 212.

[x] *Wankford* v. *Wankford*, 1 Salk. 303; *Mitchell* v. *Smart*, 3 Atk. 606. See, however, *Webb* v. *Atkins*, 2 W. R. (C. P.) 225.

[y] *In the goods of M. Hill*, 6 Jur. 350; *Evans* v. *Tyler*, 2 Rob. 131. See, however, *infra*, s. 73.

abode of every person making them. Where there are two or more persons, the names of all of them must be written in the jurat, and they must never be sworn before the party or before the proctor, solicitor, or attorney, or the clerk of the proctor, solicitor, or attorney of the party on whose behalf they are offered.

The applicant must make at the same time the usual affidavit for the Commissioners of Inland Revenue, and according to the form given (N. C. Form 3, b).

The registrar will require from the applicant an administration bond in the form given (N. C. Form 16), with one or more sureties if he deems it requisite: a form for the justification of sureties is given (N. C. Form 19).

As to administration bonds, see *inf.* s. 81, note.

In all cases where application is made for letters of administration of the goods of a bastard dying unmarried without issue, or of a person dying without known relations, notice of such application is to be given to her Majesty's Procurator-General, or, where the deceased is domiciled within the Duchy of Lancaster, to the solicitor to the Duchy, and in both cases the usual advertisements (see *inf.* s. 61, note) must be inserted, as in the case of citations (Amended Rules, N. C. 7).

Administration is in these cases granted to a nominee of the crown, usually to the solicitor for the Treasury; he files an inventory, but by stat. 15 & 16 Vict. c. 5, s. 2, the administration bond is dispensed with.

When no caveat has been put in, or no proceedings taken adverse to the application, the registrar will issue letters of administration.

The grant cannot issue (unless under the direction of the judge) until after the lapse of fourteen clear days from the death of the deceased.

Where administration is not applied for until after the lapse of three years, the registrar will require a certificate of the reason of the delay, and, if the certificate be unsatisfactory, an affidavit. Every person intending to oppose an application must attend at the registry, for the purpose of putting in an appearance, either personally or by attorney.

II. *The Grant of Probate or Letters of Administration with the Will annexed in Common Form.*

Where a will is found in which executors are named, they, or as many of them as may be willing to act, proceed to obtain probate.

Where a will is found in which there is no appointment of executors, or where the executors appointed by the will renounce, the persons entitled to administration, whose office differs little from that of executors, proceed to obtain probate of the will.

The acts of both these are so nearly similar that we may consider them together.

The forms given for either of these cases will be found together in the rules for non-contentious business.

Application must be made in the principal registry by a proc-

tor or an attorney; in the district registry it may be made in person also.

When the person applying resides out of England, administration with or without the will annexed may be granted to an attorney acting under a power of attorney from the applicant, properly attested.

Upon any application to the district registrar, he must ascertain, by an affidavit, that the deceased had a fixed place of abode within his district, *inf.* s. 46.

Affidavits.—It must be borne in mind that no affidavit will be admitted in any matter depending in the Court of Probate, of which any material part is written on an erasure (Amended Rules, N. C. 3), *sup.* p. 26.

When Application is to be made.—No probate or letters of administration with the will annexed can issue until after the lapse of seven days and, where there is no will, not until fourteen days after the decease, except with the leave of the judge; and when they are applied for, for the first time, after the lapse of three years, the reason of the delay must be certified to the registrar under the signature of the applicant and his proctor or attorney. On this certificate a half-crown stamp is required.

The Application.—Upon application for probate or letters of administration with the will annexed, the registrar inspects the will.

If he finds (in the case of wills made since 1837) that the attestation clause is in accordance with the provisions of 1 Vict. c. 26, s. 9, and 15 & 16 Vict. c. 24, and that the will was duly executed (in which latter case, in default of the attestation clause, he requires an affidavit to that effect), he proceeds to examine the will.

In every case where an affidavit is required from an attesting witness, he must in such affidavit depose as to the mode in which the will or codicil was executed and attested.

If the registrar finds that there are no interlineations, obliterations or erasures, or symptoms of some other paper having been attached to the will (in all which cases, unless they are referred to in the attestation clause, he requires explanatory and satisfactory affidavits), he will, as also before granting administration without the will, ascertain the time and place of deceased's death, and the value of the property to be covered by the grant, and he will see that the applicant has been sworn as required by the 55 Geo. 3, c. 184, and in the usual form as executor or administrator.

Where the testator was blind he must have signed (or acknowledged his signature, if by delegate) in the presence of two witnesses who must have signed in such a position as that (if he had had his sight) he could have seen them.[y] The will need not have been read over to him if it can be proved that it was in accordance with instructions given.

Where one attesting witness could not write, and his hand was guided by the other attesting witness, it was held to be sufficient.[z]

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[y] *In the goods of Piercy*, 1 Rob. 278.

[z] *In the goods of Frith*, 27 L J., P. & M. 6; *S. C.* 4 Jur., N. S. 288.

Application to District Registry.—Where the application is made to a district registry, the district registrar will then send notice of the application to the principal registry by the next post in the form prescribed; and will fix the day for the parties to appear again at his office. See *inf.* s. 46, note.

Where there are no interlineations or erasures, or where these are accounted for in a manner satisfactory to the registrar, the will is engrossed, and having been collated in the principal registry by the examiner of wills, the registrar writes upon the copy "Let probate of the will pass as contained in this copy." Any affidavits that have been required as to the due execution of the will are engrossed at the same time.

Upon the applicant's attending at the appointed time, if the registrar has received no notice of caveat or other prohibitory process, probate or letters of administration in the form prescribed are handed to the applicant.

Where on an application to a district registry, the registrar receives notice from the principal registry of the entry of a caveat, he cannot proceed further until he receives notice of its withdrawal or of a decree.

The 21 Hen. 8, c. 5, s. 4, required an executor or administrator to make a true and perfect inventory of the goods of the deceased, and the Ecclesiastical Courts were formerly very strict with respect to inventories. The Prerogative Court of Canterbury formerly required an inventory to be exhibited before probate granted.[a]

The practice, however, of late years has been, that an executor or administrator need only exhibit an inventory when cited to do so. See s. 41, note. Except in case of a bastard, *sup.* p. 27.

Collecting the Effects.—The next duty of the executor or administrator is to collect the estate and effects of the deceased.

For this purpose the law invests him with large powers, and it is incumbent on him to use diligence. So, if by unduly delaying to bring an action, he enables a creditor of the deceased to avail himself of the Statute of Limitations, he will be personally liable.[b]

Payment of the Debts of the Deceased.—One of the principal duties of an executor or administrator is, out of the estate of the deceased, to pay his debts according to the order prescribed by law. In such payment he must be careful to observe the rules of priority; for if (*having notice* of the existence of a superior debt) he pay debts of a lower degree first, he must, in case of a deficiency of assets, answer such superior claims out of his own estate. The precedence, according to which payment is to be made, is—

I. Funeral expenses, see above, p. 25.

II. Testamentary expenses—

The expenses of taking out probate or letters of administration. Under this head are included the costs of an administration suit.

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[a] *Phillips* v. *Bignell*, 1 Phillim. 240.

[b] *Hayward* v. *Kinsey*, 12 Mod. 573.

III. Payment of debts in the following order—

1. Debts due to the crown by record or specialty claim the precedence of all other debts, with the exception of the priority of a solicitor's lien for costs upon money decreed or recovered for the deceased plaintiff.

Amongst such debts to the crown are not, however, included arrears of rent due to the crown, or amercements in courts not of record, or a sum of money owing for which no specialty has been given.

2. Next in order are certain debts to which particular statutes have given priority; such are monies due to the parish by overseers of the poor, which must, by 17 Geo. 2, c. 38, s. 3, be paid *before any other debts of the deceased are paid and satisfied.*

So by 33 Geo. 3, c. 54, s. 10, Any monies received by deceased as officer of a friendly society. See also 4 & 5 Will. 4, c. 40, s. 12.

So by 58 Geo. 3, c. 73, ss. 1, 2, All regimental debts shall be paid out of the effects of any officer or soldier dying while in the service, in such proportion as shall be ordered by the secretary at war, in preference to any other of his debts.

So by 57 Geo. 3, c. 29, s. 51 (local act), Monies received by deceased as treasurer or collector to the paving commissioners under that act.

3. Debts of record—

Of these debts the executor or administrator is bound to take notice, upon the principle that every one is presumed to have cognizance of the proceedings of the King's courts. They are:

1. Judgments in all courts of record, whether obtained compulsorily against, or confessed by the deceased.

Between judgments as they stand amongst themselves, neither priority of time nor difference in the original cause of action are material. The judgment creditor who first sues out execution must be preferred, and, before this step has been taken, it is at the election of the executor or administrator whom he will pay first.

A decree in a court of equity is equivalent to a judgment at law and stands in the same order for payment.

2. Recognizances and statutes.

4. Debts by special contract.

All these must be paid before debts by simple contract (*Pinchon's case*, 9 Co. 88, *b.*)

Amongst specialty debts is included a debt for rent, as is also a demand arising from a covenant or bond whether now due or payable at a future day.

Amongst specialty debts are not, however, included claims for reimbursement for payment made upon a bond by a co-obligor of the deceased, nor for money due by the deceased upon an administration bond, or upon any voluntary bonds or covenants.

5. Debts by simple contract.

Of debts on simple contract, such as on bills or notes, not under seal, and verbal promises or such as are implied in law, those due to the crown have the precedence.

An executor or administrator has a right to retain for a debt

due to himself in preference to all other creditors of the deceased of equal degree; and not only for those which he claims beneficially, but also for those to which he is entitled as trustee, and even debts to another, where he is the cestui que trust.[c] He may also give preference among the other creditors of equal degree, subject only to the claim of a priority in obtaining judgment.[d] Where a suit is commenced against him by a creditor of the deceased, though he may not make a voluntary payment to another creditor, he has it still in his power to confess a judgment to that other, and so to give him a preference.[e]

This liberty of confessing judgments is enjoyed to an almost unlimited extent.[f]

The Distribution of the Personal Estate and Effects of Deceased.—The distribution of the personal estate and effects of an intestate is according to the provisions of the Statute of Distributions, 22 & 23 Car. 2, c. 10; 29 Car. 2, c. 3; and the 1 Jac. 2, c. 17. It is as follows: "Where a husband dies intestate, one-third goes to the widow, and the residue in equal proportions to his children, or their representatives, being their lineal descendants; if there are no children or legal representatives, one moiety goes to the widow, and the other moiety to the next of kin, in equal degree, and their representatives; if no widow, the whole goes to the children; if neither widow nor children, the whole is distributed amongst the next of kin, in equal degree, and their representatives; no representatives, however, are admitted amongst collaterals, further than the nephews and nieces of the intestate. The next of kin here referred to are to be sought for by the same rules of consanguinity as are used in inquiring who are the persons entitled to letters of administration. Vide *inf.* s. 73, note.

Where a feme covert dies intestate the husband succeeds to all.

When a child dies intestate, unmarried, the father succeeds to all; if the father be dead, the mother and the remaining children, or their representatives, *per stirpes*, divide the effects of the deceased in equal portions.

The question, who may be a legatee, seems scarcely to be within the compass of the present note. The only point to which it is necessary to draw attention here, is that by the Wills Act, (1 Vict. c. 26, s. 15,) in the case of wills made since 1837. "If any person shall attest the execution of any will (or testament, or codicil, or any other testamentary instrument) to whom, or to whose wife or husband, any beneficial devise, legacy, estate, interest, gift, or appointment, of or affecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts), shall be thereby given or made such devise, legacy, estate, interest, gift, or appointment, shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any per-

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[c] *Plumer* v. *Marchant*, cited 3 A. & E. 858; 3 Burr. 1380.

[d] *Ashley* v. *Pococke*, 3 Atk. 208.

[e] *Lyttleton* v. *Cross*, 3 B. & C. 317.

[f] See *Barker* v. *Dumeries Barnard*, Chanc. Cas. 277.

son claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will."

Where, after probate granted, a codicil is discovered, not in anywise repealing or altering the appointment of executors made in the will, a separate probate of that codicil will be granted to the executors.

III. *Grant of Probate in Solemn Form.*

As to the *effect* of taking out probate in solemn form, and who are entitled to call for it, see *inf.* s. 61, note.

The Suit—The Citation and warning to caveat.—As to advertising citations, see s. 61, note.

The executors or other parties entitled to administration with the will annexed, who wish to prove the will in *solemn form*, upon handing in a *præcipe* or note of instruction to the registrar (C. Form 6), obtain citations upon the heir at law, next of kin, &c. in the form given (C. Form 3). The registrar signs and seals such citation in accordance with the *præcipe*, and hands it back to the party obtaining it, who effects a personal service by leaving a copy of it with the party cited, and showing him the original, if required by him so to do.

Upon the issuing of a citation, a caveat is entered in the court books, and notice of it sent to the registrar of the district where the deceased appears to have had his last residence.

If it is intended by the heir at law, next of kin, or other parties interested, to put the executor or other parties entitled to administration with the will annexed to proof of the will in solemn form, or to oppose the will, any person so intending must enter a caveat, in the form given (C. Form 1) at the registry: this caveat will remain in force for six months, and may be renewed. Notice of this caveat will be given to the persons applying for probate, &c.

The next step taken by the executor, &c., is to warn the person entering the caveat to put in an appearance within six days. This warning (C. Form 2) may be sent by the registrar by post; it is highly necessary, therefore, that the party entering the caveat should insert therein a sufficient address. The warning must state the name and interest of the applicant, and, if he claims under a will or codicil, the date of the same. See Amended Rules (C. Form). The entry of an appearance must be accompanied by an address within three miles of the General Post-office, and must set forth the interest in the effects of the deceased testator or intestate of the party on whose behalf such appearance is entered.

Proceedings in Default.—Where no appearance is put in by the party who receives the citation or the warning to his caveat, as the case may be, the plaintiff files in the registry an affidavit of personal service or, where he has not been able to effect a personal service, an order of the judge giving him leave to

proceed founded upon an affidavit of a due attempt so to effect personal service, or of the necessary advertisements, s. 61, note.

He must then, within eight days from the last day allowed in the citation for the appearance of the defendant, file his declaration in the registry, delivering therewith an affidavit of scripts (C. Form 12).

After filing his declaration, the plaintiff applies to the judge as to the mode in which the cause shall be tried. Upon the direction of the judge having been obtained, the record is made up in the form given (C. 16), and the cause is set down for hearing.

The cause then comes on as an undefended cause, and having been duly proved, judgment for the plaintiff is entered on the record in the form given (C. Form 27).

Which Party to declare.—The rule is, that the party propounding the will is in all cases to be the party to declare, and the party claiming under an intestacy is in all cases to be the party to plead thereto.

Time for declaring.—Where an appearance is put in to the citation or to the warning of the caveat, the cause is entered in the court book, and the declaration, with notice to plead thereto within eight days, may be delivered to the defendant at any time, as soon as is convenient. If the declaration is not delivered within a month the defendant may apply to the judge in chambers to fix a time within which it shall be delivered. The plaintiff cannot be compelled, however, to deliver or file his declaration until eight days after the defendant has filed his affidavit of scripts. The plaintiff, as has been stated above, must, on the same day on which he delivers his declaration to the defendant, file a copy of it in the registry.

The Affidavit of Scripts.—The affidavit of scripts, inasmuch as it contains the particulars of the action, may be considered analogous to the particulars of demand in an action at law. It was at first ordered generally, that it be filed in the form given (C. Form 12), contemporaneously with the declaration or plea by the plaintiff or defendant respectively; the time for filing them may, however, be varied by order of the judge, upon the application of either party. It has now, however, been ordered (Amended Rules, 19), that, in testamentary causes, the plaintiff and defendant, within eight days of an entry of appearance by the defendant, are respectively to file their affidavits as to scripts. The party making the affidavit must take care to describe particularly all the papers mentioned in his affidavit, and, if possible, to bring them into the registry annexed thereto. Neither party is allowed, unless by leave of the judge or one of the registrars of the principal registry, to inspect the affidavit or the scripts of the other party, until he has filed his own (Amended Rules, 20).

The Declaration.—The form of declaration furnished under the Rules and Orders (C. Form 8) is so well drawn that there are very few cases in which any very material alterations will be required.

Applications during the Cause. See *Summonses, inf.* p. 39.

Amendment of Declaration, or other Pleadings.—Either

the plaintiff or defendant may object to the other's pleading, and may apply to the judge for its amendment. By the practice of the Prerogative Court, an allegation might be opposed *in the whole*, if the whole substance of the allegation was objected to; that is, where the facts altogether, if taken to be true, would not entitle the party alleging to the demand which he made, or to the defence which he set up; or it might be opposed *in part*, if any of the facts pleaded were irrelevant to the matter in issue, or could not be proved by admissible evidence, or were incapable of proof.[s] These objections somewhat resembled a demurrer at common law. Applications for amendment will be argued before the judge, who may order the pleadings to be amended.

Time allowed for Plea.—The plea must be delivered within eight days, and, just as in the case of the declaration, filed on the same day in the registry, otherwise the defendant will not be allowed to plead, except with the permission of the judge, and judgment will go by default. An application for time may be made to one of the registrars of the principal registry, if the judge is not sitting, and he may make such allowance, not, however, beyond the day upon which the judge shall next sit. Where the defendant intends to raise some collateral issue, he must proceed by act on petition. See *inf.* p. 38.

Form of Plea.—The plea must be, as nearly as may be, in the form given (C. Form 10). By it the defendant denies either the due making of the will, or the competency of the testator, or he sets up an instrument revoking or substituted for the will propounded by the plaintiff.

Further Pleadings.—Either party may give in such further pleading, by way of replication or rejoinder, rebutter or surrebutter, as he may be advised, and may amend his pleadings by permission of the judge, in such form and on such terms as the judge may approve.

The Issue.—Within eight days after the delivery of the last pleading in the cause, the plaintiff delivers to the defendant the *issue*, made up in the form prescribed (C. Form 13).

Notice as to Mode of Trial.—After delivery of the issue, the plaintiff gives notice to the defendant that, after eight clear days, he intends to apply to the court to try the question, stating in what way he wishes it to be tried; he must file a copy of such notice in the registry on the same day. If the plaintiff does not give his notice within sixteen days, the defendant may give a similar notice to the plaintiff. The judge will direct, after hearing the parties, in what mode the cause shall be tried. Where an heir at law is party to a cause, he has a right, upon application to the court, to have it tried by a jury.

Record.—When the judge has directed in what manner the cause is to be heard, the plaintiff, within four clear days, must deposit in the registry the record of the cause, made up in the form prescribed (C. Form 15).

Entry of Cause for Trial.—If the plaintiff does not set down

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[s] 1 Phillim. 1, *in notis*; 1 Hagg. 11; 3 Hagg. 311.

the cause for trial within one month after the order of the court, the defendant may set it down; but either party must, on the day on which he enters the cause, give notice to every party by whom an appearance has been entered. The cause, when entered, will come on in its turn, unless the judge shall otherwise direct. No cause is to be called on for hearing or trial until after the expiration of ten days from the day when the same has been set down as ready for hearing or trial and notice thereof has been given, save with the consent of all parties to the suit (Amended Rules, 18).

As to obtaining Evidence before Trial.—See s. 24, note, p. 17.

Notice to Admit.—The rule (C. 30) under which this notice to admit is given, is nearly identical with the 117th section of "The Common Law Procedure Act, 1852," and the form given (C. Form 21) is nearly identical with the form given, Reg. Gen., Hil. Term, 1853. It might have been well had this latter form been implicitly followed, as the omission of the words "his attorney or agent" in a notice, might be productive of annoyance if the opposing party is obstructively disposed. The following is the form used in describing documents in the common law courts:—

Originals.

Description of Documents.	Dates.
Letter—defendant to plaintiff	Feb. 14th, 1859.
Memorandum of agreement between A. B. and C. D.	April 1st, 1849.

Copies.

Description of Documents.	Dates.	Original application served, sent or delivered, when, how, and by whom.
Register of baptism of A. B., in the parish of W.	May 21, 1825	
Letter—plaintiff to defendant	Dec. 24, 1857	Sent by General Post, Dec. 24, 1857.

The above provision applies, it is apprehended, to all documents proposed to be adduced in evidence, whether in the possession of the party giving the notice or of a third person; in the latter case, the form of the notice should be varied accordingly.[h]

It is important that the documents be fully and correctly described.[i]

[h] Lush's Practice, 2nd edit. 364; *Rutter* v. *Chapman*, 1 Dow. Pr. C., N. S. 118.

[i] *Field* v. *Hemming*, 7 C. & P. 619; *Doe* d. *Wright* v. *Smith*, 8 A. & E. 255.

One of the "just exceptions" alluded to in the words of the rule, has been held, under the similar section of "The Common Law Procedure Act, 1852," to be a want of a proper stamp. The opposite party, therefore, by admitting any particular document described in the notice, does not preclude himself from taking the objection at the trial of the want of such stamp.[k]

As to the stamping such document at the trial, see 17 & 18 Vict. c. 125, s. 27.

Form of Admission.—No form of admission is given; when, therefore, the party called upon is not prepared to admit the whole of the documents proposed, and cannot, therefore, sign the notice, he may write at the bottom of the notice:—

"I consent to admit the documents marked (numbers) in the written notice as required therein.

A. B. { Defendant's / Attorney's } { Attorney, Proctor, or Agent.

Notice to produce Subpœna, &c.—See *sup.* s. 24, note, p. 17.

When Issue directed to be tried elsewhere.—See *inf.* s. 35, note.

Jury Process.—See *inf.* s. 36, note.

Course of Proceedings at the Trial.—The practice of the court in the hearing of the cause is similar to that of the courts of common law. The hearing may take place in chambers whenever, in the opinion of the judge, such a course will be of advantage to the suitors, provided that neither party require it to be heard in open court (21 & 22 Vict. c. 95, s. 3). The judge, in so hearing the cause, has the same powers as in full court (Ibid. s. 5).

As soon as the cause is called on and (in jury cases) the jury sworn, the junior counsel for the plaintiff opens the pleadings by shortly stating the names of the parties, the substance of the pleadings as they appear on the record, and the issues which the jury are to try.

It is a general rule that that party is entitled to begin who has to maintain the affirmative of the question in issue.

Having stated his case, the same counsel produces evidence in support of it; and, in the event of his opponent not announcing at the close of the case of the party who begins that he intends to call evidence, the party who begins addresses the jury the second time for the purpose of summing up the evidence, and the opposite counsel then addresses the jury upon the whole case. Where the opposing counsel announces at the close of the case of the party who begins, his intention to call evidence, the counsel on the other side opens his case, calls his evidence, and sums it up, and the counsel who begins replies upon the whole case (17 & 18 Vict. c. 125, s. 18).

Where a counsel did not announce his intention to adduce evidence, in consequence of which the party who began summed up his case, it was not held competent to him afterwards to adduce evidence.[l]

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[k] *Vane* v. *Whittington*, 2 Dow. Pr. C., N. S. 757.

[l] *Darby* v. *Ousely*, 25 L. J., Exch. 227.

As to evidence, see s. 33, note, p. 45.

Where an executor propounds a will in solemn form, and there are several defendants whose case on the pleadings is substantially the same, the court will hear counsel for one defendant only.[m]

The judge then sums up the whole of the evidence, commenting upon the manner in which it bears on the issue to be tried, and giving his opinion upon any matter of law that may arise upon the proofs, but leaving to the jury to determine for themselves the credit and weight to which such evidence is entitled, and to decide whether, upon the whole, the preponderance of proofs is in favour of the plaintiff or the defendant.

At the conclusion of the trial the registrar enters on the record the decision of the judge in the form prescribed (C. Form 27); and in cases where the question has been tried by a jury, he enters the finding of the jury in the form prescribed (C. Form 26) and signs the same.

Application for a New Trial, or for the rehearing of a case, may be made within ten days, or on the first sitting of the court, after the cause has been tried or heard.

Appeals, see *inf.* s. 39.

Suits for the Revocation of Grants.—A suit for the revocation of probate of a will granted in common form is substantially a suit for proving a will in solemn form; and similarly a suit for the revocation of a grant of letters of administration is substantially an interest cause, the only difference between them being in the form in which the respective suits are commenced.

In a suit for the revocation of a grant, the party desiring the revocation is the plaintiff, and cites the party who has obtained the grant, who thus becomes the defendant, to bring into the registry the probate or letters of administration which have been granted to him.

The defendant brings in the grant, enters an appearance, and files a declaration, propounding the will where the grant, that it is sought to revoke, was of probate, or propounding his interest, where the grant was of letters of administration.

To this declaration the plaintiff pleads, and the remainder of the suit is conducted in a manner exactly similar to that detailed above.

Interest Causes.—These are administration suits, in which the question is raised as to the title of the person applying for letters of administration.

Where, on the death of an intestate, it is intended to contest the title of the person applying for letters of administration, a caveat is entered by the person so claiming interest, and a warning to it is sent in the same manner as in the case of an application for a grant, *ut sup.* p. 32. On the appearance to the warning, the two parties contest the right to administration and proceed *pari passu.*

The Declaration.—The form of declaration is given (C. Form 9). It must show clearly, on the face of it, that no other person exists having an interest superior to that of the plaintiff.

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[m] *Palmer* v. *Maclean and another*, 1 Sw. & Tr. 149.

Plea.—See the form given (C. Form 10). The last observation applies equally to the plea. A person in possession of an administration is not bound to propound his interest till the party calling the grant in question has first propounded and proved his. For a summary of the practice of the Ecclesiastical Courts upon this point, see the judgment of Sir *John Nicholl* in the cases of *Dabbs* v. *Chisman*, and *Jennens* v. *Beauchamp*, 1 Phillim. 155.

Upon all other points with reference to the pleadings see above, in the suit for obtaining probate in solemn form.

Proceedings by Petition.—An act on petition, as it is technically called, is a summary mode of proceeding, in which the parties state their respective cases briefly, and support their statements by affidavit.[m]

A form of and rules for proceedings are given in the Rules and Orders (C. 45-48, Form 29). In the Ecclesiastical Court, it was the usual form for bringing before the Court questions collateral or incidental to the main issue in a cause; such as questions of domicil, the interest of a party, or the effects of the grant of an administration *pendente lite*. By this mode of proceeding also the main question at issue might be determined, as where objections were taken to an inventory and account, or to the grant of a faculty, or the appointment of a guardian. Also where the next of kin disputes the marriage of a deceased intestate with the alleged husband or wife. By this form also proceedings have been ordinarily commenced against the sureties on an administration bond, in order to put such bond in suit. It was the invariable practice of the Ecclesiastical Courts not to allow matter to be introduced into an act on petition, in opposition to an allegation in the principal cause.[n]

Proceedings in.—The plaintiff, within four days after the entry of an appearance by the defendant, delivers his petition to the defendant, and files a copy of it in the registry. If the defendant objects to proceeding by petition, he must take out a summons to show cause why the proceedings should not be by declaration.

In all causes relating to grants, the defendant may, on the day on which he puts in an appearance, or on the day on which he receives the declaration, or three days thereafter, notify to the plaintiff his object in putting in an appearance, what he intends to admit, and what he contends. The plaintiff, within eight days of the receipt of such notice, unless otherwise ordered by the judge, files his act on petition, and, if he fails to do so, the defendant may file his act on petition.

Form of.—In the petition the proctor for the petitioner states the facts of his case, refers to the affidavits upon which his petition is founded, and winds up with a prayer to the court.

The proctor for the opposing party puts in his answer, states his own case, and concludes in a similar manner. It seems that, under the next section of this act, each party is liable to be cross-examined by his opponent on his affidavit.

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[m] *Per* Lord Stowell in the case of Ville de Varsovie, 2 Dod. Adm. R. 174.

[n] *Dysart* v. *Dysart*, 2 Notes of Cases, 17; Wad. Dig. 1, tit. *Act on Petition.*

Any further pleadings that there may be until issue follow the same form; and issue having been joined by the statement of the one party that he "does not write further to the said act," and the affidavits upon which the parties found their respective cases having been filed, motion is made in court to the judge to make a decree in the case.

Costs.—In all cases the party opposing a will may, with his pleas, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he will thereupon be at liberty to do so, and will be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Prerogative Court.

Taxation of Costs.—When an appointment has been made by a registrar of the principal registry for taxing any bill of costs, and one party only attends at the time appointed, the registrar may, nevertheless, proceed to tax the bill after the expiration of a quarter of an hour, upon being satisfied by affidavit that the other party had due notice of the appointed time.

If more than one-sixth is deducted from any bill of costs taxed as between party and party, or as between practitioner and client, no costs incurred in the taxation thereof shall be allowed as part of such bill.

SUMMONS.

Where either party wishes to obtain an order of the judge in any matter contentious or non-contentious as (for example) for time to plead, or when any person, not a party to the cause, wishes to intervene in the suit, the proper mode to proceed is by obtaining a summons.

A printed form of the summons must be obtained, filled up with the object of the summons, and a half-crown stamp affixed. This must be taken to the Clerk of the Papers, who will fill up the blank left for the time at which the summons is to be made returnable, get the summons signed by a registrar, enter the name of the cause or matter and of the agent taking it out in the summons book, and return it, with the stamp obliterated, to the agent.

Where a formal order is desired, or where the party summoned consents to the order sought, provided that the order sought is one which, in the opinion of the registrar, the judge ought to make, an order will be drawn up with a half-crown stamp, without the necessity of attending before the judge, and delivered to the party filing the summons or copy, indorsed with a consent signed by the party summoned or by his agent.

What the Summons should contain.—The summons should express, in full, the terms of the order sought, so that a mere naked consent may entitle the applicant to all he wants, for in such a case the order is in form the affirmative of the summons. It is the practice of the courts of common law that where a summons is obtained to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be therein stated.

Service.—A copy of the summons must be served on the party summoned one clear day at least before the summons is

returnable, and before 7 P.M.; and on Saturdays before 2 P.M. If a service is made after these hours the rules of the common law courts is, that the service is deemed as made on the following day (Reg. Gen., H. T. 1853, 164); and if the party summoned does not choose to attend no order can be made thereon.

Attendance.—On the day and at the hour named in the summons the party issuing the same is to present himself with the original at the judge's chambers.

If the party summoned do not appear after the lapse of half an hour from the time named in the summons, the party is at liberty to go before the judge, who will thereupon make such an order as he shall think fit.

An attendance on behalf of the party summoned for the space of half an hour, if the other party do not during such time appear, will be deemed sufficient, and bar the party taking out the summons from the right to go before the judge on that occasion (Amended Rules as to Summons, 4—7).

MOTIONS.

These may be made by counsel before the court, subject to the following regulations:—

There must be lodged in the principal registry before 2 o'clock P.M. on the third day (exclusive of Sundays), before the motion is to be made—

1. A motion paper, containing an outline of the principal facts upon which the motion is grounded, concluding with the terms in which the motion is to be made.

2. An affidavit or affidavits of the facts upon which the motion is grounded. If an appearance has been entered by a defendant, or if a party interested, with or without notice of the motion, has intimated his intention of opposing it, copies of the motion paper and affidavits should be delivered to him. He may at any time file counter-affidavits.

Mode of taking evidence in contentious matters.

XXXI. Subject to the regulations to be established by such rules and orders as aforesaid, the witnesses, and where necessary the parties, in all contentious matters where their attendance can be had, shall be examined orally by or before the judge in open court: provided always, that, subject to any such regulations as aforesaid, the parties shall be at liberty to verify their respective cases, in whole or in part, by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party orally in open court as aforesaid, and after such cross-examination may be re-examined orally in open court as aforesaid by or on behalf of the party by whom such affidavit was filed.

The provisions in this section are almost identical with s. 43 of the Divorce Act. The permission to parties to verify their

cases by affidavit, has at present been very charily acquiesced in by the judge ordinary. Those who are in the habit of dealing with oral examination, and seeing its great superiority over affidavits, cannot fail to hope that this practice will be maintained. Very few instances have at present occurred under this act, of the parties applying to verify their respective cases by affidavit.

As to the persons before whom an affidavit may be sworn, see *sup.* s. 27, note, p. 22, and *inf.* p. 45.

In any questions arising upon this provision, due consideration will probably be given to the somewhat similar provisions of the Chancery Amendment Act (15 & 16 Vict. c. 86), and to the cases decided thereon.[o]

This power of requiring the person making an affidavit to attend to be cross-examined applies to causes tried by act on petition, in which the parties verify their cases entirely by affidavit. *Sup.* ss. 29, 30, note, p. 38.

Court may issue commissions or give orders for examination of witnesses abroad or who are unable to attend.

XXXII. Provided, that where a witness in any such matter is out of the jurisdiction of the court, or where, by reason of his illness or otherwise, the court shall not think fit to enforce the attendance of the witness in open court, it shall be lawful for the court to order a commission to issue for the examination of such witness on oath, upon interrogatories or otherwise, or if the witness be within the jurisdiction of the court to order the examination of such witness on oath, upon interrogatories or otherwise, before any officer of the said court, or other person to be named in such order for the purpose; and all the powers given to the courts of law at Westminster by the Acts of the thirteenth year of King George the Third, chapter sixty-three, and of the first year of King William the Fourth, chapter twenty-two, for enabling the courts of law at Westminster to issue commissions and give orders for the examination of witnesses in actions depending in such courts, and to enforce such examination, and all the provisions of the said Acts, and of any other Acts for enforcing or otherwise applicable to such examination, and the witnesses examined, shall extend and be applicable to the said Court of Probate, and to the examination of witnesses under the commissions and orders of the said court, and to the witnesses examined, as if such court were one of the courts of law at Westminster, and the matter before it were an action pending in such court.

[o] See Chitty's Stats. IV. 270.

By the former of these acts, certain powers were given and provisions made for the examination of witnesses in India, in all cases of indictments or informations, and in actions or suits at law or in equity, for which cause had arisen or should arise in India; by the latter, the powers of that act were extended to all colonies, islands, plantations, and places, under the dominion of his majesty, in foreign parts, and to the judges of the several courts therein, and to all actions depending in any of his majesty's courts of law at Westminster, in what place or country soever the cause of action might have arisen, and whether the same might have arisen within the jurisdiction of the court, to the judges whereof the writ of commission might be directed or elsewhere, when it should appear that the examination of witnesses under a writ or commission issued in pursuance of the authority thereby given would be necessary or conducive to the due administration of justice in the matter wherein such writ should be applied for.

A few of the decisions on these acts applicable to the present act are appended.

Scotland was held not to be *in foreign parts*, for the purpose of these acts,[p] but as a person residing there is out of the jurisdiction of the Court of Probate, the provisions of those acts would, for the purpose of this act, be applicable, although the Act 6 & 7 Vict. c. 82, which extended the power of the abovementioned acts to Scotland and Ireland, is not mentioned here. As to the persons before whom such affidavits must be made, see *inf.* p. 45, and *sup.* s. 27, note, p. 22.

The words "out of the jurisdiction," extend to cases where the witness is in foreign parts,[q] and is not confined to places within her majesty's dominions.[r]

The granting a commission is in the discretion of the court,[s] and the application will not be refused if it be made *bonâ fide*, and for the furtherance of justice;[t] but if it appears that the application is made for the purpose of delay, the court will either refuse it, or grant it on such terms as may appear to them just.[u] However, a bare suggestion that the witness is unwilling to submit to a cross-examination, or that he is the son of the applicant,[v] or the fact that the party applying for the commission is not proceeding promptly in the cause is no sufficient objection.[w] The commission ought to be applied for promptly.[x]

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[p] *Wainwright* v. *Bland*, 3 Dowl. 653.

[q] *Bain* v. *De Vetry*, 3 Dowl. 516

[r] *Duckett* v. *Williams*, 1 Dowl. 291; 1 Cromp. & J. 510; *Pole* v. *Rogers*, 3 Bing. N. C. 780; *Norton* v. *Lamb*, 5 Dowl. 181; *Norton* v. *Lord Melbourne*, 3 Bing. N. C. 67.

[s] *Duckett* v. *Williams*, 3 Dowl. 291.

[t] *Lloyd* v. *Key*, 3 Dowl. 253; *Baddeley* v. *Gilmore*, 1 M. & W. 55; *Westmorland* v. *Huggins*, 1 Dowl., N. S. 800.

[u] *Dalton* v. *Lloyd*, 1 Gale, 102; *Sparkes* v. *Barrett*, 5 Scott, 402; *Healy* v. *Young*, 2 C. B. 702.

[v] *Carruthers* v. *Graham*, 9 Dowl. 947.

[w] *Weekes* v. *Pall*, 6 Dowl. 462; 5 Scott, 718; *Dye* v. *Bennett*, 1 L. M. & P. 92.

[x] *Bridges* v. *Fisher*, 4 Moore & S. 458; *Mondel* v. *Steele*, 8 M. & W. 300; *Piris* v. *Iron*, 8 Bing. 143; *Clutterbuck* v. *Jones*, 18 L. J., Q. B. 11; 6 Dowl. & L. 251; *Dye* v. *Bennett*, 1 L. M. & P. 92, n.

The application must be supported by an affidavit, stating who the witnesses are, to be examined,[y] though, if the witnesses are out of the jurisdiction, and there be difficulty in furnishing their names, this will be dispensed with;[z] that they are material and out of jurisdiction of the court;[a] or if infirmity of age or illness be the ground of the application, an affidavit of a medical man, stating the nature of the complaint, pledging his belief that the witness will not be able to attend the trial of the cause, will be necessary.[b] It has been doubted whether the pregnancy and the apprehension of immediate delivery of a witness be a "permanent sickness," within the meaning of the act.[c] The rule is not an absolute stay of proceedings, but only a limited one.[d] The commission may issue, omitting the usual clause requiring the commissioners to take an oath as such, where it is shown that such limitation is requisite in order to render the commission effectual.[e] And where it appears reasonable, the court will add to the order a liberty to examine the witnesses *vivâ voce*.[f] Some particularity is necessary in drawing up the final order. It should state first, the name of the commissioner to execute the commission,[g] though this is not, it would seem, absolutely necessary in orders for foreign commissions.[h] Secondly, the place of execution.[i] Thirdly, the names of the witnesses to be examined, if known, or some of them.[k] Fourthly, whether the examination is to be on interrogatories or otherwise.[l] Where depositions taken under a commission, founded on an order which omitted to state the place of execution, were given in evidence at a trial, the court set aside the verdict on the ground that the commission had issued without authority.[m] The same particularity will be necessary in framing the commission, so that it pursues the order, and the return that it follows the commission.[n] Where, therefore, a commission was directed to the Court of Commerce at Hamburgh, directing the examination, and that the same should be sent to the Court

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[y] *Gunter* v. *M'Lear*, 1 M. & W. 201; *Doe* d. *Thorne* v. *Phillips*, 1 Dowl. 56.

[z] *Bereaford* v. *Easthope*, 8 Dowl. 294; *Dimond* v. *Vallance*, 7 Dowl. 590; *Cow* v. *Kinnersley*, 1 Dowl. & L. 906; *M'Hardy* v. *Hitchcock*, 11 Beav. 93; *Smith* v. *Pincombe*, 1 Hall & Tw. 250.

[a] *Norton* v. *Lord Melbourne*, 3 Bing. N. C. 67; *Healy* v. *Young*, 2 C. B. 702; *Baddeley* v. *Gilmore*, 1 M. & W. 55; *Lloyd* v. *Key*, 3 Dowl. 253.

[b] *Davis* v. *Lowndes*, 7 Dowl. 101; *Abraham* v. *Newton*, 8 Bing. 274; 1 Moore & S. 384; 1 Dowl. 266; *Pond* v. *Dunes*, 3 Moore & S. 161; 2 Dowl. 730.

[c] *Abraham* v. *Newton*, 8 Bing. 274.

[d] *Forbes* v. *Wells*, 3 Dowl. 318.

[e] *Clay* v. *Stephenson*, 3 Ad. & E. 807.

[f] *Pole* v. *Rogers*, 3 Bing. N. C. 780.

[g] *Doe* v. *Phillips*, 1 Dowl. 56; *Steinkeller* v. *Newton*, 1 Scott, N. R. 148; *Greville* v. *Stulz*, 17 L. J., Q. B. 14.

[h] *Nichol* v. *Allison*, 17 L. J., Q. B. 355.

[i] *Ibid.*

[k] *Gunter* v. *M'Lear*, 1 M. & W. 201.

[l] *Pole* v. *Rogers*, 3 Bing. N. C. 780.

[m] *Greville* v. *Stulz*, 17 L. J., Q. B. 14. See *Steinkeller* v. *Newton*, 8 Dowl. 579; *Sims* v. *Henderson*, 17 L. J., Q. B. 209.

[n] *Ibid.*

of King's Bench, it was held, that a copy of such examination, though returned under the seal of the court, could not be read in evidence.[p] When the commission authorized the examination to take place at Macao, and the depositions returned were taken at Canton, they were held inadmissible.[q] But where a commission for the examination of witnesses abroad, directed the commissioners to reduce the examinations into writing in the English language, and to return the same, and to swear an interpreter to translate the oath, interrogatories and depositions, it was held, that the commission was well executed by the return of a translated copy of depositions which had originally been taken down in the foreign language, and six weeks afterwards had been translated by the interpreter into English.[r] Original documents, produced before the commissioners, must be transmitted with the depositions,[s] unless it be the usage of the country in which the commission was executed not to allow the removal of the documents.[t]

As to the mode of conducting the examination and cross-examination, see 1 Arch. Pr., 8th ed. 317; Gresley on Evidence. The depositions, if properly taken and returned, may be read by either party,[u] and, if put in, the whole must be read.[v] It would seem not to be necessary to prove the order for the commission.[w] If there be any irregularity in the manner of procuring or executing the commission, that will be subject of after inquiry, and the depositions will not, on that account, be rejected at the trial.[x] But if the depositions returned contain illegal questions or answers, these may be objected to and struck out at the trial, though they cannot be objected to by the party putting the questions.[y]

The commission is not a judicial writ.[z]

The costs of every commission under the acts referred to are in the discretion of the court. In this discretion the courts of common law at Westminster have been guided by the same principles as those upon which the courts of equity (from whose practice the enactment was borrowed) acted before the passing of these acts.[a] Following the practice of the courts under the

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[p] *Clay* v. *Stephenson*, 7 Ad. & E. 185. See *Atkins* v. *Palmer*, 4 B. & A. 377; *Scott* v. *Van Sandau*, 8 Jur. 1114.

[q] *Entwistle* v. *Dent*, 8 L. T. 495.

[r] *Atkins* v. *Palmer*, 4 B. & A. 377. See *Doe* d. *Baker* v. *Winchester*, C. P., 17th April, 1850.

[s] *Rex* v. *Douglas*, 1 C. & K. 670; *Alcock* v. *The Royal Exchange Insurance Company*, 18 L. J., Q. B. 121.

[t] *Alison* v. *Furnival*, 1 C. M. & R. 277.

[u] *Proctor* v. *Lainson*, 7 C. & P. 629.

[v] *Temperley* v. *Scott*, 5 C. & P. 341. See *Stevens* v. *Foster*, 6 C. & P. 289.

[w] *Wickes* v. *Tanner*, 10 L. T. 504; *per Wightman*, J., *Greville* v. *Stulz*, 17 L. J., Q. B. 14.

[x] *Steinkeller* v. *Newton*, 8 Dowl. 579; *Scott* v. *Van Sandau*, 8 Jur. 1114.

[y] *Hutchinson* v. *Bernard*, 2 Moo. & R. 1; *Tufton* v. *Whitmore*, 12 Ad. & E. 370; *Williams* v. *Williams*, 4 M. & Sel. 497.

[z] *Nichol* v. *Alison*, 17 L. J., Q. B. 355.

[a] *Bridges* v. *Fisher*, 1 Bing. N. C. 510; 1 Scott, 485.

previous acts, one of the registrars of the Court of Probate (*inf.* s. 96) will decide what costs are to be allowed,[b] with whose discretion the court would not generally interfere.[c]

If the depositions are not used, the costs of the commission will not be allowed.[d] The fact of the witness being out of the jurisdiction of the court must be proved by some one who can speak to the fact of his own knowledge, and answers given to inquiries made at the residence of a witness will not be sufficient,[e] as to the date of the departure of witnesses.[f]

Whenever it is necessary to obtain the affidavits, &c. of persons residing out of her majesty's dominions, they may be sworn (21 & 22 Vict. c. 95, s. 31) before any British ambassador, envoy, minister, chargé d'affaires, or secretary of embassy or legation, exercising his functions in any foreign country, or any British vice-consul, acting-consul, proconsul, or consular agent, as well as every consul-general or consul exercising his functions in any foreign place, whenever he shall be thereto required.

For the means of compelling the attendance of a witness on a commission, out of the jurisdiction, but within the realm, see 6 & 7 Vict. c. 22, ss. 5—7.

By the Amending Act, the court has power to appoint solicitors practising in the Isle of Man and the Channel Islands, to be commissioners for administering oaths and taking declarations or affirmations, and the Court of Probate recognizes as such commissioners any commissary, ecclesiastical judge of surrogate, in these Islands, authorized to administer oaths at the time of the passing of this act (21 & 22 Vict. c. 95, ss. 30, 31) and any affidavits, &c. to be used in the Court of Probate may be sworn in any country out of England and within her majesty's dominions, before any court, judge, notary, or person lawfully authorized. This enactment did away with the difficulty which arose in the case, In the goods of Bedwell, 27 L. J. (P. & M. 8.)

Rules of evidence in common law courts to be observed.

XXXIII. The rules of evidence observed in the superior courts of common law at Westminster shall be applicable to and observed in the trial of all questions of fact in the Court of Probate.

It is not necessary here to go fully into a general examination of the laws of evidence established and acted upon in the superior courts of common law at Westminster. On those heads the practitioner is referred to the admirable treatises of Mr. Taylor and Mr. Starkie. There are, however, one or two points which find a proper place in a note on this section of the act,

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[b] *M'Alpine* v. *Poles*, 1 C. & M. 795.

[c] *Cornet* v. *Dempsey*, 1 Dowl., N. S. 422; *White* v. *Mayor*, 5 Tyrw. 487.

[d] *Curling* v. *Robertson*, 13 L. J., C. P. 169.

[e] *Robinson* v. *Marks*, 2 Moo. & R. 375.

[f] *Carruthers* v. *Graham*, C. & M. 5; *Varicas* v. *French*, 2 C. & K. 1008.

which applies, for the first time, these laws to a practice that has so long been conducted under very different rules.

By the general principles of the civil and canon laws a greater amount of evidence is required to constitute what is called "full proof," than is required by the courts of common law, for to such "full proof" the former laws require the evidence of *two* witnesses; so in the Court of Probate under the present system, where a defendant appears to watch the proof of a will in solemn form, the evidence of both the attesting witnesses, if it can be obtained, is required by the Court.

In the Prerogative Court, Dr. Lushington said,[g] "I consider it to be of the highest importance that the court should adhere to the same rules of evidence as prevail elsewhere," and a reciprocal feeling was expressed by Denman, C. J., in the case of *Wright* v. *Doe dem. Tatham*.[h] Still it cannot have escaped observation that evidence was continually received in the Ecclesiastical Courts, which the more free ventilation of Westminster Hall had long ago shown unworthy to be relied on; the reason for its adoption is perhaps to be found in the words of Tindal, C. J., in the case last quoted, that "In an Ecclesiastical Court, the same persons are judges both of the law and the fact, and their experience and sagacity may be sufficient to prevent any injurious consequences from a class of evidence which approaches so closely to, if it is not in fact, mere opinion of the witness, by giving such testimony no more weight than it really deserves. But our rules of evidence are calculated for trial before popular tribunals; and one of the first objects of the law of evidence in these courts, is to exclude the admission of any evidence which may by possibility mislead the understanding of the jury."

The rule with regard to this second class of evidence will be found nowhere more clearly laid down than by the last-mentioned learned judge in the same case, "I consider that this condition" (that what was so said, written or done to the testator by others is shown to have come home to his actual knowledge) "to be indispensable as to the admissibility of this second class of evidence; for, as to what was said by others, but not heard by the party whose understanding is the subject-matter of inquiry, or written by others, but which never reached him, or done by others, but never known by him to have been done, it appears to me that such speaking, or such writing, or such acting can amount to no more than the expression of the opinion of the speaker, or the writer, or the actor, and that such opinion, not having been given upon oath, and not being subject to cross-examination as to the grounds upon which it was originally formed or continued, cannot upon that account be deemed admissible in evidence."

With the exception of the case mentioned above, one witness is sufficient evidence to prove any fact, though the concurrence of two or more strengthens the proof, and, where there is any cross-examination as to the facts deposed to, is in the highest degree desirable.

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[g] *Beazley* v. *Beazley*, 3 Hagg. 651.

[h] 7 A. & E. 401.

All parties to the suit, and their husbands and wives, by 14 & 15 Vict. c. 99, amended by 16 & 17 Vict. c. 83, are competent and compellable to give evidence on behalf of either or any of the parties, subject only to exception where the question tends to criminate the person examined, or where it tends to make a husband give evidence for or against his wife, or to oblige either of them to disclose any communication made by the other during marriage. These objections, however, can only be to the question put, the anticipation of them is no ground for a witness to refuse to be sworn.[j]

Witnesses how sworn.—The witness must be sworn in such form and with such ceremonies as he holds to be binding.[k] Upon alleging conscientious motives against being sworn, he may, instead of swearing, make his solemn affirmation.[l]

A counsel, proctor, attorney or solicitor is neither bound nor at liberty to divulge the secrets of the cause with which he may have become confidentially intrusted.[m]

After the examination of the witness by the party for whom he is called, which is termed his *examination in chief*, he is subjected to *cross-examination* by the opposite party, which being concluded, he may then be *re-examined* by the party calling him, in reference to any matters suggested by the cross-examination.[n]

The following are the principal provisions of "The Common Law Procedure Act, 1854," upon the subject of evidence.

How far a party may discredit his own Witness.—"A party "producing a witness shall not be allowed to impeach his credit "by general evidence of bad character, but he may, in case the "witness shall, in the opinion of the judge, prove adverse, "contradict him by other evidence, or, by leave of the judge, "prove that he has made at other times a statement inconsistent "with his present testimony; but before such last-mentioned "proof can be given, the circumstances of the supposed state-"ment, sufficient to designate the particular occasion, must be "mentioned to the witness, and he must be asked whether or "not he has made such statement."[o]

Proof of contradictory statements of an adverse Witness.—"If a witness, upon cross-examination as to a former statement "made by him relative to the subject-matter of the cause, and "inconsistent with his present testimony, does not distinctly "admit that he has made such statement, proof may be given "that he did in fact make it, but before such proof can be "given, the circumstances of the supposed statement, sufficient "to designate the particular occasion, must be mentioned to the "witness, and he must be asked whether or not he has made "such statement."[p]

Cross-examination as to previous statements in Writing.—

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[j] *Boyle* v. *Wiseman*, 10 Ex. R. 647.

[k] *Omichund* v. *Barker*, 1 Atk. 19.

[l] 17 & 18 Vict. c. 125, s. 20.

[m] *Duchess of Kingston's case*, 11 Harg. St. Tr. 203.

[n] *Prince* v. *Samo*, 7 A. & E. 627.

[o] 17 & 18 Vict. c. 125, s. 22.

[p] *Ibid.* s. 23.

"A witness may be cross-examined as to previous statements "made by him in writing, or reduced into writing, relative to "the subject-matter of the cause, without such writing being "shown to him, but, if it is intended to contradict such witness "by the writing, his attention must, before such contradictory "proof can be given, be called to those parts of the writing, "which are used for the purpose of so contradicting him: "Provided always, that it shall be competent for the judge, at "any time during the trial, to require the production of the "writing for his inspection, and he may thereupon make such "use of it for the purpose of the trial as he shall think fit."[q]

It would seem that it is for the witness to determine whether his answer may tend to criminate him.[r]

Proof of a previous conviction of a Witness may be given.—"A witness in any cause may be questioned as to whether he "has been *convicted* of any *felony* or *misdemeanour*, and, upon "being questioned, if he either denies the fact, or refuses to "answer, it shall be lawful for the opposite party to prove such "conviction; and a certificate containing the substance and "effect only (omitting the formal part) of the indictment and "conviction of such offence, purporting to be signed by the "clerk of the court, or other officer having the custody of the "records of the court where the offender was convicted, or by "the deputy of such clerk or officer (for which certificate a fee "of five shillings and no more shall be demanded or taken), "shall, upon proof of the identity of the person, be sufficient "evidence of the said conviction, without proof of the signature "or official character of the person appearing to have signed "the same."[s]

This statutory exception, however, applies only to a *conviction* for a felony or misdemeanour, no independent proof can be given to establish the truth of any other imputation; Taylor on Evidence, 3rd ed., s. 1293.

Attesting Witness need not be called except in certain cases.—"It shall not be necessary to prove by the attesting witness "any instrument to the validity of which attestation is not "requisite; and such instrument may be proved by admission, "or otherwise, as if there had been no attesting witness "thereto."[t]

A list of the principal documents which must still be proved by calling one or more of the subscribing witnesses is given in Taylor on Evidence, 3rd ed., s. 1638. They are—all instruments executed under powers, where the parties creating such powers have thought proper, for better security, to require the execution to be attested; wills; warrants of attorney; cognovits; and satisfaction pieces; conveyances to charitable uses under the Mortmain Acts; bargains and sales enrolled for exchanging charity lands; leases under the leasing powers of

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[q] 17 & 18 Vict. c. 125, s. 24.

[r] *Per* Jervis, C. J., and Maule, J., *Fisher* v. *Ronalds*, 22 L. J., C. P. 63. See also *Osborne* v. *London Dock Company*, 24 L. J., Exch. 140; and *Reg.* v. *Garbett*, 2 C. & K. 474.

[s] 17 & 18 Vict. c. 125, s. 25.

[t] *Ibid.* s. 26.

the Act for Religious Worship in Ireland, 1855; certificates of searches and memorials, and some copies of enrolments granted by the registrar of deeds and wills in Yorkshire and Middlesex; appointments of trustees of property conveyed for religious or educational purposes; marriage registers; deeds of fathers appointing guardians of their children; assignments and consents under copyright acts; assignments of bail bonds; bills of exchange and promissory notes under 5*l.*; protests of inland bills of exchange by persons not notaries; agreements between owners and drivers of metropolitan stage carriages; admissions of debts by traders signed out of the Court of Bankruptcy; admissions by witnesses in the Court of Bankruptcy, that they are indebted to the bankrupt on a balance of accounts; and schedules and balance-sheets filed by prisoners in the Insolvent Debtors' Court.

The only exceptions to this rule, requiring the production of the subscribing witnesses, are:—[a]

1. Where the instrument is thirty years old, in which case the subscribing witnesses are presumed to be dead.

2. Where the attesting witness has signed the instrument merely in pursuance of a rule of some court, and such court has subsequently acted upon it.[x]

3. Where the instrument is proved to be in the possession of the opposite party, who refuses to produce it after notice. *Sup.* s. 24, n., p. 19.[y]

4. Where the opposite party produces an instrument and claims some interest under it.[z]

5. Where a party to a cause has solemnly admitted an instrument in reference to the cause; so where he has solemnly recited a deed under his seal and has acquired some benefit therefrom.[a]

6. Where a document is tendered as evidence against a public officer who is bound by law to have proceeded to its due execution, and who has dealt with it as a document duly executed.[b]

7. Where the party, from physical or legal obstacles, is unable to produce the witness.

Except in the case of wills, however (*sup.* p. 46), it is not necessary to call more than one of the subscribing witnesses.[c] This rule prevails both at law[d] and in chancery.

As to the amount of diligence which it is necessary to show has been used in the search after a subscribing witness, see the cases of the *Earl of Falmouth* v. *Roberts*[e] and *Burt* v. *Walker*.[f]

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[a] Taylor, 3rd edit. s. 1643.

[x] *Streeter* v. *Bartlett*, 5 Com. B. 562.

[y] *Cooke* v. *Tanswell*, 8 Taunt. 450; *Poole* v. *Warren*, 8 Ad. & E. 588.

[z] *Doe* v. *Marquis of Cleveland*, 9 B. & C. 864.

[a] *Fishmongers' Company* v. *Robertson*, 1 Com. B. 60.

[b] *Plumer* v. *Brisco*, 11 Q. B. 46.

[c] *Hindson* v. *Kersey*, 4 Burn's Eccl. L. 116.

[d] *Holdfast* v. *Dowsing*, 2 Str. 1254.

[e] 9 M. & W. 469.

[f] 4 B. & A. 697.

Where an instrument is necessarily attested by more than one witness the absence of them all must be duly accounted for, in order to let in secondary evidence of the execution.[g]

Comparisons of Disputed Writings. — "Comparison of a "disputed writing with any writing proved to the satisfaction "of the judge to be genuine shall be permitted to be made by "witnesses, and such writings, and the evidence of witnesses "respecting the same, may be submitted to the court and "jury as evidence of the genuineness or otherwise of the "writing in dispute."[h]

The proper question to be asked of an expert is, "Having looked at and compared them, do you believe that both these writings are by the same hand?" *Per* Cresswell, J., *Pritchard* v. *Webber*, Gloucester Spring Assizes, 1856.

As to Stamping Document at the Trial.—"Upon the pro- "duction of any document as evidence at the trial of any "cause, it shall be the duty of the officer of the court, whose "duty it is to read such document, to call the attention of the "judge to any omission or insufficiency of the stamp; and the "document, if unstamped or not sufficiently stamped, shall not "be received in evidence until the whole or (as the case may "be) the deficiency of the stamp duty and the penalty required "by statute, together with the additional penalty of one pound, "shall have been paid."[i]

"Such officer of the court shall, upon payment to him of the "whole or (as the case may be) of the deficiency of the stamp "duty payable upon or in respect of such document, and of "the penalty required by statute and of the additional penalty "of one pound, give a receipt for the amount of the duty or "deficiency which the judge shall determine to be payable, and "also of the penalty, and thereupon such document shall be "admissible in evidence, saving all just exceptions on other "grounds; and the entry of the fact of such payment and of "the amount thereof shall be made in a book kept by such "officer; and such officer shall, at the end of such sittings or "assizes (as the case may be), duly make a return to the "Commissioners of the Inland Revenue of the monies, if any, "which he has so received by way of duty or penalty, dis- "tinguishing between such monies, and stating the name of "the cause and of the parties from whom he received such "monies, and the date, if any, and the description of the docu- "ment, for the purpose of identifying the same; and he shall "pay over the said monies to the Receiver-General of the "Inland Revenue, or to such person as the said commissioners "shall appoint or authorize to receive the same; and in case "such officer shall neglect or refuse to furnish such account, or "to pay over any of the monies so received by him as afore- "said, he shall be liable to be proceeded against in the manner "directed by 13 & 14 Vict. c. 97, s. 8; and the said commis- "sioners shall, upon request and production of the receipts

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[g] *Canliffe* v. *Sefton*, 2 East, 183.

[h] 17 & 18 Vict. c. 125, s. 27.

[i] *Ibid.* s. 28.

"hereinbefore mentioned, cause such document to be stamped "with the proper stamp or stamps in respect of the sums so paid "as aforesaid: provided always, that the aforesaid enactment "shall not extend to any document which *cannot now be* "*stamped after the execution thereof*, on payment of the duty "and a penalty."[k]

XXXIV. It shall be lawful for the judge of the Court of Probate to sit, with the assistance of any judge or judges of any of the superior courts of law at Westminster, who, upon the request of the judge of the Court of Probate, may find it convenient to attend for that purpose.

Common law judges may sit, on request of judge of court.

This section is similar to sect. 8 of the 14 & 15 Vict. c. 83, which enables the common law judges, at the request of the Lord Chancellor, to sit in the Court of Chancery. The practice of the Court of Chancery under that Act is:—If the Master of the Rolls or a Vice-Chancellor desires the assistance of a common law judge, he writes to the Lord Chancellor to ask his lordship to request that his court may have the assistance of one of the learned common law judges; and when he has ascertained when it will be convenient for such common law judge to attend, he communicates the result to the parties.[l] See Smith's Chan. Prac., 5th edit. p. 4.

TRIAL OF ISSUES.

XXXV. It shall be lawful for the Court of Probate to cause any question of fact arising in any suit or proceeding under this Act to be tried by a special or common jury before the court itself, or by means of an issue to be directed to any of the superior courts of common law, in the same manner as an issue may now be directed by the Court of Chancery, and such question shall be so tried by a jury in any case where an heir-at-law, cited or otherwise made party to the suit or proceeding, makes application to the Court of Probate for that purpose; and in any other case where all the parties to the suit or proceeding concur in such an application, and where any party or parties other than such heir-at-law make a like application (the other party or parties not concurring therein), and the court shall refuse to cause such question

Court may cause questions of fact to be tried by a jury before itself, or direct an issue to a court of law.

[k] 17 & 18 Vict. c. 125, s. 29.
[l] *Hay* v. *Willoughby*, 9 Hare, App. xxx.

to be tried by a jury, such refusal of the court shall be subject to appeal as herein provided.

Where a question of fact arises in any suit or proceeding before the court, it will be tried by a jury:—1. When the heir-at-law, if cited or otherwise made a party to the suit, claims it; 2. When all the parties to the suit agree to have a jury. It is *in the discretion* of the court (subject to an appeal on refusal) to grant a jury, when it is required only by the one party, and the others do not concur in the application.

As the court is enabled itself to try the question of fact before either a special or a common jury, and has the most full powers under sect. 24, in ordering the production of papers and in the examination of witnesses, it seems scarcely probable that the practice of sending the issue to a court of law will be much resorted to, involving, as it necessarily would, a great additional length of litigation. Cases, undoubtedly, will occur when the situation of the property, the subject of the will under dispute, and other circumstances, will make such an application desirable. See sect. 61, note. Any motion to remove a cause to the assizes should be made before the commission days are fixed. In issues concerning realty, it has been the strict practice of the Court of Chancery to direct the venue to be laid in the county where the property is situated.

It is to be noticed that the act leaves the transmission of the question of fact to a court of law completely in the power of the judge of the Court of Probate; the only claim that the parties have is that it shall be tried before a jury.

The court of equity has in general considered the claim of the heir to be so strong that it would not, where the heir objected to it, even when the evidence before them was such as to leave no ground for doubt upon the subject, take upon itself to establish a will affecting real estate without previously having the opinion of a jury upon an issue *devisavit vel non*.[m]

Where an heir-at-law first opposed probate and then withdrew his opposition, and allowed the executors and devisees to pay away large sums of money under the will; he was held to have deprived himself of the right to an issue to try the validity of the will.[n]

So, where upon a bill to perpetuate the testimony of the witnesses, he did not examine the witnesses, but took his costs as a disinherited heir.[o]

So, where he acquiesced in a will for twenty years, and put the party claiming under it in a worse situation than he would have been in had he disputed it in the first instance.[p]

Where the counsel for the heir-at-law, an infant, thought, from evidence already examined, that there was no ground to dispute the will, he was justified in declining an issue.[q]

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[m] *Lord Fingal* v. *Blake*, 1 Moll. 113; *Tucker* v. *Sanger*, 1 M'Cl. & Y. 425.

[n] *Pike* v. *Hoare*, Ambl. 428.

[o] *Ibid.*

[p] *Tucker* v. *Sanger*, *supra*.

[q] *Levy* v. *Levy*, 3 Madd. 245.

In the Court of Chancery an issue may be granted either upon the original hearing of the cause or upon a hearing for further directions.

On an application under sect. 36 of the Divorce Act, by which the court has a similar discretionary power of allowing issues of fact to be tried before a jury, the judge ordinary said :[r] "I "think it is very desirable that, on the application of either "party, the privilege of having questions of fact submitted to "a jury should be granted."[r]

In directing an issue the Court of Chancery usually directs the party supporting the affirmative to be the plaintiff in the issue; and the plaintiff has the right of selecting the court in which it shall be tried.[s]

Where the court orders the trial of an issue it will order the parties to make such admissions as are necessary to raise the question to be determined; and, in the trial by another court (as that trial is the creation of its own direction), all orders for production, &c. must be made by the court whence the issue flows.

The judge at law has no power to refer the issue to arbitration; and if reference is adopted by consent, the effect is to abandon the whole proceedings.[t]

Where the issue is to be tried by a jury, the court may direct either that it shall be tried before the court itself or by an issue directed to any of the superior courts of common law.

Where the trial is before the court itself, see *inf.* s. 37, note.

Where the issue is directed to a court of common law, see *inf.* s. 38, note.

The court refused to direct an issue to be tried at the assizes where the cause had excited considerable discussion and feeling in the county where it was proposed to be tried.[u]

So, where there was a probability of the cause, if sent down, being made a remanet.[x]

Powers of the court for the trial of questions by a jury.

XXXVI. When the court shall order a question of fact to be tried before itself by a jury, the court may make all such rules and orders upon the sheriff or any other person for procuring the attendance of a special or common jury for the trial of such question as may now be made by any of the superior courts of common law at Westminster, and may also make any other orders which to such court may seem requisite; and every such jury shall consist of persons possessing the qualifications, and shall be struck,

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[r] *Marchmont* v. *Marchmont*, 27 L. J., P. & M. 59.

[s] *Antrobus* v. *East India Company*, 5 Madd. 3.

[t] *Woodley* v. *Johnson*, 1 Moll. 394.

[u] *Cooper and another* v. *Moss and another*, 1 Sw. & Tr. 143.

[x] *Ingram* v. *Fuller and another*, 1 Sw. & Tr.

summoned, balloted for, and called in like manner as if such jury were a jury for the trial of any cause in any of the said superior courts; and every juryman so summoned shall be entitled to the same rights, and subject to the same duties and liabilities, as if he had been duly summoned for the trial of any such cause in any of the said superior courts; and every party to any such proceeding shall be entitled to the same rights as to challenge and otherwise as if he were a party to any such cause; and generally for all purposes of or auxiliary to the trial of questions of fact by a jury before the court itself, and in respect of new trials thereof, and also for all purposes in relation to or consequential upon the direction of issues, the Court of Probate shall have the same jurisdiction, powers, and authority in all respects as belong to any superior court of common law, or to any judge thereof, or to the High Court of Chancery, or any judge thereof for the like purposes.

The practice of the Court of Probate, in reference to the summoning of the jury who are to try the issue of fact, is similar to that of the superior courts of common law in town causes: it is thus subject to any modification under the general provision of the Common Law Procedure Act, 1854, whereby "the several courts or any judge thereof may make all such rules or orders upon the sheriff or other person as may be necessary to procure the attendance of a special or common jury for the trial of any cause at such time and place and in such manner as they or he shall think fit,"[y] and is subject also to any other orders which the Court of Probate may make.

Common Jury Causes.—By the Common Law Procedure Act, 1852,[z] it is enacted, that the sheriffs of London and Middlesex respectively shall, pursuant to a precept under the hand of any judge, and without any other authority, summon a sufficient number of common jurors for the trial of all issues in the superior courts of common law for the ensuing sittings. Seven days before the first day of each sitting a printed panel of the jurors so summoned for the trial of causes at such sittings is made by such sheriffs in accordance with this duty charged upon them, and kept in their office for public inspection; and a printed copy thereof is delivered by such sheriffs to any party requiring the same upon payment of one shilling, and must in like manner be annexed by the plaintiff's attorney to the nisi prius record; and the jurors contained in such panel are the jurors to try causes at the sittings for which they are summoned.

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[y] 17 & 18 Vict. c. 125, s. 59. [z] 15 & 16 Vict. c. 76, s. 107.

Special Jury Causes.—When either party requires a special jury he must apply to the court or to the judge in chambers for a rule. This rule in the common law courts is a side bar rule, and the motion-paper to obtain it requires the signature of counsel, for which the fee is half-a-guinea. The ordinary practice in the Court of Probate is to make the motion in court.

By the Common Law Procedure Act, 1852, "Where the defendant gives notice of his intention to try by a special jury, the court, if satisfied that such application is made for purposes of delay, may order that the cause be tried by a common jury, or make such other order as to the trial of the cause as it shall think fit.[a]

Notice must be given to the sheriff six days before the sittings that a cause is to be tried by a special jury, otherwise no special jury need be summoned to attend, and the cause may be tried by a common jury as if no proceedings had been taken to try the cause by a special jury, unless otherwise ordered by the court.[b]

Where a cause was entered as a special jury cause, but was taken in the defendant's absence and tried by a common jury as an undefended cause, the court set aside the trial and verdict with costs.[c]

The mode of drawing a special jury is that prescribed by 6 Geo. 4, c. 50, s. 34, which is continued by the Common Law Procedure Act, 1852.[d]

The registrar appoints the time and place for the nomination of the jury and a copy of the rule of court and of the registrar's appointment is served upon the deputy of the under-sheriff. At the time and place appointed, the registrar, being attended by the under-sheriff, or his agent, who have with them the jurors' book, and the special jurors' list, and all the numbers (prefixed to the names in such list in alphabetical order) written on distinct pieces of paper or card, in the presence of all the parties or their attornies (if they respectively choose to attend, or if the said parties or their attornies, all or any of them, do not attend, then in their absence) put all the said numbers into a box by him provided for that purpose, and after having shaken them together, draws out of the said box forty-eight of the said numbers one after another, and, as each number is drawn, refers to the corresponding number in the jurors' list, and reads aloud the name designated by such number, and if at the time of so reading any name either party or his attorney objects that the man whose name has been so referred to is in any manner incapacitated from serving on the said jury, and then and there proves the same to the satisfaction of the registrar, such name is set aside, and the registrar, instead thereof, draws out of the said box another number, and in like manner refers to the corresponding number in the said list and reads aloud the name designated thereby, which name in like manner may be set aside, and other numbers and names are in every such case

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[a] 15 & 16 Vict. c. 76, s. 111.
[b] *Ibid.* ss. 112, 113.
[c] *Hague* v. *Hall*, 5 Man. & G. 693.
[d] 15 & 16 Vict. c. 76, s. 110.

resorted to for the purpose of supplying names in the places of those set aside, until the whole number of forty-eight names, not liable to be set aside, are completed; and if in any case it happens that the whole of the forty-eight names cannot be obtained from the special jurors' list, in such case the registrar fairly and indifferently takes such a number of names from the general jurors' book, in addition to those already taken from the special jurors' list, as are required to make up the full number of forty-eight names, all and every of which forty-eight names are in such case equally deemed and taken to be those of special jurors; and the registrar afterwards makes out for each party a list of the forty-eight names, together with their respective places of abode and additions, and after having made out such list, returns all the numbers so drawn out, together with all the numbers remaining undrawn, to the under-sheriff or his agent, to be by him safely and securely kept for future use. Having received such list of forty-eight from the registrar, the party procuring the special jury obtains and serves the opposite party with another appointment to *reduce*, upon which each party may—the plaintiff beginning—strike out twelve names, or, if either of the parties fail to attend, the registrar may strike out twelve for him; and a copy of the reduced list of twenty-four is then given to each party and is annexed to the record.

It seems that if an issue be directed out of the Court of Chancery to be tried by a special jury neither party can have a *tales* without the consent of the other.[e] In the courts of law, however, the plaintiff may have a *tales* without the defendant's consent.[f]

Costs of a Special Jury.—The fee to a special jury is "such sum of money as the judge who tries the issue shall think just and reasonable, not exceeding one pound and one shilling." This is, in practice, the regular fee.[g]

The person or party who appeals for a special jury pays the fees for striking such jury, and all expenses occasioned by the trial of the cause by the same; and has no further or other allowance for the same, upon taxation of costs, than such person or party would be entitled unto in case the cause had been tried by a common jury; unless the judge before whom the cause is tried shall, immediately after the verdict, certify, under his hand, upon the back of the record, that the same was a cause proper to be tried by a special jury.[h]

The party who moves for a special jury pays for it, even though, to ensure a trial, the opposite party has summoned them.[i]

The judge cannot give a certificate under this section unless the cause *is tried*.[j]

The judge must certify within a reasonable time after the

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[e] *Wood* v. *Thomson*, Car. & M. 171.

[f] *Gatliff* v. *Brown*, 2 M. & Rob. 100.

[g] 6 Geo. 4, c. 50, s. 35.

[h] 6 Geo. 4, c. 50, s. 34.

[i] *Wilson* v. *Butler*, 2 M. & Rob. 78.

[j] *Clements* v. *George*, 11 Moore, 510.

trial.[k] It is too late to apply the day after trial; the certificate must be not only acceded to but *signed*.[l]

Where a case turned solely upon a question of law, and there was no fact in dispute between the parties, Abbott, C. J., refused to certify for a special jury.[m]

Challenge.—A special juror cannot be challenged at the trial for want of qualification, as a common juror may: the party has had an earlier opportunity of making the objection.[n] There is no right of *peremptory* challenge in the case of a jury summoned to try an issue joined in a civil action. In *Creed* v. *Fisher*, Baron Parke said, "It is quite clear that a special jury is on "the same footing with a common jury. There must be a cause "for challenging, although it is a common practice, if a jury-"man is objected to, not to call him, yet it is not a matter of "right. It is the same in trials for misdemeanour. I recollect "trying a case of misdemeanour at York—every juryman in "the panel was objected to. When the panel was exhausted, I "ordered the first name to be called again, and required cause "to be shown why he should not serve, and we soon had a "jury."[o]

Question to be stated, and jury sworn to try it.

XXXVII. When any such question shall be so ordered to be tried by a jury before the court itself, such question shall be reduced into writing in such form as the court shall direct, and at the trial the jury shall be sworn to try the said question, and a true verdict to give thereon according to the evidence; and upon every such trial the Court of Probate shall have the same powers, jurisdiction, and authority as belong to any judge of any of the said superior courts sitting at Nisi Prius.

Court, on trial, to have the same authority as a judge at Nisi Prius.

It will be observed that the court has power to try by a jury before itself, not only an issue raised upon the pleadings in a cause, but also "any question of fact arising in any suit or proceeding." Such question is reduced into writing in such form as the court may direct, and will be tried in the same manner as an issue raised by the pleadings. See *supra*, ss. 29, 30, note, p. 36.

It is analogous to a feigned issue directed by a court of law, where a material fact is controverted in a case before the court, which the court thinks of too much importance to be decided summarily upon affidavits.

The principal points to be noticed will be found in the note to the following section:—

[k] *Christie* v. *Richardson*, 10 M. & W. 688; *Serrell* v. *Derbyshire, &c. Railway Company*, 10 C. B. 910; *Grace* v. *Clinch*, 4 Q. B. 606; *Waggett* v. *Shaw*, 3 Camp. 316.

[l] *Dewar* v. *Swabey*, 11 A. & E. 913.

[m] *Wemyss* v. *Greenwood*, 2 Car. & P. 483; *Roberts* v. *Brown*, 6 Car. & P. 757.

[n] *Rex* v. *Sutton*, 8 B. & C. 419.

[o] 23 L. J., Exch. 143.

Court may direct where issues shall be tried.

XXXVIII. Where the Court of Probate directs an issue, it shall be lawful for such court to direct such issue to be tried either before a judge of assize in any county or at the sittings for the trial of causes in London or Middlesex, and either by a special or common jury, in like manner as is now done by the Court of Chancery.

The interlocutory order of the court directing the issue should also direct who shall be plaintiff and who defendant.

It will be observed that the direction of an issue is in the discretion of the judge of the Court of Probate, as the ordering of a similar proceeding in equity is with a judge of the court from which it issues. It is the practice of the courts of equity, however, to direct an issue whenever a material fact is strongly denied, particularly in causes relating to title to lands, whether or not a party is the heir-at-law of the deceased, &c. With regard to feigned issues, the stat. 8 & 9 Vict. c. 109, s. 19, enacts, that "in every case where any court of law or equity may desire to have any question of fact decided by a jury, it shall be lawful for such court to direct a writ of summons to be sued out by such person or persons as such court shall think ought to be plaintiff or plaintiffs, against such person or persons as such court shall think ought to be defendant or defendants therein, in the form set forth in the second schedule to that act annexed, with such alterations or additions as such court may think proper; and thereupon all the proceedings shall go on and be brought to a close in the same manner as is now practised in proceedings under a feigned issue."

The form alluded to may be followed in preparing an issue for the Court of Probate. It is as follows:—

In the Court of Queen's Bench ["Common Pleas," *or* "Exchequer," *or in any inferior court, as the case may be.*]
Middlesex to wit [*or in such other county as may be directed.*]

Whereas A. B. affirms, and C. D. denies [*here state fully the fact or facts in issue*], and the judge of Her Majesty's Court of Probate is desirous of ascertaining the truth by the verdict of a jury, and both parties pray that the same may be inquired of by the country. Now let a jury, &c.

The rule or order for the issue should point out the time within which the issue must be delivered by the plaintiff, and returned by the defendant, if objected to; at all events, the draft must be delivered by the plaintiff in time to give the usual notice of trial to the defendant. If the counsel on both sides cannot agree upon the form of it, the parties should attend by counsel before the judge in chambers, and he will decide upon the form of the issue or refer it to one of the registrars.

In equity, if the plaintiff will not make up the issue, the defendant may move the court that the matter be taken *pro confesso*, which the court will order accordingly, unless the plaintiff shows some reasonable or satisfactory cause for his not having done so; or, if the issue be made up, but in such a manner that

the matters, intended by the court to be tried, are not put in issue or found by the jury, the court will order a new trial.[p]

The Record.—The record should be made up as in ordinary cases. *Supra*, p. 34.

The Trial.—The Court of Probate having the same powers in directing an issue as the Court of Chancery, may order that particular matters shall be admitted or allowed in evidence, that the depositions of such witnesses as shall be dead at the time of the trial, or in such a state of health as not to be capable of attending, shall be read, and also, in some cases, that the plaintiff or defendant shall attend to be examined.[q] All these matters are to be strictly observed at the trial, and the judge at the trial will take notice of the terms of the decree.[r]

Which Party to begin.—Where, in an issue out of the Court of Probate, the defendants had propounded the will, and the plaintiff alleged incapacity, fraud and coercion, Crompton, J., ruled that the defendants should begin.[s]

Upon the trial of the issue a bill of exceptions will not lie,[t] nor will a writ of error, after verdict.[u]

The plaintiff may elect to be nonsuited, as in ordinary cases.[v]

When the decree directs the issue to be tried at the next assizes or sittings, an application to postpone the trial should be made to the Court of Probate.[x] It would seem, however, that it may be made to the judge at Nisi Prius.[y]

Postea.—The judge, before whom the issue is tried, certifies the finding of the jury, and adds, in his certificate, the mention of any circumstances that he may think important.

Costs.—The costs are entirely in the discretion of the Court of Probate.

New Trial.—The application for a new trial must be made to the Court of Probate, both when it is grounded on a wrong reception of evidence and when it is applied for on other grounds.[z] Where, however, leave to move is given by the judge at the trial, the motion may, it would seem, be made in the court of law.[a]

If the motion for a new trial be made in the Court of Probate, that court should be furnished with the report of the judge who tried the cause, and which may be obtained, upon application to him, by the court for that purpose.

Where a court of equity ordered that a second trial should be had on the same issue, and between the same parties, it was held that the order for that purpose was right in directing that the judge's notes of the evidence of a witness, since deceased, might be given in evidence upon the new trial.[b]

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[p] Arch. Pr. 809.

[q] 15 Ves. jun. 176.

[r] *Wood* v. *Thompson*, Car. & M. 171.

[s] *Evans* v. *Attwood and another*, Gloucester Spring Ass. 1859.

[t] *Clayton* v. *Nugent*, 8 Jur. 867.

[u] *Snook* v. *Mattock*, 5 Ad. & E. 239; *Clayton* v. *Nugent*, 8 Jur. 867.

[v] *Barnes* v. *Headley*, 1 Camp. 164.

[x] *Keble* v. *Philpot*, 9 Sim. 614.

[y] *Buxton* v. *Lawton*, 4 Camp. 163.

[z] *Bowker* v. *Nixon*, 6 Taunt. 444; *Stone* v. *Marsh*, 8 D. & R. 71; *Carstairs* v. *Stein*, 4 M. & S. 192.

[a] *Haleworthy* v. *Richards*, 2 Chit. R. 270; *Carstairs* v. *Stein*, *sup.*

[b] *Malone* v. *Malone*, 8 Cl. & Fin. 179.

APPEAL.

Appeal to the House of Lords.

XXXIX. Any person considering himself aggrieved by any final or interlocutory decree or order of the Court of Probate may appeal therefrom to the House of Lords: provided always, that no appeal from any interlocutory order of the Court of Probate shall be made without leave of the Court of Probate first obtained, but on the hearing of an appeal from any final decree all interlocutory orders complained of shall be considered as under appeal as well as the final decree.

Scarcely any legal question presents more interesting features in its history than does the appeal from the Ecclesiastical Courts. A few lines, recording its varied career, may perhaps not be out of place on its entering under a new jurisdiction.

However much, as Sir William Blackstone observes, the people of England may have regarded with an evil eye appeals to Rome, the practice had obtained at the close of the reign of King Stephen. It was against this practice that it was declared in the Constitutions of Clarendon[c] that, "appeals in causes ecclesiastical ought to be from the archdeacon to the diocesan; from the diocesan to the archbishop of the province; and from the archbishop to the king; and are not to proceed any farther without special licence from the crown." But the unhappy advantage that was given in the reigns of King John, and his son Henry the Third, to the encroaching power of the pope, who was ever vigilant to improve all opportunities of extending his jurisdiction hither, at length riveted the custom of appealing to Rome in causes ecclesiastical so strongly, that it never could be thoroughly broken off till the grand rupture happened in the reign of Henry the Eighth, when all the jurisdiction usurped by the pope in matters ecclesiastical was restored to the crown, to which it originally belonged; so that the statute 25 Hen. 8, c. 19, was but declaratory of the ancient law of the realm.[d]

By the statutes of Hen. 8, any person suing to Rome, or obeying any process from thence, was made liable to the pains of *præmunire*; and the Court of Delegates was formed as a court of ultimate appeal in ecclesiastical causes. The court was constituted for each particular case, and consisted of certain persons, delegated by commission under the great seal, to hear and determine the cause in appeal.[e] It was in the power of the king, on an appeal from a decision of the Court of Delegates, to grant a commission of review. This, however, was rarely done.

An attempt was made, in 1675, by Lord Shaftesbury, the great promoter of the appellate jurisdiction of the House of Lords, to

[c] 11 Hen. 2, c. 8.
[d] 4 Inst. 341
[e] 4 Inst. 339.

extend that jurisdiction over the courts spiritual. In 1678, two appeals from Doctors' Commons were presented; one from the Court of Delegates, another from the Prerogative Court. In the latter case (*Bampfield* v. *Rogers*) the entry in the journal of the House of Lords of Tuesday, June 25, is, "Forasmuch as it appeareth that the said matter depends on ecclesiastical jurisdiction, it is therefore ordered by the lords spiritual and temporal in parliament assembled, that the said petition of Warwick Bampfield, John Winter and Thomas Warr be dismissed this House." In the appeal from the Court of Delegates (*Cattington* v. *Gallina*), read on the 10th May, 1678, and referred to the Lords' Committee of Privileges, it was resolved and ordered, June 17 (*dissentiente* Shaftesbury), that the said appeal did not come properly before the House, and no further attempt was then made in that direction.

This Court of Delegates was abolished by 2 & 3 Will. 4, c. 92, and its jurisdiction transferred to the Privy Council, for which appellate jurisdiction, in matters and causes testamentary, that of the House of Lords is now substituted.

The appeal from the Court of Probate partakes of the nature of an appeal from a court of equity in this, that it may be brought, not only upon a final judgment, but also, by permission of the judge, upon an interlocutory order or grievance.

As to bringing an appeal for costs alone, the rule was thus laid down by Lord Brougham;[f] "The rule with respect to costs in this House, as well as in the Privy Council and the Court of Chancery, is, that you cannot appeal for costs alone; but you can bring an appeal on the merits; and, if that is not a colourable ground of appeal for the purpose of introducing the question of costs to the court called upon to review the case, the Court of Review will treat that not as an appeal for costs, but will, on affirming the judgment given in the court below, consider the question of costs as if it is fairly raised. That question is open to the appellant, provided the other was not a colourable object of appeal."

Parties entitled to Appeal.—It is submitted, that in appeals from the Court of Probate, as in appeals from the Courts of Chancery, the right of appealing to the House of Lords is not confined to the *parties* to the original cause. Any person who is *a party to the order* may appeal against it. Thus, in the Court of Chancery, under the old practice, a creditor who had come in before the master, and had had his claim disallowed on the hearing of exceptions to the master's report, was allowed to appeal to the House of Lords against the order.[g] A party having appealed against one part of a decree in a suit, when the title is not at issue, thereby virtually submits to the rest of it, and cannot afterwards present a new appeal against other parts of the same decree.

When an appeal under such circumstances is presented, the party served with it ought not to answer it, but to present a counter-petition to have it dismissed. If he treats it as an effec-

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[f] *Inglis* v. *Mansfield*, 3 Cl. & Fin. 371.

[g] *Winchelsea* v. *Garetty*, 1 Myl. & K. 253.

tive appeal, by answering it and suffering it to proceed before he presents a counter-petition, he will not be entitled to the costs of such petition.[h]

It is to be noticed that, on the hearing of an appeal from any final decree, all interlocutory orders, *complained of*, are considered as under appeal; where, therefore, before the hearing of the appeal, the appellant is advised that some of the previous orders are so connected with the order appealed against that it is impossible to do justice to his case without extending the appeal to those former orders, he should apply for liberty to amend the petition of appeal.[i]

By a standing order of the House of Lords,[k] all persons desirous of appealing to the House of Lords from a court of equity must present their petition within fourteen days from the first day of any session or meeting of parliament after a recess. No standing order has, however, at present been promulgated with regard to the Court of Probate.

The Petition of Appeal.—This is addressed to the Right Honourable the Lords Spiritual and Temporal in Parliament assembled. It should recite the filing of the declaration, or the first act in the cause, whatever it may be, and sufficient of the statements contained in it to make the case clear, and the relief sought intelligible. It should then state that the defendant appeared and answered, and that, the cause being at issue and divers witnesses having been examined, the same came on to be heard before the judge making the decree. It should then set forth the part of the decree or order appealed from, and that the said decree was signed and enrolled in the court on a certain day, and proceed to state that the petitioner is advised and humbly conceives that the said decree is erroneous and contrary to equity and justice, and pray, "That your lordships will be pleased to grant your lordships' order of summons to C. D. (respondent) to put in his answer to this your petitioner's appeal, and that service thereof upon the said C. D.'s proctor or attorney in the said cause may be deemed good service. And that your lordships, upon hearing the merits of the said cause, will be pleased to reverse (or vary) the said decree (and subsequent order or orders), or to grant unto your petitioner such other relief in the premises as to your lordships in your great wisdom and justice shall seem meet. And your petitioner will ever pray, &c."

If it is sought only partially to vary the decree or order, the petitioner should pray that the said decree may be varied in so far as it declares or directs, &c. (setting forth the parts complained of). All appeals are to be signed by two counsel; and no counsel is to sign any appeal unless engaged as counsel in the court below, or unless he attends at the bar of the House when the appeal is heard. The counsel also certify that in their judgment there is reasonable cause of appeal.

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[h] *Norbury* v. *Meade*, 3 Bligh, 261.

[i] *Bourchier* v. *Dillon*, 5 Bligh, 714.

[k] 13th July, 1678.

The petition of appeal being settled and signed by counsel, must be copied on parchment, the words written at length, and the names of the counsel, as well to the appeal as the certificate, copied. Before any petition of appeal is presented to the House of Lords, notice must be given to the agent of the parties respondent of the time when such petition is intended to be presented, and the day of giving such notice should be indorsed by the petitioner's agent on the back of the appeal.[1]

The petition is presented to the House by a lord, who moves that it may be read; the clerk reads the prayer; the usual order made (in the case of Chancery appeals) is, that the respondent may have a copy of the appeal, and that he do put in an answer thereto on or before, &c., and that service of the order on the solicitor of the respondent in the court below shall be deemed a good service of order. The order is signed by the deputy clerk of the House of Lords. A copy of the order must be served, and an affidavit of the service made. Within eight days after the appeal has been lodged, the appellant must enter into recognizances to answer costs in the penalty of 400*l.*

If the respondent does not answer within the time limited by the order, upon an affidavit of service of the first order, a peremptory order is obtained, that he do answer within a limited time; and if no answer is put in within that time, the appellant applies to the House of Lords to have the cause appointed for hearing *ex parte*. The respondent, however, may apply for time, if he requires it. On being served with the order to answer, the respondent instructs his agent to apply at the Parliament Office for a copy of the petition of appeal. He then prepares his answer, which is engrossed and lodged at the Parliament Office. The answer being put in, either party may apply to have the cause appointed to be heard. An order for the purpose is drawn up and served. A draft of the case is next prepared and printed for the use of the House. The case should contain all the material facts, and should narrate concisely the substance of the pleadings, and the evidence or proofs, whether consisting of documents, depositions or interrogatories, and particularly, those on behalf of the party whose case it is. It should contain a copy of so much of the proofs taken in the court below, as the parties intend to rely on at the hearing, together with references to the documents, &c., where the same may be found. The evidence, and also copies of deeds and other instruments are usually stated in an Appendix, separate from the case, which is printed and indorsed in a similar manner, and delivered at the same time. The case must be signed by one or more of the counsel who were counsel in the court below, or who will be so at the hearing. When the case has been signed, it is printed, and the appellant and respondent exchange cases. Usually five hundred copies are printed. If the appellant and respondent agree upon a joint Appendix, it tends materially to diminish the expense.

The hearing of the Appeal.—At the hearing, one of the counsel for the appellant opens the cause; then the evidence on his side is read; this being done, the other counsel for the appel-

[1] S. O. 9th April, 1812.

lant makes comments on the evidence; then one of the respondent's counsel is heard, and the evidence on his side read; after which the other counsel for the respondent is heard, and then one counsel only for the appellant replies.

When the arguments of counsel are concluded, judgment is either given or reserved. The Lords, in reviewing decisions, consider themselves bound by the rules of the court from which the appeal comes. If, in pursuance of an order of the House of Lords, anything is to be done under the direction of the court below, the order of the House of Lords must be made an order of that court; and, until this has been done, it cannot be acted upon in that court, or process enforced. As the order of the House of Lords is final, it appears that the registrar will draw up the above order without a consent brief on affidavit of service.

If the respondent is also dissatisfied with the decree, he may present a cross appeal, but he must do this within a week after the answer is put in to the original appeal.

If an appeal to the House of Lords becomes abated, the order to revive is obtained, as of course, and there is no fresh summons.[m]

PRACTITIONERS.

Advocates admitted to practise.

XL. All persons who at the time of the passing of this Act have been admitted advocates in any of the Ecclesiastical Courts shall be entitled to practise as advocates or counsel in all matters and causes whatsoever in the Court of Probate; and all serjeants and barristers-at-law shall be entitled to practise as advocates or counsel in all contentious matters and causes in the said court; and such persons who have been so admitted advocates and serjeants and barristers-at-law shall have respectively the same rank and precedence which they now have before the Judicial Committee of the Privy Council, unless and until her Majesty shall otherwise order.

Barristers may practise in contentious causes.

Advocates admitted to practise as barristers.

XLI. All persons who at the time of the passing of this Act have been admitted as advocates as aforesaid shall be entitled to practise as counsel in any of her Majesty's courts of law or equity in England, with the same eligibility to appointments, under Acts of Parliament or otherwise, as if they had respectively been duly called to the degree of barrister-at-law on the days on which they respectively were so admitted as advocates, and with

[m] *Byne* v. *Potter*, 5 Ves. 305.

the same rank and precedence which they now have before the said Judicial Committee, unless and until her Majesty shall otherwise order.

All proceedings in the court not included under the expression of common form business (sect. 2), except the warning of the caveats, shall be deemed "*contentious business.*" Reg. 1.

It may not be amiss to subjoin the table of precedence as given by Sir Wm. Blackstone (Bl. Comm. iii. 27, n), with the slight alterations which have been made since his time:—

1. The Queen's Advocate General.
2. The Queen's Attorney General } By royal mandate, 14th
3. The Queen's Solicitor General } December, 1811.
4. The Queen's premier serjeant (so constituted by special patent).
5. The Queen's ancient serjeant, or the eldest among the Queen's serjeants.
6. The Queen's serjeants.
7. The Queen's counsel.
8. Serjeants-at-law.
9. The Recorder of London.
10. Advocates of the civil law.
11. Barristers.

In the Court of Exchequer, two of the most experienced barristers, called the *post*-man, and the *tub*-man (from the places in which they sit) have also a precedence in motions.

A question was raised (*In the goods of S. H. Ludlow*, 27 L. J., P. & M. 7), as to how barristers not civilians could practise in the Court of Probate in non-contentious matters; it was subsequently enacted (21 & 22 Vict. c. 95, s. 2), that all serjeants and barristers may practise there in all causes whatsoever.

Proctors admitted to practise.

XLII. Every person who at the time of the passing of this Act is actually admitted and practising as a proctor in the courts in Doctors' Commons, or in the Prerogative Court of York, or in any diocesan court, or in any archidiaconal court, having previously duly served under articles of clerkship either to an attorney or proctor, may, upon his application, at any time within one year after the passing of this Act, be admitted a proctor of the Court of Probate, without payment of any fee or stamp duty.

All motions in court are to be made by counsel. Proctors may be heard in chambers.[a]

Articled clerks to proctors, on serving their full term, may be admitted as proctors.[b]

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[a] *Drake and another* v. *Morgan*, 27 L. J., P. & M. 4.

[b] 21 & 22 Vict. c. 95, s. 9.

Admission of registrars and proctors as solicitors.

XLIII. Every person who at the time of the commencement of this Act is acting as registrar or deputy registrar of any ecclesiastical court, or is actually admitted and practising as a proctor in the courts in Doctors' Commons, or in any ecclesiastical court in England or Wales, may, within one year after the passing of this Act, be admitted, without the payment of any stamp duty, fee, charge, or gratuity whatsoever, as a solicitor of the High Court of Chancery, upon the production of his appointment or admission as such registrar, deputy registrar, or proctor, or an official certificate thereof; and upon the production of an official certificate that such appointment or admission continued in force at the time of the passing of this Act, and upon signing the roll of solicitors of the High Court of Chancery, but not otherwise, such person shall be entitled to be admitted as a solicitor of such court, and to be afterwards in like manner admitted and enrolled as an attorney of her Majesty's superior courts.

Admission of articled clerks to proctors as solicitors.

XLIV. Every person who at the time of the commencement of this Act has served or is actually serving as an articled clerk to a proctor entitled to take such articled clerk, and who has not been admitted as a proctor, shall be entitled to be admitted as a solicitor of the High Court of Chancery, in the same manner, and subject to the same rules and regulations, and upon the same conditions as if he had before the commencement of this Act, been articled to a solicitor or to an attorney-at-law; and such admission shall entitle such articled clerk so admitted as a solicitor to be afterwards in like manner admitted and enrolled as an attorney of her Majesty's superior courts: provided, that if any such proctor to whom any such clerk is now articled shall retire from practice after the passing of this Act, he shall and is hereby required to transfer such articled clerk to some other proctor, or to a solicitor, or to an attorney-at-law, for the unexpired term of his articles of clerkship; provided that the court shall at any time have the same power to transfer such clerk, during the unexpired term of his articles of clerkship, to any other proctor, or to a solicitor, or to an attorney-at-

law, as the judge of the Prerogative Court now has in respect to clerks articled to proctors practising in the Court of Arches.

XLV. All solicitors and attornies-at-law may practise in the Court of Probate, and the laws and statutes now in force concerning solicitors and attornies shall extend to solicitors and attornies practising in the said court; and the commissioners for taking oaths in the High Court of Chancery shall be commissioners for taking oaths in the Court of Probate. Practitioners.

The stamp duty payable on admission to practise as proctor in the Court of Probate is the same as has been payable hitherto on admission to practise in the Prerogative Court (20 & 21 Vict. c. 85, s. 63).

PRACTICE OF THE DISTRICT REGISTRY.

XLVI. Probate of a will or letters of administration may, upon application for that purpose to the district registry, be granted in common form by the district registrar in the name of the Court of Probate, and under the seal appointed to be used in such district registry, if it shall appear by affidavit of the person or some or one of the persons applying for the same that the testator or intestate, as the case may be, at the time of his death had a fixed place of abode within the district in which the application is made, such place of abode being stated in the affidavit, and such probate or letters of administration shall have effect over the personal estate of the deceased in all parts of England accordingly. Probates and administration may be granted in common form by district registrars, if it shall appear by affidavit that the testator, &c., had a fixed place of abode.

It is to be observed that probate or letters of administration thus granted only affect personal estate, and are not accompanied by the advantages accruing under s. 62, to probate obtained in solemn form.

The district registrar can only grant probate or letters of administration in cases in which there is no contention, or in which the contention is terminated, and in them only, when it appears from the affidavit, which he requires from the applicant in the first instance:—

1. That the deceased had, at the time of his death, a fixed place of abode within his district.

2. That the requirements of 1 Vict. c. 26, s. 9, have been complied with.

3. When the will is a complete document.

4. That seven days have elapsed from the death of the deceased (unless by order of the judge); and when a grant of administration is applied for, fourteen days.

The district registrar, before granting probate, &c., must, in addition to the transmission of notices required by s. 62, communicate with the principal registry—

1. When it appears doubtful whether the will was duly executed.

2. When a reasonable doubt is raised as to important interlineations, erasures, or obliterations.

3. When doubts arise, from some marks of sealing wax or wafers on the will, whether some paper memorandum or other document has not been attached to it.

4. When the will is simply an execution of a special power.

5. Whenever the rights of the party applying for administration with the will annexed, and administration with the will annexed *de bonis non*, appears at all questionable.

6. When probate or letters of administration are first applied for at the expiration of three years from the death, and the certificate and affidavit are not satisfactory.

7. When a citation to accept or refuse probate or letters of administration, or a subpœna to bring in testamentary papers are necessary.

In all these cases the application for a grant must be made to the Court of Probate through its principal registry.

Where a person disappears, and death is presumed, probate, &c., must be taken out in the principal registry.

In this case, where administration was moved for to next of kin of a sailor, on the presumption of his death, proof of shipwreck, and payment by underwriters, as on total loss, was held sufficient.[p]

As to obliterations, interlineations and alterations, see 1 Vict. c. 26, s. 21.

If certain passages in a will are obliterated, so as not to be distinguished on the face of the will, this is a complete revocation of the obliterated parts;[q] but the obliterations must be made *animo revocandi*;[r] and they must be proved to have existed in the will at the time of its execution, or must be duly executed and attested.[s] A line drawn through with pencil is not an obliteration, but is merely regarded as something deliberative.[t] If the words obliterated or erased can be readily ascertained, they must, in absence of satisfactory evidence, form part of the probate.

In every case of words having been erased, which might have been of importance, an affidavit is required by the district registrar.

Motion for probate of will with interlineations, which are

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[p] *In the goods of Andrew Main, a seaman, Jan.* 28, 1858. See also *Deane* v. *Davidson*, 3 Eccl. R. 554.

[q] *Townley* v. *Watson*, 3 Curt. 761.

[r] *Brook* v. *Kent*, 3 Moo. P. C. 334.

[s] *In re Martin*, 1 Rob. 712.

[t] *Francis* v. *Grover*, 5 Hare, 39.

proved by affidavits of the attesting witnesses, must be made in open court.[u]

Where a motion was made for a decree of probate of a will, with interlineations and blanks, it was granted as to the blanks, but refused as to the interlineations, there being no evidence that they were inserted before execution.[x]

Any interlineations or obliterations will, of course, prove themselves, when the signature or the initials of the testator and of the attesting witnesses are written against them.

As to the preliminary notices to the principal registry, see *inf.* s. 49, note.

The practice in obtaining a grant from the district registry will be found *sup.* p. 29, note.

The district registrar makes the grant of probate or letters of administration, as the case may be, where the contention has been going on in the County Court under the powers of this act, upon the judge of the County Court pronouncing his decree, in accordance with the certificate forwarded to him. *Inf.* s. 54, note.

All second and subsequent grants must be made in the principal registry, or in the district registry, where the original will or the original record of the letters of administration may be in respect of such grants; it need not, therefore, appear by the affidavit where the place of abode of the deceased was at the time of his death.

Where the district registrar is in doubt as to the propriety of making the grant, or any other question that may arise in relation to it, he is to transmit a statement of the matter in question to the principal registry, where the direction of the judge will be obtained upon the matter of his application.

The following memoranda of the requirements of the district registrars are appended, as likely to be of use to the practitioner:—

In obtaining Probate.—Having read the will carefully through, the two printed forms headed "Oath for Executors," "Affidavit for the Commissioners of Inland Revenue; For Executors," must be filled up and sworn to (*sup.* p. 29). In filling up the form, the following requisitions must be observed:—

Description of Testator.

1. As a general rule, the signature of a testator, as his name, although it differs from his name as written at the heading of the will, should be adopted.

2. When there is a variance between the name of the testator in the heading of the will, and the name as signed at the foot or end of it, even where the former is the more correct, the testator should be described by the name he signs, the word "otherwise," followed by the name given in the will, being added.

3. In a like case of variance, where the signature is the more correct; as, for instance, where the testator signs his true name "Thomas Lloyd," and the name at the heading of the will is spelt "Thomas Llloyd," the testator may be described by his

[u] *In the goods of Daniel Pearman, Feb.* 15, 1858.

[x] *In the goods of E. H. Twentyman, Jan.* 28, 1858.

true name only, because the other is not only manifestly a clerical error, but the sound of both is the same.

4. Where the testator's name is wrongly spelt in the will, and he signs his will by his initials or by a mark, he should be described by his true name, the word "otherwise" followed by the name written in the will being added.

5. Where the testator is described in the will as "the elder," but does not so subscribe himself, such description is not to be inserted.

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

7. The place of residence of the testator, as stated in the will or codicil, should be inserted, as also any previous or subsequent residence, provided that not more than three places of residence be inserted. Thus—"Formerly of Birmingham, in the county of Warwick, brass manufacturer, afterwards of Ludlow, in the county of Salop, and late of Newtown, in the county of Montgomery, gentleman."

Description of Executors, &c.

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

9. When there are more than one, if they are all females, they should be described as "the executrixes." If they are all males, or partly males and partly females, they should be described as "the executors." The expressions "joint executors" and "executor and executrix" should not be used in the papers.

10. Where the name of an executor or executrix is misspelt in the will, the words "in the will written" should be added to his or her true name, and if the two names be identical in sound, no proof of identity is required.

11. Where an executor is wrongly described in the will as "the elder" or "the younger," or by a wrong christian name, an affidavit is requisite in proof of the identity of the person named in the will with the executor applying for the grant, or to whom power to apply is to be reserved in the grant. Such affidavits, however, do not usually form part of the probate copy of the will.

12. If power is to be reserved to an executor, it is requisite that the solicitor write to that effect in the margin of the will, adding such executor's address and description, and sign the same.

13. Whenever it happens that an executor or executrix is related to the testator as father, mother, grandfather, grandmother, son, daughter, grandson, granddaughter, brother, brother by the half blood, sister, sister by the half blood, uncle, aunt, great uncle, great aunt, nephew, niece, great nephew, great niece, or is described in the will as the son or daughter of some other person, he or she is to be so described in the oath.

14. Whenever it happens that an executor or executrix is

described in the will merely as a "relative" of the testator, and he is not related so nearly as above mentioned, the relationship, if any, should be stated; but if none, the party should be described as "a stranger in blood to testator."

In obtaining Administration (with the Will annexed).—Having read the will through carefully, and ascertained how the residuary personal estate is disposed of, the two printed forms, headed "Oath for Administrators with the Will annexed," and "Affidavit for the Commissioners of Inland Revenue; For Administrators with the Will annexed," must be filled up and sworn to, and the administration bond executed.

In the oath for administrators (with the will annexed), all persons having a prior right to the grant must be cleared off; for instance, "that A. B., the sole executor named in the said will, died in the lifetime of the testator," or "survived the testator and died without proving the said will," or "hath renounced the probate and execution of the said will," or "that there is no executor named therein," adding, "that I am the relict of the testator and the universal (or residuary) legatee named in the said will," as the case may be; or if there is no executor or residuary legatee named in the will these facts must be stated, care being taken to designate the parties properly; *sup.* p. 69.

Where the residue is bequeathed to a child of the testator, and such child dies in testator's lifetime, leaving issue, the legal personal representative of such child (not his or her issue as such) will be entitled to administration with the will annexed.[y]

Wills of Married Women.—In all cases of married women's wills, the draft oath in writing must be settled by the registrar before the parties are sworn. The following is a form in a case of limited probate:—

"In her Majesty's Court of Probate,
"District Registry of Shrewsbury.
"In the goods of A. B. (wife of B. B.) deceased.

"We, C. D., of , and E. F., of , make oath and say, that the said A. B., (wife of B. B.,) late of , deceased, during her coverture with the said B. B., by virtue of certain powers and authorities given to and vested in her by [a certain indenture of settlement bearing date , and made between the said deceased, by her then name and description of , of the first part, the said B. B., of , of the second part, and G. H., of , and I. J., of , of the third part,] (*if by a will state whose will, the date of it, and when and where proved,*) made and executed her last will and testament, bearing date the day of , and thereof appointed us, the deponents, C. D., and E. F., executors. That we believe the paper writing hereto annexed and marked by us to contain the said will of the said deceased, that as such executors we will faithfully administer such personal estate and effects as she, the said deceased, by virtue of the said (*indenture of settlement and will of the said deceased*) had a right to appoint and dispose of, and hath in and by her said will appointed and disposed of

[y] 1 Vict. c. 26, s. 33.

accordingly, by paying her just debts and the legacies contained in her will as far as the same shall extend and the law bind us. That we will exhibit an inventory and render an account of our executorship whenever required by law so to do. That the deceased died at , on , that she had at the time of her death a fixed place of abode at , within the district for the counties of Salop and Montgomery, and that the whole personal estate and effects of the said deceased does not amount in value to the sum of[1] pounds, to the best of our knowledge, information and belief."

In obtaining Letters of Administration.—Where it has been ascertained who were the next of kin of the intestate at the time of his or her death, (except in cases where the widow is living and applies for the grant,) the two printed forms headed, "Oath for Administrators," and "Affidavit for the Commissioners of Inland Revenue; For Administrators," must be filled up and sworn to, and the administration.

Description of the Persons applying for Letters of Administration.—Administrators should be described in the oath and bond as follows:—A husband of an intestate, as "the lawful husband;" a widow of an intestate, as "the lawful widow and relict;" a father, as "the natural and lawful father;" a mother, as "the natural and lawful mother and next of kin;" a child, as "the natural, lawful and only child," or as "one of the natural and lawful children;" a brother, as "the natural and lawful brother;" a sister, as "the natural and lawful sister," adding, "by the half blood," if such be the case.

If no parent survived intestate, the brother or sister should further be described as "one of the next of kin," or the "only next of kin;"

A nephew, as "the lawful nephew," } and "one of the" or "only next of kin."
A niece, as "the lawful niece," }

If a brother or sister should be living and renounce or have survived the intestate and since died, and the nephew or niece (being always the child of intestate's brother or sister who died in intestate's lifetime) takes administration, he or she should be further described "as one of the parties entitled to distribution," but not as next of kin. Grandparents, grandchildren, cousins, &c., should be described as "lawful."

In case any of the above have survived the intestate and died without taking out letters of administration, or have renounced, they should be similarly described in recording those facts in the oath; but in case the intestate died without leaving any such relatives, they must be cleared off in the oath thus:—"died a bachelor" or "spinster," "widower" or "widow," "without child or parent, brother or sisters, uncle or aunt, nephew or niece," leaving a lawful cousin german.

Brothers and sisters by the half blood are equally entitled in distribution and to letters of administration with those of the whole blood, notwithstanding that they may not all be by the same father or mother: thus, a widow, having already a child

[1] *Platt* v *Routh*, 6 M. & W. 789.

of her own (No. 1), marries A., and has two children by him (Nos. 2 and 3), she dies and A. marries again, and by such marriage there is another child (No. 4). Now, if all four survive their parents, and Nos. 2 or 3 die intestate, a bachelor or spinster, a widower or widow, without child, No. 1 and No. 4 are equally entitled with the survivor of Nos. 2 or 3. On the other hand, if No. 1 or No. 4 so die, leaving three others surviving, Nos. 2 and 3 only are entitled, to the exclusion of No. 1 and No. 4, as the case may be.

The following suggestions may be useful to the practitioner :—

It is advisable that printed forms should be used (as far as practicable) in obtaining probates and letters of administration, and that those printed by authority only should be so used. Every description of printed forms may generally be obtained at the registry.

Printed bonds with the following stamps can be obtained of the stamp distributors, viz. :—1*l.* stamp, which is the highest in use here; 15*s.* stamp, where the effects are under 300*l.* and the penalty is 600*l.*; 10*s.* stamp, effects under 200*l.*, penalty 400*l.*; 5*s.* stamp, effects under 100*l.*, penalty 200*l.*; and 2*s.* 6*d.* stamp, effects under 50*l.*, penalty 100*l.*; no stamp is required if the effects are under 20*l.*

Engrossments of wills and codicils and of such affidavits as are to be registered, should be fairly and properly written on parchment, not less than fifteen inches in width, in round hand or (if preferred by the practitioner) in the engrossing hand (the latter is compulsory in the principal registry). Two lines should be left in blank between each testamentary paper and affidavit; the names of the executors should be written large, and the word "executors" in the appointment should be in text hand.

The copies should be carefully examined, and, having been counted at the rate of ninety words to the folio, each folio should be marked, and the total stated at the foot in pencil; they should be folded from right to left into three, so as to allow the seal to be placed in the centre.

Engrossments not fairly and properly written will be rejected. Should the papers be deposited without the engrossment, (either to save time or otherwise,) the parchment will be furnished and the engrossment completed for the practitioner.

Signatures in verification of Testamentary Papers.—The signatures of the executors, parties making affidavits and commissioners, must be so placed upon the testamentary papers as that they will not be confounded with those of the attesting witnesses. The following memorandum may be written on the paper for them to sign :—

"This is the paper writing referred to in the affidavit sworn this 29th day of March, 1859."

A. B.
C. D.

Affidavits, which it is required should be copied on parchment, are :—

All affidavits that are required in consequence of something appearing in the will, codicil or testamentary papers, which is

unintelligible unless explained; especially, whenever a testamentary paper has been apparently twice executed by the testator, and it is uncertain which execution was the attested one; also, whenever an affidavit is needed to supply the date of a testamentary paper.

An affidavit of the due execution of a will rendered necessary by reason of the attestation clause being defective.

This last affidavit should not refer to any other matters requiring evidence or explanation; any such other matters should be embraced in separate affidavits.

It is *not* necessary, however, to copy on parchment, affidavits which are required merely for the satisfaction of the registrar; such as an affidavit that the testator, if blind or illiterate, had knowledge of the contents of the will; or affidavits in verification of alterations in the will or codicil.

Language of Affidavits and Oaths.—In affidavits and oaths the words used should be "*I*," "*me*" and "*my*," "*we*," "*us*" and "*our*," as the case may be, and never "*he*," "*his*," "*they*" or "*their*." All the signatures of testators, executors, administrators, bondsmen and other deponents, should be carefully inspected, with a view to seeing that they agree with their names, as written in the several documents they sign, and to which such documents have reference. No affidavit made by two or more persons will be received in which the names of the several persons making it are not written in the jurat.

The following form of jurat may be used, in compliance with Rule 6, in cases where the persons making the affidavit cannot read or write, or who can only write illegibly:—

"Sworn by the said A. B. and C. D. at X., in the county of Y., on the 7th day of April, 1859, the affidavit having been read in the presence of the said A. B. and C. D., who seemed perfectly to understand the same, and who made their marks (or wrote their signatures) in my presence."

No affidavit will be received which has been sworn before the party on whose behalf it is offered, or before any person acting professionally for him.

Where the name of the district differs from the name of the town in which the registry is situated, the word "*said*," which precedes the word "*district*," in the printed forms, should be struck out, and the name of the district, as set out in the Schedule, *sup.* pp. 9—11, inserted after the word "*district*."

Affidavit to be conclusive for authorizing grant of probate.

XLVII. Such affidavit shall be conclusive for the purpose of authorizing the grant, by the district registrar, of probate or administration; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the district at the time of his death; and every probate and administration granted by any such district registrar shall effectually discharge and protect all persons paying to or

dealing with any executor or administrator thereunder, notwithstanding the want of or defect in such affidavit, as is hereby required.

For the forms of the affidavit, see the rules (D. Forms 4 and 5).

A distinction is to be found between this section and the somewhat similar section (sect. 57), by which an affidavit is directed to found the jurisdiction of the county court judge; in the latter case, the affidavit is conclusive, *unless disproved while the matter is pending*; here there is no such proviso, and the affidavit, once put in, is conclusive.

The enactment in this section is a very necessary one. Without it, it would have seemed that a grant made upon the faith of a false affidavit would be not only voidable, but absolutely void, as being made by a court which had not competent jurisdiction, and, that being so, even a *bonâ fide* payment to such executor or administrator would not, as the law stood before this act, have been a legal discharge to a debtor to the estate. By ss. 77 and 78 of this act, however, such mesne payments, receipts and acts of the executor or administrator, made or done between the grant and its revocation, are completely valid.[a]

District registrars not to make grants where there is contention, &c.

XLVIII. The district registrar shall not grant probate or administration in any case in which there is contention as to the grant, until such contention is terminated or disposed of by decree or otherwise, or in which it otherwise appears to him that probate or administration ought not to be granted in common form.

The district registrar makes a grant when the contention is finished in the county court, upon receiving the certificate of the decree of the judge. *Sup.* s. 46, note, p. 69, *inf.* s. 54, note, p. 80.

For the cases in which the district registrar is authorized to make a grant, see *sup.* p. 67.

As to transmission of notice of application for grants of probate, &c. to district registrar.

XLIX. Notice of every application to any district registrar for the grant of probate or administration shall be transmitted by such district registrar to the registrars of the principal registry by the next post, after such application shall have been made; and such notice shall specify the name and description, or addition (if any), of the testator or intestate, the time of his death, and the place of his abode at his decease, as stated in the affidavit made in support of such application, and the name of the

[a] See *inf.* ss. 77, 78, note.

person by whom the application has been made, and such other particulars as may be directed by rules or orders under this Act; and no probate or administration shall be granted in pursuance of such application until such district registrar shall have received a certificate, under the hand of one of the registrars of the principal registry, that no other application appears to have been made in respect of the goods of the same deceased person, which certificate the said registrar of the principal registry shall forward as soon as may be to the district registrar; all such notices in respect of applications in the district registries shall be filed and kept in the principal registry, and the registrars of the principal registry shall, with reference to every such notice, examine all notices of such applications which may have been received from the several other district registries, and the applications which may have been made for grants of probate or administration at the principal registry, so far as it may appear necessary to ascertain whether or no application for probate or administration, in respect of the goods of the same deceased person, may have been made in more than one registry, and shall communicate with the district registrars as occasion may require in relation to such applications.

The certificate required by this section need not now be "under the hand" of the registrar, but may be by a stamp.[b]

These notices of applications for grants of probate or administration must also contain (in addition to the particulars specified in the above section) an extract of the words of the will or codicil by which the applicant has been appointed executor, or of the words (if any) upon which he founds his claim to such administration.

When application is made for letters of administration with or without the will annexed of the goods of a bachelor or a spinster, or a widower or a widow without issue, or of a person dying without known relation, notice of the application is to be given also by the district registrar to the Queen's Proctor, in order that he may determine whether it will be expedient to interfere on the part of the crown. When, however, the domicile of the deceased was in the Duchy of Lancaster, this notice is to be sent to the solicitor for the Duchy in London; and no grant can be issued until that officer has signified the course that he thinks proper to be taken. *Sup.* p. 27.

[b] 21 & 22 Vict. c. 95, s. 26.

District registrar in case of doubt as to grant to take the directions of the judge.

L. In every case where it appears to a district registrar that it is doubtful whether the probate or letters of administration which may be applied for should or should not be granted, or where any question arises in relation to the grant, or application for the grant, of any probate or administration, the district registrar shall transmit a statement of the matter in question to the registrars of the Court of Probate, who shall obtain the directions of the judge in relation thereto, and the judge may direct the district registrar to proceed in the matter of the application according to such instructions as to the judge may seem necessary, or may forbid any further proceeding by the district registrar in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Court of Probate through its principal registry, or, if the case be within its jurisdiction, to a County Court.

Such full instructions are laid down in the "Instructions for the District Registrars," that it is unnecessary here to go into the cases in which the district registrar is invited to take counsel of the principal registrars and, through it, of the judge of the court. *Sup.* p. 68.

District registrars to transmit lists of probates and administrations, and copies of wills.

LI. On the first Thursday of every month, or oftener if required by any rules or orders to be made in that behalf, every district registrar shall transmit to the registrars of the principal registry a list, in such form and containing such particulars as may be from time to time required by the Court of Probate, or by any rules or orders under this Act, of the grants of probate and administration made by such district registrar up to the last preceding Saturday, and not included in a previous return, and also a copy, certified by the district registrar to be a correct copy, of every will to which any such probate or administration relates.

These lists are to be furnished by the district registrars *on the first and every other Thursday*,[c] and are to contain the date of each grant, the name of the registry in which each grant was made, the christian and surname of the testator or intestate, the place and time of death of such testator or intestate, the names and description of each executor and administrator to whom the

[c] Sic in orig.

grant has been made, and the value of the personal estate and effects in each case.

Papers and other documents may be transmitted by the district registrars to the principal registry through the post office. Such letters or packets are to be superscribed with the words "On Her Majesty's Service," and may be registered if it is thought necessary.

The certificate may be by a stamp provided by the district registrar, approved by the Court of Probate.[d]

District registrars to preserve original wills.

LII. Every district registrar shall file and preserve all original wills of which probate or letters of administration with the will annexed may be granted by him, in the public registry of the district, subject to such regulations as the judge of the Court of Probate may from time to time make in relation to the due preservation thereof, and the convenient inspection of the same.

CAVEATS.

As to caveats.

LIII. Caveats against the grant of probates or administrations may be lodged in the principal registry or in any district registry, and (subject to any rules or orders under this Act) the practice and procedure under such caveats in the Court of Probate shall, as near as may be, correspond with the practice and procedure under caveats now in use in the Prerogative Court of Canterbury; and immediately upon a caveat being lodged in any district registry, the district registrar shall send a copy thereof to the registrars to be entered among the caveats in the principal registry; and immediately upon a caveat being entered in the principal registry, notice thereof shall be given to the district registrar of the district, if any, in which it is alleged the deceased resided at the time of his decease, and to any other district registrar to whom it may appear to the registrar of the principal registry expedient to transmit the same.

The caveat is the warning to the registrar that nothing be done in the matter of the goods of the deceased without notice being given to the person who enters such caveat.

Notice of the caveat will be transmitted to the principal registry and appear in the caveat book there on the day following that upon which it is entered.

[d] 21 & 22 Vict. c. 95, s. 25.

Under the old practice, the caveat was strictly valid for only six months, but by the common usage of the office of the Prerogative Court it was allowed to extend over a longer period, and notice was usually given after the period had expired, if the caveat fell under observation. Under the present practice, however, it expires at the end of six months, though it may be renewed from time to time as heretofore.

It is highly necessary that the person entering the caveat should give a sufficient address, as it is to the address mentioned in it that the registrar will send the warning. It has been usual to enter it in a fictitious name.

The applicant for a grant of probate or letters of administration must warn the caveat, and then the person entering the caveat, if he intends to oppose the grant appears, sets forth his interest, and declares the real name of the party in whose behalf it was entered.

Upon the party appearing in answer to the warning, the matter is entered as a cause in the court, and thereupon the suit proceeds in the same manner as if it had been commenced by extracting a citation. *Sup.* p. 32.

For Forms of Caveat and Warning, see Appendix.

Probate or letters of administration granted while a caveat is existing, are by the Canon Law void; not so, however, at common law.[e]

No caveat affects any grant made on the day on which the caveat is entered, unless notice of such caveat has been received prior to the grant passing the seal; on any day prior to this, however, after the time specified in the warning, the person entering the caveat may appear and oppose.

Where the person entering the caveat does not appear to the warning, the party applying for the grant will proceed by an affidavit of transmission of the warning and of search in the appearance book.

PRACTICE OF THE COUNTY COURT.

Where personalty is under 200*l.*, and real property is under 300*l.*, county court to have jurisdiction.

LIV. Where it shall appear by affidavit of the person, or some or one of the persons applying for probate or letters of administration, that the testator or intestate had at the time of his death his fixed place of abode in one of the districts specified in schedule (A) to this Act, and that the personal estate in respect of which such probate or letters of administration should be granted under this Act, exclusive of what the deceased shall have been possessed of or entitled to as a trustee, and not beneficially, but without deducting anything on account of the debts due and owing from the deceased, is under the value of two hundred pounds, and that the deceased at the time of

[e] *Offley* v. *Best*, 1 Lev. 186; 3 Bac. Abr. 41; Burn's Eccl. L. 244.

his death was not seised or entitled beneficially of or to any real estate, or that the value of the real estate of or to which he was seised or entitled beneficially at the time of his death was under the value of three hundred pounds, the judge of the County Court having jurisdiction in the place in which it shall be sworn that the deceased had at the time of his death his fixed place of abode shall have the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto.

As the section stands here, it is observable that the latter part gives to the judge of the county court jurisdiction as to the *revocation* of probate, &c.; no application for revocation appeared, however, to have been contemplated by the former part of the section, and there would have been great difficulty, as the section stands, in cases where probate, &c. had already been granted, in bringing the matter before the judge of the county court. The county court could only be put in motion upon the affidavit of a person applying for probate, &c.; to such application, in non-contentious business, no such affidavit as that required by this section is necessary; it follows, therefore, that probate, &c. having been once granted, the county court could not be put in motion to revoke, for the affidavit, upon which alone it could act, could not strictly be obtained. This defect has been remedied by the 10th sect. of the Amending Act (21 & 22 Vict. c. 95), which repeals this section, altering the first words of it, and giving the county court jurisdiction upon an affidavit to the satisfaction of a registrar of the principal registry.

Certain small properties had been exempted from the jurisdiction of the spiritual courts by previous acts.

By the 11 Geo. IV. & 1 Will. IV. c. 41, s. 5, the Commissioners of the Chelsea Hospital may authorize certain agents to receive *pensions* or *prize money*, and the Secretary-at-War may appoint certain agents to receive the *pay* due to any deceased officer, non-commissioned officer, soldier or pensioner, where the same does not exceed 50*l.*, and to pay it to any persons proving themselves legally entitled without requiring probate or letters of administration.

The 11 Geo. IV. c. 20, s. 69, amended by the 2 & 3 Will. IV. c. 40, s. 12, provides for the payment, without probate or letters of administration, of sums not exceeding 20*l.*, payable on account of wages, prize money, &c., for services of a deceased petty officer, seaman, &c.; and not exceeding 32*l.* on account of pay, half-pay or pensions of any deceased officer or widow of an officer, &c. This last provision is extended by 17 & 18 Vict. c. 104, s. 199, to the money and effects of merchant seamen and apprentices where the same is under 50*l.*

By the 7 & 8 Vict. c. 83, ss. 10, 11, the trustees or managers

of savings' banks may, under certain circumstances, pay or distribute a deposit by deceased of less than 50*l.* without requiring probate or letters of administration; and by 13 & 14 Vict. c. 115, s. 40, the same power is given to friendly societies.

As to the probate of a will, &c. of any seaman, &c. slain in actual service, see *infra*, s. 92, note.[f]

These small properties do not, therefore, come under this act.

Practice of the County Court in respect of Business under this Act.—The practice laid down by the rules for obtaining a decree of the judge of a county court for the grant of probate or letters of administration, or for the revocation of a grant that has previously issued out of the district registry in common form, is as follows:—

Jurisdiction of the Court.—The county court has the jurisdiction and authority of the Court of Probate in contentious business arising out of the district registry, where the personal estate or effects of the deceased are under the value of 200*l.* and the real estate under the value of 300*l.*

As it is not obligatory on any person to apply to a district registry, but the principal registry is open to all, so the parties only bring themselves before the county court by the application being first made at the district registry. There is a power given, however, by the act to the judge of the Court of Probate to send any contentious business arising out of the principal registry down to the county courts (*inf.* s. 59), where it is shown to the court that the date of the property and place of abode of the deceased are such as to give contentious jurisdiction to the judge of the county court.

A case is brought within the jurisdiction either by—

1. An affidavit to the satisfaction of one of the registrars of the principal registry.

2. An order of the judge of the Court of Probate.

In the first of these cases, where a person intends to oppose the grant of probate or letters of administration, for which application has been made to a district registrar, he must, whether he has or has not been previously warned to a caveat or served with a citation, appear before the district registry either personally or by his proctor, solicitor or attorney, and signify that it is his intention to oppose the grant, or he must cause an appearance to be entered for him in the principal registry. The district registrar, upon being informed of any such intention to oppose a grant, requires the person intending to oppose the same, to furnish him with his name and address, and, in the case of a proctor, solicitor or attorney, with his client's name and address, and forwards a notice of such declared intention, with the name and address of the party and of his proctor, solicitor or attorney (if any), to the principal registry.

After forwarding this notice, the district registrar will not, in any case, take any further steps in respect of the grant, except

[f] *In the goods of Hackett*, 28 L. J., P. & M. 42.

under the direction of the judge of the Court of Probate or of a county court judge.

Caveats.—The practice and procedure with respect to the lodging of caveats in the district registry is the same as that of the principal registry; they may be entered by the party intending to oppose the grant in either the principal or district registry. *Sup.* pp. 32, 78.

Immediately upon a caveat being lodged in any district registry, the district registrar sends a copy of it to the principal registry, and also to the registrar of any other district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had at that time a fixed place of abode.

Citations.—For the practice with regard to citations, see *sup.* p. 32.

As in the case of grants issuing out of the principal registry, so in the district registry no caveat will affect any grant made on the day on which the caveat is entered unless notice of the caveat has been received prior to the grant passing the seal.

The Affidavit.—In order to give the county court jurisdiction in the matter of a grant or the revocation of a grant, an affidavit must be framed in accordance with the provisions of the act. When the party applying for a grant or for revocation of a grant intends to proceed in the county court, he must produce to the registrar of the county court a certified copy of the affidavit upon which application for the grant was made to the district registry. This affidavit must contain the statements required by the act as to the place of abode and the amount of property of the deceased. In applications, therefore, for the revocation of a grant, where the original affidavit upon which the grant issued does not contain these statements, they must be set forth in an affidavit satisfactory to a registrar of the principal registry.

This affidavit is conclusive for the purpose of authorizing the exercise of the jurisdiction of the county court, and of the grant or revocation of probate or letters of administration in compliance with the decree of the judge, and no grant of probate or letters of administration is liable to be recalled, revoked or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the jurisdiction of such judge, or within any of the said districts, at the time of his death, or by reason that the personal estate, sworn to be under the value of 200*l.*, did, in fact, amount to or exceed that value, or that the value of the real estate of or to which the deceased was seised or entitled beneficially at the time of his death, amounted to or exceeded 300*l.*

Where, however, it is shown to the judge of a county court, before whom any matter is pending, that the place of abode or state of the property of the testator or intestate, in respect of whose will or estate application has been made to him for grant or revocation of probate or administration, has not been correctly stated in the affidavit, and, if correctly stated, would not have authorized him to exercise such contentious jurisdiction, he will stay all further proceedings in his court in the matter, leaving

any party to apply to the Court of Probate for such grant or revocation, and making such order as to the costs of the proceedings before him as he may think just.

The Application.—Any person desirous of taking proceedings in the county court under this act, must lodge with the registrar of the court having jurisdiction in the matter, an application in the form given (County Court Rules, Form A). There is a fee of 16*s.* 8*d.* payable upon this application. Care must be taken to insert the proper addresses of the parties, as it is to the addresses given on this application that notices are sent.

Who to be deemed Plaintiff and who Defendant.—When a person has lodged a caveat against the grant of probate or letters of administration, and proceedings are proposed to be taken in a county court, the person who applied for the probate or letters of administration is the plaintiff in the proceedings, and the person who lodges the caveat the defendant.

The party making application to a county court for the revocation of probate or letters of administration is the plaintiff in the proceedings, and the party against whom the application is made, the defendant.

The registrar of the county court being satisfied, upon the statements of the affidavit, that the person, in the matter of whose goods a decree is sought, had, at the time of his death, his fixed place of abode within the district of the court, and that the state of his property is such as to give jurisdiction to the judge of the county court, issues a notice of hearing to the defendant in the form prescribed (County Court Rules, Form B.), and delivers a notice, also in the same form, to the plaintiff or his agent.

Notices.—These notices must be issued ten clear days before the judge proceeds to make a decree, and served by a bailiff of the court, by his delivering the same to some person at the respective places of residence of the parties mentioned in the application to the court.

In proceedings for the revocation of a grant, the registrar of the county court, at the time that he issues the notices of hearing, gives notice by post according to the prescribed form (County Court Rules, Form C.), to the district registrar by whom the contested grant was made, to produce the original will, or all necessary documents, at the county court at which the matter of the application is to be considered.

Matters referred by Order of the Judge of the Court of Probate.—Where the matter has been referred to the county court by order of the judge of the Court of Probate, the registrar of the county court issues the above notice in the Form B., both to the plaintiff and defendant, without any application having been made to the court.

The Certificate.—On or before the day mentioned in the notice, the plaintiff must deliver to the registrar of the county court a certificate in blank, according to the form given (County Court Rules, Form D.), stamped with the proper duty (40*s.*), and the cause will not proceed until such form, duly stamped, is so delivered: the defendant, however, may procure and deliver such form, duly stamped, if the plaintiff neglects to do so.

The Hearing.—Upon the day mentioned in the notice, the judge, whether both parties are then before him or not, proceeds to consider the matter of the application, and to make a decree thereon. He may adjourn the proceedings from time to time as he thinks fit.

The proceedings at the hearing are similar to those at the hearing of an ordinary plaint (County Court Rules, 13). In all proceedings, however, the rules and practice of the Court of Probate are to be followed as far as they are applicable.

The notice to the district registrar is to produce the original will, or other necessary documents; no means are provided, however, for compelling his attendance with them, and it is not likely that he will risk the sending them through the post, and he would, in all probability, refuse to attend unless his attendance is enforced by a *subpœna duces tecum*, accompanied by a tender of the usual expenses.

Two questions arise upon this: upon which of the parties to the suit for the revocation of a grant is the expense thrown in thus bringing the will before the court, and what is the duty of the county court judge in the absence of documents which are so material to his decree?

With regard to the first question, the principal registry has, in one case that has been brought before them, instructed the district registrar, upon his applying for advice, that he was at liberty to send the document to the county court registrar either by post or by his sworn messenger,—the latter would seem the more proper course. With regard to the expense, it seems reasonable that the duty of producing the will is cast upon the plaintiff; and, as the county court judge can scarcely be able to arrive at a decision without seeing the will, he would seem to be justified in adjourning the case until it is so produced.

The Decree.—The decree is in the form given (County Court Rules, Form E.), and a copy of it is sent by post to both plaintiff and defendant. On the decree being made, the registrar of the county court transmits to the district registrar the certificate of its having been so made, and thereupon, on the application of the party or parties in favour of whom such decree has been made, a grant of probate or letters of administration or a revocation of the grant, as the case may be, in compliance with the decree, will be issued by the district registrar.

Appeal.—See *inf.* s. 58, note, p. 86.

Fees.—The fees to be taken by the officers of the county court, in respect of business under this act, are the same as in the case of a plaint for a sum of 20*l.* Every such fee must be collected and received by a stamp denoting the amount of the fee. These stamps may be obtained from the local stamp officers.

Registrar of county court to transmit certificate of decree for grant or revocation of probate.

LV. On a decree being made by a judge of a County Court for the grant or revocation of a probate or administration in any such cause, the registrar of the County Court shall transmit to the district registrar of the district

in which it shall have been sworn that the deceased had at the time of his decease his fixed place of abode a certificate under the seal of the County Court of such decree having been made, and thereupon, on the application of the party or parties in favour of whom such decree shall have been made, a probate or administration in compliance with such decree shall be issued from such district registry; or, as the case may require, the probate or letters of administration theretofore granted shall be recalled or varied by the district registrar according to the effect of such decree.

Copies of the decree in the form prescribed are to be sent by post both to the plaintiff and the defendant.

The judge of the county court to decide causes and enforce judgments as in other cases.

LVI. The judge of any County Court before whom any disputed question shall be raised relating to matters and causes testamentary under this Act shall, subject to the rules and orders under this Act, have all the jurisdiction, power and authority to decide the same, and enforce judgment therein, and to enforce orders in relation thereto, as if the same had been an ordinary action in the County Court.

And when the matter is once before the county court, the district registrar cannot take any steps without the direction of the court.

Affidavit of the facts giving the county court jurisdiction to be conclusive, unless disproved while the matter is pending.

LVII. The affidavit as to the place of abode and state of the property of a testator or intestate which is to give contentious jurisdiction to the judge of a County Court under the previous provisions shall, except as hereinafter provided, be conclusive for the purpose of authorizing the exercise of such jurisdiction, and the grant or revocation of probate or administration in compliance with the decree of such judge; and no such grant of probate or administration shall be liable to be recalled, revoked, or otherwise impeached by reason that the testator or intestate had no fixed place of abode within the jurisdiction of such judge or within any of the said districts at the time of his death, or by reason that the personal estate sworn to be under the value of two hundred pounds did in fact amount to or exceed that value, or that the value

of the real estate of or to which the deceased was seised or entitled beneficially at the time of his death amounted to or exceeded three hundred pounds: provided, that where it shall be shown to the judge of a County Court before whom any matter is pending under this Act that the place of abode or state of the property of the testator or intestate in respect of whose will or estate he may have been applied to for grant or revocation of probate or administration has not been correctly stated in the affidavit, and if correctly stated would not have authorized him to exercise such contentious jurisdiction, he shall stay all further proceedings in his court in the matter, leaving any party to apply to the Court of Probate for such grant or revocation, and making such order as to the costs of the proceedings before him as he may think just.

As to appeals from county court.

LVIII. Any party who shall be dissatisfied with the determination of the judge of the County Court in point of law, or upon the admission or rejection of any evidence in any matter or cause under this Act, may appeal from the same to the Court of Probate, in such manner and subject to such regulations as may be provided by the rules and orders to be made under this Act, and the decision of the Court of Probate on such appeal shall be final.

As no special rules have been made on the subject of appeals from the county court to the Court of Probate, the thirteenth rule applies here, by which it is ordered that the enactment, practice and forms enforced and used in the county court shall be adopted, so far as the same are applicable, *mutatis mutandis*. The rules and practice as to appeals under the 19 & 20 Vict. c. 108, are, therefore, applicable also to probate causes.

The power of appealing is confined to cases where a party is dissatisfied with the determination of the judge in point of law, or upon the admission or rejection of evidence. Where, therefore, there is no jury, and a judge finds certain facts, his finding is conclusive.[f] If the law and facts of a case are so mixed up in the judgment of the county court that it is impossible to separate them so as to eliminate one of these grounds of appeal, the decision cannot be reviewed.[g] If an appeal is contemplated, any point which a party may rely on should be distinctly raised

[f] *Button* v. *Kinnaird*, 1 B. & B. 432.

[g] *East Anglian Railway Co.* v. *Lythgoe*, 20 L. J., C. P. 88; *S. C.* 15 Jur. 400.

before the judge of the county court, since the Court of Appeal will allow such objections only to be argued as were made at the trial.[h]

The party who is desirous of appealing may, before the rising of the court on the day of the trial, deliver to the clerk a statement in writing, signed by him, his counsel or attorney, containing the grounds on which he seeks to appeal. In default of such statement being delivered, the decree will issue.

The party so dissatisfied may, however, appeal on grounds other and different from those contained in this statement, or although he shall not have delivered any statement.

No appeal lies from the decision of a county court if, before such decision is pronounced, both parties shall agree in writing, signed by themselves or their attornies or agents, that the decision of the judge shall be final: no such agreement requires a stamp.[i]

To whom the Appeal lies.—The appeal is to the judge of the Court of Probate or to such court as he may summon under the powers given by sect. 34 of this act, and his or their decision is final.

Notice of Appeal.—The party appealing must, within ten days after the decree in the county court, give notice to the other party or his attorney.[k] The ten days within which this notice may be given are reckoned exclusive of the day of trial.

The notice of appeal must be in writing and must state the grounds on which the party appeals. It should be signed by the appellant, his attorney or agent, and served on the clerk as well as on the successful party, by post or otherwise.

The sufficiency of this notice is a question for the judge of the county court, and, if he thinks it sufficient, no objection can be taken before the Court of Appeal that it does not contain any statement of the grounds of dissatisfaction with the decision.[l]

The party appealing must give security, to be approved of by the clerk of the court, for the costs of the appeal. This security may be either by a deposit of money or by a bond executed by the appellant and two sureties.[m]

Where the appellant proposes to give a bond, he must serve notice of the sureties whom he proposes to offer, by post or otherwise, on the opposite party, and on the clerk at his office. This notice must contain the matter stated in the form given in the schedule annexed to the rules made under the act. The sureties must, unless with the consent of the opposite party, make an affidavit of their sufficiency.

If the bond is executed in the presence of the judge or registrar of the county court, it need not be attested. It is to be deposited with the registrar until the appeal has been heard.

Where the appellant makes a deposit of money in lieu of giving a bond, he must forthwith give notice to the opposite party, by post or otherwise, of such deposit having been made.

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[h] *Watson* v. *The Ambergate &c. Railway Co.*, 15 Jur. 448.

[i] 19 & 20 Vict. c. 108. s. 69.

[k] 13 & 14 Vict. c. 61, s. 14.

[l] *Cannon* v. *Johnson*, 21 L. J., Q. B. 164.

[m] 19 & 20 Vict. c. 108, s. 70.

Where money is paid into court to abide the event of an appeal, whether by way of security or in pursuance of an order of the judge, the clerk must give the party paying it a written acknowledgment of such payment.

Form and Deposit of Appeal.—The appeal must be in the form of a case agreed on by both the parties or their attornies; if they cannot agree, the judge of the county court, upon being applied to by the parties or their attornies, must settle the case and sign it.[n] The appellant should be careful that the case is so prepared as to raise fully any objection on which he may intend to rely; for both parties are bound by it, and will not be allowed, when before the Court of Appeal, to travel out of it. On the other hand, the respondent should be careful that the case, when settled, does not contain any ground of appeal which was not taken before the judge of the county court, since, if an objection appears on the face of the case, it would appear that the Court of Appeal will consider it as having been raised before the inferior court.[o] The case may be signed by the judge and presented to him for signature, unless he otherwise orders, at the court next after twelve clear days from the giving the determination or direction objected to, and it must be sealed with the seal of the court. When signed and sealed, one copy must be deposited with the clerk and another sent, by post or otherwise, by the appellant to the successful party, within three clear days next after the time of signing and sealing it. If the appellant does not comply with this, the successful party may proceed on the decree, unless the judge otherwise orders.

Transmission to Court of Appeal.—The appellant must, within three clear days after the case is signed and sealed, transmit two copies thereof, by post or otherwise, to the office of the principal registry.[p] And notice of such transmission must forthwith be given by the appellant to the successful party, by post or otherwise. In default of this the successful party may proceed on the decree, and, on application to the court, will be entitled to such costs as he may have incurred in consequence of the appellant's proceedings; the respondent may, however, instead of proceeding on the decree, within twenty-eight days from the signing of the case, transmit it in the manner prescribed to the appellant, and give the like notice to him of such transmission.[q]

The appellant must set down the case for argument,[r] and deliver a copy of the case for the judge of the Court of Appeal four clear days before the day appointed for the hearing.

In an appeal on the ground of improper reception of evidence, in a cause tried in a county court before a jury, the court held that they had no power to set aside the verdict, and that they could only direct a new trial.[s]

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[n] 13 & 14 Vict. c. 61, s. 15.

[o] *Yorke* v. *Smith*, 21 L. J., Q. B. 53.

[p] *Figg* v. *Wilkinson*, 9 Exch. 475; *S. C.* 23 L. J., Exch. 129.

[q] 13 & 14 Vict. c. 61, s. 15.

[r] Reg. Gen. H. T., 16 Vict. R. 15; *Cooper* v. *Stevenson*, 16 Jur. 424.

[s] *Jonas* v. *Adams*, 20 L. J., Q. B. 397.

Costs.—The Court of Appeal may make such order as to costs as it thinks proper.[t] The costs of appeal, as a general rule, follow the result.[u] This rule is not, however, inflexible.[x]

Neglect to Prosecute.—If, after the case has been transmitted, the appellant does not prosecute his appeal with due diligence according to the practice of the Court of Appeal, the party successful in the county court may apply to the judge for the decree to issue, and the successful party will be also entitled to such costs as he may have incurred in consequence of the appellant's proceedings.

Judgment of Court of Appeal.—The Court of Appeal having heard the case argued, may order a new trial on such terms as it thinks fit, or may confirm or annul the decree, as the case may be, and make such order with respect to the costs of the appeal as it thinks proper, which orders are final.[y] When the Court of Appeal has pronounced judgment, either party may deposit the original order of the Court of Appeal, or any office copy thereof, with the clerk of the county court and, within forty-eight hours from the time of such deposit, give notice thereof, in writing, to either party by post or otherwise.

A new trial, in pursuance of the order of the Court of Appeal, must be entered for trial at the court which is held next after twelve clear days from the time when the order or office copy has been deposited with the clerk, unless the parties agree that it shall take place sooner, or the judge otherwise orders, and it is to be conducted in the same manner as a new trial granted by the court itself.

Not obligatory to apply for probate, &c. to district registries or county court, but may in every case be made to Court of Probate.

LIX. It shall not be obligatory on any person to apply for probate or administration to any district registry, or through any County Court, but in every case such application may be made through the principal registry of the Court of Probate, wherever the testator or intestate may at the time of his death have had his fixed place of abode: provided, that where in any contentious matter arising out of any such application it is shown to the Court of Probate that the state of the property and place of abode of the deceased were such as to give contentious jurisdiction to the judge of a County Court, the Court of Probate may send the cause to such County Court, and the judge thereof shall proceed therein as if such application and cause had been made to and arisen in his court in the first instance.

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[t] 13 & 14 Vict. c. 61, s. 14.

[u] *Robinson* v. *Lawrence*, 7 Exch. 123; *S. C.* 15 Jur. 1087.

[x] *Mountnoy* v. *Collier*, 1 E. & B. 630.

[y] 13 & 14 Vict. c. 61, s. 14.

This provision has reference to an application for the revocation of a grant, as well as to an application for any such grant.[s]

Rules and orders for regulating the procedure of county courts under the act to be made by the judges now having authority for the like purpose.

LX. For regulating the procedure and practice of the County Courts, and the judges, registrars and officers thereof, in relation to their jurisdiction and proceedings under this Act, rules and orders may be from time to time framed, amended and certified by the County Court judges appointed for the time being to frame rules and orders for regulating the practice of the County Courts under the Act of the session holden in the nineteenth and twentieth years of her majesty, chapter one hundred and eight, and shall be subject to be allowed or disallowed or altered, and shall be in force from the day named for that purpose by the lord chancellor, as in the said Act is provided in relation to other rules and orders regulating the practice of the same courts; and for establishing rules and orders to be in force when this Act comes into operation, the power given by this enactment shall be exercised as soon as conveniently may be after the passing of this Act.

The rules and orders made in pursuance of the power given by the above section came into force on the 4th of February, 1858.

In proceedings for which no rules have been provided, the rules of the Court of Probate are to be followed as far as they are applicable.

Power is given by the amending act to frame rules in all cases, and to establish scales of costs and fees.[s]

PROOF IN SOLEMN FORM.

Where a will affecting real estate is proved in solemn form, or is the subject of a contentious proceeding, the heir and persons interested in the real estate to be cited.

LXI. Where proceedings are taken under this Act for proving a will in solemn form, or for revoking the probate of a will, on the ground of the invalidity thereof, or where in any other contentious cause or matter under this Act the validity of a will is disputed, unless in the several cases aforesaid the will affects only personal estate, the heir-at-law, devisees and other persons, having or pretending interest in the real estate affected by the will shall, subject to the provisions of this Act, and to the

[s] 21 & 22 Vict. c. 95, s. 12. [s] *Ibid.* s. 13.

rules and orders under this Act, be cited to see proceedings, or otherwise summoned in like manner as the next of kin or others having or pretending interest in the personal estate affected by a will should be cited or summoned, and may be permitted to become parties, or intervene for their respective interests in such real estate, subject to such rules and orders, and to the discretion of the court.

Executors and others have the same powers of proving wills in solemn form, and next of kin and others have the same rights to call upon them to do so as they respectively had before the act.

The advantages to be derived from proving a will in solemn form, and which are the same now as heretofore, may be stated thus:—

When an executor propounds and proves a will in solemn form, duly citing the next of kin "and all others pretending interest in general" "to see proceedings," all next of kin so cited are, generally speaking, thereby for ever barred from seeking the revocation of the grant; and, if the will is so propounded and proved against *certain* only of the deceased's next of kin without citing them all to see proceedings, the others, even though uncited, if to a certain extent privy to, and aware of the suit, shall not put the executor on proof a second time;[b] and, generally, the will shall not be set aside afterwards (provided there be no irregularity in the process) after the witnesses are dead.

The intention of the legislature in this section was to avoid, as far as possible, the necessity of having the same question twice tried.[c]

The executor of a will, proved in common form, may, at any time, be compelled by a person having an interest, to prove it in solemn form,[d] and probate of a will granted in common form may at any time be revoked.[e]

The next of kin, as such merely, are entitled to call for proof in solemn form of the deceased's will, of common right. And the mere acquiescence of a next of kin to the probate being taken in common form is no bar to the exercise of this right, even though he has received a legacy as due to him under the will; for he is still at liberty to call in the probate and put the executor on proof of that identical will, *per testes*.[f] A strong instance of this occurs in the case of *Core* v. *Spenser*, (which was decided in the Prerogative Court of Canterbury in 1796,)[g]

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[b] *Newell and another* v. *Weeks*, 2 Phillim. 224.

[c] *Nichols and another* v. *Binns*, 27 L. J., P. & M. 14.

[d] *Hoffman* v. *Norris and White*, 2 Phillim. 231, n.

[e] *Satterthwaite* v. *Satterthwaite*, 3 Phillim. 1; *Finucane* v. *Gayfere*, 3 Phillim. 405.

[f] *Bell* v. *Armstrong*, 1 Add. 370; *Merryweather* v. *Turner*, 3 Curt. 802; *Bell* v. *Raisbeck*, Privy Council, 20th Feb., 1844, cited 3 Curt. 814. See also *Gascoyne* v. *Chandler*, 2 Cas. temp. Lee, 242.

[g] 1 Add. 374. In Sir J. Nicholl's judgment of *Bell* v. *Armstrong*.

where Spenser, the executor, was cited to bring in the probate of a will taken in 1788, eight years before, at the suit of Core, whose mother had received an annuity under that will for five of the eight years; and she, Core herself, her mother dying at the end of the fifth year, for the remaining three. Spenser, in that case, appeared under protest, and contended that Core was barred from putting him on proof of the will; but the court thought otherwise, and overruled the protest. Long acquiescence, however, unaccounted for by any special circumstances, and acts done by a next of kin under the provisions of the will, may (if no fact appears to excite a reasonable suspicion of the genuineness or validity of the will) amount to such a waiver of his rights as to preclude him from putting the will in suit.[h] So, where a will had been declared well proved in the Court of Chancery, after an order for an issue *devisavit vel non* had been discharged on the petition of the heiress-at-law (also sole next of kin) and her husband, and an annuity bequeathed to her had been regularly received during fourteen years, the court refused, at the prayer of the heiress-at-law and her husband, to call upon the executors to prove the will in solemn form.[i]

Before a legatee, who has received all or a part of his legacy, can be permitted thus to dispute the will, he must bring into court the amount of the legacy paid to him, to abide the event of the suit.[k] *Secus*, where the legatee is a minor.[l]

Costs.—By the practice of the Prerogative Court, a next of kin had a right to call upon an executor to prove the will *per testes*, and if he merely cross-examined the witnesses produced in support of the will, he was not generally subjected to costs; but if he went beyond this and brought in an allegation in opposition and failed in proof, he was liable to costs.[m] And the rule of the Court of Probate now is, that in all cases the party opposing a will may, with his pleas, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he will thereupon be at liberty to do so, and will be subjected only to the same liabilities in respect of costs as he would have been, under similar circumstances, according to the practice of the Prerogative Court.

On the question of costs, see *Dabbs* v. *Chisman*.[n]

As to the mode of proving a will in solemn form, see *supra*, p. 32.

The citation is a notice to all persons who have, or by possibility may have, a title to the grant superior to that claimed by the applicant, and whose unwillingness to proceed is, by proof

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[h] *Hoffman* v. *Norris*, *supra*; *Braham* v. *Burchell*, 3 Add. 257, 258.

[i] *Merryweather* v. *Turner*, 3 Curt. 802.

[k] *Braham* v. *Burchell*, 3 Add. 256, 257.

[l] *Goddard* v. *Norton*, 5 Notes of Cas. 76.

[m] *Farlar* v. *Farlar*, 27 L. J., P. & M. 103.

[n] 1 Phillim. 160, n. (*e*); *Lovett* v. *Harkness*, 1 Cas. temp. Lee, 332; *Martin* v. *Robinson*, 2 Cas. temp. Lee, 535.

of due service of the citation, or notice thereof, sufficiently certified to the court.

Every citation must be written or printed on parchment, and the party taking out the same, or his proctor, solicitor or attorney, must take it, together with the *præcipe*, a form of which is given, to the registry, and there deposit the *præcipe* and get the citation signed and sealed. The address given in the *præcipe* must be within three miles of the General Post Office. Personal service of any citation is effected by leaving a copy of the citation with the party cited, and showing him the original if required by him to do so.

Upon the issuing of a citation a caveat is entered in the court books, and notice thereof sent to the registrar of the district where the deceased resided at the time of his death. Such caveat remains in force until the proceedings, following upon the citation, have terminated.

If the party reside out of the jurisdiction, advertisement is substituted for personal service.

Citations are not now served on the Royal Exchange as heretofore, but are to be inserted in the "Gazette," in the leading London papers, and such local papers as the judge may direct.

The papers, beside the "Gazette," in which it is requisite to insert citations, are, at present, "The Times," "The Morning Post," "The Globe," "The Evening Herald," and, where necessary, the local papers.[o]

This rule, with regard to the citations issuing out of the principal registry, is applied to all citations by the Amended Rules, N. C. 8.

For forms of citations, see Forms in Appendix.

Advertisements are unnecessary in cases where the history of the deceased is traced up to a certain time, and there can be no reasonable doubt that he died at that time.[p]

So, death was presumed where the underwriters had paid as upon a total loss of the ship.[q]

So, where the deceased had gone to America seven years ago, and had not been heard of since three days after his arrival there, though advertisements had been inserted in American papers.[r]

The registrars of the principal registry may, when it appears to them desirable, dispense with the insertion of citations and other instruments in full, and may direct that an abstract of them only shall be published, in such form and at such intervals as the judge or registrars shall direct.[s]

The citation is returned to the registry as soon as service has been effected; after service, if the party cited appears and accepts the grant, the party citing him may apply to the court for costs of the citation. This he may do by means of the caveat,

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[o] *Reynold* v. *Next of Kin of A. B.*, Feb. 15, 1858.

[p] *In the goods of Norris*, 27 L. J., P. & M. 5.

[q] *In the goods of Main*, 27 L J., P. & M. 5.

[r] *In the goods of How*, 4 Jur., N. S. 366.

[s] Amended Rule, N. C. 6.

until the removal of which the opposite party cannot obtain the grant. Before the party cited, if he accepts the grant, can obtain it out of the registry, he must take out a summons against the party citing him to show cause why the grant, which he has accepted, should not be decreed to him, and, at the hearing of this summons, the judge will make an order as to costs.

A motion for citation of the heir-at-law upon an affidavit that the will affects real estate, must be made in open court.[t]

Where the will is proved in solemn form, or its validity otherwise decided on, the decree of the court to be binding on the persons interested in the real estate.

LXII. Where probate of such will is granted after such proof in solemn form, or where the validity of the will is otherwise declared by the decree or order in such contentious cause or matter as aforesaid, the probate, decree or order, respectively, shall enure for the benefit of all persons interested in the real estate affected by such will, and the probate copy of such will, or the letters of administration with such will annexed, or a copy thereof respectively, stamped with the seal of her Majesty's Court of Probate, shall in all courts, and in all suits and proceedings affecting real estate, of whatever tenure, (save proceedings by way of appeal under this Act, or for the revocation of such probate or administration,) be received as conclusive evidence of the validity and contents of such will, in like manner as a probate is received in evidence in matters relating to the personal estate; and where probate is refused or revoked, on the ground of the invalidity of the will, or the invalidity of the will is otherwise declared by decree or order under this Act, such decree or order shall enure for the benefit of the heir-at-law or other persons against whose interest in real estate such will might operate, and such will shall not be received in evidence in any suit or proceeding in relation to real estate, save in any proceeding by way of appeal from such decrees or orders.

The important effect of this section is to do away with the action of ejectment in all cases where the issue is the validity of the will; for the decision of the Court of Probate as to realty is as conclusive as a decision of the Prerogative Court was as to personalty. The plain intention of the act is to settle the personalty and realty by one suit.[u] Questions as to the

[t] *Tyson* v. *Westrope*, Feb. 15, 1858.

[u] *Freeman* v. *Binns*, 27 L. J., P. & M. 10.

validity of a will are, however, *questions of fact;* and therefore, by sect. 35, they will be tried by a jury before the Court of Probate, or by an issue directed to any of the superior courts of common law, in the same manner as an issue directed by the Court of Chancery is now tried, in any case when the heir-at-law or other parties interested make application to the Court of Probate in the manner directed by that section.

The wording of this section, which gives to the decision of the Court of Probate the same power over realty that the Prerogative Court had over personalty, would seem to lead us to the point to which the doctrine of the conclusiveness of the Ecclesiastical Courts was carried in the *King* and *Vincent;* for, taking out the parenthesis, the first part of the section runs thus, "The probate copy of such will, &c. shall in all courts, &c. be received as conclusive evidence, &c. of the validity, &c. of such will &c. in the like manner, &c." Upon this principle, a defendant indicted for forging a will of which probate had been granted, produced the probate, and the validity of the will was thereby at once established and the paying consequently disproved. Such was the decision of *King*, C. J., reported in 1 Strange, 481; overruled, however, by *R.* v. *Buttery and Macnamara*,[x] and held not to be law by Lord *Ellenborough* in *R.* v. *Gibson* at the Lancaster Assizes, 1802.

It cannot be supposed that any such estoppel is intended by this section; it seems rather that, in thus wording the power which the decision of the Prerogative Court had over personalty and in applying it to realty, it is wished to enforce the doctrine that the Court of Probate is the only court which can pronounce whether or not a will is good; and that the courts of common law have no jurisdiction over the subject; that the probate is conclusive till it is repealed; and that no court of common law can admit evidence to impeach it, and that, as a will may be proved after any lapse of time[y] or at any time impeached, even when probate had been taken in solemn form, unless all parties claiming an interest have been cited (*sup.* p. 91), any attempt to establish or to set aside a will must be made *in the first instance* in the Court of Probate. A probate of a will *communi formâ* was not binding in the spiritual court. Sir *John Edgerton's case*, 1 Roll. Rep. 21. This section follows very nearly the law as laid down by *Foster*, C. J., in *Noell* v. *Wells*, 1 Lev. 235, and afterwards confirmed by the Court of King's Bench, "that evidence could not be given directly contrary to the seal of the Ordinary in a matter within his jurisdiction. But evidence may be given, that the seal was forged or repealed, or that there were *bona notabilia;* for those confess and avoid the seal. But he can't give in evidence that another was executor, or that the testator was *non compos mentis;* for those falsify the proceedings of the Ordinary in cases of which he is judge. But those are to be remedied by appeal."

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[x] R. & R. C. C. 342.

[y] *Hoffman* v. *Norris*, 2 Phillim. 230, n.

Heir in certain cases not to be cited, and where not cited not to be affected by probate.

LXIII. Nothing herein contained shall make it necessary to cite the heir-at-law or other persons having or pretending interest in the real estate of a deceased person, unless it is shown to the court and the court is satisfied that the deceased was at the time of his decease seised of or entitled to, or had power to appoint by will some real estate beneficially, or in any case where the will propounded or of which the validity is in question would not in the opinion of the court, though established as to personalty, affect real estate, but in every such case, and in any other case in which the court may, with reference to the circumstances of the property of the deceased or otherwise, think fit, the court may proceed without citing the heir or other persons interested in real estate; provided that the probate, decree or order of the court shall not in any case affect the heir or any person in respect of his interest in real estate, unless such heir or person has been cited or made party to the proceedings, or derives title under or through a person so cited or made party.

PROOF OF WILL.

Probate or office copy to be evidence of the will in suits concerning real estate, save where the validity of the will is put in issue.

LXIV. In any action at law or suit in equity, where, according to the existing law, it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition to give to the opposite party, ten days at least before the trial or other proceeding in which the said proof shall be intended to be adduced, notice that he intends at the said trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition the probate of the said will or the letters of administration with the will annexed, or a copy thereof stamped with any seal of the Court of Probate; and in every such case such probate or letters of administration, or copy thereof respectively, stamped as aforesaid, shall be sufficient evidence of such will and of its validity and

contents, notwithstanding the same may not have been proved in solemn form, or have been otherwise declared valid in a contentious cause or matter, as herein provided, unless the party receiving such notice shall, within four days after such receipt, give notice that he disputes the validity of such devise or other testamentary disposition.

As to costs of proof of will.

LXV. In every case in which, in any such action or suit, the original will shall be produced and proved, it shall be lawful for the court or judge before whom such evidence shall be given to direct by which of the parties the costs thereof shall be paid.

The inconvenience and unnecessary expense of the attendance of an officer from the depository with the original will is thus saved in all actions and suits where it is necessary to put the will in evidence, in order to establish a devise of real estate. Notice must be given by the party, of whose case the will form a part, that he intends to give in evidence an examined copy of the probate. Such examined copy cannot, however, be put in evidence without proof of due notice having been given. It will be observed, that this section has reference only to a suit concerning real estate; where, therefore, a bequest of personalty is in question, it is still necessary to produce the probate.

Where the will has not been proved in solemn form or its validity decreed in a contentious cause or matter, the party disputing the validity may give notice, within four days after receipt of notice of the intention to put in evidence the examined copy, that he disputes the validity, and, in such case, it will be necessary for the other party to produce the original will, for the will does not then come within sect. 62; and the probate or letters of administration with the will annexed are not conclusive evidence of the validity and contents of such will as against the heir-at-law or other persons against whose interest in real estate such will might operate. If the examined copy be not admitted, the costs of producing the original will are in the discretion of the judge, and he may direct upon which party they shall fall.

Although the executor derives his title from the will by which he is appointed and not from the probate, yet it is the probate alone which authenticates his right; and, as the probate or letters of administration with the will annexed had hitherto been the only legal evidence of the will in all questions regarding personalty,[z] so now also with regard to realty they are the only legitimate evidence of the property being vested in an executor or of the executor's appointment. The original will cannot be read in evidence for that purpose unless it bears the seal of the court.[a]

[z] *R.* v. *Netherseal*, 4 T. R. 258. *Cross*, Cas. temp. Hardw. 108.
[a] *Kempton* dem. *Bayfield* v.

All that is required, either in the case of an executor or administrator, is to show that the court has given authority to the person to administer. It is only the act of the court that is to be proved. The probate is a copy of this act; the original book containing the entry of the act of court is the original, and therefore the primary evidence. Hence the act-book or, by the 14 & 15 Vict. c. 99, s. 14, a copy of it is admissible evidence of the parties therein named being executors, without accounting for the non-production of the probate.[b]

To prove that the probate of a will has been revoked, an entry of the revocation in a book of the Prerogative Court, in which all causes were entered by the registrar, and which was kept as the only record of such proceedings and of the decree of the court, has been admitted as good evidence.[c]

The title of an administrator *de bonis non* is sufficiently proved by the letters of administration *de bonis non*, without producing those granted to the first executor or administrator.[d]

As to how far probate or letters of administration, when produced by the plaintiff, are conclusive upon the defendant, see Williams Exors. & Adm.[e]

PLACE OF DEPOSIT.

Place of deposit of original wills.

LXVI. There shall be one place of deposit under the control of the Court of Probate, at such place in London or Middlesex as her Majesty may by order in council direct, in which all the original wills brought into the court or of which probate or administration with the will annexed is granted under this Act in the principal registry thereof, and copies of all wills the originals whereof are to be preserved in the district registries, and such other documents as the court may direct, shall be deposited and preserved, and may be inspected under the control of the court and subject to the rules and orders under this Act.

No change has at present been made in these particulars; wills are deposited and may be inspected as before the act.

Judge to cause calendars to be made from time to time

LXVII. The judge shall cause to be made from time to time in the principal registry of the Court of Probate, calendars of the grants of probate and administration in

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[b] *Cox* v. *Allingham*, Jacob, 514.

[c] *Ramsbottom's case*, 1 Leach Cr. C. 25, n.

[d] *Catherwood* v. *Chabaud*, 1 B. & C. 150. See also *Gradell* v. *Tyson*, 2 Stra. 716.

[e] Pt. V., Bk. 1, cap. 1.

the principal registry, and in the several district registries of the court, for such periods as the judge may think fit, each such calendar to contain a note of every probate or administration with the will annexed granted within the period therein specified, and also a note of every other administration granted within the same period, such respective notes setting forth the dates of such grants, the registry in which the grants were made, the names of the testators and intestates, the place and time of death, the names and descriptions of the executors and administrators, and the value of the effects; and the calendars to be so made shall be printed as the same are from time to time completed.

In the principal registry, and to be printed.

LXVIII. The registrars shall cause a printed copy of every calendar to be transmitted through the post or otherwise to each of the district registries, and to the office of her Majesty's prerogative in Dublin, the office of the commissary of the county of Midlothian, in Edinburgh, and such other offices, if any, as the Court of Probate shall from time to time by rule or order direct; and every printed copy of a calendar so transmitted as aforesaid shall be kept in the registry or office to which it is transmitted, and may be inspected by any person on payment of a fee of one shilling for each search, without reference to the number of calendars inspected.

Registrar to transmit printed copies to certain offices.

LXIX. An official copy of the whole or any part of a will, or an official certificate of the grant of any letters of administration, may be obtained from the registry or district registry where the will has been proved or the administration granted, on the payment of such fees as shall be fixed for the same by the rules and orders under this Act.

Official copy of whole or part of will may be obtained.

For the amount of fees payable, see the Appendix.

ADMINISTRATION PENDENTE LITE.

LXX. Pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling, or revoking any probate or any grant of administration,

Administration *pendente lite.*

the Court of Probate may appoint an administrator of the personal estate of such deceased person; and the administrator so appointed shall have all the rights and powers of a general administrator, other than the right of distributing the residue of such personal estate; and every such administrator shall be subject to the immediate control of the court, and act under its direction.

Until *contestatio litis* or issue given, a suit is not held to be commenced by the civil or canon law,[f] but from the service of the citation there is a *lis pendens*.[g]

All the provisions respecting grants *pendente lite* apply to the case of appeals to the House of Lords under this act.[h]

The court has full power to appoint as administrator *pendente lite* a person agreed upon by the parties in the suit, or two persons jointly, one chosen by each party, or, failing an agreement, to select for itself some other person.[i]

The grant determines on decree or on the determination of an appeal.

As this is contentious business, the administrator *pendente lite* files an inventory in the form prescribed, giving security.

In both the oath and the bond there must be inserted an additional clause binding the administrator to act subject to and under the direction of the Court of Probate.

RECEIVERS PENDENTE LITE.

Receiver of real estate *pendente lite*.

LXXI. It shall be lawful for the Court of Probate to appoint any administrator appointed as aforesaid or any other person to be receiver of the real estate of any deceased person pending any suit in the court touching the validity of any will of such deceased person by which his real estate may be affected, and such receiver shall have such power to receive all rents and profits of such real estate, and such powers of letting and managing such real estate, as the court may direct.

In this case the court may require security by bond, which bond it may assign (21 & 22 Vict. c. 95, s. 21).

Remuneration to administrators *pendente lite* and receivers.

LXXII. The Court of Probate may direct that administrators and receivers appointed pending suits involving

[f] *Ray* v. *Sherwood and another*, 1 Curt. 207.

[g] *Ibid.* 173, 193; 3 Burn's Eccl. L. 189.

[h] 21 & 22 Vict. c. 95, s. 22.

[i] *Chatelain* v. *De Pontigny*, 1 Sw. & Tr. 34; *Northy* v. *Cock*, 1 Add. 326; *Hellier* v. *Hellier*, 1 Cas. temp. Lee, 281.

matters and causes testamentary, shall receive out of the personal and real estate of the deceased such reasonable remuneration as the court think fit.

A person unconnected with the suit is the most proper person to be appointed.[k]

APPOINTMENT OF ADMINISTRATOR.

Power as to appointment of administrator.

LXXIII. Where a person has died or shall die wholly intestate as to his personal estate, or leaving a will affecting personal estate, but without having appointed an executor thereof willing and competent to take probate, or where the executor shall at the time of the death of such person be resident out of the United Kingdom of Great Britain and Ireland, and it shall appear to the court to be necessary or convenient in any such case, by reason of the insolvency of the estate of the deceased, or other special circumstances, to appoint some person to be the administrator of the personal estate of the deceased, or of any part of such personal estate, other than the person who if this Act had not been passed would by law have been entitled to a grant of administration of such personal estate, it shall not be obligatory upon the court to grant administration of the personal estate of such deceased person to the person who if this Act had not passed would by law have been entitled to a grant thereof, but it shall be lawful for the court, in its discretion, to appoint such person as the court shall think fit to be such administrator upon his giving such security (if any) as the court shall direct, and every such administration may be limited as the court shall think fit.

The powers given to the court by this section have reference solely to personal estate.

The cases in which the court may adopt the power thus given are, when a person dies intestate, or where the executor shall have died or be resident abroad or be incompetent or unwilling to act.

Where the person entitled under an intestacy to an adminis-

[k] *Chatelain* v. *De Pontigny*, *supra*.

tration *de bonis non* was resident abroad, the court made the grant to the attorney of the person so entitled.[l]

Where the person entitled to the grant is resident abroad, the court will make a grant under this section upon being satisfied that it is "necessary or convenient;" unless it is so satisfied, however, it will require notice of the application for the grant to be given to the person primarily entitled.[m]

The words "by reason of the insolvency of the estate of the deceased," seem to point out what are the "especial circumstances" under which the court will deviate from the practice of the old courts under the statute which directed that the Ordinary should grant administration "to the widow or next of kin or to both" at his discretion.

This section empowers the Court of Probate to carry out a suggestion of the learned judge, Sir *John Nicholl*, that there are cases where a *man of business* is the more proper person to whom administration should be granted. In the case referred to,[n] the court was enabled to do so, as the grantee, the partner of the deceased in his banking house, stood in parity of kin with the claimant; and the learned judge said, "The point is, not whom the deceased would have chosen for his administrators, but who is the most proper for the office;" and he gave to the man of business a *cæteris paribus* preference.

The court is now enabled to carry this further, and it is submitted that the expression of Sir *John Nicholl's* opinion, that "the court would not willingly give any person a power of looking into the affairs of this banking house" is a fair example of the "special circumstances" under which the court would act, and this, not only in the cases in which (when several persons stood in the same degree of relationship to the testator[o]) the statute gave the Ordinary his selection to accept any one or more of such persons; but under this statute in other cases, also, the rule of practice may now be considerably enlarged, and the court will, under "special circumstances," consider that it is its first duty to place the administration in the hands of that person who is likely best to convert it to the advantage of those who have claims, either in paying the creditors or in making distributions, keeping in view, as the primary object, the interest of the estate.

For the practice of the court in cases where the person entitled to letters of administration takes no beneficial interest, see *In the goods of Gill*.[p]

Where none of the next of kin would take out administration, a creditor was, *by the practice* of the court, permitted to do so on the single ground that he could not be paid his debt until representation to the deceased was made;[q] and letters of

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[l] *In the goods of Escot*, 28 L. J., P. & M. 17. See also *In the goods of Keene*, *Ib.* 34.

[m] *In the goods of Cooke*, 28 L. J., P. & M. 43.

[n] *Williams* v. *Wilkins*, 2 Phillim. 100.

[o] Sty. 451.

[p] 1 Hagg. 341.

[q] *Menzies* v. *Pulbrook and another*, 2 Curt. 850; *Eline* v. *Da Costa*, 1 Phillim. 177.

administration have even been granted to the executors of a creditor.[r] Whenever a party has had a right to the administration, the court has always required that he should be cited or consent;[s] and this rule was not relaxed, notwithstanding that the party who had the right had no interest in the property in respect of which administration was sought.[t]

"To couple the grant with the interest," said Dr. *Lushington*,[u] "is, for the most part, one of the leading principles of this court, and, as I think, one of the safest principles upon which it can go."

This principle will be well elucidated, it is thought, by the following remarks, condensed from Mr. Justice *Williams's* valuable work on Executors and Administrators,[x] and will be useful here in considering who are "the next and most lawful friends" and the "next of kin" entitled under the statutes.

It has been an established principle of the Ecclesiastical Courts that the right to a grant of administration to the effects of an intestate follows the right to the property in them.[y] It seems to follow, then, that the persons entitled under the Statute of Distribution are the persons entitled to administration under the Statutes of Administration. Modern cases, however, seem to have fully established that the construction of the Statute of Distribution, as to the proximity of degrees of kindred at least, shall be according to the rules of the civil law.[z]

In the mode of computing proximity of kindred for the purpose of deriving the right to administration, several remarkable differences may be observed, with reference to the corresponding rule of the common law, respecting succession of inheritance.

1st. Relations by the father's side and the mother's side, are in equal degree of kindred; and, therefore, equally entitled to administration: for, in this respect, dignity of blood gives no preference. Hence it may happen that relations are distant from the intestate by an equal number of degrees, and equally entitled to the administration of his effects, who are no relations at all to each other, *sup.* p. 72.

2nd. The half blood is admitted to administration as well as the whole.[a] The Master of the Rolls then stated it as the settled practice of the Ecclesiastical Court that, under the Statute of Distribution,[b] brothers and sisters of the half blood of an intestate are equally entitled with brothers and sisters of the whole

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[r] *Jones* v. *Beytagh*, 3 Phillim. 635.

[s] *In the goods of Barker*, 1 Curt. 592.

[t] *In the goods of Radnall*, 2 Add. 232.

[u] *Brenchley* v. *Lynn*, 2 Rob. 470.

[x] Pt. I., Bk. 5, cap. 2.

[y] By Sir John Nicholl, *In the goods of Gill*, 1 Hagg. 341.

[z] *Thomas* v. *Ketteriche*, 1 Ves. sen. 333; *Lloyd* v. *Zench*, 2 Ves. sen. 214; *Wallis* v. *Hodson*, 2 Atk. 117; *Lock* v. *Lake*, 2 Cas. temp. Lee, 420.

[a] *Jessopp* v. *Watson*, 1 Myl. & K. 665; *Burnett* v. *Mann*, *Ib. cit.*

[b] 22 & 23 Car. II. c. 10, and 1 Jac. II. c. 17.

blood to share with their mother, after the death of the intestate's father, in the personal property of the intestate, dying without wife or children; for the half blood are kindred of the intestate, and have been excluded from the inheritance of land only on feudal reasons. Therefore, the brother of the half blood shall exclude the uncle of the whole blood,[c] and the Ordinary might grant administration to the sister of the half or the brother of the whole blood at his discretion.[d] But, although, when the contest for an administration is between two persons in equal degree of the whole blood, the general rule has been to grant it to that person in whom the majority of those entitled to distribution concur,[e] yet that rule does not hold when the contest is between one of the whole blood and one of the half blood, for in that case the whole blood is preferable, in the grant of administration, to the half blood, though the majority of interests concur in selecting the latter, unless material objections can be shown against him of the whole blood.[f]

3rd. As younger children must stand in the same degree of kindred as the eldest, primogeniture can give no right to preference in the grant of administration, so as to weigh against the wish of the majority of interests; yet if things are precisely equal—if the scale is exactly poised, the circumstance of primogeniture as between brothers will incline the balance;[g] as between sisters this advantage has no weight against the majority of interests.[h]

4th. The right to administration will follow the proximity of kindred, though ascendant; and, therefore, when a child dies intestate, without wife or child, leaving a father, the father is entitled to the administration of the personal effects of the intestate as next of kin, exclusive of all others.[i] Indeed, anciently, that is, in the reign of Henry I., a surviving father could have taken even the real estate of his deceased child.[k] But this law of succession was altered soon afterwards; for we find by Glanville, that in the time of King Henry II. the father could not take the real estate of his deceased child, the inheritance being then carried over to the collateral line. And it was subsequently held an inviolable maxim, that an inheritance could not ascend. This alteration of the law never extended, however, to the personal estate.[l] And now by stat. 3 & 4 Will. IV. c. 106, s. 6, every lineal ancestor shall be capable of being heir to any of his issue. So with respect to the mother, if a child dies intestate without a wife, child, or father, the mother is entitled to administration; and, before the Statute of Distribution, she could claim as next of kin the whole personal estate; but under that statute every brother and sister has an equal share

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[c] *Collingwood* v. *Pace*, 1 Ventr. 424.

[d] *Hill* v. *Bird*, Sty. 102.

[e] *Williams* v. *Wilkins*, 2 Phillim. 100.

[f] *Mercer* v. *Morland*, 2 Cas. temp. Lee, 499.

[g] *Warwick* v. *Greville*, 1 Phillim. 125.

[h] *Coppin* v. *Dillon*, 4 Hagg. 376.

[i] *Ratcliff's case*, 3 Co. 40; *Collingwood* v. *Pace*, 1 Ventr. 414.

[k] *Blackborough* v. *Davis*, 1 P. Wms. 50.

[l] 1 P. Wms. 51.

with her. Again, if a man dies intestate, leaving no nearer relations than a grandfather or grandmother, and an uncle or aunt, the grandfather or grandmother being in the second degree, though ascendant, will be entitled to administration to the exclusion of the uncle or aunt, who are related only in the third degree.[m] So a great-grandmother is equally entitled with an aunt.[n]

Though the ecclesiastical law of England, however, acknowledged the rights of ascendants generally, yet it did not recognize them to the extent of the civil law, according to which, ascendants, of whatever degree, are preferred before all collaterals except in case of brothers and sisters. But our law prefers the next of kin, though collateral, to one, who, though lineal, is more remote.[o]

5th. With respect to the right to administration, those in equal degree were equally entitled, subject to the discretionary election of the Ordinary, whether males or females.[p]

It remains to notice certain exceptions to the rule of computation above stated, of the proximity of kindred and consequent right to administration.

1st. The parents of an intestate are as near akin to him as his children, for they are both in the first degree; but, by our law, children are allowed the preference.[q] But by this preference, it is not to be understood that they are not considered as perfectly equal in degree of proximity,[r] so also are their lineal descendants to the remotest degree.[s]

2nd. Where the nearest relations, according to the above computations, are a grandfather or grandmother and brothers or sisters of the intestate, although these are all related in the second degree, yet the latter are entitled to the administration to the exclusion of the former.[t]

To recapitulate; In the first place the children and their lineal descendants to the remotest degree and, on failure of the children, the parents of the deceased are entitled to the administration; then follow brothers and sisters, then grandfathers and grandmothers, then uncles or nephews, great-grandfathers and great-grandmothers, and lastly, cousins.[u]

The practice of the Ecclesiastical Court has been to prefer a sole to a joint administration, and never to force a joint one; and in modern practice, the election of the judge has been in

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[m] *Mentney* v. *Petty*, Prec. Chan. 593; *Blackborough* v. *Davies*, 1 P. Wms. 41; *S. C.*, 1 Lord Raym. 684; *Woodroff* v. *Winkworth*, Prec. Chan. 527.

[n] *Burton* v. *Sharp*, cited in Lord Raym. 686; 1 P. Wms. 45; (*S. C.*, but differently reported as to the facts, Lutw. 1055;) *Lloyd* v. *Zench*, 2 Ves. sen. 215, by Strange, M. R.

[o] 1 P. Wms. 51, by Lord Holt; *Stanley* v. *Stanley*, 1 Atk. 458, by Lord Hardw.

[p] *Anon.*, Style, 74.

[q] 2 Black. Comm. 504.

[r] *Withy* v. *Mangles*, 4 Beav. 358; *S. C.*, 10 Cl. & Fin. 215.

[s] *Carter* v. *Crawley*, T. Raym. 500; *Evelyn* v. *Evelyn*, Ambl. 191; *S. C.*, 3 Atk. 762.

[t] *Winchelsea* v. *Norcliff*, 2 Freem. 95; *S. C.*, 1 Vern. 403.

[u] 2 Black. Comm. 505.

favour of the widow under ordinary circumstances.[x] But the court has always held that the widow may be set aside, and administration granted to the next of kin on good cause; for instance, if she has barred herself of all interest in her husband's personal estate by her marriage settlement,[y] or where she is a lunatic,[z] or where she has eloped from her husband or cohabited in his lifetime with another man,[a] or has lived separate from her husband.[b] But the circumstance of the wife having married again is no valid objection.[c] However, if the deceased left children, one of whom, supported by the rest, applies for administration, the second marriage might induce the court to prefer the child.[d]

Whenever the court thinks fit to exercise the power given by this section, the fact should be made plainly to appear in the oath of the administrator, in the letters of administration, and in the administration bond.

The preparation of this grant occasionally requires great nicety.[e]

Where the next of kin of an intestate lived in Sydney, in New South Wales, at the time of the sudden death of intestate, and the property required immediate attention, letters of administration were granted to the father-in-law of the next of kin for the benefit of the next of kin, until he should apply for administration; the father-in-law giving security and filing an inventory.[f]

Administration of the effects of an intestate was granted to the executor of one next of kin to the deceased, the other next of kin having renounced, upon proof of citation of the other next of kin, to accept or refuse, or to show cause why such administration should not be granted to such executor, and upon proof of the due execution and return of the citation with an affidavit of service.[g]

This section gives power to the court to grant administration with the will annexed to the nominees of an executor appointed by a power under the will. The court will require proof of the appointment.[h] So where certain trustees were the universal legatees in trust.[i]

Limited grants of doubtful validity made by the old courts are confirmed by this act. See *inf.* ss. 86, 88.

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[x] *Goddard* v. *Goddard*, 3 Phillim. 637; *Atkinson* v. *Barnard*, 2 Phillim. 316.

[y] *Walker* v. *Carless*, 2 Cas. temp. Lee, 560.

[z] *In the goods of Williams*, 3 Hagg. 217; *In the goods of Dunn*, 5 Notes of Cas. 97.

[a] *Fleming* v. *Pelham*, 3 Hagg. 217, n. (*b*); *Conyers* v. *Kitson*, 3 Hagg. 556.

[b] *Lambell* v. *Lambell*, 3 Hagg. 568. See *Chappell* v. *Chappell*, 3 Curt. 429.

[c] *Webb* v. *Needham*, 1 Add. 494.

[d] *Ibid.* 1 Add. 496.

[e] *In the goods of Keene*, 28 L. J., P. & M. 34.

[f] *In the goods of Jones*, 28 L. J., P. & M. 17.

[g] *In the goods of Winstanley*, Jan. 28th, 1858.

[h] *In the goods of Martindale*, 27 L. J., P. & M. 29; *S. C.*, 4 Jur., N. S. 196.

[i] *In the goods of Goodyear*, 4 Jur., N. S. 1243.

LXXIV. The provisions of an Act passed in the thirty-eighth year of his late majesty King George the Third, chapter eighty-seven, shall apply (in like manner) to all cases where letters of administration have been granted, and the person to whom such administration shall have been granted shall be out of the jurisdiction of her Majesty's courts of law and equity.

38 Geo. 3, c. 87, extended to administrators.

The Ecclesiastical Courts had always the power, *before probate*, of granting a limited administration, *durante absentiâ*,[k] but not so when probate had been once granted and the executor gone abroad. It was to this latter case that the statute referred to applied. By the 38 Geo. III. c. 87, where twelve months had expired from the testator's decease, and the executor, to whom probate had been granted, was then residing out of the jurisdiction of the courts of law or equity, the Ecclesiastical Court was empowered, on the application of a creditor, next of kin, or legatee, grounded on an affidavit in conformity with the statute, to grant a special administration (of which also the form is set out in the statute) on a five shilling stamp.

Thus, where A., appointed executor, proved the will, and retired into Scotland, or otherwise out of the jurisdiction of the court,[l] and there were proceedings pending in Chancery, but *not otherwise*,[m] the object of the statute was to provide a method for proceeding in the courts of this country while the executor remained out of the jurisdiction, and to carry their decrees into effect, so that a suit, so instituted, was not to evade on the return of the executor, but to go on, he being made a party, and then the temporary administrator might account, have his costs, and be discharged.[n] The power of granting a special administration is, under this section, given to the court in cases where letters of administration have been granted, and the grantee resides for twelve months out of the jurisdiction of the court.

Under this act of Geo. III. it has been decided that payments made to such temporary administrator after the return, are good if the party paying had no notice of the return.[o] On the return the temporary administrator is declared to have ceased and expired.[p]

The authority of an administrator thus appointed does not become void upon the death of such executor, but only voidable.[q]

When the executor or administrator thus appointed dies, and a person takes out administration as next of kin to the original

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[k] *Slater* v. *May*, 2 Lord Raym. 1071.

[l] *Hannay* v. *Taynton*, 2 Add. 505.

[m] *In the goods of Davis*, 2 Hagg. 79.

[n] *Rainford* v. *Taynton*, 7 Ves. 460.

[o] *Walker* v. *Woolaston*, 2 P. Wms. 580; *Clare* v. *Hedges*, 1 Lutw. 342, *Ib. cit.*

[p] *In the goods of Cassidy*, 4 Hagg. 360.

[q] *Taynton* v. *Hannay*, 3 Bos. & P. 26.

testator, the Court of Equity will put an end to the authority of the special administrator.[r]

Both this act, however, and the act of Geo. III. applied only to cases where there are proceedings in Chancery. This defect has been amended,[s] and there is now no need that there should be any proceedings in Chancery to authorize the Court of Probate in granting such an administration, and the language of the grant, prescribed by the statute of George, may be altered so as to make it apply to grants made under this act.

REVOCATION OF GRANTS.

After grant of administration no person to have power to sue as an executor.

LXXV. After any grant of administration, no person shall have power to sue or prosecute any suit, or otherwise act as executor of the deceased, as to the personal estate comprised in or affected by such grant of administration, until such administration shall have been recalled or revoked.

Where a grant has been made, whether of probate or of letters of administration, and another person then intermeddles with the goods of the deceased, the person so intermeddling does not become an executor *de son tort*, because there exists a legal personal representative; such intermeddler is liable to be sued as a trespasser.[t] It would appear, however, that if an action of trespass be brought against him by the lawful representatives of the deceased, he may give in evidence, in mitigation of damages, payments made by him, which the lawful executor or administrator would have been bound to make.[u] He cannot, however, in answer to such an action, plead payment of debts, &c., to the value of the assets, or that he has given the goods in satisfaction of the debts.[v]

No grant can be revoked by a *district* registrar, even with the consent of the parties interested. All applications for such revocation must be made to the *principal* registry.

The court will revoke a grant—1st, when it is shown to have been made on mistaken promises; 2ndly, when it is shown to be inefficient.[x]

If the will has been proved in solemn form (*sup.* p. 91), the executors cannot again, under ordinary circumstances, be put on the proof of it; but if fraud can be shown or if a later will be set up, then the parties having interest under such will may again cite the executor with the view of obtaining revocation

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[r] *Taynton* v. *Hannay*, and *Rainsford* v. *Taynton*, *sup.*; *Suwerkrop* v. *Day*, 8 A. & E. 625.

[s] 21 & 22 Vict. c. 95, s. 18.

[t] *Anon.*, 1 Salk. 312; *Kellow* v. *Westcombe*, 1 Freem. 122; *S. C.*, 3 Keb. 202.

[u] *Mountford* v. *Gibson*, 4 East, 441.

[v] Wms. Ex. & Adm., Pt. I., Bk. 3, cap. 5.

[x] See *infra*, ss. 77, 78, n., p. 110.

of the probate. Where probate of a testamentary paper, in the nature of a codicil, was taken by consent in common form, it was held, that it could not afterwards be revoked solely on the ground that the conditions upon which such consent was obtained had not been complied with.[y]

Administration may be revoked where the grant has been obtained in an irregular manner, or where a next of kin, to whom it has been committed, becomes *non compos*, or otherwise incapable,[z] or, it has been said, if he becomes resident abroad;[a] or if it has been made to one not next of kin,[b] or to a creditor before the renunciation of the next of kin, or if the next of kin, at the time of the death of the intestate, was incapable and afterwards becomes capable.[c]

The court cannot, however, revoke a grant on the ground of abuse,[d] nor on account of the omission by an administrator to bring in an inventory or account.[e] If an administration has been properly granted, it cannot be revoked except on strong grounds,[f] even on the application of the administrator himself, and although he has not intermeddled with the goods.

Where probate had been granted to the brother of an officer who had been left for dead on the field of Coruña, and reported in the despatches of Sir John Hope as killed, the original will, with the probate, being first cancelled, was delivered out of the registry to this supposed dead man on his personal appearance before the court.[g]

Revocation of temporary grants not to prejudice actions or suits.

LXXVI. Where before the revocation of any temporary administration any proceedings at law or in equity have been commenced by or against any administrator so appointed, the court in which such proceedings are pending may order that a suggestion be made upon the record of the revocation of such administration, and of the grant of probate or administration which shall have been made consequent thereupon, and that the proceedings shall be continued in the name of the new executor or administrator, in like manner as if the proceeding had been originally commenced by or against such new executor or administrator, but subject to such conditions and variations, if any, as such court may direct.

This section is similar to that in the Common Law Procedure

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[y] *Nichol* v. *Askew*, 2 Moore, P. C. C. 88.

[z] *Offley* v. *Best*, 1 Sid. 372.

[a] Bac. Abr. 966.

[b] *Brown* v. *Wood*, Al. 36; *Blackborough* v. *Davis*, 1 Salk. 38.

[c] 4 Burn's E. L. 403. See also *In the goods of Ferrier*, 1 Hagg. 241; *In the goods of Jenkins*, 3 Phillim. 33.

[d] *Thomas* v. *Butler*, 1 Vent. 219.

[e] *Hill* v. *Bird*, Sty. 102.

[f] *In the goods of Heslop*, 5 Notes of Cas. 2.

[g] *In the goods of Napier*, 1 Phillim. 83.

Act, 1852 (15 & 16 Vict. c. 76, s. 135), framed to meet the event of death of a plaintiff *pendente lite*. For the purpose of carrying out the provisions of that act, it is enacted by the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125, s. 92), that when an action, in which the proceedings may be so revised or continued, has so abated, the defendant may apply by summons to compel the plaintiff to proceed.

Heretofore, if an action was brought by an administrator and, while it was pending, administration was committed to another, the writ abated.[h]

Payments under revoked probates or administration to be valid.

LXXVII. Where any probate or administration is revoked under this Act, all payments *bonâ fide* made to any executor or administrator under such probate or administration, before the revocation thereof, shall be a legal discharge to the person making the same; and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself in respect of any payments made by him which the person to whom probate or administration shall be afterwards granted might have lawfully made.

Persons, &c., making payment upon probates granted for estate of deceased person to be indemnified.

LXXVIII. All persons and corporations making or permitting to be made any payment or transfer *bonâ fide*, upon any probate or letters of administration granted in respect of the estate of any deceased person under the authority of this Act, shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of such probate or letters of administration.

The distinction, to which attention has been drawn above, between grants which are void and such as are merely voidable, becomes now practically of less importance; the only question which will arise now in the case of mesne acts of an executor or administrator will be, whether the payments made and acts done were *bonâ fide*. Before the passing of this act, the mesne acts of an executor or administrator, done between the grant and its revocation, were of no validity where the grant was void: such are grants of letters of administration on the concealment of a will that afterwards appeared; grants obtained by fraud; and, generally, grants made in derogation of the rights of an executor. All lawful mesne acts, however, have always been considered valid where the grant was merely voidable: such are grants of administration made to a person not next of kin, or *non vocatis jure vocandis;* and, generally,

[h] Bro. Abr. tit. "Administrator," pl. 3.

grants made only in derogation of the right of the next of kin or the residuary legatee.

On this subject, see further Wms. Ex. & Adm. Pt. I., Bk. VI., c. 2.

RENUNCIATION.

Rights of an executor renouncing probate to cease as if he had not been named in the will.

LXXIX. Where any person, after the commencement of this Act, renounces probate of the will of which he is appointed executor or one of the executors, the rights of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve, and be committed in like manner as if such person had not been appointed executor.

Under this section, an executor renouncing probate, *for ever* waives his claim, and in the case of his surviving those executors who proved, the chain of executorship is carried on through such last surviving executor. The name of a renunciant is now, in fact, utterly expunged from the will. By the 16th section of the Amending Act (21 & 22 Vict. c. 95) where an executor dies without having taken out probate, or where he does not appear to a citation, his right in respect of such executorship shall wholly cease, and the administration of the testator's effects proceed as if such person had never been appointed.

Renunciation may also take place before a commissioner, either personally or by proxy, the executor making oath or affirmation, or handing in an affidavit that he has not intermeddled, and will not intermeddle.[1] A renunciation may also be by non-appearance to a citation. When an executor has intermeddled, he cannot renounce.[k] A renunciation once made cannot be retracted from.[l]

ADMINISTRATION BONDS.

Sureties to administration bonds.

LXXX. So much of an Act passed in the twenty-first year of King Henry the Eighth, chapter five, and of an Act passed in the twenty-second and twenty-third years of King Charles the Second, chapter ten, and of an Act

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[1] *Long and another* v. *Symes and another*, 3 Hagg. 776.

[k] *Haywood* v. *Bridges*, cited in *Jackson and another* v. *Whitehead*, 3 Phillim. 579.

[l] *West and another* v. *Willdy*, 3 Phillim. 374.

passed in the first year of King James the Second, chapter seventeen, as requires any surety, bond or other security, to be taken from a person to whom administration shall be committed, shall be repealed.

The Act 25 Hen. VIII. c. 5, s. 3, directed the Ordinary "to grant administration, &c., taking surety of him or them to whom should be made such commission for the true ministration of the goods, chattels and debts which he or they should be so authorized to administer." The Act 22 & 23 Car. II. (made perpetual by the 1 Jac. II. c. 17) commonly called *The Statute of Distributions*, gave the form of the administration bond to be taken by the Ordinary, which has, *mutatis mutandis*, been followed in the forms prescribed under this act. (App. Form.)

It is to be noticed that these acts are only repealed so far as their requirements of sureties in *all* cases goes, such a requirement being now within the discretion of the judge or registrar; there is the exception also of certain cases within the proviso of section 81, in which it will not be necessary to give any security.

Bonds given before January 11, 1858, remain in force, as if given to the judge of the Court of Probate.[k]

Persons to whom grant of administrations shall be committed shall give bond.

LXXXI. Every person to whom any grant of administration shall be committed shall give bond to the judge of the Court of Probate to enure for the benefit of the judge for the time being, and, if the Court of Probate or (in the case of a grant from the district registry) the district registrar shall require, with one or more surety or sureties, conditioned for duly collecting, getting in, and administering the personal estate of the deceased, which bond shall be in such form as the judge shall from time to time by any general or special order direct: provided that it shall not be necessary for the solicitor for the affairs of the Treasury or the solicitor of the Duchy of Lancaster applying for or obtaining administration to the use or benefit of her Majesty to give any such bond as aforesaid.

Penalty on bond.

LXXXII. Such bond shall be in a penalty of double the amount under which the estate and effects of the deceased shall be sworn, unless the court or district registrar, as the case may be, shall in any case think fit to direct the same to be reduced, in which case it shall be lawful for the court or district registrar so to do, and the court or district registrar may also direct that more bonds than one shall be given, so as to limit the liability of any

[k] 21 & 22 Vict. c. 95, s. 15.

surety to such amount as the court or district registrar shall think reasonable.

Where the solicitor for the Treasury takes the administration on behalf of the crown, as in the case of a bastard bachelor or spinster intestate or of a person having no known relatives, the administration bond had been already dispensed with.[l]

In all cases of limited or special administration, two sureties are to be required, and the bond is to be given in double the amount of the property.

A husband taking administration to his wife enters into a bond with one surety only.[m] So, where the estate is *bonâ fide* under the value of 50*l.*

If the administrator be out of the jurisdiction, the sureties must be resident within it.[n]

Under certain special circumstances the court, in granting administration to a foreigner, will accept as sureties foreigners, "out of its reach and control;" the circumstances must, however, be very special to justify it in doing so.[o]

When, on an administration granted *pendente minore ætate*, the minor on coming of age takes upon himself the administration, he is obliged to give the same security that the administrator did in the first instance.

The justification of sureties may be before a person authorized under the act to administer oaths, in the prescribed form.[p]

The calling for justification of sureties to the administration bond has been in the discretion of the court according to the circumstances of each case; except that there has been one general rule that, where there has not been a personal service on the party or parties having the prior claim to the grant, justification of sureties has been required.[q]

Where the application that the sureties might be directed to justify was made on behalf of a next of kin, the court felt bound to grant it; but it may be sufficient for the sureties to justify in respect of the share of the party excluded from the administration.[r]

Where administration *cum testamento annexo* was granted to the next of kin on the ground of there being no executor of residuary legatee who survived the testator, the party who had unsuccessfully claimed the administration derivatively from the residuary legatee, prayed that the sureties to the administration bond of the next of kin might be compelled to justify; but the court rejected the application as contrary to the established practice.[s]

It was the practice of the Prerogative Court not to allow separate bonds.[t] In a case in which the court had decreed a general grant, but, under the special circumstances of the case,

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[l] 15 & 16 Vict. c. 3, s. 2.

[m] *Re Noel*, 4 Hagg. 204.

[n] *In the goods of O'Byrne*, 1 Hagg. 316.

[o] *Cambiaso* v. *Negrotto*, 2 Add. 439.

[p] App. N. C., Form 19.

[q] 3 Hagg. 194, note (*a*).

[r] *Coppin* v. *Dillon*, 4 Hagg. 376.

[s] *Taylor* v. *Diplock*, 2 Phillim. 280.

[t] *Howell* v. *Metcalf and another*, 2 Add. 348.

required the sureties to justify only as to *part* of the property, this the sureties were willing to do, but were unwilling to subject themselves to the usual penalty under the common bond, the court held that it could not allow *separate* bonds, so that other securities than those that had justified in the requisite amount should enter into the common administration bond in the double amount of the whole property. By the power given by the latter part of sect. 82, the court or district registrar may now take separate bonds each in such amount as shall appear reasonable or making up in the whole the requisite amount.

Where the administratrix was solely entitled to the personalty of deceased, the court reduced the penalty to double the amount of the debts.[a]

On the death of the obligee, the bond is to his successors,[x] and by this section it enures for the benefit of the judge of the Court of Probate for the time being.

For the additional clauses required in the bond on an administration granted *pendente lite*, see *sup.* s. 70, note, p. 100.

Administration bonds must be attested by an officer of the principal registry, by a district registrar, or by a person authorized under this and the amending act to administer oaths, and may not in any case be attested by the proctor, solicitor, attorney or agent of the party who executes them. If the signature of the person taking out administration be executed in a district registry, it must be attested by the person administering the oath; if in the principal registry, it may be attested either by him or by the proper clerk in the registry.[y]

For forms of administration bonds, justification of sureties, &c., see Appendix.

The bond is conditioned (*inter alia*) to exhibit an inventory. This may be called for at any time[z] by a person interested in the estate; a certain limitation has, however, been allowed.[a]

Under what circumstances the court requires an inventory, see *sup.* pp. 27, 29.

The stamps upon administration bonds are regulated by stats. 55 Geo. III. c. 114 and 13 & 14 Vict. c. 97, ss. 2, 3.

The following memoranda of the practice with regard to bonds, in obtaining administration with or without the will annexed, may be of use to the practitioner:—

Practice with regard to bonds.—Where a married woman is administratrix, it is not the practice for her husband to be joined in the oath or affidavit with her, nor for her to be joined in the bond with him and the sureties.

In the conditional part of the bond the relationship of the intended administrator to the deceased, and his or her interest under the will, should be inserted as well as the full description of the deceased as it appears in the other papers, and also the date of death.[b]

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[a] *In the goods of Gent*, 27 L. J., P. & M. 37, *S. C.*

[x] Sw. & Tr. 54.

[y] *Howley* v. *Knight*, 19 L. J., Q. B. 3.

[z] Amended Rules, N. C. 4.

[a] *Jickling* v. *Bircham and another*, 2 Notes of Cas. 463.

[b] *Burgess* v. *Marriott*, 3 Curt. 426; *Ritchie* v. *Rees*, 1 Add. 144; *Bowles* v. *Harvey*, 4 Hagg. 241; *Scurrah* v. *Scurrah*, 2 Curt. 919.

The penal sum in bonds and the stamps thereon are as follows:—

Where the effects are sworn under the value of

£50	the penalty of	£50	and the stamp	2*s.* 6*d.*
100	,,	150	,,	5*s.*
200	,,	200	,,	10*s.*
300	,,	300	,,	15*s.*

If the effects are sworn under any sum over 300*l.*, the penalty in the bond must still be double the sum sworn under, and the stamp 1*l.*

For seals, common wafers may be used with a portion of the paper turned over upon them and impressed. Gummed wafers and sealing-wax occasionally fall off and are therefore objectionable, not only for bonds but also for proxies.

Power of court to assign bond.

LXXXIII. The court may, on application made on motion or petition in a summary way, and on being satisfied that the condition of any such bond has been broken, order one of the registrars of the court to assign the same to some person, to be named in such order, and such person, his executors or administrators, shall thereupon be entitled to sue on the said bond, in his own name, both at law and in equity, as if the same had been originally given to him instead of to the judge of the court, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond.

The not delivering a true and perfect inventory is a breach of the condition.[c]

So, the not making a just and true account.[d]

So, the conversion by an administrator of the effects of the deceased to his own use, so that they are entirely lost to the estate.[e]

Not so, however, the non-payment of a creditor's debt;[f] nor the neglect or refusal to distribute the surplus of the effects amongst the next of kin, unless there has been a decree.[g]

If the bond becomes forfeited suit cannot be brought upon it without the order of the judge of the Court of Probate.[h] If the court declines making an order without cause, it is submitted

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[c] *Greenside* v. *Benson*, 3 Atk. 252.

[d] *Abp. of Canterbury* v. *Willis*, 1 Salk. 172, 315.

[e] *Abp. of Canterbury* v. *Robertson*, 1 C. & M. 711.

[f] *Abp. of Canterbury* v. *Willis*, 1 Salk. 316.

[g] *Abp. of Canterbury* v. *Robertson*, 1 C. & M. 690; *Same* v. *Tappen*, 8 B. & C. 151.

[h] *Howley* v. *Knight*, 19 L. J., Q. B. 3.

that the proper way will be to proceed by *mandamus*.[i] For the course of practice in the old Ecclesiastical Courts, see *Young* v. *Skelton*.[k]

A creditor has a right *ex debito justitiæ*, as well as the next of kin, to sue upon the bond;[l] and either of these, or the legatee, may now, upon assignment to him of the bond, sue in the name of the obligee without any suit or citation, as if he had been the original obligee.

In the case of a bond given to the Bishop of Chester before the Court of Probate came into existence, the learned judge of the court doubted his jurisdiction. He ordered the registrar, however, to assign the bond, leaving it to the assignee to do what he could with it in a court of law.[m]

SUITS COMMENCED IN EXTINCT COURTS.

Pending suits transferred to Court of Probate.

LXXXIV. All suits, whether original or by way of appeal, which at the commencement of this Act shall be pending in any court in England respecting any grant of probate or administration, shall be transferred, with all the proceedings therein, to the Court of Probate, there to be dealt with and decided according to the rules and practice of the said court, except so far as such court may think it expedient to adopt, for the purposes of such transferred suits or any of them, the rules or practice of the court in which the same shall have been pending, to which end the Court of Probate shall, for the purposes of such suits, have all the jurisdiction, power, and authority possessed by the court from which such suit shall be transferred; but this enactment shall not apply to proceedings by way of appeal pending before her Majesty in council, which proceedings shall be carried on and prosecuted in the same manner in all respects as if this Act had not passed; and every person who if this Act had not passed might have appealed to her Majesty in council against any proceeding, decree or sentence of any court respecting the grant of any probate or adminis-

Not to apply to appeals pending before her Majesty in Council.

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[i] *Howley* v. *Knight*, 19 L. J., Q. B. 3.

[k] 3 Hagg. 780.

[l] *Greenside* v. *Benson*, and *Abp. of Canterbury* v. *Robertson*, *sup.*

[m] *Young* v. *Ozley*, 27 L. J., P. & M. 30.

tration, may, notwithstanding this Act, appeal to her Majesty in council against such proceeding, decree or sentence: provided also, that her Majesty in council may remit to the Court of Probate any cause or proceeding pending by way of appeal as aforesaid, or to be brought before her Majesty in council upon appeal as aforesaid, with such directions as the justice of the case may require.

"A suit, commenced under the old system, is to be continued under the old system in the new court, unless for any special reasons." [n]

Quære, whether an affidavit sworn under a requisition issuing out of the old court is transferred, so that it may be used in the Court of Probate.[o]

Where proxies of renunciation had been sent out to India in the old form and returned subsequently to the order in council, coupled with a deed for the satisfaction of the Court of Chancery; it was held that, *with the deed*, this was sufficient, and administration was granted.[p]

Where in a proceeding, commenced in one of the old courts, an appearance had been put in but no answer, it was held to be a new suit and not a transferred one.[q]

JUDGMENTS OF EXTINCT COURTS.

Power to judges whose jurisdiction is determined to deliver written judgments.

LXXXV. Provided, that if at the commencement of this Act any cause which would be transferred to the Court of Probate under the enactment hereinbefore contained shall have been heard before any judge having jurisdiction in relation to such cause before the commencement of this Act, and shall be standing for judgment, such judge may, at any time within six weeks after the commencement of this Act, give in to one of the registrars of the court a written judgment thereon, signed by him, and a decree or order, as the case may require, shall be drawn up in pursuance of such judgment; and every such decree or order shall have the same force and effect as if it had been drawn up in pursuance of a judgment of

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[n] *Drake and another* v. *Morgan*, 27 L. J., P. & M. 1.

[o] *In the goods of Bedwell*, 27 L. J., P. & M. 8.

[p] *In the goods of Greenway*, Jan. 28th, 1858.

[q] *Freeman* v. *Binns*, 27 L. J., P. & M. 14. See also *In the goods of Bedwell*, 27 L. J., P. & M. 8.

the Court of Probate on the day on which the same shall so be delivered to the registrar, and shall be subject to appeal under this Act.

Void and voidable probates and administrations.

LXXXVI. All grants of probates and administrations made before the commencement of this Act, which may be void or voidable by reason only that the courts from which respectively the same were obtained had not jurisdiction to make such grants, shall be as valid as if the same had been obtained from courts entitled to make such grants: provided, that any such grants of probate or administration shall not be made valid by this Act when the same shall before the commencement of this Act have been revoked or determined by any court of competent jurisdiction to have been void; nor shall this Act prejudice or affect any proceedings pending at the time of the passing of this Act in which the validity of any such probate or administration shall be in question: If the result of such proceeding shall be to invalidate the same, such probate or administration shall not be rendered valid by this Act; and if such proceedings abate or become defective by reason of the death of any party, any person who but for this Act would have any right by reason of the invalidity of such probate or administration shall retain such right, and may commence proceedings for enforcing the same within six calendar months after the death of such party.

The effect of this section is to confirm and render valid those limited grants of the old courts which would have been void from a defect in jurisdiction, so far as concerns the property over which the court, making the grant, had jurisdiction.

Probates and administrations granted before this act comes into operation.

LXXXVII. Legal grants of probate and administration made before the commencement of this Act, and grants of probate and administration made legal by this Act, shall have the same force and effect as if they had been granted under this Act, but in every such case there shall be due and payable to her Majesty such further stamp duty, if any, as would have been chargeable on any probate or administration which but for this Act would or ought to have been obtained in respect of the personal estate not covered by the grant; and all inven-

tories and accounts in respect thereof shall be returnable to the Court of Chancery, and all bonds taken in respect thereof may be enforced by or under the authority of the Court of Chancery, at the discretion of the court.

Where the will had been proved in the province of Canterbury for 7,000*l.*, and 120*l.* stamp duty paid upon it, and after the issue of the order in council for the new court, it was discovered that about 600*l.* of the 7,000*l.* was in the province of Chester; a motion, that the probate in the province of Canterbury should be taken of goods out of the province as if issued under this act was granted, with an intimation that the extra duty on 600*l.* must be paid, and recovered, if possible, from Somerset House.[r]

Probate or administration may be granted of personal estate not affected by the former grants.

LXXXVIII. Provided that where any probate or administration has been granted before the commencement of this Act, and the deceased had personal estate in England not within the limits of the jurisdiction of the court by which the probate or administration was granted, or otherwise not within the operation of the grant, it shall be lawful for the Court of Probate to grant probate or administration only in respect of such personal estate not covered by any former probate or administration, and such grant may be limited accordingly.

The effect of this section, and of sect. 86, is to render valid (with very few exceptions) diocesan grants which would, before the coming into operation of this act, have been void by reason of *bona notabilia*. In no case, however, will such a grant operate beyond the jurisdiction of the court from which it emanated; a further grant is, therefore, necessary in respect of personal estate situate out of such jurisdiction.[s]

TRANSMISSION OF WILLS.

Judges of present Ecclesiastical Courts and others to transmit all wills, &c. to the registry.

LXXXIX. The acting judge and registrar of every court, and other person now having jurisdiction to grant probate or administration, and every person having the custody of the documents and papers of or belonging to such court or person, shall, upon receiving a requisition for that purpose, under the seal of the Court of Probate,

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[r] *In the goods of Freckleton*, 27 L. J., P. & M. 6; *S. C.* 4 Jur., N. S. 124.

[s] *In the goods of Elwell*, 1 Sw. & Tr. 28.

from a registrar, and at the time and in the manner mentioned in such requisition, transmit to the Court of Probate or to such other place as in such requisition shall be specified, all records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, writs, documents and every other instrument relating exclusively or principally to matters or causes testamentary, to be deposited and arranged in the registry of each district or in the principal registry, as the case may require, so as to be easy of reference, under the control and direction of the court.

All grants of probate or administration will be found either in the principal registry or in the registry of the district in which the deceased died, or, in cases of deaths before this act, in the registry to which, in compliance with a requisition under this section, they have removed. It is important to remember this, because by the 20th section of the Amending Act[t] all subsequent grants must be made in the same registry. By the same section, in the case of subsequent grants, no affidavit of abode is necessary.

This section is construed by 21 & 22 Vict. c. 95, s. 27, to extend to all requisitions, whether for the transmission of one or more records, &c.

The Treasury are authorized to pay any expenses connected with any removal required under the authority of this act, upon a certificate from the judge of the Court of Probate.[u]

Penalty for default.

XC. No judge, registrar or other person who shall wilfully refuse or neglect so to transmit such records, wills, grants, probates, letters of administration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings, writs, documents or any other instrument relating to matters or causes testamentary, shall be entitled to any compensation under this Act, and every judge, registrar or other person so refusing or neglecting shall be liable to a penalty of one hundred pounds, to be sued for and recovered, together with full costs of suit, in any of her Majesty's superior courts, by the registrars.

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[t] 21 & 22 Vict. c. 95.

[u] 21 & 22 Vict. c. 95, s. 37.

WILLS OF LIVING PERSONS.

As to depositories for safe custody of the wills of living persons.

XCI. One or more safe and convenient depository or depositories shall be provided, under the control and directions of the Court of Probate, for all such wills of living persons as shall be deposited therein for safe custody; and all persons may deposit their wills in such depository upon payment of such fees and under such regulations as the judge shall from time to time by any order direct.

It is required by the keeper of the records in the principal registry, of any person wishing to deposit his will for safe custody that he should attend in person, see his will enclosed in an envelope and sealed, and that he should sign, in the presence of one of the registrars, a memorandum written thereon; a copy of that memorandum is handed to him upon payment of the fee of one guinea.

STAMP DUTIES.

This act not to affect the stamp duties on probates and administrations.

XCII. Nothing in this Act contained shall affect the stamp duties now by law payable upon probates and administrations; and all the clauses, provisions, rules, regulations and directions contained in any Act of Parliament relating to the said duties, and to wills, probates of wills, and letters of administration, for securing the said duties, not superseded by or inconsistent with the express provisions of this Act, shall be in full force, and shall be observed, applied, and put in execution for securing the duties payable on probates of wills and letters of administration granted under this Act, as if such duties had been granted by this Act, and the said clauses, provisions, rules and regulations relating thereto were herein repeated and specially enacted.

The acts which fix the stamp duties payable upon probates and administrations are the 55 Geo. 3, c. 184, and the 16 & 17 Vict. c. 51. The former of these fixes the duties proportioned to the amount of the property which alone came within the jurisdiction of the old courts, viz. personalty; the latter, the duties payable on succession to real property, which is now also the subject of probate.

By the 55 Geo. 3, c. 184, the following stamp duties are imposed on probates and letters of administration with the will

annexed, and on letters of administration without the will annexed:—

Where the estate and effects, for or in respect of which such probate or letters of administration shall be granted, exclusive of what the deceased shall have been possessed of, or entitled to, as a trustee for any other person or persons, and not beneficially, shall be—

Above the value of			With the Will.	Without.
£	and under the value of	£	£ s.	£ s.
20		50	0 10	0 10
50	"	100	0 10	1 0
100	"	200	2 0	3 0
200	"	300	5 0	8 0
300	"	450	8 0	11 0
450	"	600	11 0	15 0
600	"	800	15 0	22 0
800	"	1,000	22 0	30 0
1,000	"	1,500	30 0	45 0
1,500	"	2,000	40 0	60 0
2,000	"	3,000	50 0	75 0
3,000	"	4,000	60 0	90 0
4,000	"	5,000	80 0	120 0
5,000	"	6,000	100 0	150 0
6,000	"	7,000	120 0	180 0
7,000	"	8,000	140 0	210 0
8,000	"	9,000	160 0	240 0
9,000	"	10,000	180 0	270 0
10,000	"	12,000	200 0	300 0
12,000	"	14,000	220 0	330 0
14,000	"	16,000	250 0	375 0
16,000	"	18,000	280 0	420 0
18,000	"	20,000	310 0	465 0
20,000	"	25,000	350 0	525 0
25,000	"	30,000	400 0	600 0
30,000	"	35,000	450 0	675 0
35,000	"	40,000	525 0	785 0
40,000	"	45,000	600 0	900 0
45,000	"	50,000	675 0	1,010 0
50,000	"	60,000	750 0	1,125 0
60,000	"	70,000	900 0	1,350 0
70,000	"	80,000	1,050 0	1,575 0
80,000	"	90,000	1,200 0	1,800 0
90,000	"	100,000	1,350 0	2,025 0
100,000	"	120,000	1,500 0	2,250 0
120,000	"	140,000	1,800 0	2,700 0
140,000	"	160,000	2,100 0	3,150 0
160,000	"	180,000	2,400 0	3,600 0
180,000	"	200,000	2,700 0	4,050 0
200,000	"	250,000	3,000 0	4,500 0
250,000	"	300,000	3,750 0	5,625 0
300,000	"	350,000	4,500 0	6,750 0
350,000	"	400,000	5,250 0	7,875 0
400,000	"	500,000	6,000 0	9,000 0
500,000	"	600,000	7,500 0	11,250 0
600,000	"	700,000	9,000 0	13,500 0
700,000	"	800,000	10,500 0	15,750 0
800,000	"	900,000	12,000 0	18,000 0
900,000	"	1,000,000	13,500 0	20,250 0
1,000,000 and upwards		..	15,000 0	22,500 0

By this act the probate of a will and letters of administration to the effects of any common seaman, marine or soldier, slain or dying in actual service, are exempted from all stamp duties.

By the 37th section of this act, any person administering any personal property without obtaining probate or letters of administration within six months after the decease, or within two months after the termination of a suit, forfeits 100*l.* and 10 per cent. upon the amount of the stamp duty.

Section 39 exempts from stamp duty the affidavit of the estate and effects of the deceased required by the previous section, and fixes a penalty of 50*l.* for neglect to send in such affidavit.

For special affidavits respecting trust property when required for the transfer of stock, &c., see the 48 Geo. 3, c. 149, ss. 36, 37.

Section 40 provides for the recovery of money from Somerset House, where too high a stamp duty has been paid; the application must, however, be made within six months after the mistake has been discovered; and by sections 41, 42 and 43, provision is made for the opposite case where too little has been paid, with a penalty attached thereto, unless it shall be made clear to the stamp authority that such deficient payment was the consequence of a misappropriation; the commissioners are not, however, to allow this additional stamp unless an additional security has been given to the court granting administration.

Sections 45 to 49 provide for cases in which it is necessary for the commissioners to give credit on a deposit with them of the probate or letters so to be stamped.

Section 50 gives directions concerning affidavits made by executors residing out of England with regard to trust property.

Section 51 provides for a return of duty on probates, &c. to be made in respect of debts payable out of the personal estate of the deceased, provided that the same is claimed within three years after the date of such probate, &c.; this time is extended, under peculiar circumstances, by the 5 & 6 Vict. c. 79, s. 23.

By the 48 Geo. 3, c. 149, s. 35, probates, &c. are to be deemed valid as to *trust* property, though the value thereof be not covered by the stamp duty.

By the 39 & 40 Geo. 3, c. 72, s. 16, the commissioners are empowered to cancel useless grants, and to allow for the stamps, upon proof made to them that such grant has been taken out through inadvertence.

The personal property of a testator, which, at the time of his death, is in a foreign country, but which, after his death, is brought into this country by the executor, is not liable to duty.[x]

No duty is payable on stock which is part of the national debt of a foreign state,[y] though it is upon government bonds

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[x] *Attorney-General* v. *Dimond*, 1 C. & J. 356; *Attorney-General* v. *Hope*, 1 C. M. & R. 530; *S. C.*, 8 Bligh, 44; *S. C.*, 2 Cl. & Fin. 84.

[y] *Ibid.*; *Pearse* v. *Pearse*, 9 Sim. 430.

which are marketable securities within this realm, transferred by delivery only and not requiring any act whatever beyond the realm to render a transfer valid.[x]

As duty is not payable on real estate, but this comes within the Succession Duty Act,[a] so neither is it payable where there is a direction in the will that the land is to be converted into money.[b]

As to the liability to probate duty of property devised under a general power, see *Drake* v. *Attorney-General*.[c]

For the stamp duties payable on legacies and successions to personal estate upon intestacies, see stat. 55 Geo. 3, c. 184, and note the continuance, by sect. 8 of that act, of the powers of preceding acts, more especially of the 36 Geo. 3, c. 52.

By the Succession Duty Act,[d] real property, as well as personal, is subjected to duties on its transfer by the death of the possessor, and for the purposes of that act leaseholds of any denomination are considered as real property.

The registrars to deliver copies of wills, &c. to the Commissioners of Inland Revenue.

XCIII. The registrars of the Court of Probate shall, within such period as the judge shall direct after probate of any will or letters of administration shall have been granted, deliver or cause to be delivered to the Commissioners of Inland Revenue, or their proper officer, the following documents respectively; that is to say, in the case of a probate or administration with a will annexed a copy of the will and the original affidavit, and in the case of letters of administration without a will annexed such original affidavit, and in every case of letters of administration a copy or extract thereof, and in every case such certificate or note of the grant as the said commissioners may require.

PROCTORS MAY ACT AS AGENTS.

Sections 8 & 9 of 53 Geo. 3, c. 127, repealed in part as to the Court of Probate.

XCIV. Whereas by an Act passed in the fifty-third year of King George the Third, chapter one hundred and twenty-seven, it is enacted, that if any proctor of any Ecclesiastical Court shall act as such, or permit his name to be used in any suit appertaining to the office of a proctor, or

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[x] *Attorney-General* v. *Bouwens*, 4 M. & W. 171.

[a] 16 & 17 Vict. c. 51.

[b] *Matson* v. *Swift*, 8 Beav. 368.

[c] 10 Cl. & Fin. 257.

[d] 16 & 17 Vict. c. 51, s. 1.

in obtaining probates of wills or letters of administration, for or on account or for the profit or benefit of any person not entitled to act as a proctor, or shall permit any such person to participate in such profit or benefit, such proctor shall be subject to certain penalties therein mentioned; and it is also therein further enacted, that if any person shall, in his own name, or in that of any other person, do or perform any act whatever belonging to the office of a proctor in consideration of any gain, fee or reward, or with a view to participate in the benefit to be derived from the office, functions or practice of a proctor, without being admitted and enrolled, every such person shall be subject to certain other penalties therein mentioned: be it enacted, nothing in the said Act contained shall prevent any proctor of the Court of Probate from acting as agent of any attorney or solicitor in relation to any matter testamentary, or from allowing him to participate in the profits of and incident thereto.

The section of the act referred to is sect. 9, which inflicted a penalty of 50*l.* on any one exercising the duties of proctor, not being duly enrolled.

The judge of the Court of Probate has the same power over proctors, attornies and solicitors practising in the court as any judges of the superior courts of law or equity have over persons practising therein as solicitors or attornies.[e]

FEES.

Fees to be taken by officers of court and by officers of county courts.

XCV. The lord chancellor, with such assistance as is hereinbefore provided as to rules and orders to be made in pursuance of this Act, shall, as soon as conveniently may be after the passing of this Act, fix a table or tables of fees to be taken by the officers of the Court of Probate, and the proctors, solicitors and attornies practising therein, including the district registrars, and the proctors, solicitors and attornies practising in district registries, and of fees to be taken by the officers of the county courts in respect of business under this Act, and of fees to be payable in respect of searches, inspection, and printed and

[e] 21 & 22 Vict. c. 95, s. 36.

other copies of and extracts from records, wills and other documents in the custody or under the control of the Court of Probate, and the judge of the Court of Probate, with such concurrence as is hereinbefore provided in respect of the amendment of rules and orders, is hereby empowered, from time to time after this Act shall come into operation, to add to, reduce, alter or amend such table or tables of fees as he may see fit: provided that such tables of fees and every alteration of the same, except so far as respects the fees which are to be taken by district registrars, proctors and others, for their own remuneration and to their own use, shall be subject to the approval of the Commissioners of her Majesty's Treasury; and every such table of fees, and every addition, reduction, alteration or amendment to, in, or of the same, shall be published in the "London Gazette;" and no other fees than those specified and allowed in such tables of fees shall be demanded or taken by such officers and proctors, solicitors and attornies.

The subject of fees in the Ecclesiastical Court hath ever been a sore subject, and the Court of Probate appears, by the present judicious scale, to have put matters in a better train than they ever have been from the time when, as it is complained in the preamble of 31 Edw. 3, st. 1, c. 4,—"The ministers of bishops and other ordinaries of holy church took of the people grievous and outrageous fine for the probate of testaments and the making of acquittances thereof." See also 21 Hen. 8, c. 5.

TAXATION OF COSTS.

Taxation of costs.

XCVI. The bill of any proctor, attorney or solicitor, for any fees, charges or disbursements in respect of any business transacted in the Court of Probate, whether contentious or otherwise, or any matters connected therewith, shall, as well between proctor or attorney or solicitor and client as between party and party, be subject to taxation by any one of the registrars of the said court, and the mode in which any such bill shall be referred for taxation, and by whom the costs of taxation shall be paid, shall be regulated by the rules and orders to be made under this

Act, and the certificate of the registrar of the amount at which such bill is taxed shall be subject to appeal to the judge of the said court.

As some part of the proceedings under this act, viz., the trying of an issue of fact under sect. 35, may take place in one of the courts of common law, it may be useful to state the practice in similar cases in the Courts of Chancery. When the bill of costs contains charges for business done in a court of law, it is usual for the Chancery taxing master to send a request to the taxing officer at law to tax such charges, which he accordingly does, and such taxation is adopted and reported upon by the Chancery taxing master.

The taxing master will, in all cases, be at liberty to certify specially any circumstances relating to the bill of costs or taxation.[f] By the practice of the Court of Chancery a party dissatisfied with the officer's taxation applies to the court by motion or petition, for an order to review the taxation. Such motions and petitions are heard and determined upon the evidence which was brought before the taxing master, and no further evidence is received upon the hearing thereof, unless the court otherwise directs; and it has been the practice of the court not to permit a retaxation in respect of mere *quantum*, but, on a special case being made by petition, either of irregularity in the proceedings or that the master has acted upon a mistaken principle, the court will interfere.[g]

The court and its registrars have the same power in taxing costs in a transferred suit as was possessed by the extinct court from which it was transferred, and upon the scale allowed by the extinct courts.[h]

Where the costs of the unsuccessful party to a testamentary suit are directed to be paid out of the estate, they are not taxed on so liberal a scale as between proctor or attorney and client.[i]

Fees not to be paid in money, but by stamps.

XCVII. None of the fees payable to the officers of the Court of Probate, or of any County Court, in respect of business under this Act, except the fees of the district registrars (which are to be taken as their remuneration, and for their own use), the fees of proctors, solicitors and attornies, and such fees as may be authorized to be taken for their own use by surrogates and commissioners for administering oaths, shall be received in money, but every such fee shall be collected and received by a stamp denoting the amount of the fee which otherwise would be payable.

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[f] 6 & 7 Vict. c. 73, s. 37.

[g] *Fenton* v. *Crickitt*, 3 Madd. 496.

[h] 21 & 22 Vict. c. 95, s. 28.

[i] *Jeffrey* v. *Jeffrey and others*, 28 L. J., P. & M. 43.

Provisions of acts relating to stamps to be applicable to stamps for collecting fees.

XCVIII. The fees to be collected by means of stamps under the provisions of this Act shall be deemed "stamp duties," and shall be placed under the management of the Commissioners of Inland Revenue, to be collected and paid into the Exchequer under the same laws and regulations as those made in respect of the other duties of "stamps," and the provisions in the several Acts for the time being in force relating to stamps under the care or management of the Commissioners of Inland Revenue shall in all cases not hereby expressly provided for be of full force and effect with respect to the stamps to be provided under or by virtue of this Act, and to the vellum, parchment or paper on or to which the same stamps shall be impressed or affixed, and be applied and put in execution for collecting and securing the sums of money denoted thereby, and for preventing, detecting and punishing all frauds, forgeries and other offences relating thereto, as fully and effectually to all intents and purposes as if such provisions had been herein repeated and specially enacted with reference to the said last-mentioned stamps and sums of money respectively; but a separate and distinct account of all money received in respect of the said last-mentioned stamps for every year ending the thirty-first day of March, shall be laid before both houses of Parliament within one month after the termination of such year of accounts, or, if Parliament be not then sitting; within one month after the commencement of the next session of Parliament.

The total amount of monies received in 1858 on stamps and by cash from the Inland Revenue Office, amounted to 51,813*l.* 0*s.* 6*d.* in the principal registry, and 47,796*l.* 18*s.* 10½*d.* in the district registries, making a total receipt of 99,609*l.* 19*s.* 4½*d.*

STAMPING DOCUMENTS.

No document to be received or used unless stamped.

XCIX. No document which under this Act, and any table of fees for the time being in force under this Act, ought to have a stamp in respect of such fee impressed thereon or affixed thereto, shall be received or filed or be used in relation to any proceeding in the Court of Probate, or be of any validity for any purpose whatsoever,

unless or until the same shall have the proper stamp impressed thereon or affixed thereto: provided that if any time it shall appear that any such document has, through mistake or inadvertence, been received, or filed or used without having such stamp impressed thereon or affixed thereto, it shall be lawful for the judge of the Court of Probate, if he think fit, to order that such stamp shall be impressed thereon or affixed thereto, and thereupon, when a stamp shall have been impressed on such document or affixed thereto in compliance with any such order, such document and every proceeding in reference thereto shall be as valid and effectual as if such stamp had been impressed thereon or affixed thereto in the first instance.

As to stamping other documents at a trial, see *sup.* s. 33, note, p. 50.

By stat. 55 Geo. 3, c. 184, s. 8, no instrument, not properly stamped, can be given in evidence; and upon the trial of a cause, where an administrator showed that he sued for a greater amount than was covered by the *ad valorem* stamp of his letters of administration, although he sued for a doubtful debt, it was held, that he showed his administration to be void, and that he could not recover.[k]

PUNISHMENT OF FRAUDS.

Officers of the court may be dismissed for fraud or wilful neglect in relation to stamps.

C. If any officer of the Court of Probate, or any other person employed under this Act, shall do or commit or connive at any fraudulent act or practice in relation to any stamp to be used under the provisions of this Act, or to any fee or sum of money to be collected, or which ought to be collected, by means of any such stamp, or if any such officer or person shall be guilty of any wilful act, neglect or omission whereby any fee or money which ought to be collected by means of a stamp under this Act shall be lost, or the payment thereof evaded, every such officer or person so offending shall be dismissed from his office or employment if the judge of the Court of Probate shall think fit so to order.

[k] *Hunt* v. *Stevens and another*, 3 Taunt. 113. See also *Christian* v. *Devereux*, 12 Sim. 264; *Rogers* v. *James*, 7 Taunt. 147.

Any officer of the court, rendered temporarily incapable of performing the duties of his office, may appoint a deputy for six months. The judge may give to any officer leave of absence for any period not exceeding two months in any year (21 & 22 Vict. c. 95, s. 35).

SALARIES OF JUDGE AND OFFICERS.

Salary of judge and compensations to be charged on Consolidated Fund.

CI. The salary of the judge of the Court of Probate, and any retiring annuity granted to a judge of the Court of Probate under this Act, and all compensations payable under this Act, shall be charged on and payable out of the Consolidated Fund of the United Kingdom.

The salary of the present judge of the Court of Probate of 4,000*l.* was increased to 5,000*l.* in consequence of his holding the additional appointment of judge ordinary.

Salaries and expenses not charged on the Consolidated Fund to be paid out of moneys to be provided by Parliament.

CII. It shall be lawful for the Commissioners of her Majesty's Treasury, out of such moneys as may be provided and appropriated by Parliament for the purpose, to cause to be paid all salaries payable to the registrars, clerks and other officers under this Act, and all necessary expenses of the Court of Probate and its registries, and other expenses which may be incurred in carrying the provisions of this Act into effect (except such salary, retiring annuity and compensations as are hereinbefore charged on the said Consolidated Fund).

COMPENSATIONS.

Compensation to registrars, &c., of existing courts.

CIII. It shall be lawful for the Commissioners of the Treasury to grant to any archdeacons, judges, deputy judges, registrars, deputy registrars, and other persons holding office in the courts now exercising jurisdiction in matters and causes testamentary who may sustain any loss of emoluments by reason of the passing of this Act, and who are not transferred or appointed by or under this Act to offices of equal value in the Court of Probate, such compensation as, having regard to the tenure of their respective offices and appointments, and to the provisions of the Act of the session holden in the sixth and seventh years of King William the Fourth, chapter seventy-

seven, section twenty-five, and of the Act of the session holden in the tenth and eleventh years of her Majesty, chapter ninety-eight, section nine, and the several subsequent Acts continuing the provisions of the said Acts respectively, the said commissioners deem just and proper to be awarded: provided that where persons whose claims in respect of offices, held for life or otherwise, are excluded by the said provisions, have executed in person the duties of such offices, the said provisions shall not be deemed to prevent the said commissioners from granting to such persons such compensation as the said commissioners would deem just and proper to be awarded on the abolition or reduction of the emoluments of like offices, if held at the pleasure of the crown; and it shall be lawful for the said commissioners to grant to all managing and other clerks who have been continuously employed in the offices of registrars of the said courts for fifteen years and upwards immediately before the passing of this Act, and may sustain any loss of emoluments as aforesaid, and are not transferred or appointed as aforesaid, such compensation as the said commissioners may deem just and proper: provided always, that if any person to whom any yearly sum is awarded for compensation as aforesaid is or shall be appointed to any office or situation under this Act, or in the public service, the payment of such compensation shall be suspended so long as he continues to receive the salary or emoluments of such office or situation, if the amount thereof be equal to or greater than the amount of emoluments in respect of the loss whereof compensation is awarded; and if the amount of such last-mentioned emoluments be greater than the salary or emoluments of such office or situation, no more of such compensation shall be paid than will, with such salary or emoluments, be equal to the emoluments in respect of the loss whereof such compensation is payable.

The amount of compensation awarded to judges and other officers under the acts for abolishing the Ecclesiastical Courts was 40,950*l.*

CIV. Any person to whom compensation is awarded under this Act in respect of the loss of emoluments of

Persons receiving compensation to

continue to discharge the remaining duties of their offices.

any office, and who at the passing of this Act shall have been discharging or liable to discharge in respect of such office duties other than those in matters and causes testamentary, shall, so long as he shall receive such compensation, be bound to discharge such other duties on the same terms on which, whether gratuitously or otherwise, he discharged or was liable to discharge the same before the passing of this Act.

Compensation to proctors.

CV. Whereas the fees or emoluments of the persons now practising as proctors in the courts now exercising jurisdiction in matters and causes testamentary may be damaged by the abolition of the exclusive rights and privileges which they have hitherto enjoyed as such proctors in such courts: be it enacted, that the Commissioners of her Majesty's Treasury, by examination on oath or otherwise, which oath they are hereby authorized to administer, may inquire into and may, by the production of such evidence as they shall think fit to require, ascertain and absolutely determine the net annual amount of the profits arising from the transaction of business by proctors in matters and causes testamentary, on an average of five years immediately preceding the commencement of this Act, or of such proportion of five years as shall have elapsed since each and every such proctor was admitted to practise in such courts, and shall award to each and every such proctor a sum of money or annual payment during the term of his natural life of such amount as shall be equal in value to one-half of the net profits derived by such proctor in respect of matters and causes testamentary upon the said average of five years immediately preceding the commencement of this Act, or of such proportion of the said five years as shall have elapsed since the admission of each and every such proctor to practise in the courts now exercising jurisdiction in matters and causes testamentary.

Compensation to proctors in partnership.

CVI. And whereas divers proctors practising in the courts now exercising jurisdiction in matters and causes testamentary now are or may at the commencement of this Act be associated together in partnership: be it therefore enacted, that in all such cases the Commissioners of her

Majesty's Treasury shall inquire into and ascertain the terms or conditions of such partnerships, and shall absolutely determine and award compensation in respect thereof as hereinbefore provided to each of such partnerships, in like manner as if all the emoluments thereof had been derived by one individual, and shall apportion such compensation among the members of each such partnership, with or without benefit of survivorship, regard being had to the existing terms and conditions of the same.

The amount of annuities awarded as compensation to proctors under the acts for abolishing the Ecclesiastical Courts was 60,394*l.*

For the protection of the interests of Viscount Canterbury.

CVII. And whereas the most Reverend Charles, late Archbishop of Canterbury, by virtue of the power given by an Act of the ninth year of King George the Fourth, "to authorize the Lord Archbishop of Canterbury for the time being to appoint a person or persons to the office of registrar of his prerogative, without a previous surrender of the existing grant or grants of the said office," did, by letters patent under his archiepiscopal seal, dated the twenty-first day of June, one thousand eight hundred and twenty-eight, with the confirmation of the dean and chapter of the cathedral and metropolitical church of Christ, Canterbury, grant the said office of registrar of his prerogative to the Right Honourable Charles Manners Sutton, now Viscount Canterbury, then Charles Manners Sutton, Esquire, the eldest son and next heir male of the Right Honourable Charles Manners Sutton, late Viscount Canterbury, for his life, subject and without prejudice to the estates and interests, rights and privileges of the Reverend George Moore and Robert Moore (who then held the said office by virtue of such grant as therein mentioned) and the survivor of them: And whereas by an Act passed in the session of parliament held in the second and third years of the reign of his late Majesty King William the Fourth, intituled "An Act for settling and securing Annuities on the Right Honourable Charles Manners Sutton and on his next heir male, in consideration of the eminent services of the

2 & 3 Will. 4, c. 109.

said Right Honourable Charles Manners Sutton," it was enacted, that an annuity of four thousand pounds should be payable out of the consolidated fund of the United Kingdom of Great Britain and Ireland to the said Right Honourable Charles Manners Sutton, late Viscount Canterbury, during his life, and that after the decease of the said Charles, late Viscount Canterbury, one annuity of three thousand pounds be payable out of the said consolidated fund to the then heir male of the body of the said Charles, late Viscount Canterbury, during the natural life of such heir male; and it was further enacted, that in the event of the said Charles, now Viscount Canterbury, having succeeded to and being in the possession of the said annuity of three thousand pounds, and afterwards becoming entitled to the full possession of the said office of registrar of the prerogative of the Lord Archbishop of Canterbury, and to the fees, perquisites, profits and emoluments thereof (provided the same should exceed the annual sum of three thousand pounds), then and in either of the cases aforesaid, the said annuity of three thousand pounds should cease and determine and be no longer payable to the said Charles, now Viscount Canterbury: provided nevertheless, that if the said fees, perquisites, profits and emoluments of the said office of registrar should not produce the net annual sum of three thousand pounds to the said Charles, now Viscount Canterbury, then there should be issued and paid out of the said consolidated fund such a sum of money annually as, together with the said fees, perquisites, profits and emoluments, would make a clear annual income to the said Charles, now Viscount Canterbury, of three thousand pounds: And whereas the said Charles, now Viscount Canterbury, upon the decease of the said Charles, late Viscount Canterbury, succeeded to and is now in possession of the annuity of three thousand pounds, but he is not yet in possession of the said office of registrar; there shall be awarded to the said Charles, now Viscount Canterbury, as a compensation for the fees, perquisites, profits and emoluments of the said office of registrar of the prerogative of the Lord Archbishop of Canterbury,

an annuity to be calculated upon the average yearly net receipts of the legal fees, perquisites, profits and emoluments of the said office during such period next preceding the time when this Act shall come into operation as the Commissioners of her Majesty's Treasury shall think proper; and such annuity shall commence from the time of this Act coming into operation if the said Charles, Viscount Canterbury, shall then be in possession of the said office, and if not, then from the time at which the said Charles, Viscount Canterbury, would have become entitled, but for the passing of this Act, to the full possession of the said office, and to the receipt of the fees, perquisites, profits, and emoluments thereof, and shall be paid to the said Charles, Viscount Canterbury, thenceforth during his life; provided that if the said annuity by way of compensation shall exceed the annual sum of three thousand pounds, then the said annuity of three thousand pounds payable under the last-recited Act to the said Charles, Viscount Canterbury, shall, from and after the commencement of the said annuity by way of compensation, cease and determine, and shall not be payable to the said Charles, Viscount Canterbury; and in case the annuity awarded by way of compensation shall be less than the net annual sum of three thousand pounds, the provision contained in the said recited Act passed in the session of parliament held in the second and third years of his late Majesty King William the Fourth, for the payment unto the heir male of the body of the said Charles, Viscount Canterbury, out of the said consolidated fund, of such a sum of money annually as, together with the said fees, perquisites, profits and emoluments, would make up a clear income to him of three thousand pounds, shall, from and after the commencement of the said annuity by way of compensation, be applicable to and be in force for the purpose of making up, together with the said annuity so to be awarded in lieu of such fees, perquisites, profits and emoluments as aforesaid, a clear annual income of three thousand pounds to the said Charles, now Viscount Canterbury, during his life.

CVIII. All the claim, title and interest which at the The registry

of Prerogative Court of Canterbury to vest in registrars of the court.

time of the passing of this Act the Reverend Robert Moore, clerk, has or is entitled to in or in respect of the building at present used as the public registry of the Prerogative Court, shall at the time appointed for the commencement of this Act vest in the registrars for the time being of the court, subject to the payment of such rents, and the performance and fulfilment of such contracts in respect thereof, as the said Robert Moore, his executors or administrators, shall be subject to at the time of such vesting.

Compensation to Sir John Dodson in case he be not appointed judge of the Court of Probate.

CIX. In case Sir John Dodson, the present judge of the Prerogative Court of Canterbury and Dean of the Court of Arches, be not appointed the first judge of the Court of Probate, there shall be paid to him during his natural life, as well by way of retiring pension as of salary as Dean of the Court of Arches, the net yearly sum of two thousand pounds, to commence from the time appointed for the coming into operation of this Act, and to be paid out of the fund and in manner herein provided for the payment of compensations.

Establishments in district registries.

CX. There shall be a clerk or so many clerks in each district registry, and there shall be paid to such clerk or clerks such salary or respective salaries, as the judge of the court, with the sanction of the Commissioners of her Majesty's Treasury, may from time to time think fit to direct; and it shall be lawful for such judge to prescribe from time to time the qualifications which shall be possessed by persons appointed to be clerks in such district registries, and generally to regulate the establishment of such district registries with reference to the duties to be performed therein; and the clerk or clerks in each district registry shall be appointed by the district registrar, with the approval of the judge; and every such clerk may be removed by such judge, or by the district registrar with the approval of the judge.

Fees payable to district registrars.

CXI. Each district registrar shall, out of the fees taken by him in respect of the business in his respective district registry, pay the salary or salaries of the clerk or clerks in such registry, and the residue of such fees shall be retained by such district registrar to his own use; and

every district registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the Commissioners of her Majesty's Treasury a faithful account in writing of all such fees received by him during such year: provided that it shall be lawful for the Commissioners of her Majesty's Treasury, at any time after the commencement of this Act, to order that the district registrars under this Act, or any of them, shall be paid by salaries instead of fees, and to fix the salaries to be payable to them respectively; and thereupon all fees payable to the district registrars so ordered to be paid by salaries shall be accounted for and paid into the Exchequer at such times and under such regulations as the Commissioners of her Majesty's Treasury shall direct, and shall be carried to and form part of the consolidated fund of the United Kingdom, and the salaries of such district registrars and of their clerks shall be paid out of such moneys as shall be provided by Parliament for that purpose, and no such district registrar shall be deemed to have any claim to compensation on account of any diminution of his emoluments by reason of any such order.

District registrars may be paid by salaries instead of fees.

CXII. It shall be lawful for the Commissioners of the Treasury to grant to every clerical surrogate or other clerical person who, at the time of the passing of this Act, shall have been appointed surrogate in either of the provinces of Canterbury or York, such compensation for any loss the said surrogates or persons may sustain by the passing of this Act as the said commissioners deem just and proper to be awarded; the said commissioners having regard in awarding such compensation to the circumstance of the said clerical surrogates not being able to follow any other professional employment in lieu of the said office of surrogate.

Compensation to clerical surrogates, &c.

CXIII. That every person to whom any compensation shall be granted under this Act shall at all times when called upon be liable to fill any public office or situation in England under the crown for which his previous services in any office abolished by this Act may render him eligible; and that if he shall decline when called upon so

Persons receiving compensation to be liable to be called upon to fill offices, &c.

to do to take upon himself such office or situation, and execute the duties thereof satisfactorily, being in a competent state of health, he shall forfeit his right to any compensation or allowances which may have been granted to him in respect of such previous services.

This section is taken from sect. 14 of stat. 4 & 5 Will. IV. c. 24, by the following section of that act, where any person receiving compensation is appointed to any office, his compensation is to cease to the amount of the salary of the office so undertaken. There appears to have been an omission here in this respect.

RETURNS OF FEES AND SALARIES.

Publication of accounts.

CXIV. The Commissioners of her Majesty's Treasury shall cause to be prepared in each year, ending December thirty-one, a return of all fees and monies levied in such year under the authority of this Act; also a return of the annual salaries of the judge of the said Court of Probate, and of the registrars, deputy registrars, clerks and all others holding offices either in London or in the country districts, with an account of all the incidental expenses relating to the offices aforesaid, whether such salaries and expenses be defrayed out of fees or out of any other monies; also a return of all superannuations, pensions, annuities, retiring allowances and compensations made payable under this Act in each year, stating the gross amount and the amount in detail of such charges; provided always, that all such returns aforesaid shall be presented to both Houses of Parliament on or before the thirty-first day of March in each year, if Parliament is then sitting, and if Parliament is not sitting, then such returns shall be presented within one month of the first meeting of Parliament after the thirty-first day of March in each year: provided also, that every district registrar shall keep an account of all fees so taken by him as aforesaid, and shall within one month after the end of each year render to the Commissioners of her Majesty's Treasury a faithful account in writing of all such fees received by him during such year.

The return to an order of the House of Commons, dated

April 19, 1859, shows that the salary of the judge of the court is 5,000*l.*; the salaries paid for the principal registry, 27,200*l.*; those for the district registry, 45,779*l.* 2*s.* 0½*d.*: making a total cost of 77,979*l.* 2*s.* 0½*d.*

THE JUDGE OF THE COURT.

Judge, if a privy councillor, to be a member of the Judicial Committee.

CXV. The judge of the court, if a privy councillor, shall be a member of the Judicial Committee of the Privy Council.

THE COLLEGE OF DOCTORS OF LAW.

College of Doctors of Law may let, sell, &c., their real and personal estate, and lay out monies in purchase of other estates, &c.

CXVI. And whereas, with reference to the abolition of the jurisdiction hereby abolished and otherwise, it is expedient to give, confirm or extend certain powers to or of "The College of Doctors of Law exercent in the Ecclesiastical and Admiralty Courts," incorporated under that style and title by letters patent, dated the twenty-second day of June, in the eighth year of his late Majesty King George the Third: be it enacted, that it shall be lawful for the said college from time to time hereafter to let, sell or exchange for other real or personal estate, or both, all or any part of the real and personal estate which shall for the time being belong to the said college, either directly or through the medium of any trustee or trustees, and to lay out the monies to be received on any such sale or exchange, or otherwise, belonging to the said college as aforesaid, in the purchase of other real or personal estate, or both, but so that the said college shall not at any one time hold or enjoy real estate of a yearly value exceeding one thousand pounds in the whole, and to pay, apply and dispose of the income of all the real and personal estate which shall for the time being belong to the said college as aforesaid to or for the benefit of such body or bodies politic or corporate, or person or persons, whether being or including, or not being or including, the said college, and all or any individual members or member thereof for the time being, and generally for such purposes and in such manner as the said college shall think fit; and further, to alien and dispose of all or

any part of such real and personal estate, and the proceeds of any sale thereof, either by way of donation, voluntary disposition or otherwise, unto, between or amongst any body or bodies politic or corporate, or any person or persons whatsoever, whether being or not being a member or members of the said college: provided always, that no donation or other voluntary disposition of the corpus, or any part of the corpus, of the real and personal estate of the said college to any person or persons being a member or members thereof at the time of such donation or other voluntary disposition shall be effectual without the previous consent thereto of a majority of the members of the said college present at any meeting of the college, and the receipt of the treasurer for the time being of the said college shall be an effectual discharge for all gross annual and other sums which shall for the time being belong or be payable to the said college.

College may surrender their charter, and upon such surrender shall be dissolved.

CXVII. It shall be lawful for the said college, at any time after a resolution to that effect shall have been come to at a meeting of the college, by a majority of the members present at such meeting, to surrender and yield up to her Majesty, her heirs or successors, at such time as in such resolution shall be determined, the Charter of Incorporation of the said college, and all franchises and privileges thereby conferred, or which shall for the time being belong to the said college; and upon and by such surrender the said corporation shall be dissolved and shall cease to exist, for all purposes whatsoever, (except so far as its existence may be requisite for the saving of the rights of her Majesty, her heirs and successors, and of all and every person and persons, body and bodies politic or corporate, whatsoever other than the said college,) and all real and personal estate which at the time of such dissolution of the said college shall belong to the said college for its own use and benefit, either directly or through the medium of any trustee or trustees, shall thenceforth belong, for all the estate and interest therein which at the time of such dissolution belonged to the said college absolutely, to all the persons who at the time of such dissolution thereof shall be the president and fel-

lowes of the said college, in equal shares as tenants in common, to and for their own use and benefit respectively, but subject to any charges or incumbrances affecting the same at the time of such dissolution, and all real and personal estate of which the said college at the time of such dissolution thereof be seised or possessed, upon any trust or trusts, shall thereupon become vested in the four persons who at the time of such dissolution shall be the president and three senior fellowes of the said college, as joint tenants, their heirs, executors or administrators, according to the nature of the real and personal estates respectively, upon the trust or trusts affecting the same respectively.

REGISTRIES AND OFFICES.

Treasury to provide the buildings for registries, &c.

CXVIII. It shall be lawful for the Commissioners of her Majesty's Treasury, out of such monies as may be provided and appropriated by Parliament for that purpose, to cause to be purchased, erected, hired or otherwise provided such offices and buildings as may be suitable for the district registries and depository or depositories for wills, and such buildings, if any, as may be necessary for the court and principal registry, in addition to the building by this Act vested in the said registrars, or after the determination of their interest in such building.

The Treasury are also empowered, upon the certificate of the judge of the Court of Probate, to allow the expenses attending the removal of records under sect. 89.

RULES AND ORDERS.

Rules and orders to be laid before Parliament.

CXIX. All rules and orders to be made under this Act concerning procedure and practice, and the table of fees to be fixed under this Act, and all alterations thereof to be from time to time made, shall be laid before both Houses of Parliament within one month after the making thereof if Parliament be then sitting, or if Parliament be not then sitting, within one month after the commencement of the then next session of Parliament.

21 & 22 Vict. Cap. 56.

An Act to amend the Law relating to the Confirmation of Executors in Scotland, and to extend over all Parts of the United Kingdom the Effect of such Confirmation, and of Grants of Probate and Administration.

[23rd July, 1858.]

Whereas it is expedient to amend the law relating to the confirmation of executors in Scotland, and to extend over the United Kingdom the effect of such confirmation, and of grants of probate and administration: be it enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Practice of raising edicts of executry to cease.

I. From and after the 12th day of November, 1858, the practice of raising edicts of executry before the Commissary Courts in Scotland, for the decerniture of executors to deceased persons, shall cease, and it shall not be competent to any person to obtain himself decerned executor in virtue of any such edict raised subsequently to the date aforesaid.

Petition to commissary to be substituted.

II. From and after the date aforesaid every person desirous of being decerned executor of a deceased person as disponee, next of kin, creditor, or in any other character whatsoever now competent, or of having some other person, possessed of such character, decerned executor to a deceased person, shall, instead of applying, as heretofore, for an edict of executry from the commissary, present a petition to the commissary for the appointment of an executor, which petition shall be in the form as nearly as may be of the Schedule (A.) hereunto annexed, and shall be subscribed by the petitioner or by his agent.

Form of petition as in Schedule (A).

To whom petition to be presented.

III. Such petition shall be presented to the commissary of the county wherein the deceased died domiciled, and in the case of persons dying domiciled furth of Scotland, or without any fixed or known domicile, having personal or

moveable property in Scotland, to the commissary of Edinburgh.

Mode of intimating petition.

IV. Every such petition, in place of being published at the kirk door and market cross, as edicts of executry have been in use to be published, shall be intimated by the commissary clerk affixing on the door of the Commissary Court House, or in some conspicuous place of the court and of the office of the commissary clerk, in such manner as the commissary may direct, a full copy of the petition, and by the keeper of the record of edictal citations at Edinburgh inserting in a book, to be kept by him for that purpose, the names and designations of the petitioner and of the deceased person, the place and date of his death, and the character in which the petitioner seeks to be decerned executor, which particulars the keeper of the record of edictal citations shall cause to be printed and published weekly, along with the abstracts of the petitions for general and special services, in the form of Schedule (B.) hereunto annexed: provided always, that to enable the keeper of the record of edictal citations to make such publication, the commissary clerk shall transmit to him the said particulars, and to enable the commissary clerk to grant the certificate after mentioned, the keeper of the record of edictal citations shall transmit to the commissary clerk a copy, certified by the said keeper, of the printed and published particulars, all in such form and manner and on payment of such fees as the Court of Session by act of sederunt may direct.

Certificate of intimation of petition.

V. The commissary clerk, after receiving the certified copy of the printed and published particulars, shall forthwith certify on the petition that the same has been intimated and published, in terms of the provisions of this Act, in the form of Schedule (C.) hereunto annexed, and such certificate shall be sufficient evidence of the facts therein set forth: provided always, that where a second petition for confirmation is presented in reference to the same personal estate, the commissary shall direct intimation of such petition to be made to the party who presented the first petition.

Additional intimation of petition in certain cases.

Procedure on petition.

VI. On the expiration of nine days after the commissary clerk shall have certified the intimation and publication of a petition for the appointment of an executor as aforesaid, the same may be called in court, and an executor decerned, or other procedure may take place, according to the forms now in use in case of edicts of executry, and with the like force and effect; and decree dative may be extracted on the expiration of three lawful days after it has been pronounced, but not sooner: provided always, that nothing herein contained shall alter or affect the law as to executors finding caution; and that bonds of caution for executors may be partly printed and partly written.

Decree dative.

Proviso as to caution.

Not to affect present procedure.

VII. Provided always, that nothing hereinbefore contained shall alter or affect the course of procedure now in use before the commissaries in confirmations of executors nominate.

Where inventories, &c., may be recorded.

Confirmations may be granted.

VIII. Inventories of personal estates of deceased persons and relative testamentary writings may be given up and recorded in, and confirmations may be granted and issued by, any commissary court to which it is competent to apply, in virtue of the provisions of this Act, for the appointment of an executor dative to the deceased.

Inventory may include personal estate in any part of United Kingdom.

IX. From and after the date aforesaid it shall be competent to include in the inventory of the personal estate and effects of any person who shall have died domiciled in Scotland, any personal estate or effects of the deceased situated in England or in Ireland or both: provided that the person applying for confirmation shall satisfy the commissary, and that the commissary shall by his interlocutor find that the deceased died domiciled in Scotland, which interlocutor shall be conclusive evidence of the fact of domicile: provided also, that the value of such personal estate and effects situated in England or Ireland respectively, shall be separately stated in such inventory, and such inventory shall be impressed with a stamp corresponding to the entire value of the estate and effects included therein, wheresoever situated within the United Kingdom.

X. Confirmations shall be in the form, or as nearly as may be in the form, of Schedules (D.) and (E.) hereunto annexed; and such confirmations shall have the same force and effect with the like writs framed in terms of the Acts of Sederunt passed on the twentieth December, one thousand eight hundred and twenty-three and the twenty-fifth February, one thousand eight hundred and twenty-four, or at present in use.

Form and effect of confirmations.

XI. Oaths and affirmations on inventories of personal estates given up to be recorded in any commissary court, may be taken either before the commissary or his depute, or the commissary clerk or his depute, or before any commissioner appointed by the commissary, or before any magistrate or justice of the peace within the United Kingdom or the colonies, or any British consul.

Oaths, before whom to be taken.

XII. From and after the date aforesaid, when any confirmation of the executor of a person who shall in manner aforesaid be found to have died domiciled in Scotland, which includes, besides the personal estate situated in Scotland, also personal estate situated in England, shall be produced in the principal Court of Probate in England, and a copy thereof deposited with the registrar, together with a certified copy of the interlocutor of the commissary finding that such deceased person died domiciled in Scotland, such confirmation shall be sealed with the seal of the said court and returned to the person producing the same, and shall thereafter have the like force and effect in England as if a probate or letters of administration, as the case may be, had been granted by the said Court of Probate.

Confirmation produced in Probate Court of England, and sealed, to have the effect of probate or administration.

It is by this and by the three preceding sections that the sealing of Scotch confirmations under this Act is especially regulated.

It will be seen that the commissary is to find by his interlocutor that the deceased died domiciled in Scotland, and that besides the personal estate situated in Scotland, personal estate situated in England is to be included in the confirmation also. By sect. 10 it is provided, that confirmations are to be in the form, or as nearly as may be in the form, of Schedules (D.) and (E.) annexed to this Act.

To obtain the Seal.—The original confirmation, and a certified copy of the interlocutor, must, together with a plain copy of the confirmation, be deposited with the examiner of wills in the principal registry. The inventory is required in exceptional cases only.

After the papers have been collated, they are handed to the record keepers, who thereupon (as also in the case of sealing Irish grants) peruse and examine them carefully, in the same manner as the clerks of the seals peruse probates and administrations issuing from the principal registry, and, if they find them free from defect, the seal of the Court is attached upon the fiat of one of the registrars.

Fees.—The fee for the seal is 1*l.* 1*s.* There is a fee also of 1*s.* for the receipt, which is given upon the papers being deposited; a fee for collating, according to the length; a fee of 2*s.* 6*d.* on each document filed, and the common search fee.

Confirmation produced in Probate Court of Dublin, and sealed, to have the effect of probate or administration.

XIII. From and after the date aforesaid, where any confirmation of the executor of a person who shall so be found to have died domiciled in Scotland, which includes, besides the personal estate situated in Scotland, also personal estate situated in Ireland, shall be produced in the Court of Probate in Dublin, and a copy thereof deposited with the registrar, together with a certified copy of the interlocutor of the commissary finding that such deceased person died domiciled in Scotland, such confirmation shall be sealed with the seal of the said court and returned to the person producing the same, and shall thereafter have the like force and effect in Ireland as if a probate or letters of administration, as the case may be, had been granted by the said Court of Probate in Dublin.

For the practice with regard to sealing Irish grants, see the note to the preceding section.

Probate or letters of administration produced in Commissary Court and certified, to have effect of confirmation.

XIV. From and after the date aforesaid, when any probate or letters of administration to be granted by the Court of Probate in England to the executor or administrator of a person who shall be therein, or by any note or memorandum written thereon signed by the proper officer, stated to have died domiciled in England, or by the Court of Probate in Ireland to the executor or administrator of a person who shall in like manner be stated to have died domiciled in Ireland, shall be produced in the Commissary Court of the county of Edinburgh, and a copy thereof deposited with the commissary clerk of the said court; the commissary clerk shall endorse or write on the back or face of such grant a certificate in the form as near as may be of the Schedule (F.) hereunto annexed; and such probate or letters of administration, being duly stamped, shall be of the like force and effect and have

the same operation in Scotland as if a confirmation had been granted by the said court.

This note must be made before probate issues.[1]

For securing the stamp duties, probates, &c., to be deemed granted for all the property in the United Kingdom.

XV. In any of the aforesaid cases where the deceased person shall be stated in or upon the probate or letters of administration to have been domiciled in England or in Ireland, as the case may be, such probate or letters of administration shall, for the purpose of securing the payment of the full and proper stamp duties, be deemed and considered to be granted for and in respect of the whole of the personal and moveable estate and effects of the deceased in the United Kingdom, within the meaning of the Act of Parliament passed in the fifty-fifth year of the reign of King George the Third, chapter one hundred and eighty-four, and of all other Acts of Parliament granting or relating to stamp duties on probates and letters of administration in England and Ireland respectively; and the affidavit required by law to be made on applying for probate or letters of administration in England or Ireland as to the value of the estate and effects of the deceased; and also where the commissary shall, in manner aforesaid, find that the deceased was domiciled in Scotland, the inventory required by law to be exhibited and recorded in the proper Commissary Court in Scotland before obtaining confirmation, or intermitting with or entering upon the possession or management of the personal or moveable estate or effects of the deceased in Scotland, shall respectively extend to and include the whole of the personal and moveable estate of the deceased person in the United Kingdom, and the value thereof; and the stamp duties for the time being chargeable on probates and letters of administration and on inventories respectively shall be chargeable upon any probate or letters of administration to be granted, and any inventory to be exhibited and recorded as aforesaid respectively, for and in respect of the whole of the personal and moveable estate and effects of the deceased in the United Kingdom and the value thereof; and the said affidavit shall also

Inventory to include all such property.

[1] *In the goods of Muir*, 28 L. J., P. & M. 49.

separately specify the value of the said estate and effects in Scotland.

Provisions of former Acts to apply to the probates, letters of administration, and inventories mentioned in this Act.

XVI. For the purpose aforesaid, and also for granting relief where too high a stamp duty shall have been paid on any such probate or letters of administration or inventory, the provisions contained in sections forty, forty-one, forty-two and forty-three of the said Act passed in the fifty-fifth year of his Majesty King George the Third, relating to probates and letters of administration granted in England, and the like provisions in the Act passed in the fifty-sixth year of the said King, chapter fifty-six, relating to probates and letters of administration granted in Ireland, and the provisions contained in the Act passed in the forty-eighth year of the said King, chapter one hundred and forty-nine, relating to inventories in Scotland, and also all other provisions contained in the said Acts respectively, or in any other Act or Acts relating to probates and letters of administration and inventories respectively, shall apply to the probates and letters of administration to which effect is given by this Act, and to the whole of the personal and moveable estate of the deceased for or in respect of which the same shall, in pursuance of this Act, be deemed to be granted, wheresoever situate in the United Kingdom; and also to the inventories in which the whole of the personal and moveable estate of the deceased, wheresoever situate in the United Kingdom, ought, in pursuance of this Act, to be included, in as full and ample a manner as if all such provisions were herein enacted in reference to such probates, letters of administration and inventories respectively.

Affidavit as to domicile to be made on applying for probate or administration.

XVII. Provided, that in any case where, on applying for probate or letters of administration, it shall be required to be stated as aforesaid that the deceased was domiciled in England or in Ireland, the affidavit so as aforesaid required by law shall specify the fact according to the deponent's belief, which shall be sufficient to authorize the same to be so stated in or upon the probate or letters of administration; provided also, that any such statement, and the interlocutor of the commissary finding that the deceased was domiciled in Scotland, shall be evidence, and have effect for the purposes of this Act only.

Acts of Sederunt to be passed for following out purposes of this Act.

XVIII. It shall be competent to the Court of Session, and they are hereby authorized and required, from time to time, to pass such Acts of Sederunt as shall be necessary and proper for regulating in all respects the proceedings under this Act before the Commissary of Edinburgh and other commissaries in Scotland, and following out the purposes of this Act, and also the fees to be paid to agents before the said courts, and to the commissary clerks and other officers of court, and the expense of publication of petitions.

Former Acts of Sederunt repealed if inconsistent with this Act.

XIX. All former Acts, and Acts of Sederunt made in virtue thereof, so far as inconsistent with the present Act, are hereby repealed; and this Act may be amended or repealed by any Act to be passed during the present session of Parliament, and may be cited as the "Confirmation and Probate Act, 1858."

Interpretation of terms.

XX. The word "commissary" shall include commissary depute, and the term "commissary clerk" shall include commissary clerk depute.

SCHEDULES to which the foregoing Act refers.

SCHEDULE (A.)

Form of a Petition for Appointment of an Executor to a deceased Person.

Unto the Honourable the Commissary of [*specify the county*], the Petition of *A. B.* [*here name and design the petitioner*];

Humbly sheweth,

That the late *C. D.* [*here name and design the deceased person to whom an executor is sought to be appointed*] died at [*specify place*] on or about the [*specify date*], and had at the time of his death his ordinary or principal domicile in the county of [*specify county, or* "furth of Scotland," *or* "without any fixed domicile," *or* "without any known domicile," *as the case may be*].

That the petitioner is the only son and next of kin [*or state what other relationship, character, or title the petitioner has, giving him right to apply for the appointment of executor*].

May it therefore please your lordship to decern the petitioner executor dative quà next of kin to the said *C. D.* [*or state the other character in which the petitioner claims to be appointed executor*].

According to justice, &c.

[*Signed by the petitioner or his agent*].

SCHEDULE (B.)

Roll of Petitions for the Appointment of Executors in Commissary Courts in Scotland.

County.	Name and Designation of Petitioner.	Title of Petitioner.	Name and Designation of Defunct.	Place and Date of Death.
Edinburgh.	*A. B.*, Writer in Edinburgh.	Next of Kin.	*C.D.*, Merchant in Edinburgh.	No. George Street, Edinburgh, 1st Jan., 1857.

SCHEDULE (C.)

Form of Certificate by Commissary Clerk of Publication of a Petition for the Appointment of an Executor.

I, *A. B.*, commissary clerk [*or* "commissary clerk depute," *as the case may be,*] of the county of [*specify county*], hereby certify that this petition was intimated by affixing a copy thereof on the door of the court-house [*if some other place has been directed by the commissary, specify it*], on the [*specify date*], and by being published by the keeper of the record of edictal citations at Edinburgh, in the printed roll of petitions for the appointment of executors in the commissary courts of Scotland, printed and published on [*specify date*].

A. B.

SCHEDULE (D.)

Form of a Testament Dative or Confirmation of the Executor of a Person who has died without naming one.

I, *A. B.*, commissary of the county of [*specify county*], considering that by my decree, dated [*specify date*], I decerned *C. D.* executor dative quà next of kin [*or other character, as the case may be,*] of the late *E. F.*, who died at [*specify place*], on [*specify date*], and seeing that the said *C. D.* has since given up on oath an inventory of the personal estate and effects of the said *E. F.* at the time of his death situated in Scotland, [*or* "situated in Scotland and England," *or* "in Scotland and Ireland," *or* "in Scotland, England and Ireland," *as the case may be,*] amounting in value to pounds, which inventory has been recorded in my court books, of date [*specify date*], and that he has likewise found caution for his acts and intromissions as executor: Therefore I, in her Majesty's name and authority, make, constitute, ordain and confirm the said *C. D.* executor dative quà [*specify character*] to the defunct, with full power to him to uplift, receive, administer and dispose of the said personal estate and effects, and grant discharges thereof, if needful to pursue therefor, and generally every other thing concerning the same to do that to the office of executor dative

quà [*specify character*] is known to belong; providing always, that he shall render just count and reckoning for his intromissions therewith when and where the same shall be legally required.

Given under the seal of office of the commissariot [*specify county*], and signed by the clerk of court at [*specify place*], the [*specify date*].

To be signed by the commissary clerk or his depute, and sealed with the seal of office.

SCHEDULE (E.)

Form of a Testament Testamentar or Confirmation of an Executor Nominate.

I, *A. B.*, commissary of the county of [*specify county*], considering that the late *C. D.* died at [*specify place*], upon [*specify date*], and that by his last will [*or other writing containing the nomination of executor*], dated [*specify date*], and recorded in my court books upon [*specify date*], the said *C. D.* nominated and appointed *E. F.* to be his executor, and that the said *E. F.* has given up on oath an inventory of the personal estate and effects of the said *C. D.* at the time of his death situated in Scotland, [*or* "situated in Scotland and England," *or* "situated in Scotland and Ireland," *or* "situated in Scotland, England and Ireland," *as the case may be,*] amounting in value to pounds, which inventory has likewise been recorded in my court books of date [*specify date*]: Therefore I, in her Majesty's name and authority, ratify, approve and confirm the nomination of executor contained in the aforesaid last will [*or other writing containing the nomination of executor*]; and I give and commit to the said *E. F.* full power to uplift, receive, administer and dispose of the said personal estate and effects, grant discharges thereof, if needful to pursue therefor, and generally every other thing concerning the same to do that to the office of an executor nominate is known to belong; providing always, that he shall render just count and reckoning for his intromissions therewith when and where the same shall be legally required.

Given under the seal of office of the commissariot of [*specify county*], and signed by the clerk of court at [*specify place*], the [*specify date*].

To be signed by the commissary clerk or his depute, and sealed with the seal of office.

SCHEDULE (F.)

I, *A. B.*, commissary clerk [*or* "commissary clerk depute"] of the county of Edinburgh, hereby certify that this grant of probate has [*or* "these letters of administration have"] been produced in the commissary court of the said county, and that a copy thereof has been deposited with me.

21 & 22 Vict. Cap. 95.

An Act to amend the Act of the Twentieth and Twenty-first Victoria, Chapter Seventy-seven.

[2nd August, 1858.]

20 & 21 Vict. c. 77.

Whereas in the last session of Parliament an Act was passed, intituled "An Act to amend the Law relating to Probates and Letters of Administration in England," hereinafter designated "The Court of Probate Act:" and whereas it is expedient to amend the same: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:—

The judge of the High Court of Admiralty and the judge of the Court of Probate may sit for each other.

I. It shall be lawful for the judge of the High Court of Admiralty to sit in open court or in chambers for the judge of her Majesty's Court of Probate, and it shall be lawful for the judge of her Majesty's Court of Probate to sit in open court or in chambers for the judge of the High Court of Admiralty; and all orders, decrees or sentences, and other Acts whatsoever, made, decreed, pronounced or done by either of the judges aforesaid acting for the other, shall, in the court books, be stated to have been made, decreed, pronounced or done by such judge sitting and acting on behalf of such other judge; and such orders, decrees, sentences and other Acts so made, decreed, pronounced or done shall have the same force and validity in law as if they had been made, decreed, pronounced or done by the judge on whose behalf they purport to have been so made, decreed, pronounced or done.

Amends sect. 5 of the principal act. *Sup.* p. 5.

Serjeants and barristers may practise in Court of Probate.

II. All serjeants and barristers-at-law shall be entitled from and after the passing of this Act to practise in all causes and matters whatsoever in the Court of Probate.

This section meets the difficulty which arose under sect. 40 of the principal act. *Sup.* p. 65.

The judge of the Court of Probate may sit in chambers.

III. It shall be lawful for the judge of the Court of Probate for the time being to sit in chambers for the dispatch of such part of the business of the said court as can in the opinion of the said judge, with advantage to the suitors, be heard in chambers; and the times at which such sittings shall be held shall from time to time be fixed by the judge: provided always, that no question shall be heard in chambers which either party shall require to be heard in open court.

The Treasury to cause chambers to be provided.

IV. The Commissioners of her Majesty's Treasury shall from time to time provide chambers in which the judge of the Court of Probate shall sit for the dispatch of such business as aforesaid; and until such chambers are provided elsewhere the said judge shall sit in chambers in any room which he may find convenient for the purpose.

Powers of judge when sitting in chambers.

V. The judge of the Court of Probate, when so sitting in chambers, shall have and exercise the same power and jurisdiction in respect of the business to be brought before him as if sitting in open court.

Power to appoint an additional registrar.

VI. Whereas there are now three registrars only of the principal registry of the said court, that is to say, Augustus Frederic Bayford, the senior registrar; Charles John Middleton, the second registrar; and Edward Francis Jenner, the third registrar: and whereas the duties of the said principal registry cannot be efficiently discharged by three registrars: be it enacted, that it shall be lawful for the judge of the said court to appoint a fourth registrar for the principal registry of the said court, in addition to the three registrars appointed under the Court of Probate Act; and from and after the appointment of such fourth registrar there shall be paid to each of the said registrars the annual salary mentioned in the schedule to this Act, in lieu of the salary provided by the Court of Probate Act, such salaries to be paid out of any monies provided by Parliament for the purposes of the said Act: provided always, that nothing herein contained shall be construed to diminish the salary of any

of the three registrars appointed before the passing of this Act.

Schedule.

Senior registrar	£1,600
Second „	1,400
Third „	1,200
Fourth „	1,000

Vacancy in office of registrar how to be filled up.

VII. On the death, resignation or removal of any of the four registrars of the said principal registry, other than the junior registrar for the time being, the vacancy thereby occasioned shall be filled up by the registrar next in seniority to whom no sufficient objection shall be made to the satisfaction of the judge of the said court.

These two sections amend sects. 14 & 15 of the principal act. *Sup.* p. 12.

Clerks in the principal registry eligible to be registrars, &c.

VIII. Clerks having served five years in the principal registry of the Court of Probate shall be eligible to be appointed registrars or district registrars of the said court.

Amends sect. 20 of the principal act. *Sup.* p. 15.

Certain articled clerks to be admitted proctors of the Court of Probate.

IX. It shall be lawful for the judge of the Court of Probate to admit any person who at the time of the passing of the Court of Probate Act was articled to a proctor in Doctors Commons, or to a proctor belonging to any Ecclesiastical Court, so soon as he shall have served the full term for which he was articled, or within the period of one year therefrom, to be a proctor of her Majesty's Court of Probate, upon the payment of such fees as shall be fixed by the judge of the said Court, with the sanction of the Commissioners of her Majesty's Treasury.

Where personalty is under 200*l*. County Court to have jurisdiction.

X. Where it appears by affidavit to the satisfaction of a registrar of the principal registry that the testator or intestate in respect of whose estate a grant or revocation of a grant of probate or letters of administration is applied for had at the time of his death his fixed place of abode in one of the districts specified in Schedule (A.) to the said "Court of Probate Act," and that the personal estate in respect of which such probate or letters of administration are to be or have been granted, exclusive of

what the deceased may have been possessed of or entitled to as a trustee, and not beneficially, but without deducting anything on account of the debts due and owing from the deceased, was at the time of his death under the value of two hundred pounds, and that the deceased at the time of his death was not seised or entitled beneficially of or to any real estate of the value of three hundred pounds or upwards, the judge of the County Court having jurisdiction in the place in which the deceased had at the time of his or her death a fixed place of abode shall have the contentious jurisdiction and authority of the Court of Probate in respect of questions as to the grant and revocation of probate of the will or letters of administration of the effects of such deceased person, in case there be any contention in relation thereto.

Sect. 54, of 20 & 21 Vict. c. 77, repealed.

XI. Section fifty-four of the said Court of Probate Act shall be and the same is hereby repealed.

Sect. 59, of 20 & 21 Vict. c. 77, to apply to applications for revocation of grants.

XII. The said Court of Probate Act, section fifty-nine, shall, so far as the County Courts or a judge thereof are concerned, apply to an application for the revocation of a grant of probate or administration as well as to an application for any such grant.

For the change effected by these two sections (11 & 12), see *sup.* p. 80.

Power to make rules and orders and frame scales of fees for the County Courts.

XIII. The power and authority to make rules and orders for regulating the proceedings of the County Courts shall extend and be applicable to all proceedings in the County Courts under this Act, and also to framing a scale of costs and charges to be paid to counsel, proctors, solicitors and attornies, in respect of proceedings in County Courts, under the said Court of Probate Act or this Act.

See *sup.* p. 60.

Noncontentious business pending in any Ecclesiastical Court to be transferred.

XIV. All noncontentious business pending in any Ecclesiastical Court at the time when "The Court of Probate Act" came into operation shall be deemed to have been transferred to the Court of Probate, in the same way as all pending suits were transferred to the said court under the said Act, and all Acts executed under the

authority of any such Ecclesiastical Court with reference to such business which would have been valid if the authority of such court had not been abolished shall be valid, and all oaths and bonds sworn and executed in manner required by any such Ecclesiastical Court in reference to such business, prior to the eleventh day of January, one thousand eight hundred and fifty-eight, shall continue to have and be deemed to have had the same force and effect in law as they would have had if sworn and executed in pursuance of the provisions of the said Act or of this Act.

Bonds given before Jan. 11, 1858, to remain in force.

XV. Bonds given to any archbishop, bishop or other person exercising testamentary jurisdiction in respect of grants of letters of administration made prior to the eleventh day of January, one thousand eight hundred and fifty-eight, or in respect of grants made in pursuance of the Court of Probate Act or of this Act, whether taken under a commission or requisition executed before or after the said eleventh day of January, shall enure to the benefit of the judge of the Court of Probate, and, if necessary, shall be put in force in the same manner and subject to the same rules (so far as the same may be applicable to them) as if they had been given to the judge of the said court subsequently to that day.

These two sections (14 & 15) extends the provisions of sect. 84 of the principal act. *Sup.* p. 116.

An executor not acting or not appearing to a citation to be treated as if he had renounced.

XVI. Whenever an executor appointed in a will survives the testator, but dies without having taken probate, and whenever an executor named in a will is cited to take probate, and does not appear to such citation, the right of such person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his effects shall and may, without any further renunciation, go, devolve and be committed in like manner as if such person had not been appointed executor.

This section explains who is intended under sect. 79 of the principal act as a person renouncing probate. *Sup.* p. 111.

Judge of the Court of Probate may

XVII. The judge of the Court of Probate shall have and exercise the same power of altering and amending

grants of probate and letters of administration made before the eleventh day of January, one thousand eight hundred and fifty-eight, as any Ecclesiastical Court had and exercised in respect of such grants.

amend grants made before Jan. 11, 1858.

XVIII. The provisions of an Act passed in the thirty-eighth year of George the Third, chapter eighty-seven, and of "The Court of Probate Act," shall be extended to all executors and administrators residing out of the jurisdiction of her Majesty's courts of law and equity, whether it be or be not intended to institute proceedings in the Court of Chancery, and to all grants made before and subsequently to the passing of the last-mentioned Act, and it shall be lawful to alter the language of the grant prescribed by the first-named statute so as to make it apply to grants made in the Court of Probate under the said last-mentioned Act.

Provisions of 38 Geo. 3, c. 87, and 20 & 21 Vict. c. 77, extended to all cases of executors and administrators.

This section extends the provisions of sect. 74 of the principal act. *Sup.* p. 107.

XIX. From and after the decease of any person dying intestate, and until letters of administration shall be granted in respect of his estate and effects, the personal estate and effects of such deceased person shall be vested in the judge of the Court of Probate for the time being, in the same manner and to the same extent as heretofore they vested in the Ordinary.

Between the death of the person deceased and the grant the property to vest in the judge ordinary.

XX. All second and subsequent grants of probate or letters of administration shall be made in the principal registry, or in the district registry where the original will is registered or the original grant of letters of administration has been made, or in the district registry to which the original will or a registered copy thereof or the record of the original grant of administration have been transmitted, by virtue of a requisition issued in pursuance of section eighty-nine of "The Court of Probate Act;" and for and in respect of such second or subsequent grants of probate or letters of administration to be made in a district registry, it shall not be requisite that it should appear by affidavit that the testator or intestate had a fixed place of abode within the district in which the application is made.

Second and subsequent grants to be made where the original will or the original letters of administration are deposited.

The Court of Probate may require security from a receiver of real estate.

XXI. It shall be lawful for the Court of Probate to require security by bond, in such form as by any rules and orders shall from time to time be directed, with or without sureties, from any receiver of the real estate of any deceased person appointed by the said court, under section seventy-one of "The Court of Probate Act;" and the court may, on application made on motion or in a summary way, order one of the registrars of the court to assign the same to some person to be named in such order; and such person, his executors or administrators, shall thereupon be entitled to sue on the said security, or put the same in force in his or their own name or names, both at law and in equity, as if the same had been originally given to him instead of to the judge of the said court, and shall be entitled to recover thereon, as trustee for all parties interested, the full amount due in virtue thereof.

The court has power under sect. 70 of the principal act to appoint a receiver of real estate *pendente lite*. *Sup.* p. 99.

Administration pending suit deemed to apply to appeals.

XXII. All the provisions contained in the Court of Probate Act respecting grants of administration pending suit, shall be deemed to apply to the case of appeals to the House of Lords under the said Act.

This section enlarges the powers of sect. 70 of the principal act. *Sup.* p. 99.

Registrar may issue subpœnas to produce papers, &c.

XXIII. It shall be lawful for a registrar of the principal registry of the Court of Probate, and whether any suit or other proceeding shall or shall not be pending in the said court, to issue a subpœna requiring any person to produce and bring into the principal or any district registry or otherwise, as in the said subpœna may be directed, any paper or writing being or purporting to be testamentary, which may be shown to be in the possession, within the power or under the control of such person; and such person, upon being duly served with the said subpœna, shall be bound to produce and bring in such paper or writing, and shall be subject to the like process of contempt in case of default as if he had been a party to a suit in the said court, and had been ordered by

the judge of the Court of Probate to produce and bring in such paper or writing.

This section gives to a registrar of the principal registry the power given to the court by sect. 26 of the principal act, for the proceedings where a person makes default, see *sup.* p. 21.

For the notice to produce, see *sup.* p. 19.

The registrars to do all acts heretofore done by surrogates.

XXIV. The registrars of the principal registry shall be invested with and shall and may exercise, with reference to proceedings in the Court of Probate, the same power and authority which surrogates of the judge of the Prerogative Court of Canterbury could or might before the passing of the Court of Probate Act have exercised in chambers with reference to proceedings in the said Prerogative Court.

Copies of wills may be certified by a stamp.

XXV. Copies of wills required to be transmitted by a district registrar, and certified by him to be correct copies, under section fifty-one of the Court of Probate Act, may be so certified and transmitted under a stamp provided by the district registrar for that purpose, and approved of by the judge of the Court of Probate.

See *sup.* p. 77.

Certificates from the principal registry may be stamped.

XXVI. Certificates issued from the principal registry with reference to notices of applications transmitted from the district registrars under section forty-nine of the Court of Probate Act need not be made under the hand of a registrar of the principal registry, as required by the said Act, but may be issued under a stamp provided for that purpose, and approved of by the judge of the Court of Probate.

See *sup.* p. 76.

Requisitions may be issued for the transmission of a single paper.

XXVII. Whereas doubts have been entertained whether a requisition can be issued under section eighty-nine of the Court of Probate Act for the transmission of one or more papers only, not being all the papers and documents in the custody of the person to whom any such requisition may be addressed: be it therefore enacted and declared, that the said section shall be construed to extend to all requisitions, whether for the transmission of one or of more records, wills, grants, probates, letters of admi-

nistration, administration bonds, notes of administration, court books, calendars, deeds, processes, acts, proceedings or other instruments, relating exclusively or principally to matters and causes testamentary.

See the note, sect. 89, of the principal act, *sup.* p. 120.

Power to enforce decree as to costs.

XXVIII. The judge of the Court of Probate, and the registrars of the principal registry thereof, shall respectively, in any case where an ecclesiastical or other court having testamentary jurisdiction had previously to the eleventh day of January, one thousand eight hundred and fifty-eight, made any order or decree in respect of costs, have the same power of taxing such costs, and enforcing payment thereof, or of otherwise carrying such order or decree into effect, as if the cause wherein such decree was made had been originally commenced and prosecuted in the said Court of Probate: provided that in taxing any such costs, or any other costs incurred in causes depending in any such courts before the time aforesaid, all fees, charges and expenses, shall be allowed which might have been legally made, charged and enforced, according to the practice of the Prerogative Court of Canterbury.

On the subject of fees and costs, see the note to sect. 96 of the principal act, *sup.* p. 127.

Letters of administration granted in Ireland not to be resealed in England until sufficient bond is given.

XXIX. Letters of administration granted by the Court of Probate in Ireland shall not be resealed, under section ninety-five of the twentieth and twenty-first Victoria, chapter seventy-nine, until a certificate has been filed under the hand of a registrar of the Court of Probate in Ireland that bond has been given to the judge of the Court of Probate in Ireland in a sum sufficient in amount to cover the property in England as well as in Ireland, in respect of which such administration is required to be resealed.

See *sup.* p. 147.

Commissioners may be appointed in the Isle of Man, &c.

XXX. It shall be lawful for the judge of the Court of Probate to appoint, by commission under seal of the court, any persons practising as solicitors in the Isle of Man, in the Channel Islands, or any of them, to administer oaths, and to take declarations or affirmations, and

to exercise any other powers which can be exercised by Commissioners of her Majesty's Court of Probate; and such persons shall be entitled from time to time to charge and take such fees as any other persons performing the same duties in the Court of Probate may charge and take.

Affidavits, before whom to be sworn when parties making them reside in foreign parts.

XXXI. In cases where it is necessary to obtain affidavits, declarations or affirmations, to be used in the Court of Probate from persons residing in foreign parts out of her Majesty's dominions, the same may be sworn, declared or affirmed, before the persons empowered to administer oaths under the Act of the sixth of George the Fourth, chapter eighty-seven, or under the Act of the eighteenth and nineteenth of Victoria, chapter forty-two; provided that in places where there are no such persons as are mentioned in the said Acts such affidavits, declarations or affirmations, may be made, declared and affirmed before any foreign local magistrate or other person having authority to administer an oath.

Affidavits, before whom to be sworn.

XXXII. Affidavits, declarations and affirmations, to be used in the Court of Probate may be sworn and taken in Scotland, Ireland, the Isle of Man, the Channel Islands, or any colony, island, plantation, or place out of England, under the dominion of her Majesty, before any court, judge, notary public, or person lawfully authorized to administer oaths in such country, colony, island, plantation, or place respectively, or, so far as relates to the Isle of Man and the Channel Islands, before any commissary, ecclesiastical judge or surrogate, who, at the time of the passing of the Court of Probate Act, was authorized to administer oaths in the Isle of Man or in the Channel Islands respectively, and all registrars and other officers of the Court of Probate shall take judicial notice of the seal or signature, as the case may be, of any such court, judge, notary public or person, which shall be attached, suspended, or subscribed to any such affidavit, declaration or affirmation, or to any other document.

These three sections (30—32) amend sect. 27 of the principal act, see *sup.* p. 22. For the penalty for forging, see *inf.* sect. 34 of this act.

Persons forging seal or signature guilty of felony.

XXXIII. If any person shall forge any such seal or signature as last aforesaid, or any seal or signature impressed, affixed or subscribed, under the provisions of the said Act of the sixth of George the Fourth, or of the said Act of the eighteenth and nineteenth Victoria, to any affidavit, declaration or affirmation to be used in the Court of Probate, or shall tender in evidence any such document as aforesaid with a false or counterfeit seal or signature thereto, knowing the same to be false or counterfeit, he shall be guilty of felony, and shall upon conviction be liable to penal servitude for the term of his life, or for any term not less than seven years, or to be imprisoned, with or without hard labour, for any term not exceeding three years nor less than one year; and whenever any such document has been admitted in evidence by virtue of this Act, the court or the person who has admitted the same may, at the request of any party against whom the same is so admitted in evidence, direct that the same shall be impounded, and be kept in the custody of some officer of the court or other proper person, for such period and subject to such conditions as to the said court or person shall seem meet; and every person charged with committing any felony under this Act may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence may be laid and charged to have been committed, in the county, district or place in which he may be apprehended or be in custody; and every accessory before or after the fact to any such offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his offence laid and charged to have been committed, in any county, district or place in which the principal offender may be tried.

As to the recognition of the seal of the court, see *sup.* p. 15.

Persons taking a false oath before a surrogate guilty of perjury.

XXXIV. Any person who shall wilfully give false evidence, or who shall wilfully swear, affirm or declare falsely, in any affidavit or deposition before any surrogate having authority to administer oaths under the Court of Probate Act, or before any person who before the passing of the said Act was a surrogate authorized to

administer oaths in any of the Channel Islands, or before any person authorized to administer oaths under this Act, shall be liable to the penalties and consequences of wilful and corrupt perjury.

Provision for the necessary absence of officers.

XXXV. In case any officer appointed or to be appointed by virtue of the Court of Probate Act, 1857, or of this Act, shall, by reason of ill-health or other infirmity, become temporarily incapable of performing the duties of his office, it shall be lawful for the judge to appoint some other fit and proper person to discharge the duties of such office for any period not exceeding six calendar months at any one time, and the person so appointed shall, during such period, have all the power and authority of the officer in whose place he shall be so appointed, and shall be paid by such officer such sum by way of salary or allowance as shall be agreed upon between them respectively or be fixed by the judge, and the judge may, at his discretion, give leave of absence to any officer of the court for any period not exceeding two months in any year, and shall have the like power of making provision for the discharge of the duties of the office during such absence.

The judge to have the same powers over practitioners as judges of other courts.

XXXVI. The judge of the Court of Probate shall have and exercise over proctors, solicitors and attornies practising in the said court, the like authority and control as is now exercised by the judges of any Court of Equity or Common Law over persons practising therein as solicitors or attornies.

The first statute, which enacted certain penalties against any serjeant, pleader or other on account of deceit or collusion in the King's Court, was 3 Edw. I. c. 29. That act extends to attornies, clerks of court or any other, 2 Inst. 213.

For the practice in proceeding against an attorney, see *In re King*, 1 Ad. & E. 560; *In re Jaques*, 2 D. & R. 64; *In re Hodgson*, 3 Dowl. 330.

Provision for expenses of indexing, &c. documents required to be removed under requisition.

XXXVII. When any requisition shall issue in pursuance of section eighty-nine of "The Court of Probate Act, 1857," it shall be lawful for the Commissioners of her Majesty's Treasury, out of such monies as may be provided and appropriated by Parliament for that purpose, to cause to be paid all such expenses attending the

arranging, classification, indexing, carriage or otherwise connected with the removal of the documents or books required by such requisition to be removed, as the judge shall from time to time certify to the said commissioners to be proper and necessary.

Short title of Act.

XXXVIII. In citing the Act of the twentieth and twenty-first Victoria, chapter seventy-seven, in any instrument, document or proceeding, it shall be sufficient to use the expression "The Court of Probate Act, 1857," and in citing this Act, the expression "Court of Probate Act, 1858."

APPENDIX.

RULES AND ORDERS (1857)

For Her Majesty's Court of Probate, in respect of CONTENTIOUS BUSINESS (SECT. 30).

(Referred to throughout as C.)

1. All proceedings in the Court of Probate or in the registries thereof in respect of business not included in the Act itself under the expression "Common Form business," except the warning of caveats, shall be deemed to be *Contentious* business.[a]

2. Executors or other parties who, previously to the passing of the Act, might prove wills in solemn form of law, shall be at liberty to prove wills under similar circumstances, and with the same privileges, liabilities and effect, as heretofore.[b]

3. Next of kin and others who, previous to the passing of the Act, had a right to put executors or other parties entitled to administration with the will annexed upon proof of the will in solemn form of law, shall continue to possess the same rights and privileges, and be subject to the same liabilities with respect to costs, as heretofore.[c]

4. Parties who previously to the passing of the Act had a right to intervene in the cause shall continue to possess the same right, subject to the same limitations and the same rules with respect to costs as heretofore.[d]

5. A caveat shall remain in force for the space of six months, and then expire and be of no effect, but may be renewed from time to time as heretofore. A caveat shall be warned at the place mentioned in it as the address of the person who entered it. It shall be sufficient for the warning of a caveat that one of the registrars send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.[e]

6. Upon a party appearing in answer to the warning of a caveat, the matter shall be entered as a cause in the court book, and the contentious business shall thereupon be held to commence.[f]

7. Where a party proposes to prove a will or codicil in solemn form of law, and no caveat has been entered, or a caveat has been entered

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[a] Page 65.
[b] Page 91.
[c] *Ibid.*
[d] Page 25.
[e] Page 78.
[f] Page 32.

and no appearance given to the warning thereof, the contentious business shall be held to commence with the extracting of a citation in the Forms Nos. 3 and 5, or in some similar form.[g]

8. Citations to see proceedings may be extracted from the registry, on the application of any party to the cause. A form is given, No. 4. Before a party can proceed after the service of a citation, an appearance must have been previously entered by or on behalf of the party cited, or an affidavit of personal service must have been filed in the registry, or the order of the judge, founded on an affidavit, and giving leave to proceed, must have been obtained, and filed in the registry.

9. Every citation shall be written or printed on parchment, and the party taking out the same, or his proctor, solicitor or attorney, shall take it, together with a præcipe, a form of which is given, marked No. 6, to the registry, and there deposit the præcipe and get the citation signed and sealed. The address given in the præcipe must be within three miles of the General Post Office. Personal service of any citation shall be effected by leaving a copy of the citation with the party cited, and showing him the original, if required by him so to do.[h]

10. The entry of the appearance of a party shall be accompanied by an address within three miles of the General Post Office.

11. It shall be sufficient to leave all pleadings and other proceedings not expressly requiring personal service under these rules and orders at the address furnished so as aforesaid by plaintiff and defendant respectively.

12. In case the party cited does not appear within the time limited in the citation, the plaintiff shall allege the default of appearance on the record, and the cause shall thereupon proceed in default.[i]

13. The form to be used in entering an appearance is given, No. 7.

14. In case of proving a will in solemn form of law, the plaintiff shall declare in the Forms Nos. 8 and 9, or as near thereto as the circumstances of the case admit; and such declaration shall be delivered to the defendant, and a copy thereof filed in the registry upon one and the same day.

15. The declaration may be delivered to the defendant at any time after the defendant has entered an appearance. If the plaintiff do not deliver his declaration within one month after an appearance has been given, the defendant may apply to the judge in chambers to fix a time within which such declaration shall be delivered.[k]

16. In case of proceedings in default, the plaintiff shall file his declaration in the registry within eight days from the last day allowed in the citation for the appearance of the defendant.

17. The defendant, if desirous of pleading, must deliver his plea to the plaintiff within eight days after the service of the declaration, and file a copy thereof in the registry on one and the same day, otherwise he will not be permitted to plead, except with the permission of the judge. Forms of pleas are given, Nos. 10 and 11.[l]

18. If the plaintiff propound a will, and the defendant in his plea allege the existence of a will of later date, the plaintiff, as well as the defendant, may, with and subject to the permission of the judge, adduce proof on the trial of the validity of the will upon which he relies.

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[g] Page 65.
[h] Page 32.
[i] *Ibid.*
[k] Page 33.
[l] Page 34.

19. In testamentary causes, the several scripts of the testator, that is to say, wills, codicils, drafts of wills or codicils, or written instructions for the same, shall continue to be brought into the registry as heretofore. And for this purpose, every plaintiff shall at the time of filing the copy of his declaration in the registry, file therewith an affidavit of scripts to the effect of Form No. 12; and in like manner the defendant, upon filing the copy of his plea, shall file therewith a similar affidavit. The time for the filing of these affidavits of scripts may be varied by order of the judge, on the application of either party. Every script coming within the terms of the affidavit, and of which the deponent has any knowledge, is to be specified therein, and every script in the custody or under the control of the party making the affidavit is to be annexed thereto, and deposited therewith in the registry.[m]

20. Either of the parties may give in such further pleading as he may be advised. If either party desire to amend his pleadings, he may do so by permission of the judge, and in such form and under such terms as the judge may approve. The form of the declaration and plea will, it is presumed, be a sufficient guide to practitioners as to the form of any further pleadings.[n]

21. If the defendant or plaintiff shall be of opinion that the declaration or plea or subsequent pleading does not disclose sufficient to enable him to proceed with safety, he may apply to the judge to order the pleadings to be amended; and, if necessary, further application may be made to the judge thereon.

22. Within eight days after the delivery of the last pleading in the cause, the plaintiff is to deliver to the defendant the issue in the Form No. 13, or in a form as near thereto as the circumstances of the case will admit.[o]

23. The plaintiff, after delivery of the issue, shall give notice to the defendant, that, after the expiration of eight clear days, he intends to apply to the court to try the question at issue before itself, either with or without a jury, or to direct an issue to be tried before a judge of assize, as the case may be; and if the plaintiff do not give such notice within sixteen days from the day on which the issue was delivered the defendant may give a similar notice to the plaintiff. A Form of Notice, No. 14, is subjoined.[p]

24. A copy of every such notice shall be filed in the registry upon the day on which the same is served upon the opposite party in the cause.

25. In each case the judge shall direct, and, if necessary, after hearing the parties, in what mode the cause shall be tried.

26. After the direction of the judge has been obtained as to the mode in which the cause is to be heard, the plaintiff shall, within four clear days, deposit the record of the cause in the registry. The record is to conclude with a statement of the mode in which the judge has directed the cause to be tried, as in the Form No. 15.

27. The plaintiff shall, on the day upon which he sets down the cause as ready for trial, give notice to each party for whom an appearance has been entered of his having done so; and if he delay setting down the cause as ready for trial for the space of one month after the

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[m] Page 33.
[n] *Ibid.*
[o] Page 34.
[p] *Ibid.*

court has directed the mode in which the question at issue shall be tried, the defendant may set the cause down as ready for trial, and give a similar notice to the plaintiff and the aforesaid other parties. A copy of every such notice shall be filed in the registry; and the cause, excepting the judge shall otherwise direct, shall come on in its turn.

28. In default of the appearance of the party cited, a record, in Form No. 16, or as near thereto as can be, shall be filed in the registry.

29. Every subpœna shall be written or printed on parchment, and may include the names of any number of witnesses. The party, or his solicitor or attorney, shall take it, together with a præcipe, (forms of which are given, marked 17, 18, 19 and 20,) to the registry, and there get it signed and sealed, and there deposit the præcipe.[q]

30. Either the plaintiff or defendant may call upon the other party, by notice in writing in the Form annexed, No. 21, to admit any document, saving any just exceptions; and in case of refusal or neglect to admit the same, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be given except in cases where the omission to give the notice is, in the opinion of the registrar, a saving of expense.[r]

31. Applications for the production of instruments purporting to be testamentary, and shown to be in the possession or under the control of any person or persons, as mentioned in the 26th section of the Act, may be made to the judge, on motion or petition, or by summons served on the opposite party in any suit, and upon motion and affidavit in cases where no suit is pending. Forms of subpœnas applicable to these cases are given, Nos. 22, 23, 24 and 25.[s]

32. The hearing of the case shall be conducted in court, and the counsel shall address the court, subject to the same rules and regulations as now obtain in the courts of common law.[t]

33. After the conclusion of the trial, the registrar shall enter on the record the finding of the jury, or the decision of the judge, in a form corresponding as near as may be with that given, Nos. 26 and 27, and shall sign the same.

34. Any person proceeding to prove a will in solemn form, or to revoke the probate of a will, may, if the will affects real estate, apply to the judge for an order authorizing him to cite the heir or heirs at law or other person or persons pretending interest in such real estate; and the judge, on being satisfied by affidavit that the will in question does affect or purport to affect the real estate, shall make an order authorizing the person applying to cite the heir or heirs at law or other such person or persons as aforesaid: provided always, that the judge may make any special directions as to the persons to be cited which he may think the justice of the case requires.[u]

35. An application for a new trial may be made to the Court of Probate in respect to causes tried before a jury within ten days from

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[q] Page 19.
[r] Page 35.
[s] Page 21.
[t] Page 36.
[u] Page 94.

the day on which the cause was tried, or on the first sitting of the court after the cause has been tried.[v]

36. An application for a rehearing of any case tried before the judge without a jury, and in which evidence is given *vivâ voce*, may be made within ten days from the day on which the same was heard, or at the first sitting of the court after the cause has been heard.[w]

37. If the plaintiff or defendant in any cause, unless by leave of the judge previously obtained, fail to deliver the declaration, plea or other pleading within the time specified in these rules, the other party in the cause shall not be compelled to receive the same, unless by direction of the judge. The expense of every such application to the judge shall fall on the party who has caused the delay.

38. Citations, notices, and other processes heretofore in use and still retained, are to be inserted in the *London Gazette*, and in such of the leading morning and evening papers, and such local papers as the judge may from time to time direct, instead of being served on the Royal Exchange.[x]

39. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used in court, unless by leave of the judge.

40. In contentious business, inventories, and not merely declarations of the personal estate and effects of the deceased, are to be used, unless by order of the judge. The Form of Inventory is given, No. 28.

41. All notices required by these rules, or by the practice of the court, are to be in writing.

Interest Causes.[y]

42. In interest causes, as heretofore, each party shall be at liberty to deny the interest of the other; and in such cases both parties may, with and subject to the permission of the judge, adduce proof on one and the same trial of their interest respectively.

43. In interest causes the pleading of each party must show on the face of it that no other person exists having an interest superior to that of the claimant.

44. Forms of the declaration and plea in an interest cause are given, No. 9, and No. 11.

Proceedings by Petition.[z]

45. In proceedings by petition the plaintiff shall, within four clear days after an appearance has been entered for the defendant, or, when the defendant is already before the court, within four clear days from the day upon which he claims to be heard by petition, deliver his act to the defendant, and file a copy thereof in the registry upon one and the same day.

46. The defendant shall, within eight days after the delivery of the act, deliver his answer to the plaintiff, and file a copy thereof in the registry upon one and the same day.

47. The same course shall be pursued until the petition is concluded.

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[v] Page 37.
[w] Page 59.
[x] Page 93.
[y] Page 37.
[z] Page 38.

48. Both plaintiff and defendant shall, within eight clear days from the day upon which the petition is concluded, file in the registry such affidavits as may be necessary in support of their several averments therein. A Form of Petition is given, No. 29.

Appeals.[a]

49. No petition of appeal shall be lodged against any sentence of the Court of Probate, unless within a month of the delivery of the sentence appealed from, or within such other time as the judge shall direct, and unless notice of such appeal has been given to the opposite party in the cause, and filed in the registry.

50. Parties may proceed to carry into effect the decision of the Court of Probate, notwithstanding any such notice of appeal, unless the judge shall otherwise order.

51. After notice of appeal has been given, the judge of the Court of Probate may order the execution of his decree to be suspended, upon such terms as he sees fit.

52. The judge shall in every case in which a time is fixed by these rules for the performance of any act have power to extend the same to such time, and with such qualifications and restrictions, and on such terms as to him may seem fit.

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[a] Page 60.

FORMS,

Which are to be followed as nearly as the circumstances of each case will allow.

No. 1.—Caveat.

In her Majesty's Court of Probate. The Principal Registry.

Let nothing be done in the goods of A. B., late of deceased, who died on the day of 18 at unknown to C. D., of having interest [*or* to E. F., proctor, solicitor *or* attorney of parties having interest].

Dated this day of 18 .

(Signed) C. D., of [*or* E. F., of the proctor, solicitor *or* attorney of parties having interest].

No. 2.—Warning to Caveat.

In her Majesty's Court of Probate. The Principal Registry.

To A. B., of [*or* to C. D., of proctor, solicitor *or* attorney of parties having interest].

You are hereby WARNED, within six days after the service of this warning upon you, inclusive of the day of such service, to cause an appearance to be entered for you in the principal registry of the Court of Probate to the caveat entered by you in the goods of E. F., late of deceased, who died at on the day of 18 and to set forth your [*or* your client's] interest; and take notice, that in default of your so doing the said court will proceed to do all such acts, matters and things as shall be needful and necessary to be done in and about the premises.

(Signed) X. Y., one of the registrars of her Majesty's Court of Probate.

Indorsement to be made after Service.

This warning was served by I. K. on A. B. [*or* C. D.], of the person named in the caveat entered in respect of the goods of the said deceased at on the day of 18 .

(Signed) I. K.,

[*or*, The duplicate of this warning, signed by the said X. Y., was sent by the public post, directed to the said A. B. [*or* C. D.], at on the day of 18].

(Signed) I. K.

No. 3.—Citation.

In her Majesty's Court of Probate.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of in the county of .

Whereas A. B., of claiming to be the executor of C. D., late of deceased, who died on or about the day of 18 at intends to prove in solemn form of law as well the alleged last will and testament of the said deceased bearing date the day of as also the [*first*] codicil thereto, bearing date the day of [*and so on for any other codicils*]: NOW THIS IS TO COMMAND YOU, that within eight days after service hereof on you, inclusive of the day of such service, you do cause an appearance to be entered for you in our Court of Probate in support of any interest you may have in the estate and effects of the said deceased: AND TAKE NOTICE, that in default of your so doing the judge of our said court will proceed to hear the said will [and codicils] proved in solemn form of law, and to pronounce sentence in regard to the validity of the same, your absence notwithstanding.

(Signed) E. F., Registrar.

Indorsement to be made after Service.

This citation was served by G. H. on the within-named of at on the day of 18 .

(Signed) G. H.

No. 4.—Citation to see Proceedings.

In her Majesty's Court of Probate.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of in the county of .

Whereas there is now depending in our Court of Probate a cause entitled A. B. *v.* C. D., wherein the said A. B. is proceeding to prove in solemn form of law the alleged last will and testament with codicils, of E. F., late of deceased, who died on or about the day of at :

And whereas it has been alleged that you are one of the next of kin [*or* interested under a former will of the deceased, *or* that you are a party entitled in distribution to the personal estate and effects of the deceased, *or as the case may be*]: THIS IS TO GIVE YOU NOTICE to appear in the said cause, either personally or by your proctor, solicitor or attorney, should you think it for your interest so to do, at any time during the dependence of the said cause, and before final judgment shall be given therein: AND TAKE NOTICE, that in default of your so doing the judge of our Court of Probate will proceed to hear the said will [and codicils] proved in solemn form of law, and pronounce judgment in the said cause, your absence notwithstanding.

(Signed) E. F., Registrar.

Indorsement to be made after Service.

This citation was served by G. H. on of at on the day of 18 .

(Signed) G. H.

No. 5.—Citation to bring in Probate.

In her Majesty's Court of Probate.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of in the county of .

Whereas probate of the last will and testament [with codicils] of A. B., late of deceased, was on or about the day of 18 granted to you by our Court of Probate: and whereas C. D., one of the natural and lawful brothers and next of kin [*or* interested under a former will, *or*, a party interested in distribution in the goods] of the said deceased, hath alleged that the said probate ought to be called in, revoked and declared null and void in law: NOW THIS IS TO COMMAND YOU, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal registry of our said court the aforesaid probate, and further do show cause (if you should think it for your interest so to do) why the same should not be revoked, and the said will, [and codicils] pronounced to be null and invalid.

(Signed) E. F., Registrar.

Indorsement to be made after Service.

This citation was served by G. H. on the within-named of at on the day of 18 .

(Signed) G. H.

No. 6.—Præcipe for Citation.

In her Majesty's Court of Probate.

Citation [*or* citation to see proceedings] for A. B. of against C. D., in a matter of proving in solemn form of law the last will and testament with codicils of E. F., late of in the county of, &c., deceased [*or generally describing the nature of the suit*].

P. A., proctor, solicitor *or* attorney for [*or* A. B. in person].

The day of 18 .

No. 7.—Entry of an Appearance.

In her Majesty's Court of Probate.

A. B., Plaintiff, against C. D.,
or
Against C. D. and another,
or
Against C. D. and others.

} The Defendant C. D. appears in person, *or* E. F. proctor, solicitor *or* attorney for C. D., appears for the Defendant.

[*Here insert the address required by rule No.* 9.]

Entered the day of 18 .

No. 8.—Declaration.

In her Majesty's Court of Probate.

The day of 18 .

A. B. by C. D., his proctor, solicitor *or* attorney, says, that E. F., late of deceased, who died on or about the day of at made his last will and testament, with codicils, bearing date, to wit, the said will on the day of 18 the said first codicil on the day of 18 [*and so on for any other codicils*], and in the said will appointed the said A. B. sole executor [*or as the case may be*]; that the said will and codicils respectively, after having been reduced into writing, were signed by the said testator in the presence of two witnesses present at the same time, and who subscribed the same in the presence of the said testator, and whose names severally appear upon the said will and codicils; and that the said testator was at the time of the execution of the said will and codicils respectively of perfect sound mind, memory and understanding.

(Notice, where the Defendant appears.)

The defendant must plead hereto in eight days from the date hereof, otherwise the plaintiff will proceed to obtain probate of the said will [and codicils].

No. 9.—Declaration in an Interest Cause.

In her Majesty's Court of Probate.

The day of 18 .

A. B. [*or* A. B. by C. D., his proctor, solicitor *or* attorney] saith, that E. F., late of deceased, died on or about the day of 18 at intestate, a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece, leaving the said A. B. his lawful cousin-german and one of his next of kin [*or as the case may be*].

(Notice.)

The defendant must plead hereto in eight days from the date hereof, otherwise the plaintiff will proceed to obtain letters of administration to the personal estate and effects of the said deceased.

No. 10.—Plea.

In her Majesty's Court of Probate.

The day of 18 .

G. H. [*or* G. H. by I. Z., his proctor, solicitor *or* attorney] saith, that the paper writing bearing date the day of 18 and alleged by the plaintiff to be the last will and testament of A. B., late of in the county of deceased [*or* the first *or any other* codicil thereto], was not executed according to the provisions of 1 Vict. cap. 26, [*or* that the deceased at the time the said alleged will (*or* alleged codicil) bears date, to wit, on the day of 18 was not of sound mind, memory and understanding], [*or any other averment in accordance with the circumstances of the case*].

No. 11.—Plea in an Interest Cause.

In her Majesty's Court of Probate.

The day of 18 .

G. H. [*or* G. H. by I. K., his proctor, solicitor *or* attorney] saith, that A. B., the plaintiff, is not the lawful cousin-german of E. F., who died on or about the day of 18 at the deceased in this cause. And further, that the said deceased died intestate, a widower, without child, parent, brother or sister, uncle or aunt, nephew or niece, or cousin-german, leaving him the said G. H. his lawful cousin-german once removed, and his only next of kin [*or as the case may be*].

No. 12.—Affidavit of Scripts.

In her Majesty's Court of Probate.

A. B. *v.* C. D.

I, $\left\{\begin{matrix}\text{A. B.}\\\hline\text{C. D.}\end{matrix}\right\}$ of in the county of party in this cause, make oath and say, that no paper or parchment writing, being or purporting to be or having the form or effect of a will or codicil or other testamentary disposition of E. F., late of in the county of deceased, the deceased in this cause, has at any time, either before or since his death, come to the hands, possession, or knowledge of me this deponent, save and except the true and original last will and testament of the said deceased now remaining in the registry of this court, the said will bearing date the day of 18 [*or as the case may be*], also save and except [*here add any other testamentary papers of which the deponent has any knowledge*].

(Signed) A. B.

Sworn before me [*person authorized to administer oaths under the act.*]

N.B.—*All papers answering the description in the affidavit which are in the possession or under the control of the party making the affidavit should be particularly described therein, and, if possible, brought into the registry annexed thereto.*

No. 13.—The Issue.

In her Majesty's Court of Probate.

The day of 18 .

A. B. *v.* C. D.

A. B., by P. Q., his proctor, solicitor, *or* attorney, [*or* in person] did deliver, to wit, on the day of 18 to the said C. D., his declaration in the words and figures following:

[*Here insert declaration at length.*]

Whereupon the said C. D. did deliver, to wit, on the day of to the said A. B., his plea, in the words and figures following:

[*Here insert plea at length.*]
[*Add any further pleadings.*]

Therefore the plaintiff claimed that the cause should be tried as the court shall direct.

No. 14.—Notice as to Mode of Trial.

In her Majesty's Court of Probate.

A. B. *v.* C. D.

To of

Take notice, that after the expiration of eight clear days from the service hereof the { plaintiff / defendant } in this cause intends to apply to the court to try the question at issue before itself [*or* by a common or special jury before itself], [*or* to direct an issue to be tried before the judge of assize by a special or common jury at the next assizes to be holden in and for the county of], [*or as the case may be*].

Dated this day of 18 .

(Signed) { A. B. / C. D. }

or E. F., proctor, solicitor, *or* attorney for { A. B. / C. D. }

No. 15.—Form of Record.

In her Majesty's Court of Probate.

The day of 18 .

A. B. *v.* C. D.

A. B., by E. F., his proctor, solicitor, *or* attorney [*or* in person], having cited C. D. to appear in support of any interest he may have in the estate and effects of G. H. [*or according to the terms of the citation*], late of deceased, who died on or about the day of 18 at the said C. D. appeared thereto personally [*or by his proctor, solicitor, or attorney*]: Whereupon A. B., to wit, on the day of 18 did deliver his declaration to the said C. D., in the words and figures following:

[*Here insert declaration at full length.*]

Whereupon the said C. D. did deliver, to wit, on the day of to the said A. B., his plea in the words and figures following:

[*Here insert plea at length.*]

[*Add any further pleadings.*]

Whereupon the judge did order, as follows:

[*Here set forth the order verbatim.*]

No. 16.—Form of Record in case of Party cited not appearing.

In her Majesty's Court of Probate.

The day of 18 .

A. B. *v.* C. D.

A. B., by E. F., his proctor, solicitor *or* attorney [*or* in person], having cited C. D. to appear in support of any interest he may have in the estate and effects of G. H. [*or according to the terms of the citation*], late of deceased, who died on or about the day of 18 at the

said C. D. did not appear personally or by his proctor, solicitor or attorney: Whereupon, in default of the appearance of the said E. F., A. B. did file his declaration in the registry in the words and figures following:

[*Here insert declaration at full length.*]

Therefore A. B. claimed that the cause should be tried as the Court shall direct:

Whereupon the judge did direct the said cause to be heard before himself [*or as the case may be*].

No. 17.—Form of Subpœna ad testificandum.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to [*names of all witnesses included in the subpœna*], greeting. We command you and every of you that, all other things set aside and ceasing every excuse, you and every of you be and appear in your proper persons before [*insert the name of the judge*], judge of our Court of Probate at our Court of Probate at on the day of by of the clock in the forenoon of the same day, and so from day to day until the cause or proceeding is tried, to testify the truth according to your knowledge in a certain cause now in our court before our said judge depending, between plaintiff and defendant [*or* in a certain cause or proceeding now in our court before our said judge depending, in default of the appearance of parties cited, entitled], on the part of the [*plaintiff, defendant, or as the case may be*], and at the aforesaid day, between the parties aforesaid, to be tried [*or* in default aforesaid, between the parties aforesaid, to be tried]; and this you nor any of you shall in nowise omit, under the penalty of every of you of 100*l.* Witness [*insert the name of the judge*], at the Court of Probate, the day of in the year of our reign.

(Signed)

No. 18.—Subpœna duces tecum.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, to [*names of all parties included in the subpœna*], greeting. We command you and every of you that, all other things set aside and ceasing every excuse, you and every of you be and appear in your proper persons before [*insert the name of the judge*], judge of our Court of Probate at on the day of by of the clock in the forenoon of the same day, and so from day to day until the cause or proceeding is heard, and also that you bring with you and produce at the time and place aforesaid [*here describe shortly the deeds, letters, papers, &c. required to be produced*], then and there to testify and show all and singular those things which you or either of you know or the said deed or instrument doth import of and concerning a certain cause or proceeding now in our said court before our said judge depending, between plaintiff and defendant [*or* a certain cause or proceeding now in our said court before our said judge depending, in default of the appearance of parties cited, and entitled], on the part of the [*plaintiff or defendant, or as the case may be*], and at the aforesaid day between the parties aforesaid to be tried. And this you nor any of you shall in nowise omit, under the penalty of every of you of 100*l.* Witness [*insert the name of the judge*], at the Court of Probate, the day of in the year of our reign.

(Signed) E. F., Registrar.

No. 19.—Præcipe for Subpœna ad testificandum.

In her Majesty's Court of Probate.

Subpœna of W. W., T. W., S. W., G. W. and F. W., to testify between A. B., plaintiff, and C. D., defendant, on the part of the plaintiff [*or* defendant], the day of 18 .

(Signed) { A. B. / C. D. } *or* { P. A., plaintiff's [*or* defendant's] proctor, solicitor *or* attorney.

No. 20.—Præcipe for Subpœna duces tecum.

In her Majesty's Court of Probate.

Subpœna for W. W. to testify and produce, *&c.* between A. B., plaintiff, and C. D., defendant, on the part of the plaintiff [*or* defendant], the day of 18 .

(Signed) { A. B. / C. D. } *or* { P. A., plaintiff's [*or* defendant's] proctor, solicitor *or* attorney.

No. 21.—Notice to admit Documents.

In her Majesty's Court of Probate.

A. B. *v.* C. D.

Take notice, that the { plaintiff / defendant } in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the { defendant / plaintiff } at on between the hours of and the { defendant / plaintiff } is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed or executed as they purport respectively to have been, that such as are specified to be copies are true copies, and such documents as are stated to have been served, sent or delivered were so served, sent or delivered respectively, saving all just exceptions to the admissibility of all such documents as evidence in the cause. Dated, &c.

To { A. B. / C. D. } *or* to E. F., attorney *or* solicitor *or* agent for { defendant. / plaintiff. }

(Signed) { C. D. / A. B. } *or* G. H., attorney *or* solicitor *or* agent for { plaintiff. / defendant. }

[*Here describe the documents. The same form may be employed in describing the documents as is now in use in the common law courts.*]

No. 22.—Subpœna to bring in a Script in a Cause.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of .

WHEREAS there is now proceeding in our Court of Probate a certain business of proving in solemn form of law the last will and testament of

A. B. late of deceased, who died on or about at the said will bearing date the day of 18 promoted by C. D., the sole executor [*or as the case may be*] therein named, against E. F., the natural and lawful brother and one of the next of kin of the said deceased [*or as the case may be*]: And whereas it appears by a certain affidavit of the said C. D. made in the said cause, bearing date the day of 18 and now remaining in the registry of our said court, that a certain original paper writing or script, purporting to be testamentary, to wit, [*here describe the paper accurately,*] is now in your possession or under your control: NOW THIS IS TO COMMAND YOU, that, within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the registry of our said court the aforesaid script, or in case the said script be not in your possession or under your control, that you, within eight days after the service hereof on you, exclusive of the day of such service, do file in the registry of our said court an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said script; and this you shall nowise omit, under the penalty of 100*l.* Witness [*insert the name of the judge*], at the Court of Probate, the day of 18 in the year of our reign.

Indorsement to be made after service.

This citation was served by I. K. on the within-named of at on the day of 18 .

(Signed) I. K.

No. 23.—Subpœna to a Witness to be examined touching a Testamentary Paper of which he is supposed to have knowledge.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of greeting. We command you that, all other things set aside and ceasing every excuse, you do appear before A. B., the judge of our Court of Probate, at our Court of Probate, at on the day of 18 by of the clock in the forenoon of the same day, and so from day to day until you be dismissed by our said judge, to testify the truth according to your knowledge [*or* to answer to certain interrogatories to be administered to you], touching a certain paper writing or script, purporting to be testamentary, of which reasonable grounds have been furnished to our said judge for believing that you have knowledge. And this you shall nowise omit, under the penalty of 100*l.* Witness [*insert the name of the judge*], at the Court of Probate, the day of 18 in the year of our reign.

Indorsement to be made after service.

This citation was served by I. K. on the within-named on the day of 18 .

(Signed) I. K.

No. 24.—Præcipe for a Witness to bring in a Script.

In her Majesty's Court of Probate.

Subpœna for W. W. to bring into and leave in the registry.

[*Here accurately describe the script.*]

The day of 18 .

(Signed) { A. B. / C. D. } *or* { P. A., plaintiff's [*or* defendant's] proctor, solicitor *or* attorney.

No. 25.—Præcipe for a Witness to be examined touching a Testamentary Paper of which he is supposed to have knowledge.

In her Majesty's Court of Probate.

Subpœna for W. W. to testify respecting of a paper writing or script purporting to be testamentary, to wit, [*describing it,*] of which he has knowledge, on the part of this day of .

(Signed) { A. B. / C. D. } *or* { P. A., plaintiff's [*or* defendant's] proctor, solicitor *or* attorney.

No. 26.—Entry on the Record of a Verdict for Plaintiff.

Afterwards, on the day of 18 before the judge of her Majesty's Court of Probate, come the parties within mentioned, by their respective attornies [*or as the case may be*] within mentioned, and a jury duly summoned also come, who, being sworn to try the matters in question between the parties, upon their oath say, that [*state the affirmative or negative of the issue, as it is found for the Plaintiff, and in the terms adopted in the pleading*].

[*If there be several issues joined and tried, then say*] as to the first issue within joined upon their oath say, that [*here state the affirmative or negative of issue, as found for plaintiff*], and as to the second issue within joined, the jury aforesaid upon their oath say, *&c.* [*so proceed to state the finding of the jury on all the issues*]; and that with respect to the costs in the said cause the said judge on the same day [*as the case may be*] directed [*here insert direction as to costs*].

(Signed) A. B., Registrar.

No. 27.—Entry on the Record of a Judgment for Plaintiff.

Afterwards, on the day of 18 before the judge of her Majesty's Court of Probate, come the parties within mentioned, by their respective attornies [*or as the case may be*] within mentioned: Whereupon the judge decreed [*here insert the tenor of the decree*].

(Signed) A. B., one of the Registrars of her Majesty's Court of Probate.

No. 28.—Inventory.

A true, full, and particular inventory of all and singular the personal estate and effects of A. B., late of deceased, which have at any time since his death come to the hands, possession, or knowledge of C. D., the sole executor named in the last will and testament of the said A. B. [*or* administrator, *as the case may be*], made and exhibited upon and by virtue of the corporal oath [*or* solemn affirmation] of the said C. D., as follows, to wit:

First, this exhibitant saith, that the said deceased was at the time of his death possessed of - - - - -

£	s.	d.

[*The details of the deceased's effects must be here inserted in as many sheets of paper as may be necessary, and the value inserted opposite to each particular.*]

Lastly, this exhibitant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the hands, possession, or knowledge of this exhibitant, save as is hereinbefore set forth.

(Signed) C. D.

On the day of 18 the said C. D. was duly sworn to [*or* solemnly affirmed] the truth of the above inventory,

Before me [*person authorized to administer oaths under the act*].

No. 29.—Petition.

The day of 18 .

A. B. [*or* A. B., proctor, solicitor, *or* attorney for C. D.] says that

[*Here insert all the facts which are to be alleged*]:

Wherefore the said A. B. prays, that

[*Here end with the prayer of the petitioner.*]

(Signed) A. B.

Answer.

The day of 18 .

E. F. [*or* E. F., proctor, solicitor, *or* attorney for G. H.] says, that

[*Here insert the facts alleged in answer.*]

Wherefore the said E. F. prays, that

[*Here insert the prayer of the defendant.*]

(Signed) E. F.

The reply, rejoinder, &c. (if any such be necessary), are to be followed out in the same form.

FEES

To be taken in Court and Contentious Business in the

COURT OF PROBATE.

	£	s.	d.
On every citation	0	5	0
On every citation to see proceedings	0	5	0
On entering appearance	0	2	6
Filing declaration	0	5	0
Filing plea	0	5	0
Filing act on petition	0	5	0
Filing answer	0	5	0
Filing reply	0	5	0
Filing any further writing to the Act	0	5	0
Filing inventory	0	5	0
On pleadings amended or reformed	0	2	6
Filing interrogatories	0	5	0
Filing answers to interrogatories	0	5	0
Filing affidavit as to scripts	0	2	6
Filing every script annexed to such affidavit	0	5	0
Filing case for motion	0	5	0
For entering the order of court on motion	0	5	0
Summons to attend in chambers	0	2	6
For entering the order of court on summons	0	2	6
Filing notices	0	1	0
On depositing the record	1	0	0
Setting a cause down for hearing or trial	0	5	0
Entering the final decree in a cause	0	10	0
Entering special verdict, if five folios of seventy-two words or under	0	2	6
If exceeding five folios, per folio of seventy-two words	0	0	6
Entering order appointing a receiver of real estate	1	0	0
Entering decree or order in pursuance of judgment of an extinct court	0	10	0
Entering any order or decree made with consent of parties by the judge	0	10	0
Entering any order or decree in the court book, not otherwise specified	0	2	6
On withdrawal of a cause after the same is set down for hearing or trial, to be paid by the party at whose instance it is withdrawn	0	5	0
On the hearing or trial of a cause:			
From the plaintiff	1	0	0
From the defendant	0	15	0
If the hearing or trial continues more than one day, for each day:			
From the plaintiff	0	10	0
From the defendant	0	10	0

	£	s.	d.
Reducing into writing any question to be submitted to a jury under the judge's direction	1	0	0
Producing the judge's notes	0	5	0
Bill of exceptions signed by the judge	0	5	0
Entering on the record the finding of the jury or the decision of the judge	0	5	0
On every subpœna	0	2	6
On every commission issuing under seal of the court	1	0	0
Writ of attachment	0	7	6
Writ of sequestration	1	0	0
Filing certificate of County Court judge	0	1	0
Search in court books, if within the last five years	0	1	0
If at an earlier period than within the last five years	0	2	6
Bond to be executed as security for costs or by a receiver of real estate, or for any other purpose or by any other person:			
If three folios of seventy-two words or under	0	5	0
If above three folios of seventy-two words, per folio ..	0	2	0
Assignment of bond	0	5	0
Filing and entry of remission of appeal	0	10	0
Filing exhibits, not exceeding ten folios each exhibit	0	1	0
If exceeding ten but not exceeding twenty	0	10	0
If exceeding twenty but not exceeding fifty	0	15	0
If exceeding fifty	1	0	0
Office copies of orders or decrees, judge's notes, or other documents filed in a cause:			
If five folios of seventy-two words or under	0	2	6
If exceeding five folios of seventy-two words, per folio ..	0	0	6
Filing every affidavit or other document brought into court, and deposited in the registry, not otherwise specified	0	2	6
Taxing every bill of costs:			
If three folios of seventy-two words or under	0	2	6
If exceeding three folios of seventy-two words:			
When taxed as between party and party, per folio ..	0	0	6
When taxed as between practitioner and client, per folio	0	1	0
Office copy of will under seal of the court:			
In addition to fees of the office copy of the will	1	0	0
Commissioner of the court for administering oaths to each deponent	0	1	6
Examiner appointed to take depositions under a commission for examination of witnesses, for each day's attendance, besides travelling expenses	3	3	0

FEES

To be taken by Officers of the County Courts in respect of Business under the Act.

The same fees as in case of a plaint for a sum of 20*l.*

FEES

To be taken for their own use by the Proctors, Solicitors and Attornies practising in the Court of Probate

IN CONTENTIOUS BUSINESS.

	£	s.	d.
Citation including præcipe	0	7	6
Citation to see proceedings, including præcipe	0	7	6
Certificate of service..	0	2	6
Subpœna ad testificandum	0	5	0
Subpœna duces tecum, or to bring in a script, if five folios of seventy-two words, or under	0	5	0
If exceeding five folios, per folio	0	1	0
Writ of attachment, including præcipe	0	7	6
Writ of sequestration, including præcipe	0	7	6
Service of citation or subpœna, if within two miles of the place of business of the practitioner or of the person employed to effect the service	0	5	0
If beyond that distance and not exceeding ten miles, for every mile one way	0	1	0
Affidavit of service, if three folios of seventy-two words or under	0	5	0
If above, for every folio, including copy	0	1	4
In cases in which the person to be served shall avoid service, or shall reside beyond the jurisdiction, except in Scotland and Ireland, a sum to be allowed for service according to the circumstances.			

Instructions.

Instructions for citation, for pleadings, for interrogatories, for special affidavits, or for inventories	0	6	8
Ditto to defend suit	0	6	8
Ditto for brief, or case for hearing	0	13	4

Pleadings and Copies.

Drawing and engrossing declaration, if ten folios of seventy-two words or under	1	0	0
If exceeding ten folios, for every additional folio	0	1	4
Drawing and engrossing pleas, replications, and other pleadings, if ten folios of seventy-two words or under	1	0	0
If exceeding ten folios, for every additional folio	0	1	4
Copies of declaration or pleas to file, at per folio of seventy-two words	0	0	4
Drawing the issue, if fifteen folios, of seventy-two words or under, including copy	0	10	0
If exceeding fifteen folios, per folio, including copy	0	0	8
Engrossing record to file, at per folio of seventy-two words ..	0	0	6
All copies on parchment, per folio of seventy-two words, including the parchment..	0	0	6

	£	s.	d.
Drawing and engrossing demurrer, inclusive of the statement of any matter of law to be argued, for ten folios of seventy-two words or under	0	10	0
If exceeding ten folios of seventy-two words, per folio	0	1	0
Copy to file, at per folio of seventy-two words	0	0	4
Copy of the issue on demurrer, at per folio of seventy-two words	0	0	4
Drawing and engrossing special case, or case for motion, per folio of seventy-two words	0	1	4
Drawing bill of costs and copy for taxation, per folio of seventy-two words	0	1	0
Copy for the adverse party, per folio of seventy-two words ..	0	0	4
Drawing any instrument to be filed in or issued by the registry for which no other fee is herein allowed, and for fair copy to be filed or issued, per folio of seventy-two words	0	1	4

Notices.

All necessary notices, if three folios or under, inclusive of copy and service..	0	5	0
If exceeding three folios, for every additional folio	0	1	0
In all cases where service of a notice is necessary beyond two miles of the place of business of the practitioner, the same fee as upon the service of a citation.			
Copy of summons or order of the judge, and service	0	5	0

Attendances.

Attendance to search for appearance to citation, or subpœna to bring in scripts	0	6	8
For attendance on counsel with brief, when the fee to counsel is one guinea..	0	3	4
When the fee to counsel exceeds one guinea and is under five guineas	0	6	8
When the fee is five guineas and upwards..	0	13	4
Attendance on consultation	0	13	4
Attendance on conference	0	6	8
Attendance in pursuance of notice to admit	0	6	8
For every hour after the first	0	6	8
Attendance on trial or hearing when cause is in paper and not tried or heard, or on motion in court	0	13	4
On trial or hearing	1	1	0
If it lasts the whole day	2	2	0
Attendance on taxation of bill of costs	0	13	4
If very long an additional fee will be allowed.			
Attendance on examination of witnesses under a commission:			
If in England or Wales, per diem	2	2	0
If elsewhere	3	3	0
For all necessary attendances in chambers before the judge or before a commissioner, on counsel, in the registry, or upon the adverse parties or practitioner, for which no other fee is herein allowed	0	6	8

Briefs and Cases for Hearing.

For drawing same, per folio of seventy-two words	0	1	0
For each copy, per folio of seventy-two words	0	0	4
Letters. Every necessary letter during the dependance of the cause	0	3	6

	£	s.	d.
Term fees and letters and messengers each term in which any business is done	0	15	0
For maps or plans .. .. each from	1	1	0
	to		
	3	3	0
Copies of same if required .. .. each from	0	10	0
	to		
	1	0	0

Affidavits.

Drawing special affidavits, per folio of seventy-two words, and copy for the court	0	1	4
Common affidavit, if five folios or under, including copy for the court or registry	0	6	8
If above five folios, per folio including copy	0	1	4
Defendants—			
Entering appearance	0	6	8

Interrogatories.

For drawing the same, at per folio of seventy-two words.. ..	0	1	0
Copy thereof to be delivered to the examiner and filed, at per folio of seventy-two words	0	0	4

Copies of Scripts or Exhibits.

For every plain copy of a script, exhibit, or other instrument filed in the registry, per folio of seventy-two words	0	0	4
If the same or any part thereof are required to be made *fac simile*, in addition to the above per folio of seventy-two words	0	0	2

If in any court or contentious business it should become necessary for proctors, solicitors, or attornies to transact any business for which no fee is herein specified, such fee shall be taken by them as would be allowed for similar business done in the courts of common law and equity, as the case may be.

FEES

To be taken for the use of other Persons by the Proctors, Solicitors and Attornies practising in the Court of Probate

IN CONTENTIOUS BUSINESS.

Counsel's Clerks' Fees.

Not to exceed as under:	£	s.	d.
Upon a fee to counsel under 5 guineas	0	2	6
5 guineas and under 10 guineas	0	5	0
10 guineas and under 20 guineas	0	10	0
20 guineas and under 30 guineas	0	15	0
30 guineas and under 50 guineas	1	0	0
50 guineas and upwards—at per cent. on the fee paid	2	10	0
On consultations:			
Senior's clerk	0	7	6
Junior's clerk	0	2	6
On general retainer	0	10	6
On common retainer	0	2	6
On conference	0	5	0

Witnesses' Expenses.

Allowance to witnesses, including their board and lodging, as between party and party:			
Common witnesses, such as labourers, journeymen, &c. &c.:			
If resident within five miles of the General Post Office, per diem	0	5	0
If beyond that distance, per diem	0	7	6
Master tradesmen, yeomen, farmers, &c.:			
If resident within five miles of the General Post Office, per diem	0	10	0
If resident beyond that distance, per diem	0	15	0
Auctioneers and accountants:			
If resident within five miles of the General Post Office, per diem	1	1	0
If resident beyond that distance, per diem	2	2	0
Professional men, including notaries, engineers and surveyors, &c.:			
If resident within five miles of the General Post Office, per diem	1	1	0
If resident beyond that distance, per diem	3	3	0
Clerks to attornies or others:			
If resident within five miles of the General Post Office, per diem	0	10	6
If resident beyond that distance, per diem	1	1	0
Esquires, bankers, merchants and gentlemen, per diem	1	1	0

Allowance to witnesses, including their board and lodging, as between party and party—*continued.*	£	s.	d.
Females according to station in life:			
If resident within five miles of the General Post Office, per diem, from	0	5	0
	to		
	0	10	0
If resident beyond that distance, per diem, from	0	7	6
	to		
	1	0	0
Police inspector:			
If resident within five miles of the General Post Office, per diem	0	7	6
If resident beyond that distance, per diem	0	10	0
Police constable:			
If resident within five miles of the General Post Office, per diem	0	5	0
If resident beyond that distance, per diem	0	7	6

The travelling expenses of witnesses will be allowed according to the sums reasonably and actually paid; but in no case will there be an allowance for such expenses of more than 1*s.* per mile one way.

RULES, ORDERS AND INSTRUCTIONS

(1857)

For the District Registrars of Her Majesty's Court of Probate, in respect of

NON-CONTENTIOUS BUSINESS.

(Referred to throughout as **D.**)

NON-CONTENTIOUS business shall include all common form business as defined by the act, and the warning of caveats.

1. Application for probate or letters of administration may be made at the principal registry in all cases. Application may be also made at a district registry in cases where the deceased at the time of his death had a fixed place of abode within the district in which the application is made, and not otherwise.

2. Such applications may be made through a proctor, solicitor or attorney, or in person.[a]

3. The district registrar, before he entertains any application for probate or administration, will take care to ascertain that the deceased had at the time of his death a fixed place of abode within his district.[b]

4. In no case should the district registrar allow the probate or letters of administration to issue until all the inquiries which he may see fit to institute have been answered to his satisfaction, and this refers more particularly to applications made by a party in person. The district registrar is, notwithstanding, to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

5. No district registrar shall take out probate or letters of administration for himself in his own district.

As to Probate of Wills and Codicils and Letters of Administration, with the Will [or Will and Codicils] annexed, where the Wills and Codicils or the Codicils only are dated after 31*st December,* 1837.

6. Upon receiving an application for probate or letters of administration with the will annexed, the district registrar must inspect the will, and see whether it purport to be signed by the testator or by some

[a] Page 27. [b] Page 67.

other person in his presence and by his direction, and subscribed by two witnesses, according to the provisions of 1 Vict. c. 26, s. 9, and 15 & 16 Vict. c. 24, and in no case must he proceed further if the will be not so signed and subscribed.

7. If the will be signed by or for the testator and subscribed by two witnesses, the district registrar must then refer to the attestation clause (if any), and consider whether from the wording thereof the will purports to have been executed in accordance with 1 Vict. c. 26, s. 9.

8. If there be no attestation clause to the will, or if the attestation clause thereto be insufficient, the district registrar must require an affidavit from at least one of the subscribing witnesses, if either of them are living, to prove that the provisions of the act in reference to the execution of the will were in fact complied with; and such affidavit must be engrossed and form part of the probate, so that the same may be a perfect document on the face of it.[c]

9. If on perusing the affidavit it appear that the requirements of the statute were not complied with, the district registrar must refuse probate.

10. If, on perusing the affidavit or affidavits, setting forth the facts of the case, it appear doubtful whether the will has been duly executed, the district registrar must transmit a statement of the matter to the registrars of the principal registry, whose duty it will then be to obtain the directions of the judge thereon.

11. If both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will; but if no affidavit of any such other person can be obtained, evidence on affidavit must be procured of that fact and of the handwriting of the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution of the will.

12. Having satisfied himself that the will was duly executed, the district registrar must carefully inspect the same, to see whether there are any interlineations or alterations appearing in it and requiring to be accounted for. Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or, if made afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.[d]

13. Where interlineations or alterations appear in the will (unless duly executed or accounted for by the attestation clause), an affidavit or affidavits in proof of their having existed in the will before its execution must be filed, except when the alterations are merely verbal or are of but small importance, and are evidenced by the initials of the attesting witnesses.

14. In like manner, with regard to erasures and obliterations, they are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto. If no satisfactory evidence is adduced as to the

[c] Page 73. [d] Page 68.

time when such erasures and obliterations were made, and the words erased or obliterated can, upon inspection of the paper, be readily ascertained, they must form part of the probate.

15. In every case of words having been erased which might have been of importance an affidavit must be required.

16. If reasonable doubt exist in regard to any interlineation, alteration, erasure or obliteration, the district registrar should, before proceeding to grant probate, communicate with the registrars of the principal registry as directed by the statute (s. 50).[e]

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

18. No deed, paper, memorandum or other document can form part of a will or codicil, unless it were in existence at the time when the will or codicil was executed.[f]

19. If any vestiges of sealing wax or wafers or other appearances are observable, leading to the inference that any paper, memorandum or other document may have been attached to the will, they should be satisfactorily accounted for, or the production of such paper, memorandum or other document should be required, and if not produced its non-production should be accounted for. If doubt exists as to whether any deed, paper, memorandum or other document be entitled to probate, the district registrar should, before proceeding to grant probate, communicate with the registrars of the principal registry, as directed by sect. 50 of the statute.[g]

20. The above rules and orders respecting wills apply equally to codicils.

21. In case of probate or administration with the will of a married woman annexed made by virtue of a power, the power or powers under which the will purports to have been made should be specified in the grant.

22. No grant of probate or administration with the will annexed, the will being *simply* an execution of a special power, should be made without communication with the registrars of the principal registry.

23. The right of parties to administration with the will annexed, and administration (with the will annexed) *de bonis non*, depends so entirely upon the circumstances of each particular case taken in connection with the wording of the will, that no general rules, other than those which have obtained a judicial sanction, can be laid down for the guidance of the district registrars. Whenever the right of the party applying is at all questionable, a statement of the case, accompanied by a copy of the will, must be transmitted to the registrars of the principal registry for the directions of the judge thereon.

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[e] Page 69.
[f] Page 2.
[g] Page 68.

As to Probate of Wills, Codicils and Testamentary Papers relating to Personalty, and dated before the 1st January, 1838.

24. It is not necessary that a will, codicil or testamentary paper made before 1st January, 1838, should be attested by witnesses to constitute it a valid disposition of a testator's personal property. Although neither signed by the testator nor attested by witnesses, it may nevertheless be valid; but in such cases the testator's intention that it should operate as his will, codicil or testamentary disposition must be proved clearly by circumstances.

25. If the will, codicil or testamentary paper be signed by the testator at the end of it, and attested by two disinterested witnesses, the district registrar (although there be no clause of attestation) must consider it as *primâ facie* entitled to probate.

26. In cases where the will, codicil or testamentary paper is attested by two witnesses, such witnesses are not required to have been present with the testator at the same time. It is sufficient if the testator subscribed his name or made his mark to it in the presence of, or produced it with his name already written, or his mark already made, to one attesting witness, and afterwards to the other attesting witness, provided that on each occasion he declared it to be his will, or otherwise notified his intention that it should operate as such.

27. If the will, codicil or testamentary paper is signed at the end of it by the testator but is unattested, and there is nothing to show an intention that it should be attested by witnesses, the affidavit of two disinterested persons to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

28. If the will, codicil or testamentary paper is signed at the end of it by the testator, and attested by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

29. The circumstance of a person being named as an executor in the will, codicil or testamentary paper, or being interested as a legatee, or as the husband or wife of a legatee under such will, codicil or testamentary paper, rendered him incompetent to become an attesting witness to it, so that if the name of a person so interested appears as that of a subscribing witness to the will, codicil or testamentary paper, the same, so far as regards his attestation, must be considered as unattested, and his evidence in support thereof will be inadmissible, unless he shall first release his interest thereunder.

30. In all cases the district registrar should carefully inspect and peruse the will or testamentary paper, with a view to ascertain that it is a complete document. If, for example, an attestation clause, or the word "witnesses," appear written at the foot of the paper, the same being unattested; or if the paper purport on the face of it to be a draft of a will, the copy of a will, or instructions for a will, it must *primâ facie* be considered as an incomplete paper, and not, save under special circumstances, entitled to probate. Also, any appearance of an attempted cancellation of a paper by burning, tearing, obliteration or otherwise must be accounted for.

31. Every fact leading to a presumption of abandonment or revo-

cation of the paper on the part of the testator must be accounted for.[h]

32. Such cases will generally, in consequence of the lapse of time, be doubtful cases, and proper to be transmitted to the registrars of the principal registry, under sect. 50 of the act.

33. Alterations and interlineations made by the testator, if unattested, are to be proved by an affidavit of two persons to his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that they were known to and approved of by the testator. Proof by affidavit that they existed in the paper at the time it was found in the repositories of the testator recently after his death may, under circumstances, suffice. Alterations and interlineations made since the 31st of December, 1837, are subject to the provisions of 1 Vict. c. 26.

34. With respect to deeds, papers, memoranda or other documents mentioned in a testamentary paper, or appearing to have been annexed or attached thereto, the foregoing instructions as to wills bearing date since the 31st December, 1837, will apply.

35. It is to be remembered that a will made before the 1st of January, 1838, is confirmed by a codicil duly executed on or after that day.

As to Letters of Administration.

36. The duties of the district registrar in granting administration are in many respects the same as in cases of probate. He is to ascertain the time and place of the deceased's death, and the value of the property to be covered by the administration, and to see that the applicant has been sworn as required by stat. 55 Geo. 3, c. 184.

37. Where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the district registrar may require proof by affidavit or statutory declaration, that notice of such application has been given to such other next of kin.

38. Limited administrations are not to be granted unless every person entitled in distribution to the personal estate has consented or renounced, or has been cited and failed to appear, except under the direction of the judge.[i]

39. No person entitled to a grant of administration of the personal estate and effects of the deceased generally will be permitted to take a limited grant.

40. The district registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.[k]

41. In all cases where grants of administration are made for the use and benefit of minors, the administrators are required to exhibit a declaration on oath of the personal estate and effects of the deceased, except where the effects are sworn under twenty pounds, or where the administrators are the guardians appointed by the High Court of Chancery, or are the testamentary guardians of the minors; and in all cases of persons cited, but not personally, and not appearing, the administrators are required to exhibit a similar declaration, and the sureties are required to justify.

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[h] Page 68. [i] Page 101. [k] Page 113.

42. There are many administrations of a special character which will need attention on the part of the district registrars. In special cases the recitals in the oath and in the letters of administration must be framed in accordance with the facts of the case.

43. Grants of administration will continue to be made as heretofore to the guardians of infants and minors, for the use and benefit of such infants and minors during their minority; and elections by minors of their next of kin or next friend, as the case may be, to such guardianship will continue to be required; but proxies accepting such guardianship will in future be dispensed with.

44. No probate or letters of administration with the will annexed shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the judge.[1]

45. No administration shall issue until after the lapse of fourteen clear days from the death of the deceased, unless under the direction of the judge.

General Instructions for the District Registrars.

46. In cases where the district registrar receives his instructions from the parties interested, and without the intervention of any proctor, solicitor or attorney, he will take care to ascertain the value of the estate and effects of the deceased as correctly as circumstances allow.

47. No administration shall issue until after the lapse of fourteen clear days from the death of the deceased, unless under the direction of the judge.

48. The district registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased or of the party applying for the grant.

49. In every case where a grant of probate or administration is for the first time applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the district registrar. If the certificate is not satisfactory the district registrar is to require an affidavit, or to communicate with the principal registry.

50. Notices of applications for grants of probate or administration, with the will annexed, transmitted by the district registrar to the registrars of the principal registry (as directed by sect. 49), are to contain (in addition to the particulars therein specified) an extract of the words of the will or codicil by which the applicant has been appointed executor, or of the words (if any) upon which he founds his claim to such administration.

51. District registrars should take care that the oath of administrators, and of administrators with the will annexed, is so worded as to clear off all persons having a prior right to the grant. In these cases, the grant should show on the face of it how the prior interests have been cleared off.

52. Under the statute the Court of Probate has power to appoint an administrator other than the person who prior to the act would have been entitled to the grant (sect. 73). Whenever the court sees fit to exercise such a power, the fact should be made plainly to appear in the

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[1] Page 27.

oath of the administrator, in the letters of administration, and in the administration bond.

53. The usual oath of administrators is, as well as that of executors and administrators with the will, to be reduced into writing, and to be subscribed and sworn by them as an affidavit, and then filed in the registry.

54. Every will or copy of a will to which an executor or administrator with the will is sworn should be marked by such executor or administrator and by the person before whom he is sworn.

55. In cases where it is necessary to issue a citation to accept or refuse probate of a will, or to accept or refuse letters of administration, or where it is necessary to issue a subpœna to bring in a testamentary paper, and in all similar cases, the district registrar is to communicate with the registrars of the principal registry, who will then issue such citation, subpœna or other requisite instrument in accordance with the direction of the judge.

56. The district registrar is not, in any case in which a will has been produced to him for probate, or for administration with the will annexed, to grant probate of any former will, or administration with any former will annexed, or administration to the deceased as having died intestate, without previous communication with the registrars of the principal registry.

57. When motions are to be made before the judge in court with regard to applications for probate and administration made at the district registries, the district registrars are to transmit all original papers and documents to the principal registry, and the same, after the directions of the court have been taken, will be returned, with the directions of the judge thereon.

58. The original papers are also to be forwarded whenever an inspection of them is necessary, in order to enable the registrars of the principal registry to answer the questions submitted to them by the district registrar.

59. Papers and other documents may be transmitted by the district registrars to the registrars of the principal registry through the Post Office. Such letters or packets are to be superscribed with the words, "On her Majesty's Service," and may be registered, if thought necessary.

60. In the case of persons residing out of England, administrations with the will annexed, and administrations, may be granted to their attorney, acting under a power of attorney properly attested.

61. The addition and true place of abode of every person making an affidavit is to be inserted therein.

62. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

63. No affidavit will be admitted in any matter depending in the Court of Probate in the jurat of which there is any interlineation or erasure.

64. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the district registrar, commissioner or other person before whom such affidavit is made is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also that the said party made his or her mark, or wrote his or her signature, in the presence of the district

registrar, commissioner or other person before whom the affidavit was made.[m]

65. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor or attorney, or before a clerk of his proctor, solicitor or attorney.

66. A proctor, solicitor or attorney, and their clerks respectively, if acting for any other proctor, solicitor or attorney, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

67. A caveat shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time as heretofore.

68. The district registrar shall, immediately upon a caveat being lodged, send a copy thereof to the registrars of the principal registry, and also to the registrars of any other district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

69. No caveat shall affect any grant made on the day on which the caveat is entered, unless notice of such caveat has been received prior to the grant passing the seal.

70. A caveat shall be warned at the place mentioned in it as the address of the person who entered it.

71. It shall be sufficient for the warning of a caveat that the district registrar send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.

72. Any person intending to oppose a grant of probate or administration, for which application has been made to a district registrar, is to appear before such district registrar, either personally, or by his proctor, solicitor or attorney, and signify such his intention; otherwise such person is to cause an appearance to be entered for him in the principal registry. This rule is to apply whether the person intending to oppose the grant has or has not been previously warned to a caveat or served with a citation.

73. The district registrar shall, upon being informed of any such intention to oppose a grant, require the person intending to oppose the same to furnish him with his name and address, and in case of a proctor, solicitor or attorney, with his client's name and address, and shall forward a notice of such declared intention, with the name and address of the party, and of his proctor, solicitor or attorney (if any) to the registrars of the principal registry.

74. The district registrar shall in no case, after he has forwarded to the registrars of the principal registry a notice of intention to oppose a grant, take any further step in respect of such grant, except under the directions of the judge of the Court of Probate or of a county court judge.

75. Citations against all persons in general, and other instruments heretofore required to be served by affixing them in some public place, are in future to be served by the insertion of the same as advertisements in such of the leading morning and evening papers, and such of the local papers as the judge may from time to time direct. Such cita-

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[m] Page 28.

tions can only be allowed to issue in cases where there is an affidavit to lead them.[n]

76. The lists of grants of probate and administration required under sect. 51 are to be furnished by the district registrars on the first and every other Thursday in the month, and are to contain the date of each grant; the name of the registry in which each grant was made; the christian and surname of each testator and intestate; the place and time of death of such testator and intestate; the names and description of each executor and administrator to whom the grant has been made; and the value of the personal estate and effects in each case.

77. A district registrar is not to grant probate, or administration with the will annexed, of the will of any blind person, or of any obviously illiterate or ignorant person, unless he has previously satisfied himself that the said will was read over to the deceased before its execution, or that the deceased had at such time knowledge of its contents. Where such information is not forthcoming, the district registrars are to communicate with the registrars of the principal registry.[o]

78. In ordinary cases where the property is *bonâ fide* under the value of fifty pounds, one surety only may be taken to the administration bond.

79. In all cases of limited or special administration two sureties are always to be required to the administration bond, and the bond is to be given in double the amount of the fund to be dealt with under the administration.

80. Whenever the value of the personal estate and effects of any deceased person is re-sworn under a different amount, or any renunciation is subsequently filed, or any alteration is subsequently made in the grant, notice of such re-swearing, renunciation or alteration is to be immediately forwarded by the district registrar to the registrars of the principal registry.

81. In all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying a bachelor or a spinster, or a widower or widow, without issue, or of a person dying without known relation, notice of such application is to be given to her Majesty's procurator-general, in order that he may determine whether it will be expedient to interfere on the part of the Crown, save and except that when the deceased is domiciled within the duchy of Lancaster, notice is to be given to the solicitor for the duchy in London; and no grant is to be issued until that officer has signified the course it will be proper to take under the circumstances of each particular case.

82. Bills of proctors, solicitors or attornies presented to the district registrars for taxation are to be forwarded to the principal registrars, with any remarks which the district registrars may see necessary.

83. The district registrar is to take care that the copies of wills to be annexed to the probate or letters of administration are fairly and properly written, and are to reject those which are not so.

84. The district registrars are, in every case of doubt or difficulty, to communicate with the registrars of the principal registry.

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[n] Page 93. [o] Page 28.

FORMS

Of Instruments to be adopted by the Districts, as nearly as the Circumstances of each Case will allow.

No. 1.—Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Probate.

The District Registry of .

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of probate of the will bearing date the day of 18 [and codicil *or* codicils bearing date the day of 18] of A. B., late of deceased, who died on or about the day of 18 at having at the time of his death a fixed place of abode at within the said district of by C. D. of the executor [*or* by E. F. of the proctor, solicitor, *or* attorney of C. D. the executor] named in the said will [*or* codicil], in the words following:

[*Here insert the extract from the will or codicil.*]

(Signed) G. H.,
District Registrar.

No. 1 *a*.—Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration with the Will annexed.

The District Registry of .

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of letters of administration with the will annexed, the said will bearing date the day of 18 [*or* will and codicil *or* codicils annexed, the said will bearing date the day of 18 and the said codicil bearing date the day of 18] of the personal estate and effects of A. B., late of deceased, who died on or about the day of 18 at having at the time of his death a fixed place of abode at within the said district of by C. D. of the residuary legatee [*or as the case may be*] named in the said will [*or* by E. F. of the proctor, solicitor, *or* attorney of C. D., the residuary legatee named in the said will], in the words following:

[*Here insert the extract from the will or codicil.*]

(Signed) G. H.,
District Registrar.

No. 1 *b*.—Notice to be transmitted by the District Registrar of Application having been made to him for Grant of Administration.

The District Registry of .

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that application has been made to me for a grant of letters of administration of the personal estate and effects of A. B., late of deceased, who died on or about the day of 18 at intestate, having at the time of his death a fixed place of abode at within the said district of a widower, without child or parent, brother or sister, uncle or aunt, nephew or niece, by C. D. of one of the lawful cousins german and next of kin of the deceased [*or* by E. F. of the proctor, solicitor, *or* attorney of C. D., one of the, *&c.*]

(Signed) G. H.,
District Registrar.

No. 1 *c*.—Notice of the Entry of a Caveat in a District Registry.

To the Registrars of the Principal Registry of her Majesty's Court of Probate.

You are requested to take notice, that a caveat has been entered in the District Registry of attached to her Majesty's Court of Probate, of the following tenor [*set out the caveat at full length*].

This day of 18 .

(Signed) C. D.,
District Registrar.

No. 2.—Affidavit of attesting Witness in proof of the due Execution of a Will or Codicil dated after 31st December, 1837.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

I, C. D., of in the county of make oath [*or* solemnly affirm], that I am one of the subscribing witnesses to the last will and testament [*or* codicil, *as the case may be*] of the said C. D., late of in the county of deceased, the said will [*or* codicil] being now hereunto annexed, bearing date and that the said testator executed the said will [*or* codicil] on the day of the date thereof, by signing his name at the foot or end thereof [*or* in the testimonium clause thereof, *or* in the attestation clause thereto, *as the case may be*], as the same now appears thereon, in the presence of me and of the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will [*or* codicil] in the presence of the said testator.

(Signed) C. D.

Sworn at on the day of 18 , before me [*person authorized to administer oaths under the act*].

N.B.—*If the signature is in testimonium clause or attestation clause, it must be shown in the affidavit that the testator fully intended the same as his final signature to his will.*

No. 3.—Affidavit for the Commissioners of Inland Revenue.—For Executors.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

The day of 18 .

I, C. D., of [*insert the names, residences and titles or professions of the persons making the affidavit*], make oath [*or* solemnly affirm], that I am one of the executors [*or* the executor] named in the last will and testament [*insert codicils, if any*] of the said A. B., late of deceased; that the said deceased died on or about the day of in the year of our Lord one thousand hundred and at [*insert place of death, or set forth the reason why the same cannot be furnished*], and that the said deceased at the time of his death had a fixed place of abode within the said district of at and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [*if any leaseholds insert clause No. 1 hereon endorsed*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [*if no leaseholds insert clause No. 2 hereon endorsed*].

(Signed) C. D.

Sworn at on the day of before me [*person authorized to administer oaths under the act*].

N.B.—*Forms for the two leasehold clauses to be printed on the back of the affidavit.*

Form of Leasehold Clause No. 1.

"Including the leasehold estate or estates for years of the said deceased, whether absolute or determinable on a life or lives."

Form of Leasehold Clause No. 2.

"And I [*or* we] lastly make oath, that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, whether absolute or determinable on a life or lives, to the best of my [*or* our] knowledge, information and belief."

No. 3*a*.—Affidavit for the Commissioners of Inland Revenue.—For Administrators with the Will annexed.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

The day of 18 .

I, C. D., of [*insert the names, residences and titles or professions of the persons making the affidavit*], the party applying for administration with the will [*insert codicils, if any*] annexed of the personal estate and effects of A. B., late of deceased, make oath [*or* solemnly affirm], that the said deceased died on or about the day of one thousand hundred and at [*insert the place of death, or set forth the reason why the same cannot be furnished*], and that the said deceased at the time of his death had a fixed place of abode within the said district of at and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which letters of administration with the said will [*insert codicils, if any*] annexed are to be

granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [*if any leaseholds insert clause No.* 1 *hereon endorsed*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [*if no leaseholds insert clause No.* 2 *hereon endorsed*].

(Signed) C. D.

Sworn at on the day of before me [*person authorized to administer oaths under the act*].

N.B.—*Forms for the two leasehold clauses to be printed at the back of the affidavit.*

See forms of leasehold clauses Nos. 1 and 2, *ante*, p. 200.

No. 3 *b*.—Affidavit for the Commissioners of Inland Revenue. —For Administrators.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

The day of 18 .

I, C. D., of [*insert the names, residences and titles or profession of the person making the affidavit*], the party applying for letters of administration of the personal estate and effects of the said A. B., late of make oath [*or* solemnly affirm] and say as follows: that the said deceased died on or about the day of one thousand hundred and at [*insert place of death, or set forth the reason why the same cannot be furnished*], and at the time of his death had a fixed place of abode within the said district of at and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person and persons, and not beneficially [*if any leaseholds insert clause No.* 1 *hereon endorsed*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [*if no leaseholds insert clause No.* 2 *hereon endorsed*].

(Signed) C. D.

Sworn at on the day of before me [*person authorized to administer oaths under the act*].

N.B.—*Forms for the two leasehold clauses to be printed at the back of the affidavit.*

See forms of leasehold clauses Nos. 1 and 2, *ante*, p. 200.

No. 4.—Oath for Executor.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say [*or* solemnly affirm], that I believe this paper writing [*or* these paper writings] hereto annexed to contain the true and original last will and testament [*or* last will and testament with codicils] of A. B. late of in the county of deceased, and that I am the sole executor [*or* one of the executors] therein named [*or* executor according to the tenor thereof, executor during

life, executrix during widowhood, *or as the case may be*], and that I will faithfully administer the personal estate and effects of the said testator by paying his just debts and the legacies contained in his will [*or* will and codicils], so far as the same shall thereto extend and the law bind me; that I will exhibit an inventory, and render an account of my executorship, whenever required by law so to do; that the testator died at in the county of on the day of 18 and that he had at the time of his death a fixed place of abode at within the said district of ; and that the whole of the personal estate and effects of the said testator does not amount in value to the sum of pounds, to the best of my [*or* our] knowledge, information and belief.

(Signed) C. D.

Sworn at this day of 18 before me, E. F.

[*Each testamentary paper to be marked by the persons sworn and the person administering the oath.*]

No. 5.—Oath for Administrators with the Will.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say [*or* solemnly affirm], that I believe this paper writing [*or* these paper writings] hereunto annexed to contain the true and original last will and testament [*or* the last will and testament with codicils] of A. B., late of in the county of deceased, and that the executor therein named is dead without having taken probate thereof [*or as the fact may be*], and that I am the residuary legatee in trust named therein [*or as the fact may be*], and that I will faithfully administer the personal estate and effects of the said deceased according to the tenor of his will [*or* will and codicils] by paying his just debts and the legacies contained in his will [*or* will and codicils], and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the testator died at on the day of 18 ; that the said testator at the time of his death had a fixed place of abode at within the said district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information and belief.

(Signed) C. D.

Sworn at this day of 18 before me, E. F.

[*Each testamentary paper to be marked by the persons sworn and the person administering the oath.*]

No. 6.—Oath for Administrators.

In her Majesty's Court of Probate. The District Registry of

In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say affirm], that A. B. late of deceased, died bachelor, wi brother or sister, uncle or aunt, nephew or nie intestate am the lawful cousin german and one of the n [*this must be altered in accordance with the cir* will faithfully administer the personal estate a by paying his just debts and distributing the

to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the said deceased died at on the day of 18 ; that at the time of his death he had a fixed place of abode at within the said district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information and belief.

(Signed) A. B.

Sworn at this day of 18 before me, E. F.

No. 7.—Probate.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that on the day of 18 the last will and testament [*or* the last will and testament with codicils] hereunto annexed of A. B., late of deceased, who died on or about at and who at the time of his death had a fixed place of abode at within the said district of was proved, and registered in the said district registry of attached to her Majesty's Court of Probate, and that the administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid court to C. D., the sole executor [*or as the case may be*] named in the said will, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased and the legacies contained in his will [*or* will and codicils] so far as he is thereunto bound by law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
District Registrar.

Extracted by (L.S.)

[*To be written in the margin of Probate.*] Sworn under £ and that the testator died on or about the day of 18 .

No. 8.—Letters of Administration with the Will annexed.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that A. B., late of in the county of deceased, who died on or about the day of at and who at the time of his death had a fixed place of abode at within the said district of made and duly executed his last will and testament and did therein name . And BE IT FURTHER KNOWN, that on the day of 18 letters of administration with the said will annexed of all and singular the personal estate and effects of the said deceased were granted by her Majesty's Court of Probate to C. D. [*insert the character in which the grant is taken*], he having previously been sworn well and faithfully to administer the same according to the tenor of the said will to pay the just debts of the said deceased, and to exhibit a true and perfect inventory of all and singular the said personal estate and effects and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
District Registrar.

(L.S.)

Sworn under £ and that the testator died 18 .

life, executrix during widowhood, *or as the case may be*], and that I will faithfully administer the personal estate and effects of the said testator by paying his just debts and the legacies contained in his will [*or* will and codicils], so far as the same shall thereto extend and the law bind me; that I will exhibit an inventory, and render an account of my executorship, whenever required by law so to do; that the testator died at in the county of on the day of 18 and that he had at the time of his death a fixed place of abode at within the said district of ; and that the whole of the personal estate and effects of the said testator does not amount in value to the sum of pounds, to the best of my [*or* our] knowledge, information and belief.

(Signed) C. D.

Sworn at this day of 18 before me, E. F.

[*Each testamentary paper to be marked by the persons sworn and the person administering the oath.*]

No. 5.—Oath for Administrators with the Will.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say [*or* solemnly affirm], that I believe this paper writing [*or* these paper writings] hereunto annexed to contain the true and original last will and testament [*or* the last will and testament with codicils] of A. B., late of in the county of deceased, and that the executor therein named is dead without having taken probate thereof [*or as the fact may be*], and that I am the residuary legatee in trust named therein [*or as the fact may be*], and that I will faithfully administer the personal estate and effects of the said deceased according to the tenor of his will [*or* will and codicils] by paying his just debts and the legacies contained in his will [*or* will and codicils], and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the testator died at on the day of 18 ; that the said testator at the time of his death had a fixed place of abode at within the said district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information and belief.

(Signed) C. D.

Sworn at this day of 18 before me, E. F.

[*Each testamentary paper to be marked by the persons sworn and the person administering the oath.*]

No. 6.—Oath for Administrators.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say [*or* solemnly affirm], that A. B. late of deceased, died a bachelor, without parent, brother or sister, uncle or aunt, nephew or niece, and intestate, and that I am the lawful cousin german and one of the next of kin of the said deceased [*this must be altered in accordance with the circumstances of the case*]; that I will faithfully administer the personal estate and effects of the said deceased, by paying his just debts and distributing the residue of his estate according

to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the said deceased died at on the day of 18 ; that at the time of his death he had a fixed place of abode at within the said district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information and belief.

(Signed) A. B.

Sworn at this day of 18 before me, E. F.

No. 7.—Probate.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that on the day of 18 the last will and testament [*or* the last will and testament with codicils] hereunto annexed of A. B., late of deceased, who died on or about at and who at the time of his death had a fixed place of abode at within the said district of was proved, and registered in the said district registry of attached to her Majesty's Court of Probate, and that the administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid court to C. D., the sole executor [*or as the case may be*] named in the said will, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased and the legacies contained in his will [*or* will and codicils] so far as he is thereunto bound by law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,

Extracted by District Registrar.

(L.S.)

[*To be written in the margin of Probate.*] Sworn under £ and that the testator died on or about the day of 18 .

No. 8.—Letters of Administration with the Will annexed.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that A. B., late of in the county of deceased, who died on or about the day of at and who at the time of his death had a fixed place of abode at within the said district of made and duly executed his last will and testament and did therein name . And BE IT FURTHER KNOWN, that on the day of 18 letters of administration with the said will annexed of all and singular the personal estate and effects of the said deceased were granted by her Majesty's Court of Probate to C. D. [*insert the character in which the grant is taken*], he having previously been sworn well and faithfully to administer the same according to the tenor of the said will to pay the just debts of the said deceased, and to exhibit a true and perfect inventory of all and singular the said personal estate and effects and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,

Extracted by District Registrar.

(L.S.)

[*To be written in margin.*] Sworn under £ and that the testator died on or about the day of 18 .

life, executrix during widowhood, *or as the case may be*], and that I will faithfully administer the personal estate and effects of the said testator by paying his just debts and the legacies contained in his will [*or* will and codicils], so far as the same shall thereto extend and the law bind me; that I will exhibit an inventory, and render an account of my executorship, whenever required by law so to do; that the testator died at in the county of on the day of 18 and that he had at the time of his death a fixed place of abode at within the said district of ; and that the whole of the personal estate and effects of the said testator does not amount in value to the sum of pounds, to the best of my [*or* our] knowledge, information and belief.

(Signed) C. D.

Sworn at this day of 18 before me, E. F.

[*Each testamentary paper to be marked by the persons sworn and the person administering the oath.*]

No. 5.—Oath for Administrators with the Will.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say [*or* solemnly affirm], that I believe this paper writing [*or* these paper writings] hereunto annexed to contain the true and original last will and testament [*or* the last will and testament with codicils] of A. B., late of in the county of deceased, and that the executor therein named is dead without having taken probate thereof [*or as the fact may be*], and that I am the residuary legatee in trust named therein [*or as the fact may be*], and that I will faithfully administer the personal estate and effects of the said deceased according to the tenor of his will [*or* will and codicils] by paying his just debts and the legacies contained in his will [*or* will and codicils], and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the testator died at on the day of 18 ; that the said testator at the time of his death had a fixed place of abode at within the said district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information and belief.

(Signed) C. D.

Sworn at this day of 18 before me, E. F.

[*Each testamentary paper to be marked by the persons sworn and the person administering the oath.*]

No. 6.—Oath for Administrators.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B. deceased.

I, C. D., of in the county of make oath and say [*or* solemnly affirm], that A. B. late of deceased, died a bachelor, without parent, brother or sister, uncle or aunt, nephew or niece, and intestate, and that I am the lawful cousin german and one of the next of kin of the said deceased [*this must be altered in accordance with the circumstances of the case*]; that I will faithfully administer the personal estate and effects of the said deceased, by paying his just debts and distributing the residue of his estate according

to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the said deceased died at on the day of 18 ; that at the time of his death he had a fixed place of abode at within the said district of ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information and belief.

(Signed) A. B.

Sworn at this day of 18 before me, E. F.

No. 7.—Probate.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that on the day of 18 the last will and testament [*or* the last will and testament with codicils] hereunto annexed of A. B., late of deceased, who died on or about at and who at the time of his death had a fixed place of abode at within the said district of was proved, and registered in the said district registry of attached to her Majesty's Court of Probate, and that the administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid court to C. D., the sole executor [*or as the case may be*] named in the said will, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased and the legacies contained in his will [*or* will and codicils] so far as he is thereunto bound by law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,

Extracted by District Registrar.

(L.S.)

[*To be written in the margin of Probate.*] Sworn under £ and that the testator died on or about the day of 18 .

No. 8.—Letters of Administration with the Will annexed.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that A. B., late of in the county of deceased, who died on or about the day of at and who at the time of his death had a fixed place of abode at within the said district of made and duly executed his last will and testament and did therein name . And BE IT FURTHER KNOWN, that on the day of 18 letters of administration with the said will annexed of all and singular the personal estate and effects of the said deceased were granted by her Majesty's Court of Probate to C. D. [*insert the character in which the grant is taken*], he having previously been sworn well and faithfully to administer the same according to the tenor of the said will to pay the just debts of the said deceased, and to exhibit a true and perfect inventory of all and singular the said personal estate and effects and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,

Extracted by District Registrar.

(L.S.)

[*To be written in margin.*] Sworn under £ and that the testator died on or about the day of 18 .

No. 9.—Letters of Administration.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that on the day of 18 letters of administration of all and singular the personal estate and effects of A. B., late of deceased, who died on or about 18 at intestate, and had at the time of his death a fixed place of abode at within the said district of were granted by her Majesty's Court of Probate to C. D. of the widow [*or as the case may be*] of the said intestate, she having been first sworn well and faithfully to administer the same, by paying his just debts and distributing the residue of his personal estate and effects according to law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
District Registrar.
(L.S.)

Extracted by

[*To be written in margin of administration will.*] Sworn under £ and that the intestate died on or about the day of 18 .

No. 10.—Double Probate.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that on the day of 18 the last will and testament [*or* the last will and testament with codicils] of A. B., late of deceased, who died on or about at and had at the time of his death a fixed place of abode at within the said district of was proved and registered, and that administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to C. D., one of the executors named in the said will [*or* codicil], he having been already sworn well and faithfully to administer the same, and to make a true and perfect inventory of all the said personal estate and effects, and to render a just and true account thereof whenever required by law so to do, power being reserved of making the like grant to E. F., the other executor named in the said will, when he should apply for the same. And BE IT FURTHER KNOWN, that on the * day of 18 the said will of the said deceased was also proved, and that the like administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to the said E. F., he having been first duly sworn well and faithfully to administer the same, and to make a true and perfect inventory of the personal estate and effects of the said deceased, and to render a just account thereof whenever required by law so to do.

(Signed) G. H.,
District Registrar.
(L.S.)

Extracted by

[*To be written in margin.*] Sworn under £ and that the testator died on or about the day of 18 .

[*Insert in the margin opposite the* *.] Former grant, Jan. 18 , under the same sum.

No. 11.—Exemplification of Probate or Letters of Administration with Will annexed.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that upon search being made in the district registry of attached to her Majesty's Court of Probate, it plainly appears that on the day of in the year of our Lord 18 the last will and testament with codicils of A. B., late of deceased, who died at on or about and had at the time of his death a fixed place of abode at within the said district of was proved by C. D., the executor named therein [*or* letters of administration with the last will and testament and codicils annexed of the personal estate and effects of A. B., late of, *&c.* were granted to C. D., as the], and which probate [*or* letters of administration now remain] now remains of record in the said registry. The true tenor of the said probate [*or* letters of administration with the will annexed, *as the case may be*] is in the words following, to wit:

[*Here the grant is to be recited verbatim.*]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and the sealing of these presents, this day of in the year of our Lord 18 .

(Signed) E. F.,
District Registrar.
(L.S.)

Extracted by

[*To be written in margin.*] Sworn under £ and that the testator died on the day of 18 .

No. 12.—Exemplification of Administration.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that upon search being made in the district registry of attached to her Majesty's Court of Probate, it appears that on the day of in the year of our Lord 18 letters of administration of all and singular the personal estate and effects of A. B., late of who died at on or about and had at the time of his death a fixed place of abode at within the said district of were granted to C. D., the [*or* one of the] of the said deceased, and which letters of administration now remain of record in the said registry. The true tenor of the said letters of administration is in the words following, to wit:—

[*Here the letters of administration are to be recited verbatim.*]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and sealing of these presents, this day of in the year of our Lord 18 .

(Signed) K. L.,
District Registrar.
(L.S.)

Extracted by

[*To be written in margin.*] Sworn under £ and that the intestate died on the day of 18 .

No. 13.—Special Administration with the Will of a Married Woman annexed.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that A. B., wife of C. B., late of in the county of died on the day of 18 at having at the time of her death a fixed place of abode at within the said district of , and having during her coverture with the said C. B., by virtue of certain powers and authorities given to and vested in her by a certain indenture of settlement bearing date the day of 18 and of all other powers and authorities her enabling, made and executed her last will and testament bearing date the day of 18 and thereof appointed her said husband, the said C. B., sole executor, and that the said C. B., as the lawful husband of the said deceased, is the sole person entitled to her personal estate and effects, over which she had no disposing power, and concerning which she is dead intestate. And BE IT ALSO KNOWN, that on the day of 18 letters of administration (with the said will annexed) of all and singular the personal estate and effects of the said deceased were granted and committed by her Majesty's Court of Probate to the said C. B., on his giving the usual security, he having been first sworn well and faithfully to administer the same, to pay whatever debts the said deceased at the time of her death did owe, and to exhibit a true and perfect inventory of all and singular her personal estate and effects, and to render a just account thereof whenever required by law so to do.

(Signed) J. S.,
District Registrar.
(L.S.)

Extracted by

[*To be written in margin.*] Sworn under £100, and that the testatrix died on the day of 18 .

No. 13*a*.—Limited Probate of a Married Woman's Will.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that A. B., wife of C. B., late of in the county of died on the day of 18 at having at the time of her death a fixed place of abode at within the said district of and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture of settlement, bearing date the day of 18 and made between E. F. of in the county of esquire, of the first part, the said deceased, by her then name and description of A. G. of in the county of spinster, of the second part, and H. I. of in the same county, gentleman, and the said C. B. of aforesaid of the third part, made and executed her last will and testament, bearing date the day of one thousand eight hundred and and thereof appointed L. M. and O. P. executors.

And BE IT ALSO KNOWN, that on the day of 18 the said last will and testament of the said A. B., hereunto annexed, was proved and registered in the said district registry of attached to her Majesty's Court of Probate, and that probate of the said will of the said deceased limited to the administration of all such personal estate and effects as she the said deceased by virtue of the aforesaid indenture had a right to appoint or dispose of, and has in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted to the said L. M., one of the executors named in the said will as aforesaid, he having been first sworn well and faithfully to administer the same, by paying the just debts

of the deceased, and the legacies contained in her said will, as far as he is thereunto bound by law, and to exhibit a true and perfect inventory of the said limited estate and effects, and to render a just and true account thereof whenever required by law so to do. Power being reserved of making a like grant of probate to the said O. P., the other executor, when he shall apply for the same.

(Signed) J. S.,
District Registrar.
(L.S.)

Extracted by

[*To be written in margin.*] Sworn under £ and that the testator died on the day of 18 .

No. 14.—Special Administration of the rest of the Goods of a Married Woman.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that A. B. [wife of C. B.], late of in the county of died on the day of 18 at having at the time of her death a fixed place of abode at within the said district of and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture bearing date the day of 18 and made between D. E. of in the county of esquire, of the first part, the said C. B., therein described, of in the county of gentleman of the second part, and the said A. B. by her then name and description of A. F. of in the county of widow, and G. H. of the same place, esquire, of the third part, made and executed her last will and testament, bearing date the day of 18 , and thereof appointed E. F. and G. H. executors. And BE IT ALSO KNOWN, that on the day of 18 probate of the said will, limited to the administration of all such personal estate and effects as she the said deceased, by virtue of the said indenture, had a right to appoint or dispose of, and hath in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted by authority of to the said E. F. and G. H., the executors named in the said will. And BE IT FURTHER KNOWN, that on the day of 18 letters of administration of the rest of the personal estate and effects of the said A. B. deceased were granted to the said C. B., the lawful husband of the said deceased, he having been first sworn faithfully to administer the same, and to exhibit a true and perfect inventory thereof, and also to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
District Registrar.
(L.S.)

Extracted by

[*To be written in margin.*] Sworn under £ and that the deceased died on the day of 18 .

No. 15.—Administration de Bonis non.

In her Majesty's Court of Probate. The District Registry of .

BE IT KNOWN, that A. B., late of in the county of deceased, died on or about 18 at intestate, and had at the time of his death a fixed place of abode at within the said district of , and that since his death, to wit, in the month of 18 letters of administration of all and singular his personal estate and effects were committed

and granted to C. D. [*insert the relationship or character of administrator*] (which letters of administration now remain of record in the district registry of), who, after taking such administration upon him, intermeddled in the personal estate and effects of the said deceased, and afterwards died, to wit, on leaving part thereof unadministered, and that on the day of 18 letters of administration of the said personal estate and effects so left unadministered were granted by her Majesty's Court of Probate to he having been first sworn well and faithfully to administer the same, to pay his just debts, and exhibit a true and perfect inventory of the said personal estate and effects so left unadministered, and render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
District Registrar.
(L.S)

Extracted by

[*To be written in margin of administration will.*] Sworn under £ and that the intestate died on the day of .

No. 16.—Administration Bond.

KNOW ALL MEN by these presents, that we, A. B. of C. D. of and E. F. of are jointly and severally bound unto G. H., the Judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the Judge of the said Court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such, that if the above-named A. B., the [*as the case may be*] of I. J., late of deceased, who died on the day of do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have or shall come to hands, possession or knowledge, or into the hands and possession of any other person for and the same so made do exhibit or cause to be exhibited into the district registry of attached to her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects, and all other the personal estate and effects of the said deceased at the time of death, which at any time after shall come to the hands or possession of the said or into the hands or possession of any other person or persons for do well and truly administer according to law; (that is to say,) do pay the debts which did owe at decease, and further do make or cause to be made a true and just account of said administration whenever required by law so to do; and all the rest and residue of the said personal estate and effects do deliver and pay unto such person or persons as shall be entitled thereto, under an Act of Parliament, intituled "An Act for the better Settling of Intestate Estates;" and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named do exhibit the same into the said court, making request to have it allowed and approved accordingly, if the said being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed and delivered in the presence of
K. L., Commissioner,
M. N., District Registrar of ,
[*or* O. P., Clerk to the District Registrar of].

No. 17.—Administration Bond for Administrators with the Will.

KNOW ALL MEN by these presents, that we, A. B., of C. D. of and E. F. of are jointly and severally bound unto G. H., the Judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the Judge of the said Court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such that if the above-named A. B., the [*as the case may be*] of I. J., late of deceased, who died on the day of do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have or shall come to hands, possession or knowledge, and the same so made do exhibit or cause to be exhibited into the district registry of attached to her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects do well and truly administer, (that is to say,) do pay the debts of the said deceased which did owe at decease, and then the legacies contained in the said will annexed to the said letters of administration so to committed, as far as personal estate and effects will thereto extend, and the law charge and further do make or cause to be made a true and just account of said administration when shall be thereunto lawfully required, and all the rest and residue of the said personal estate and effects shall deliver and pay unto such person or persons as shall be by law entitled thereto, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed and delivered in the presence of
K. L., Commissioner,
M. N., District Registrar of ,
[*or* O. P., Clerk to the District Registrar of].

No. 18.—Declaration of the Personal Estate and Effects of a Testator or an Intestate.

A true declaration of all and singular the personal estate and effects of A. B., late of deceased, who died on the day of at and had at the time of his death a fixed place of abode at within the district of which have at any time since his death come to the hands, possession or knowledge of C. D., the administrator with the will of the said A. B. [*or* administrator, *as the case may be*], made and exhibited upon and by virtue of the corporal oath [*or* solemn affirmation] of the said C. D., as follows, to wit:

	£	s.	d.
First, this declarant declares that the said deceased was at the time of his death possessed of or entitled to			
[*The details of the deceased's effects must be here inserted, and the value inserted opposite to each particular.*]			

Lastly, this declarant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the

hands, possession or knowledge of this declarant, save as is hereinbefore set forth.

(Signed) C. D.

On the day of 18 the said C. D. was duly sworn to [*or* solemnly affirmed] the truth of the above inventory,

Before me,

[*person authorized to administer oaths under the act*].

No. 19.—Justification of Sureties.

In her Majesty's Court of Probate. The District Registry of .

In the goods of A. B., deceased.

The day of 18 .

We, C. D. of and E. F. of jointly and severally make oath, that we are the proposed sureties on behalf of G. H., the intended administrator of all and singular the personal estate and effects of the said A. B., late of deceased, in the penal sum of pounds, for his faithful administration of the said personal estate and effects of the said deceased; and I the said C. D. for myself make oath, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of ; and I the said E. F. for myself make oath, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of pounds.

Same day the said C. D. and E. F. were duly sworn to the truth of this affidavit.

Before me,

[*person authorized to administer oaths under the act*].

No. 20.—Election by Minors of a Guardian.

In her Majesty's Court of Probate. The District Registry of .

WHEREAS A. B., late of in the county of deceased, died on or about the day of 18 at intestate, a widower, leaving C. D., E. F. and G. H. his natural and lawful children and only next of kin, the said C. D. being a minor of the age of twenty years only, the said E. F. being also a minor of the age of nineteen years only, and the said G. H. being an infant of the age of six years only:

Now we, the said C. D. and E. F., do hereby make choice of and elect K. L., of in the county of our lawful maternal uncle and one of our next of kin, to be our curator or guardian, for the purpose of his obtaining letters of administration of the personal estate and effects of the said A. B., deceased, to be granted to him, for our use and benefit, and until one of us attain the age of twenty-one years [*or* for the purpose of renouncing for us, and on our behalf all our right, title and interest to and in the letters of administration, &c., *as the case may be*] [*add, in cases where a proctor, solicitor or attorney appears for the minors,* and we hereby appoint M. N. of our proctor, solicitor *or* attorney, to file or cause to be filed this our election for us in the said district registry of attached to her Majesty's Court of Probate].

IN WITNESS whereof we have hereunto set our hands and seals this day of in the year 18 .

Signed, sealed and delivered in the presence of

G. H.,

[*One disinterested witness sufficient*].

No. 21.—Renunciation of Probate and Administration with the Will annexed.

In her Majesty's Court of Probate. The District Registry of .

WHEREAS A. B., late of in the county of deceased, died on the day of 18 at and had at the time of his death a fixed place of abode at within the said district of ; and whereas he made and duly executed his last will and testament bearing date the day of 18 [*if there are codicils their dates should be also inserted*], and thereof appointed C. D. executor and residuary legatee in trust [*or as the case may be*]:

Now I, the said C. D., do hereby declare, that I have not intermeddled in the personal estate and effects of the said deceased, and will not hereafter intermeddle therein with intent to defraud creditors, and I do hereby expressly renounce all my right and title to the probate and execution of the said will [and codicils, *if any*], and to the letters of administration with the said will [and codicils, *if any*] annexed, of the personal estate and effects of the said deceased [*add, in cases where a proctor, solicitor or attorney appears for the person renouncing*, and I hereby appoint E. F. of my proctor, solicitor *or* attorney, to file or cause to be filed this renunciation for me in the said district registry of attached to her Majesty's Court of Probate].

IN WITNESS whereof I have hereto set my hand and seal this day of 18 .

C. D.

Signed, sealed and delivered by the said C. D. in the presence of
G. H.,
[*One disinterested witness sufficient*].

No. 22.—Renunciation of Administration.

In her Majesty's Court of Probate. The District Registry of .

WHEREAS A. B., late of in the county of deceased, died on the day of 18 at intestate, a widower, and had at the time of his death a fixed place of abode at within the said district of ; and whereas I, C. D. of am his natural lawful child, and his only next of kin:*

Now I, the said C. D. do hereby declare that I have not intermeddled in the personal estate and effects of the said deceased, and do hereby expressly renounce all my right and title to the letters of administration of the personal estate and effects of the said deceased [*add, in cases where a proctor, solicitor or attorney appears for the person renouncing*, and I hereby appoint E. F. of my proctor, solicitor *or* attorney, to file or cause this renunciation to be filed for me in the district registry of attached to her Majesty's Court of Probate].

IN WITNESS whereof I have hereto set my hand and seal this day of 18 .

C. D.

Signed, sealed and delivered by the said C. D. in the presence of
G. H.,
[*One disinterested witness sufficient*].

* This to be varied according to the fact.

No. 23.—Subpœna in a Proceeding in Common Form to bring in a Script.

VICTORIA, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of .

WHEREAS it appears by a certain affidavit filed in the principal registry of our Court of Probate [*or* filed in the district registry of attached to our Court of Probate], bearing date the day of 18 and made by of that a certain original paper or script, being or purporting to be testamentary, to wit [*here describe the paper*], bearing date the day of 18 is now in your possession or under your control:

NOW THIS IS TO COMMAND YOU, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal registry of our said court [*or* the district registry of attached to our said court] the said original paper now in the possession of you the said or in case the said original paper be not in your possession or under your control, that you, within eight days after the service hereof on you, inclusive of the day of such service, do file in the principal registry of our said court [*or* the district registry of attached to our said court] an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said script: and this you shall in nowise omit under the penalty of one hundred pounds. Witness [*insert the name of the Judge*], at the Court of Probate, the day of 18 in the year of our reign.

Indorsement to be made of the Service.

This subpœna was served by G. H. on of on the day of 18 .

(Signed) G. H.

No. 24.—Affidavit of Handwriting.

In her Majesty's Court of Probate. The District Registry of .

I, A. B., of in the county of make oath [*or* solemnly affirm], that I knew and was well acquainted with C. D., late of in the county of deceased (who died on the day of at and had at the time of his death a fixed place of abode at within the said district of), for many years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription, and having now with care and attention perused and inspected the paper writing hereunto annexed, purporting to be and contain the last will and testament of the said deceased, beginning thus ending thus and being subscribed thus [*include in these recitals the date of the will*] "C. D." I further make oath, that I verily and in my conscience believe the whole body, series and contents of the said will, together with the names "C. D." subscribed thereto as aforesaid, to be of the true and proper handwriting and subscription of the said "C. D." deceased.

On the day of 18 the said A. B. was duly sworn at to the truth of this affidavit [*or* made this solemn affirmation],

Before me,

E. F.,

[*person authorized to administer oaths under the act*].

No. 25.—Affidavit of Plight and Condition and Finding.

In her Majesty's Court of Probate. The District Registry of .

I, A. B., of in the county of make oath [*or* solemnly affirm], that I am the sole executor named in the paper writing now hereunto annexed, purporting to be and contain the last will and testament of E. F., late of in the county of deceased (who died on the day of at and had at the time of his death a fixed place of abode at within the said district of) the said will bearing date the day of beginning thus ending thus and being subscribed thus "C. D.," and having viewed and perused the said will and particularly observed that [*here recite the finding of the will, and the various obliterations, interlineations, erasures and alterations (if any), and the general plight and condition of the will, or any other matters requiring to be accounted for, and clearly trace the will from the possession of the deceased in his lifetime up to the time of making this affidavit*]; I the deponent lastly make oath that the same is now in all respects in the same state, plight and condition as when found [*or as the case may be*].

On the day of 18 the said A. B. and C. D. were duly sworn at to the truth of this affidavit [*or* made this solemn affirmation],

Before me,

I. J.,

[*person authorized to administer oaths under the act*].

No. 26.—Affidavit of Search.

In her Majesty's Court of Probate. The District Registry of .

I, A. B., of in the county of make oath [*or* solemnly affirm], that I am the sole executor named in the paper writing hereunto annexed, purporting to be and contain the last will and testament of C. D., late of deceased (who died on the day of in the year 18 at and had at the time of his death a fixed place of abode at within the said district of), the said will beginning thus, " " ending thus, " In witness whereof I have hereunto set my hand this " day of , in the year of our Lord one thousand eight hundred and " fifty-four" [*or as the case may be*] and being thus subscribed, "C. D." And referring particularly to the fact that the blank spaces originally left in the said will for the insertion of the day and month of the date thereof have never been supplied [*or* that the said will is without date, *or as the case may be*], I further make oath [*or* solemnly affirm], that I have made inquiry of E. F., the solicitor of the said deceased, and that I have also made diligent and careful search in all places where he the said deceased usually kept his papers of moment and concern, and in his depositories, in order to ascertain whether he had or had not left any other will, but that I have been unable to discover any such will. And I lastly make oath [*or* solemnly affirm], that I verily believe the said deceased died without having left any will, codicil or testamentary paper whatever, other than the said will by me hereinbefore deposed of.

A. B.

On the day of 18 the said A. B. was duly sworn at to the truth of this affidavit [*or* made this solemn affirmation],

Before me,

G. H.,

[*person authorized to administer oaths under the act*].

[*This form of affidavit to be used when it is shown by affidavit that neither the subscribed witnesses nor any other person can depose to the precise time of the execution of the will.*]

No. 27.—Caveat.

In her Majesty's Court of Probate. The District Registry of .

Let nothing be done in the goods of A. B., late of deceased, who died on the day of at and had at the time of his death a fixed place of abode at within the said district of unknown to C. D. of having interest [*or* to E. F., of the proctor, solicitor *or* attorney of parties having interest].

Dated this day of 18 .

(Signed) C. D. of [*or* E. F. of the proctor, solicitor *or* attorney of parties having interest].

No. 28.—Warning to Caveat.

In her Majesty's Court of Probate. The District Registry of .

To A. B. of [*or* to C. D. of proctor, solicitor *or* attorney of parties having interest].

You are hereby WARNED, within six days[a] after the service of this warning upon you, inclusive of the day of such service, to cause an appearance to be entered for you in the said district registry attached to the said Court of Probate to the caveat entered by you in the personal estate and effects of E. F., late of deceased, who died at on or about the day of 18 and had at the time of his death a fixed place of abode at within the said district of and to set forth your [*or* your client's] interest; and take notice, that in default of your so doing the said court will proceed to do all such acts, matters and things as shall be needful and necessary to be done in and about the premises.

(Signed) X. Y.,
District Registrar.

Indorsement to be made after Service.

This warning was served by I. K. on A. B. of [*or* on C. D. of the proctor, solicitor *or* attorney] by whom the caveat was entered in respect of the personal estate and effects of the within-named deceased at on the day of 18 .

(Signed) I. K.,

[*or*, The duplicate of this warning, signed by the said X. Y. was sent by the public post, directed to the said A. B. [*or* C. D.] by whom the caveat was entered in respect of the personal estate and effects of the within-named deceased at on the day of 18 .

(Signed) I. K.]

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[a] These six days are to be exclusive of Sunday.

FEES

To be taken in the District Registries of the Court of Probate.

Probates or Letters of Administration with Will annexed.

	£	s.	d.
For every probate when the personal estate is sworn to be under 100*l.*, or any sum less than 100*l.*	0	1	0
For every probate when the personal estate is of the value of 100*l.* and under 4,000*l.*, or any sum less than 4,000*l.*, a fee of 1*s.* 6*d.* in the pound on the amount of stamp duty payable on such probate.			
For every probate when the personal estate is of the value of 4,000*l.* and upwards, the following fees:—			
If the personal estate is sworn to be—			
Under the value of £5,000	4	15	0
6,000	5	0	0
7,000	5	5	0
8,000	5	10	0
9,000	5	15	0
10,000	6	0	0
12,000	6	5	0
14,000	6	10	0
16,000	6	17	6
18,000	7	5	0
20,000	7	12	6
25,000	8	2	6
30,000	8	15	0
35,000	9	7	6
40,000	10	6	3
45,000	11	5	0
50,000	12	3	9
60,000	13	2	6
70,000	15	0	0
80,000	16	17	6
90,000	18	15	0
100,000	20	12	6
120,000	21	11	3
140,000	23	8	9
160,000	25	6	3
180,000	27	3	9
200,000	29	1	3
250,000	30	18	9
300,000	35	12	6
350,000	40	6	3

	£	s.	d.
Probates or Letters of Administration with Will annexed—*continued.*			
If the personal estate is sworn to be—			
Under the value of £400,000	41	17	6
500,000	43	8	9
600,000	46	6	3
700,000	49	13	9
800,000	52	16	3
900,000	55	18	9
1,000,000	59	1	3
Above 1,000,000	62	3	9
For registering and collating wills of three folios of ninety words each, or under	0	4	6
If above three folios of ninety words each, per folio	0	1	6
In cases of a grant for Queen's pay or prize money (the effects being under 100*l.*) without reference to the length of the will	0	4	6
For engrossing and collating a will for a double, or duplicate, or triplicate, or cessat probate of [*if?*] the will is four folios of ninety words each, or under, including parchment	0	6	0
If above four folios of ninety words each (including parchment), per folio	0	1	6
For every double or cessat probate, when the personal estate is under 450*l.* or any smaller sum, the same fee as on the first probate.			
For every double or cessat probate, when the personal estate is of the value of 450*l.* or upwards	0	12	6
For every duplicate and triplicate probate, when the personal estate is under 450*l.* or any smaller sum, the same fee as on the first probate.			
For every duplicate and triplicate probate, when the personal estate is of the value of 450*l.* or upwards	0	12	6
For engrossing, exemplifying and collating a will of four folios of ninety words each, or under, including parchment	0	6	0
If above four folios of ninety words each, per folio (including parchment)	0	1	6
For every exemplification of probate	1	1	0

Letters of Administration.

	£	s.	d.
For every grant of letters of administration when the personal estate is sworn to be under 100*l.*, or any sum less than 100*l.*, a fee of	0	1	0
For every grant of letters of administration when the personal estate is of the value of 100*l.* and under 2,000*l.*, or any sum less than 2,000*l.*, a fee of 1*s.* 6*d.* in the pound on the amount of stamp duty payable on such letters of administration.			
For every grant of letters of administration when the personal estate is of the value of 2,000*l.* and upwards, the following fees:—			
If the personal estate is sworn to be—			
Under the value of £3,000	4	13	9
4,000	4	17	6
5,000	5	5	0
6,000	5	12	6
7,000	6	0	0
8,000	6	7	6

Letters of Administration—*continued.*	£	s.	d.
If the personal estate is sworn to be—			
Under the value of £9,000	6	15	0
10,000	7	2	6
12,000	7	10	0
14,000	7	17	6
16,000	8	8	9
18,000	9	0	0
20,000	9	11	3
25,000	9	16	3
30,000	11	5	0
35,000	12	3	9
40,000	13	11	3
45,000	15	0	0
50,000	16	7	6
60,000	17	16	3
70,000	20	12	6
80,000	23	8	9
90,000	26	5	0
100,000	29	1	3
120,000	30	9	6
140,000	33	5	9
160,000	36	2	0
180,000	38	18	3
200,000	41	14	6
250,000	44	10	9
300,000	46	17	6
350,000	49	4	6
400,000	51	11	3
500,000	53	18	3
600,000	58	12	0
700,000	63	5	9
800,000	67	19	6
900,000	72	13	3
1,000,000	77	7	0
Above 1,000,000	82	0	9
For every duplicate and triplicate letters of administration when the personal estate is under 300*l.*, or any sum less than 300*l.*, the same fee as on the first grant of letters of administration.			
For every duplicate and triplicate letters of administration when the personal estate is of the value of 300*l.* and upwards	0	12	6
For every exemplification of letters of administration	1	1	0
For every grant of letters of administration with will annexed de bonis non or cessate, when the personal estate is under 450*l.*, or any smaller sum, the same fee as on the first grant.			
For every grant of letters of administration with will annexed de bonis non or cessate, when the personal estate is of the value of 450*l.* and upwards	0	12	6
For engrossing and collating a will for a grant of letters of administration with will annexed de bonis non or cessate, if the will is four folios of ninety words each or under (including parchment)	0	6	0
If above four folios of ninety words each, per folio, including parchment	0	1	6
For every grant of letters of administration de bonis non or cessate, if the personal estate is under 300*l.*, or any smaller sum, the same fee as on the first grant.			
For every grant of letters of administration de bonis non or cessate, if the personal estate is of the value of 300*l.* and upwards	0	12	6

Letters of Administration—*continued.*	£	s.	d.
For every special or limited grant of probate or letters of administration with or without the will annexed, in addition to the ordinary fees, as under :—			
If the personal estate is under the value of 20*l.*, 1*s.* per folio of ninety words each on the bond, on the act, and on the grant of probate or letters of administration.			
If the personal estate is of the value of 20*l.* and upwards, 2*s.* per folio of ninety words each on the bond, on the act, and on the grant of probate or letters of administration.			
For articles entered into by administrators to pay creditors pro rata, per folio of ninety words each	0	2	0
For the bond for the performance of the articles, per folio of ninety words	0	2	0
For noting on the grant of letters of administration with or without will annexed, and on the act that additional security has been given	0	5	0
For every certificate that additional security has been given ..	0	1	0
For every search for will or grant of letters of administration or any other document filed in the district registry, including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an administration act	0	1	0
For every third will or administration act looked up in addition to the above	0	1	0
For looking up and inspecting an original will after the same is registered, in addition to the search	0	1	0
For looking up and producing any document filed in the district registry, other than an original will or administration act ..	0	1	0
For every office copy or extract of a record, will, or probate or administration act or other document filed in the district registry, if five folios of ninety words or under	0	2	6
If exceeding five folios of ninety words, per folio	0	0	6
If the will or other document is 200 years old, and five folios of ninety words or under	0	5	0
If exceeding five folios of ninety words, per folio	0	0	9
If the office copy of a will or any part of a will or other document is required to be made fac simile, and such will or part of a will or other document is five folios of ninety words in length or under	0	3	6
If exceeding five folios of ninety words, per folio	0	0	9
For collating a probate or copy of a will or other document left in place of the original, if twenty folios in length or under ..	0	5	0
If exceeding twenty folios, every additional two folios	0	0	3
If a copy is required to be printed, for every eight folios of ninety words, in addition to a manuscript copy for the printer at 6*d.* per folio of ninety words	0	5	0
For every attendance with any book or original document within three miles of the district registry	1	1	0
For second and each subsequent attendance at the same place, and with the same document if within fourteen days ..	0	10	6
For each day's attendance with any book or original document at any place beyond the distance of three miles from the district registry, exclusive of travelling expenses	1	1	0
For every receipt for a document or documents delivered out of the district registry	0	1	0
For the entry of every caveat	0	1	0
For each notice of such caveat to the principal registry or any other district registry	0	1	0

Letters of Administration—*continued.*	£	s.	d.
For every warning to a caveat issuing from the district registry..	0	5	0
For messenger's attendance with warning to caveat within three miles of the district registry	0	2	6
For every notice of application for a grant of probate or administration transmitted to registrars of the principal registry	0	1	0
For filing each of such notices in the principal registry ..	0	0	6
For every search by the district registrar in order to ascertain whether any probate or grant of letters of administration has already issued as under:—			
For every year after the year in which the deceased died ..	0	0	6
And for every such search in the principal registry after the year in which the deceased died, a further fee of ..	0	0	6
For the certificate of the registrar of the principal registry, that no application has been made in respect of the goods of the deceased	0	1	0
For filing affidavit for the Inland Revenue Office on granting probate or letters of administration for Queen's pay or prize money	0	1	0
For filing every other affidavit and other document brought into and deposited in the district registry, except the oaths for executors, or administrators, or administrators with will, the first administration bond, and the testamentary papers in respect of which probate or administration with will annexed is granted..	0	2	6
For every receipt for documents left in the district registry in order to obtain a grant of probate or letters of administration with or without will annexed	0	1	0
For depositing every will of a person deceased in the district registry, for safe custody	0	10	0
For every oath administered by the district registrars	0	1	0

FEES

To be taken for their own Use by Proctors, Solicitors and Attornies practising in the Court of Probate and in the District Registries thereof,

IN NON-CONTENTIOUS BUSINESS.

Fees of Probates.

Effects sworn under	Oath of Executors and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn.	Engrossing and collating the Will, three folios of ninety words or under.	Probate under seal.	Extracting.	Clerk's fee.
£	s. d.	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
5	2 6	2 6	4 6	0 1 0	1 0	—
20	2 6	2 6	4 6	0 1 0	3 4	0 1 0
100	5 0	5 0	4 6	0 1 0	6 8	0 2 0
200	6 8	6 8	4 6	0 3 0	6 8	0 2 0
300	10 0	10 0	4 6	0 7 6	6 8	0 2 0
450	10 0	10 0	4 6	0 12 0	6 8	0 2 0
600	10 0	10 0	4 6	0 16 6	6 8	0 2 0
800	10 0	10 0	4 6	1 2 6	6 8	0 2 0
1,000	10 0	10 0	4 6	1 13 0	6 8	0 2 0
1,500	10 0	10 0	4 6	2 5 0	6 8	0 5 0
2,000	10 0	10 0	4 6	3 0 0	6 8	0 5 0
3,000	10 0	10 0	4 6	3 15 0	13 4	0 5 0
4,000	10 0	10 0	4 6	4 10 0	13 4	0 5 0
5,000	10 0	10 0	4 6	4 15 0	13 4	0 7 6
6,000	10 0	10 0	4 6	5 0 0	13 4	0 7 6
7,000	10 0	10 0	4 6	5 5 0	13 4	0 7 6
8,000	10 0	10 0	4 6	5 10 0	13 4	0 7 6
9,000	10 0	10 0	4 6	5 15 0	13 4	0 7 6
10,000	10 0	10 0	4 6	6 0 0	13 4	0 7 6
12,000	10 0	10 0	4 6	6 5 0	13 4	0 7 6
14,000	10 0	10 0	4 6	6 10 0	13 4	0 7 6
16,000	10 0	10 0	4 6	6 17 6	13 4	0 7 6
18,000	10 0	10 0	4 6	7 5 0	13 4	0 7 6
20,000	10 0	10 0	4 6	7 12 6	13 4	0 7 6
25,000	10 0	10 0	4 6	8 2 6	13 4	0 7 6
30,000	10 0	10 0	4 6	8 15 0	13 4	0 7 6
35,000	10 0	10 0	4 6	9 7 6	13 4	0 7 6

Fees of Probates—*continued.*

Effects sworn under	Oath of Executors and attendance on the party being sworn.		Affidavit for the Inland Revenue Office and attendance on the party being sworn.		Engrossing and collating the Will, three folios of ninety words or under.		Probate under seal.			Extracting.		Clerk's fee.		
£	s.	d.	s.	d.	s.	d.	£	s.	d.	s.	d.	£	s.	d.
40,000	10	0	10	0	4	6	10	6	3	13	4	0	7	6
45,000	10	0	10	0	4	6	11	5	0	13	4	0	7	6
50,000	10	0	10	0	4	6	12	3	9	13	4	0	7	6
60,000	10	0	10	0	4	6	13	2	6	13	4	0	7	6
70,000	10	0	10	0	4	6	15	0	0	13	4	0	7	6
80,000	10	0	10	0	4	6	16	17	6	13	4	1	1	0
90,000	10	0	10	0	4	6	18	15	0	13	4	1	1	0
100,000	10	0	10	0	4	6	20	12	6	13	4	1	1	0
120,000	10	0	10	0	4	6	21	11	3	13	4	1	1	0
140,000	10	0	10	0	4	6	23	8	9	13	4	1	1	0
160,000	10	0	10	0	4	6	25	6	3	13	4	1	1	0
180,000	10	0	10	0	4	6	27	3	9	13	4	1	1	0
200,000	10	0	10	0	4	6	29	1	3	13	4	1	1	0
250,000	10	0	10	0	4	6	30	18	9	13	4	1	1	0
300,000	10	0	10	0	4	6	35	12	6	13	4	1	1	0
350,000	10	0	10	0	4	6	40	6	3	13	4	1	1	0
400,000	10	0	10	0	4	6	41	17	6	13	4	1	1	0
500,000	10	0	10	0	4	6	43	8	9	13	4	1	1	0
600,000	10	0	10	0	4	6	46	6	3	13	4	1	1	0
700,000	10	0	10	0	4	6	49	13	9	13	4	1	1	0
800,000	10	0	10	0	4	6	52	16	3	13	4	1	1	0
900,000	10	0	10	0	4	6	55	18	9	13	4	1	1	0
1,000,000	10	0	10	0	4	6	59	1	3	13	4	1	1	0
Above that sum	10	0	10	0	4	6	62	3	9	13	4	1	1	0

For engrossing and collating the will, if more than three folios of ninety words each, per folio 1*s.* 6*d.*

Fees of Letters of Administration with Will annexed.

In addition to the above fees for attendance on execution of the bond if the effects are—

	s.	d.
5*l.* and under 20*l.*	0	10
20*l.* and under 100*l.*	1	8
100*l.* and upwards	3	4

Fees of Letters of Administration.

Effects sworn under	Oath of Administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue and attendance on Administrator being sworn.	Letters of Administration under seal.	Extracting.	Clerk.
£	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
5	2 6	2 6	0 1 0	1 0	—
20	3 4	2 6	0 1 0	3 4	0 1 0
50	5 0	5 0	0 1 6	4 8	0 2 0
100	6 8	6 8	0 3 0	6 8	0 2 0
200	10 0	6 8	0 4 6	6 8	0 2 0
300	13 4	10 0	0 12 0	6 8	0 2 0
450	13 4	10 0	0 16 6	6 8	0 2 0
600	13 4	10 0	1 2 6	6 8	0 2 0
800	13 4	10 0	1 13 0	6 8	0 2 0
1,000	13 4	10 0	2 5 0	6 8	0 5 0
1,500	13 4	10 0	3 7 6	6 8	0 5 0
2,000	13 4	10 0	4 10 0	13 4	0 5 0
3,000	13 4	10 0	4 13 9	13 4	0 7 6
4,000	13 4	10 0	4 17 6	13 4	0 7 6
5,000	13 4	10 0	5 5 0	13 4	0 7 6
6,000	13 4	10 0	5 12 6	13 4	0 7 6
7,000	13 4	10 0	6 0 0	13 4	0 7 6
8,000	13 4	10 0	6 7 6	13 4	0 7 6
9,000	13 4	10 0	6 15 0	13 4	0 7 6
10,000	13 4	10 0	7 2 6	13 4	0 7 6
12,000	13 4	10 0	7 10 0	13 4	0 7 6
14,000	13 4	10 0	7 17 6	13 4	0 7 6
16,000	13 4	10 0	8 8 9	13 4	0 7 6
18,000	13 4	10 0	9 0 0	13 4	0 7 6
20,000	13 4	10 0	9 11 3	13 4	0 7 6
25,000	13 4	10 0	9 16 3	13 4	0 7 6
30,000	13 4	10 0	11 5 0	13 4	0 7 6
35,000	13 4	10 0	12 3 9	13 4	0 7 6
40,000	13 4	10 0	13 11 3	13 4	0 7 6
45,000	13 4	10 0	15 0 0	13 4	0 7 6
50,000	13 4	10 0	16 7 6	13 4	0 7 6
60,000	13 4	10 0	17 16 3	13 4	0 7 6
70,000	13 4	10 0	20 12 6	13 4	0 7 6
80,000	13 4	10 0	23 8 9	13 4	1 1 0
90,000	13 4	10 0	26 5 0	13 4	1 1 0
100,000	13 4	10 0	29 1 3	13 4	1 1 0
120,000	13 4	10 0	30 9 6	13 4	1 1 0
140,000	13 4	10 0	33 5 9	13 4	1 1 0
160,000	13 4	10 0	36 2 0	13 4	1 1 0
180,000	13 4	10 0	38 18 3	13 4	1 1 0
200,000	13 4	10 0	41 14 6	13 4	1 1 0
250,000	13 4	10 0	44 10 9	13 4	1 1 0
300,000	13 4	10 0	46 17 6	13 4	1 1 0
350,000	13 4	10 0	49 4 6	13 4	1 1 0
400,000	13 4	10 0	51 11 3	13 4	1 1 0
500,000	13 4	10 0	53 18 3	13 4	1 1 0
600,000	13 4	10 0	58 12 0	13 4	1 1 0
700,000	13 4	10 0	63 5 9	13 4	1 1 0
800,000	13 4	10 0	67 19 6	13 4	1 1 0
900,000	13 4	10 0	72 13 3	13 4	1 1 0
1,000,000	13 4	10 0	77 7 0	13 4	1 1 0
Above that sum	13 4	10 0	82 0 9	13 4	1 1 0

Fees of Double or Cessate Probates.

If the effects are sworn under	Attendance in the Registry, and looking up the Will and bespeaking the engrossment.	Oath of the executor and attendance on his being sworn.	Affidavit for Inland Revenue Office, and attendance on the executor being sworn.	Drawing and copying statement in support of application for the duty-paid Stamp.	Attending the Commissioners of Stamps and procuring the duty-paid Stamp.	Double Probate under seal.	Extracting.	Clerk.
£	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
5	3 4	2 6	2 6	—	—	1 0	1 0	—
20	3 4	2 6	2 6	—	—	1 0	3 4	1 0
100	6 8	5 0	5 0	6 8	13 4	1 0	6 8	2 0
200	6 8	6 8	6 8	6 8	13 4	3 0	6 8	2 0
300	6 8	10 0	10 0	6 8	13 4	7 6	6 8	2 0
450	6 8	10 0	10 0	6 8	13 4	12 0	6 8	2 0
600	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
800	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	2 0
1,500	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
2,000	6 8	10 0	10 0	10 0	13 4	12 6	6 8	5 0
3,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
4,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	5 0
5,000	6 8	10 0	10 0	10 0	13 4	12 6	13 4	7 6
Above 5,000	The fees to be taken are the same as above, except the clerk's fee, which, if the effects are of the value of 70,000*l.* or upwards is 11*l.* 1*s.*							

Exemplification of Probate or Letters of Administration with or without Will annexed.

	£	s.	d.
Attending in the registry, looking up the grant of probate and original will or grant of administration, and bespeaking exemplification	0	6	8
Exemplification under seal and stamp	1	1	0
Extracting	0	6	8
Clerks	0	2	6

Duplicate and Triplicate Probates or Letters of Administration with or without Will annexed.

	£	s.	d.
Attending in the registry, looking up the will, and bespeaking duplicate or triplicate probate and engrossment	0	6	8
Drawing and copying statement in support of application to the Inland Revenue Office for the duty-paid stamp	0	10	0
Attending at the Inland Revenue Office and procuring the duty-paid stamp	0	13	4
Duplicate or triplicate probate or letters of administration, with or without the will annexed—			
If the personal estate is under 450*l.*, or any smaller sum, the same fee as on the first grant.			
If the personal estate is of the value of 450*l.* and upwards ..	0	12	6
Extracting	0	6	8
Clerks	0	2	6

Letters of Administration with or without Will annexed de Bonis non or Cessate.

If the effects are sworn under	Attending in the Registry, looking up and perusing the Will, and taking an account of the former Grant.	Oath of the administrator and attendance on his being sworn, and on execution of the Bond.	Affidavit for Inland Revenue Office, and attendance on administrator being sworn.	Drawing and copying Statement in support of application to the Inland Revenue Office for the duty-paid Stamp.	Attending at the Inland Revenue Office and procuring the duty-paid Stamp.	De bonis administration with Will under seal and duty-paid Stamp.	Extracting.	Clerks.
£	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.	s. d.
5	6 8	5 0	2 6	—	—	1 0	1 0	—
20	6 8	5 0	2 6	—	—	1 0	3 4	1 0
50	6 8	6 8	5 0	—	—	1 6	4 8	2 0
100	6 8	10 0	6 8	5 0	6 8	3 0	6 8	2 0
200	6 8	13 4	6 8	6 8	13 4	4 6	6 8	2 0
300	6 8	16 8	10 0	6 8	13 4	12 0	6 8	2 0
450	6 8	16 8	10 0	6 8	13 4	12 6	6 8	2 0
Above 450	The fees to be taken are the same as above, except the extracting fee, which, if the effects are 1,500*l.* and upwards, is 13*s.* 4*d.*, and the clerk's fee, which, if the effects are 600*l.* and upwards, is 5*s.*							

Probates, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Affidavit for Inland Revenue Office and attendance on the executor being sworn :—The same fee as on ordinary probates.			
Drawing special oath of executor, per folio of seventy-two words	0	1	0
Fair copy of the oath for the registrar, per folio of seventy-two words	0	0	4
Attending the registrar thereon	0	13	4
Engrossing same, per folio of seventy-two words	0	0	4
Attendance on the executor being sworn	0	6	8
Engrossing and collating the will, three folios of ninety words or under	The same fees as on ordinary probates.		
Special or limited probate, under seal			
Extracting			
Clerks			

Letters of Administration, Special or Limited.

	£	s.	d.
Consulting fee	0	6	8
Perusing and abstracting deeds or other instruments, when necessary, at per folio of ninety words	0	0	4
Proxy of nomination	0	13	4
Affidavit for Inland Revenue Office and attendance on the administrator being sworn :—The same fees as on ordinary grants of letters of administration.			
Drawing special oath of the administrator, per folio of seventy-two words	0	1	0
Fair copy of the oath for the registrar to peruse, per folio of seventy-two words	0	0	6
Attending the registrar thereon	0	13	4
Engrossing same, per folio of seventy-two words	0	0	4
Attendance when the administrator was sworn, and on execution of the bond	The same fees as on ordinary grants of letters of administration.		
Letters of administration, under seal and stamp ..			
Extracting			
Clerks			

Office Copies of, or Extracts from, Records, Wills, and other Documents.

	£	s.	d.
For attendance in the registry for searching for a record, will or other document, or for a grant of probate, or letters of administration, with or without a will annexed, for the first five years, or any period less than five years, *including* the ordering of a copy	0	5	0
For every five years after the first five years	0	3	4
For the perusal of a record, will or other document, when necessary, for the purpose of ordering extracts or for any other purpose, including the ordering of extracts, per folio of ninety words	0	0	4
For collating an office copy or extract of a record, will or other document, with the original, including extracting fee, per folio of ninety words	0	0	2

	£	s.	d.
For collating an office copy of the act on granting probate or administration with the original entry thereof, including extracting fee	0	1	0

Caveats.

	£	s.	d.
For attendance in the registry and entering caveat	0	6	8
For attendance in the registry and giving instructions for warning caveators to enter an appearance	0	6	8

Affidavits other than the Affidavits and Oaths included in the Fees of Probate and Letters of Administration and Declarations of Personal Estate and Effects.

	£	s.	d.
For taking instructions for every affidavit or declaration of personal estate and effects	0	6	8
For drawing and fair copy of the same, per folio of seventy-two words	0	1	0
For every copy thereof, per folio of seventy-two words ..	0	0	4

Instruments of Renunciation and Consent, Letters of Attorney, and other Documents prepared by Proctors, Solicitors or Attorneys.

	£	s.	d.
For drawing and fair copy of every instrument of renunciation, consent, letter of attorney, or other document prepared as above, per folio of seventy-two words	0	1	0
For every fair copy, per folio of seventy-two words	0	0	4

RULES, ORDERS AND INSTRUCTIONS
(1857),
For the Registrars of the Principal Registry of her Majesty's Court of Probate, in respect of
NON-CONTENTIOUS BUSINESS.

(Referred to throughout as **N.C.**)

NON-CONTENTIOUS business shall include all common form business as defined by the Act, and the warning of caveats.

1. Application for probate or letters of administration may be made at the principal registry in all cases.

2. For the present such applications are to be made through a proctor, solicitor or attorney.[a]

3. In no case should the registrars allow the probate or administration to issue until all the inquiries which they may see fit to institute have been answered to their satisfaction. The registrars are, notwithstanding, to afford as great facility for the obtaining grants of probate or administration as is consistent with a due regard to the prevention of error or fraud.

As to Probate of Wills and Codicils and Letters of Administration, with the Will [or Will and Codicils] annexed, where the Wills and Codicils or the Codicils only are dated after 31st December, 1837.

4. If there be no attestation clause to a will presented for probate, or if the attestation clause thereto be insufficient, the registrars must require an affidavit from at least one of the subscribing witnesses, if either of them are living, to prove that the provisions of 1 Vict. c. 26, s. 9, and 15 & 16 Vict. c. 24, in reference to the execution of the will, were, in fact, complied with; and such affidavit must be engrossed and form part of the probate, so that the same may be a perfect document on the face of it.[b]

5. If on perusing the affidavit it appear that the requirements of the statute were not complied with, the registrars must refuse probate.

6. If on perusing the affidavit or affidavits setting forth the facts of the case, it appear doubtful whether the will has been duly executed,

[a] Page 27. [b] Page 28.

the registrars may require the parties to bring the matter before the judge on motion.

7. If both the subscribing witnesses are dead, or if from other circumstances no affidavit can be obtained from either of them, resort must be had to other persons (if any) who may have been present at the execution of the will; but if no affidavit of any such other person can be obtained, in order to probate evidence on affidavit must be procured of that fact and of the handwriting of the subscribing witnesses, and also of any circumstances which may raise a presumption in favour of the due execution of the will.

8. Interlineations and alterations are invalid unless they existed in the will at the time of its execution, or if made afterwards, unless they have been executed and attested in the mode required by the statute, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto.

9. Where interlineations or alterations appear in the will (unless duly executed or duly accounted for by the attestation clause), an affidavit or affidavits in proof of their having existed in the will before its execution must be filed, except when the alterations are merely verbal or are of but small importance, and are evidenced by the initials of the attesting witnesses.[c]

10. In like manner, erasures and obliterations are not to prevail unless proved to have existed in the will at the time of its execution, or unless the alterations thereby effected in the will are duly executed and attested, or unless they have been rendered valid by the re-execution of the will, or by the subsequent execution of some codicil thereto. If no satisfactory evidence is adduced as to the time when such erasures and obliterations were made, and the words erased or obliterated be not entirely effaced, but can upon inspection of the paper be readily ascertained, they must form part of the probate.

11. In every case of words having been erased which might have been of importance, an affidavit should be required.

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

13. No deed, paper, memorandum or other document can form part of a will or codicil unless it were in existence at the time when the will or codicil was executed.

14. If any vestiges of sealing wax or wafers or other appearances are observable, leading to the inference that any paper, memorandum or other document may have been annexed or attached to the will, they should 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.

15. The above rules and orders respecting wills apply equally to codicils.

16. In case of probate of a married woman's will or of administration with the will of a married woman annexed, made by virtue of a

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[c] Page 29.

[d] Page 2.

power, the power under which the will purports to have been made must be specified in the grant.*

As to Probate of Wills, Codicils and Testamentary Papers relating to Personalty, and dated before the 1st January, 1838.

17. It is not necessary that a will, codicil or testamentary paper dated before 1st January, 1838, should be attested by witnesses to constitute it a valid disposition of a testator's personal property. Although neither signed by the testator nor attested by witnesses, it may nevertheless be valid; but in such cases the testator's intention that it should operate as his will, codicil or testamentary disposition, must be proved clearly by circumstances.

18. A will, codicil or testamentary paper, signed by the testator at the end of it, and attested by two disinterested witnesses (although there be no clause of attestation) is *primâ facie* entitled to probate.

19. In cases where a will, codicil or testamentary paper, is attested by two witnesses, such witnesses are not required to have been present with the testator at the same time. It is sufficient if the testator subscribed his name or made his mark to it in the presence of, or produced it with his name already written or his mark already made to, one attesting witness, and afterwards to the other attesting witness, provided that on each occasion he declared it to be his will or codicil, or otherwise notified his intention that it should operate as such.

20. If the will, codicil or testamentary paper, is signed at the end of it by the testator but is unattested, and there is nothing to show an intention that it should be attested by witnesses, the affidavit of two disinterested persons to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

21. If the will, codicil or testamentary paper, is signed at the end of it by the testator, and attested by one witness only, and there is nothing to show the testator's intention that it should be attested by a second witness, the affidavit of one disinterested person to prove the signature to be of the handwriting of the testator will be sufficient to entitle the paper to probate.

22. The circumstance of a person being named as an executor in the will, codicil or testamentary paper, or being interested as a legatee or as the husband or wife of a legatee under such will, codicil or testamentary paper, rendered him incompetent to become an attesting witness to it, so that if the name of a person so interested appears as that of a subscribing witness to the will or testamentary paper, the same, so far as regards his attestation, must be considered as unattested, and his evidence in support thereof will be inadmissible, unless he shall first release his interest thereunder.

23. If an attestation clause, or the word "witnesses," appear written at the foot of the paper, the same being unattested, or if the paper purport on the face of it to be a draft of a will, the copy of a will, or instructions for a will, it must *primâ facie* be considered as an

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* Page 71.

incomplete paper, and not, save under special circumstances, entitled to probate.

24. Any appearance of an attempted cancellation of a paper by burning, tearing, obliteration or otherwise, must be accounted for.

25. Every fact leading to a presumption of abandonment or revocation of a paper on the part of the testator must be accounted for.[f]

26. Alterations and interlineations made by the testator, if unattested, are to be proved by an affidavit of two persons to his handwriting. If the same are in the handwriting of any person other than the testator, it will suffice to prove by affidavit that they were known to and approved of by the testator. Proof by affidavit that they existed in the paper at the time it was found in the repositories of the testator recently after his death may, under circumstances, suffice. Alterations and interlineations made since the 31st of December, 1837, are subject to the provisions of 1 Vict. c. 36.

27. With respect to deeds, papers, memoranda or other documents, mentioned in a testamentary paper, or appearing to have been annexed or attached thereto, the foregoing rules, orders and instructions, as to wills bearing date since the 31st of December, 1837, will apply.

28. A will made before the 1st of January, 1838, is confirmed by a codicil duly executed bearing date on or after that day.

As to Letters of Administration.

29. Where administration is applied for by one or some of the next of kin only, there being another or other next of kin equally entitled thereto, the registrars may require proof by affidavit or statutory declaration that notice of such application has been given to such other next of kin.

30. Limited administrations are not to be granted unless every person entitled to the general grant has consented or renounced, or has been cited and failed to appear, except under the direction of the judge.[g]

31. Whenever the court, under sect. 73, appoints an administrator other than the person who, prior to the act, would have been entitled to the grant, the same is to be made plainly to appear in the oath of the administrator, in the letters of administration and in the administration bond.

32. The registrars are to take care (as far as possible) that the sureties to administration bonds are responsible persons.[h]

33. In all cases where grants of administration are made for the use and benefit of minors, the administrators are required to exhibit a declaration on oath of the personal estate and effects of the deceased, except where the effects are sworn under twenty pounds, or where the administrators are the guardians appointed by the High Court of Chancery, or are the testamentary guardians of the minors; and in all cases of persons cited, but not personally, and not appearing, the administrators are required to exhibit a similar declaration, and the sureties are required to justify.

34. In all administrations of a special character the recitals in the

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[f] Page 68. [g] Page 101. [h] Page 113.

oath and in the letters of administration must be framed in accordance with the facts of the case.

35. Grants of administration will continue to be made as heretofore to the guardians of minors and infants, for the use and benefit of such minors and infants during their minority; and elections by minors of their next of kin or next friend, as the case may be, to such guardianship, will continue to be required; but proxies accepting such guardianship will in future be dispensed with.

General Rules and Orders for the Principal Registrars.

36. No probate or letters of administration, with the will annexed, shall issue until after the lapse of seven days from the death of the deceased, unless under the direction of the judge.[1]

37. No letters of administration shall issue until after the lapse of fourteen clear days from the death of the deceased, unless under the direction of the judge.

38. The registrars may, in cases where they deem it necessary, require proof, in addition to the oath of the executor or administrator, of the identity of the deceased, or of the party applying for the grant.

39. In every case where probate or administration is, for the first time, applied for after the lapse of three years from the death of the deceased, the reason of the delay is to be certified to the registrars. Should the certificate be unsatisfactory, the registrars are to require an affidavit.

40. The oath of administrators, and of administrators with the will annexed, is to be so worded as to clear off all persons having a prior right to the grant, and the grant is to show on the face of it how the prior interests have been cleared off.[k]

41. The usual oath of administrators is, as well as that of executors and administrators, with the will, to be reduced into writing, and to be subscribed and sworn by them as an affidavit, and then filed in the registry.

42. Every will, or copy of a will, to which an executor or administrator with the will is sworn should be marked by such executor or administrator and by the person before whom he is sworn.

43. After motions have been made before the judge in court, with regard to applications for probate and administration made at the district registries, the registrars are, unless the judge shall otherwise direct, to return to the district registrars the original papers and documents, with the directions of the judge thereon.

44. Papers and other documents may be transmitted by the registrars of the principal registry to the district registrars through the Post Office. Such letters or packets are to be superscribed with the words, "On her Majesty's Service," and may be registered, if thought necessary.

45. In the case of persons residing out of England, administrations with the will annexed, and administrations, may be granted to their attorney, acting under a power of attorney duly attested.

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[1] Page 27.

[k] *Ibid.*

46. The addition and true place of abode of every person making an affidavit is to be inserted therein.

47. In every affidavit made by two or more persons, the names of the several persons making it are to be written in the jurat.

48. No affidavit will be admitted in any matter depending in the Court of Probate in the jurat of which there is any interlineation or erasure.

49. Where an affidavit is made by any person who is blind, or who, from his or her signature or otherwise, appears to be illiterate, the registrar, commissioner or other person, before whom such affidavit is made, is to state in the jurat that the affidavit was read in the presence of the party making the same, and that such party seemed perfectly to understand the same, and also that the said party made his or her mark, or wrote his or her signature, in the presence of the registrar, commissioner or other person, before whom the affidavit was made.[l]

50. No affidavit is to be deemed sufficient which has been sworn before the party on whose behalf the same is offered, or before his proctor, solicitor or attorney, or before a clerk of his proctor, solicitor or attorney.

51. Proctors, solicitors and attorneys, and their clerks respectively, if acting for any other proctors, solicitors or attorneys, shall be subject to the rules in respect of taking affidavits which are applicable to those in whose stead they are acting.

52. A caveat shall remain in force for the space of six months only, and then expire and be of no effect; but caveats may be renewed from time to time as heretofore.[m]

53. The registrars shall, immediately upon a caveat being lodged, send notice thereof to the registrars of any district in which it is alleged the deceased resided at the time of his death, or in which he is known to have had a fixed place of abode at the time of his death.

54. No caveat shall affect any grant made on the day on which the caveat is entered, unless notice of such caveat has been received prior to the grant passing the seal.

55. A caveat shall be warned at the place mentioned in it as the address of the person who entered it.

56. It shall be sufficient for the warning of a caveat that a registrar send by the public post a warning signed by himself, and directed to the person who entered it, at the address mentioned in it.

57. Any person intending to oppose a grant of probate or letters of administration must appear, either personally, or by his proctor, solicitor or attorney, and enter an appearance in the principal registry. This rule is to apply whether the person intending to oppose the grant has or has not been previously warned to a caveat or served with a citation.

58. Citations against all persons in general, and other instruments, heretofore required to be served by affixing them in some public place, are in future to be served by the insertion of the same as advertisements in such of the leading morning and evening papers, and such of the local papers, as the judge may from time to time direct. Such citations can only be allowed to issue in cases where there is an affidavit to lead them.[n]

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[l] Page 28. [m] Page 78. [n] Page 93.

59. The registrars are not to allow probate of the will, or administration with the will annexed, of any blind person, or of any obviously illiterate or ignorant person, to issue, unless they have previously satisfied themselves that the said will was read over to the deceased before its execution, or that the deceased had at such time knowledge of its contents.[o]

60. Whenever, subsequently to a grant having been made, the value of the personal estate and effects of the deceased person is re-sworn under a different amount, or any renunciation is filed, or any alteration is made in the grant, notice of such re-swearing, renunciation, or alteration is without delay to be forwarded by the registrars of the principal registry to all the district registrars.

61. The seal is not to be affixed to any probate or letters of administration granted in Ireland, so as to give operation thereto as if the grant had been made by the Court of Probate in England, unless such probate or administration be duly stamped in respect of the personal estate and effects of which the deceased died possessed in England, and unless the same appear from a stamp on the probate or letters of administration expressly denoting the same, or unless the same appear from a certificate of the commissioners of inland revenue or their proper officer.[p]

62. In all cases where application is made for letters of administration (either with or without a will annexed) of the goods of a bastard dying a bachelor, or a spinster, or a widower, or widow, without issue, or of a person dying without known relation, notice of such application is to be given to her Majesty's procurator-general, in order that he may determine whether it will be expedient to interfere on the part of the crown; save and except that when the deceased is domiciled within the duchy of Lancaster, notice is to be given to the solicitor for the duchy in London; and no grant is to be issued until that officer has signified the course it will be proper to take under the circumstances of each particular case.[q]

63. The registrars are to take care that the copies of wills to be annexed to the probate or letters of administration are fairly and properly written in the engrossing hand heretofore in use in the Prerogative Court, and are to reject those which are otherwise.

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[o] Page 28. [p] Page 146. [q] Page 27.

FORMS

Of Instruments to be adopted in the Principal Registry of the Court of Probate, as nearly as the Circumstances of each Case will allow.

No. 1.—Notice of the Entry of a Caveat in the Principal Registry.

To the Registrar of the District Registry of
her Majesty's Court of Probate.

You are requested to take notice that a caveat has been entered in this registry of the following tenor [*set out the caveat at full length*].

This day of 18

(Signed) C. D.,
Registrar.

No. 2.—Affidavit of attesting Witness in proof of the due Execution of a Will or Codicil dated after 31st December, 1837.

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

I, C. D., of in the county of make oath [*or* solemnly affirm] that I am one of the subscribing witnesses to the last will and testament [*or* codicil, *as the case may be*], of the said C. D., late of in the county of deceased, the said will [*or* codicil] being now hereunto annexed, bearing date and that the said testator executed the said will [*or* codicil] on the day of the date thereof, by signing his name at the foot or end thereof [*or* in the testimonium clause thereof, *or* in the attestation clause thereto, *as the case may be*], as the same now appears thereon, in the presence of me and of the other subscribed witness thereto, both of us being present at the same time, and we thereupon attested and subscribed the said will [*or* codicil] in the presence of the said testator.

(Signed) C. D.

Sworn at on the day of 18 before me [*person authorized to administer oaths under the act*].

N.B.—*If the signature is in testimonium clause or attestation clause, it must be shown in the affidavit that the testator fully intended the same as his final signature to his will.*

No. 3.—Affidavit for the Commissioners of Inland Revenue.—For Executors.

In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B., deceased.

The day of 18 .

I, C. D., of [*insert the names, residences and titles or profession of the persons making the affidavit*], make oath [*or* solemnly affirm], that I am one of the executors [*or* the executor] named in the last will and testament [*insert codicils, if any*] of the said A. B., late of deceased; that the said deceased died on or about the day of in the year of our Lord one thousand hundred and at [*insert place of death, or set forth the reason why the same cannot be furnished*], and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which a probate of the said will is to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [*if any leaseholds insert clause No.* 1 *hereon endorsed*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [*if no leaseholds insert clause No.* 2 *hereon endorsed*].

(Signed) C. D.

Sworn at on the day of before me [*person authorized to administer oaths under the act*].

N.B.—*Forms for the two leasehold clauses to be printed on the back of the affidavit.*

Form of Leasehold Clause No. 1.

"Including the leasehold estate or estates for years of the said deceased, whether absolute or determinable on a life or lives."

Form of Leasehold Clause No. 2.

"And I [*or* we] lastly make oath, that the said deceased was not possessed of or entitled to any leasehold estate or estates for years, whether absolute or determinable on a life or lives, to the best of my [*or* our] knowledge, information and belief."

No. 3 *a*.—Affidavit for the Commissioners of Inland Revenue.—For Administrators with the Will annexed.

In her Majesty's Court of Probate. The Principal Registry.
In the goods of A. B., deceased.

The day of 18 .

I, C. D., of [*insert the names, residences and titles or professions of the persons making the affidavit*], the party applying for administration with the will [*insert codicils, if any*] annexed of the personal estate and effects of A. B., late of deceased, make oath [*or* solemnly affirm], that the said deceased died on or about the day of one thousand hundred and at [*insert the place of death, or set forth the reason why the same cannot be furnished*], and that the personal estate and effects of the said deceased, which he any way died possessed of or entitled to, and for or in respect of which letters of administration with the said will [*insert*

codicils, if any] annexed are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person or persons, and not beneficially [*if leaseholds insert clause No.* 1 *hereon endorsed*], and without deducting anything on account of the debts due and owing from the said decease, are under the value of pounds, to the best of my knowledge, information and belief [*if no leaseholds insert clause No.* 2 *hereon endorsed*].

(Signed) C. D.

Sworn at on the day of before me [*person authorized to administer oaths under the act*].

N.B.—*Forms for the two leasehold clauses to be printed at the back of the affidavit.*

See forms of leasehold clauses, Nos. 1 and 2, *ante*, p. 236.

No. 3 *b*.—Affidavit for the Commissioners of Inland Revenue. —For Administrators.

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

The day of 18 .

I, C. D., of [*insert the names, residences, titles or profession of the persons making the affidavit*], the party applying for letters of administration of the personal estate and effects of the said A. B., late of make oath [*or* solemnly affirm] and say as follows: That the said deceased died on or about the day of one thousand hundred and at [*insert place of death, or set forth the reason why the same cannot be furnished*], and that the personal estate and effects of the said deceased which he any way died possessed of or entitled to, and for or in respect of which letters of administration are to be granted, exclusive of what the said deceased may have been possessed of or entitled to as a trustee for any other person and persons, and not beneficially [*if leaseholds insert clause No.* 1 *hereon endorsed*], and without deducting anything on account of the debts due and owing from the said deceased, are under the value of pounds, to the best of my knowledge, information and belief [*if no leaseholds insert clause No.* 2 *hereon endorsed*].

(Signed) C. D.

Sworn at on the day of before me [*person authorized to administer oaths under the act*].

N.B.—*Forms for the two leasehold clauses to be printed at the back of the affidavit.*

See forms of leasehold clauses, Nos. 1 and 2, *ante*, p. 236.

No. 4.—Oath for Executor.

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

I, C. D., of in the county of make oath and say [*or* solemnly affirm], that I believe this paper writing [*or* these paper writings] hereto annexed to contain the true and original last will and testament [*or* last will and testament with codicils] of A. B., late of , in the county of deceased, and that I am the sole executor [*or* one of the executors]

therein named [*or* executor according to the tenor thereof, executor during life, executrix during widowhood, *or as the case may be*], and that I will faithfully administer the personal estate and effects of the said testator by paying his just debts and the legacies contained in his will [*or* will and codicils], so far as the same shall thereto extend and the law bind me; that I will exhibit an inventory, and render an account of my executorship, whenever required by law so to do; that the testator died at in the county of on the day of 18 and that the whole of the personal estate and effects of the said testator does not amount in value to the sum of pounds, to the best of my [*or* our] knowledge, information and belief.

(Signed) C. D.

Sworn at this day of 18 before me, E. F.

[*Each testamentary paper to be marked by the persons sworn and the person administering the oath.*]

No. 5.—Oath for Administrators with the Will.

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

I, C. D., of in the county of make oath and say [*or* solemnly affirm], that I believe this paper writing [*or* these paper writings] hereunto annexed to contain the true and original last will and testament [*or* the last will and testament with codicils] of A. B., late of in the county of deceased, and that the executor therein named is dead without having taken probate thereof [*or as the fact may be*], and that I am the residuary legatee in trust named therein [*or as the fact may be*], and that I will faithfully administer the personal estate and effects of the said deceased according to the tenor of his will [*or* will and codicils] by paying his just debts and the legacies contained in his will [*or* will and codicils], and distributing the residue of his estate according to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the testator died at on the day of 18 ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information and belief.

(Signed) C. D.

Sworn at this day of 18 before me,

[*Each testamentary paper to be marked by the persons sworn and the person administering the oath.*]

No. 6.—Oath for Administrators.

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

I, C. D., of in the county of make oath and say [*or* solemnly affirm], that A. B., late of deceased, died a bachelor, without parent, brother or sister, uncle or aunt, nephew or neice, and intestate, and that I am the lawful cousin german and one of the next of kin of the said deceased [*this must be altered in accordance with the circumstances of the case*]; that I will faithfully administer the personal estate and effects of the said deceased, by paying his just debts, and distributing the residue of his estate according

to law; that I will exhibit an inventory and render an account of my administration whenever required by law so to do; that the said deceased died at on the day of 18 ; and that the whole of the personal estate and effects of the said deceased does not amount in value to the sum of pounds, to the best of my knowledge, information and belief.

(Signed) A. B.

Sworn at this day of 18 before me,

No. 7.—Probate.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that on the day of 18 the last will and testament [*or* the last will and testament with codicils] hereunto annexed of A. B., late of deceased, who died on or about at was proved and registered in the said district registry of attached to her Majesty's Court of Probate, and that the administration of all and singular the personal estate and effects of the said deceased was granted by the aforesaid court to C. D., the sole executor [*or as the case may be*] named in the said will, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased and the legacies contained in his will [*or* will and codicils], so far as he is thereunto bound by law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
Registrar.
(L. S.)

Extracted by

[*To be written in margin of Probate.*] Sworn under £ and that the testator died on or about the day of 18 .

No. 8.—Letters of Administration with the Will annexed.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that A. B., late of in the county of deceased, who died on or about the day of at made and duly executed his last will and testament and did therein name .

AND BE IT FURTHER KNOWN, that on the day of 18 letters of administration with the said will annexed, of all and singular the personal estate and effects of the said deceased were granted by her Majesty's Court of Probate to C. D. [*insert the character in which the grant is taken*], he having previously been sworn well and faithfully to administer the same according to the tenor of the said will to pay the just debts of the said deceased, and to exhibit a true and perfect inventory of all and singular the said personal estate and effects and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
Registrar.
(L. S.)

Extracted by

[*To be written in margin.*] Sworn under £ and that the testator died on or about the day of 18 .

No. 9.—Letters of Administration.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that on the day of 18 letters of administration of all and singular the personal estate and effects of A. B., late of deceased, who died on or about 18 at intestate, were granted by her Majesty's Court of Probate to C. D. of the widow [*or as the case may be*] of the said intestate, she having been first sworn well and faithfully to administer the same, by paying his just debts, and distributing the residue of his personal estate and effects according to law, and to exhibit a true and perfect inventory of all and singular the said estate and effects, and to render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
Registrar.
(L. S.)

Extracted by

[*To be written in margin of administration will.*] Sworn under £
and that the intestate died on or about the day of 18 .

No. 10.—Double Probate.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that on the day of 18 the last will and testament [*or* the last will and testament with codicils] of A. B., late of deceased, who died on or about at was proved and registered, and that administration of all and singular the personal estates and effects of the said deceased, and any way concerning his will, was granted to C. D., one of the executors named in the said will [*or* codicil], he having been already sworn well and faithfully to administer the same, and to make a true and perfect inventory of all the said personal estate and effects, and to render a just and true account thereof whenever required by law so to do, power being reserved of making the like grant to E. F., the other executor named in the said will, when he should apply for the same. AND BE IT FURTHER KNOWN, that on the day of 18 * the said will of the said deceased was also proved, and that the like administration of all and singular the personal estate and effects of the said deceased, and any way concerning his will, was granted to the said E. F., he having been first duly sworn well and faithfully to administer the same, and to make a true and perfect inventory of the personal estate and effects of the said deceased, and to render a just account thereof whenever required by law so to do.

(Signed) G. H.,
Registrar.
(L. S.)

Extracted by

[*To be written in margin.*] Sworn under £ and that the testator
died on or about the day of 18 .

* [*In the margin.*] "Former grant, Jan. 18 , under the same sum."

No. 11.—Exemplification of Probate or of Letters of Administration with Will annexed.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that upon search being made in the principal registry of her Majesty's Court of Probate, it plainly appears that on the day of in the year of our Lord 18 the last will and testament with codicils of A. B., late of deceased, who died at on or about 18 was proved by C. D., the executor named therein [*or* letters of administration with the last will and testament (and codicils) annexed of the personal estate and effects of A. B., late of, &c., were granted to C. D., as the], and which probate or letters of administration now remain of record in the said registry. The true tenor of the said probate [*or* letters of administration with the will annexed, *as the case may be*] is in the words following, to wit:

[*Here the grant is to be recited verbatim.*]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and the sealing of these presents, this day of in the year of our Lord 18 .

(Signed) E. F.,
Registrar.
(L.S.)

Extracted by

[*To be written in margin.*] Sworn under £ and that the testator died on the day of 18 .

No. 12.—Exemplification of Administration.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that upon search being made in the principal registry of her Majesty's Court of Probate, it appears that on the day of in the year of our Lord 18 letters of administration of all and singular the personal estate and effects of A. B., late of who died at on or about were granted to C. D., the [*or* one of the] of the said deceased, and which letters of administration now remain of record in the said registry. The true tenor of the said letters of administration is in the words following, to wit:

[*Here the letters of administration are to be recited verbatim.*]

In faith and testimony whereof these letters testimonial are issued.

Given at as to the time of the aforesaid search, and sealing of these presents, this day of in the year of our Lord 18 .

(Signed) K. L.,
Registrar.
(L.S.)

Extracted by

[*To be written in margin.*] Sworn under £ and that the intestate died on the day of 18 .

No. 13.—Special Administration with the Will of a Married Woman annexed.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that A. B., wife of C. B., late of in the county of died on the day of 18 at and having during her coverture with the said C. B., by virtue of certain powers and authorities given to and vested in her by a certain indenture of settlement bearing date the day of 18 and of all other powers and authorities her enabling, made and executed her last will and testament bearing date the day of 18 and thereof appointed her said husband, the said C. B., sole executor, and that the said C. B., as the lawful husband of the said deceased, is the sole person entitled to her personal estate and effects, over which she had no disposing power, and concerning which she is dead intestate. AND BE IT ALSO KNOWN, that on the day of 18 letters of administration (with the said will annexed) of all and singular the personal estate and effects of the said deceased were granted and committed by her Majesty's Court of Probate to the said C. B., on his giving the usual security, he having been first sworn well and faithfully to administer the same, to pay whatever debts the said deceased at the time of her death did owe, and to exhibit a true and perfect inventory of all and singular her personal estate and effects, and to render a just account thereof whenever required by law so to do.

(Signed) J. S.,
Registrar.
(L. S.)

Extracted by

[*To be written in margin.*] Sworn under £100, and that the testatrix died on the day of 18 .

No. 13 *a*.—Limited Probate of a Married Woman's Will.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that A. B., wife of C. B., late of in the county of died on the day of 18 at and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture of settlement, bearing date the day of 18 and made between E. F. of in the county of esquire, of the first part, the said deceased, by her then name and description of A. G. of in the county of spinster, of the second part, and H. I. of in the same county, gentleman, and the said C. B. of aforesaid of the third part, made and executed her last will and testament, bearing date the day of one thousand eight hundred and and thereof appointed L. M. and O. P. executors. AND BE IT ALSO KNOWN, that on the day of 18 the said last will and testament of the said A. B., hereunto annexed, was proved and registered in the said principal registry, and that probate of the said will of the said deceased, limited to the administration of all such personal estate and effects as she the said deceased by virtue of the aforesaid indenture had a right to appoint or dispose of, and has in and by her said will appointed or disposed of accordingly, but no further or otherwise, was granted to the said L. M., one of the executors named in the said will as aforesaid, he having been first sworn well and faithfully to administer the same, by paying the just debts of the deceased, and the legacies contained in her said will, as far as he is thereunto bound by law, and to exhibit a true and perfect inventory of the said limited estate and effects, and to render a

just and true account thereof whenever required by law so to do. Power being reserved of making a like grant of probate to the said O. P., the other executor, when he shall apply for the same.

(Signed) J. S.,
Registrar.
(L. S.)

Extracted by

[*To be written in margin.*] Sworn under £ and that the testator died on the day of 18 .

No. 14.—Special Administration of the rest of the Goods of a Married Woman.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that A. B. [wife of C. B.], late of in the county of died on the day of 18 and having during her coverture with the said C. B., by virtue of certain powers and authorities vested in her by a certain indenture bearing date the day of 18 and made between D. E. of in the county of esquire, of the first part, the said C. B., therein described, of in the county of gentleman, of the second part, and the said A. B. by her then name and description of A. F. of in the county of widow, and G. H. of the same place, esquire, of the third part, made and executed her last will and testament, bearing date the day of 18 and thereof appointed E. F. and G. H. executors. AND BE IT ALSO KNOWN, that on the day of 18 probate of the said will, limited to the administration of all such personal estate and effects as she the said deceased, by virtue of the said indenture, had a right to appoint or dispose of, and hath in and by her said will appointed or disposed of accordingly, but no further or otherwise was granted by authority of to the said E. F. and G. H., the executors named in the said will. AND BE IT FURTHER KNOWN, that on the day of 18 letters of administration of the rest of the personal estate and effects of the said A. B. deceased, were granted to the said C. B., the lawful husband of the said deceased, he having been first sworn faithfully to administer the same, and to exhibit a true and perfect inventory thereof, and also to render a just and true accountthereof whenever required by law so to do.

(Signed) R. S.,
Registrar.
(L. S.)

Extracted by

[*To be written in margin.*] Sworn under £ and that the deceased died on the day of 18 .

No. 15.—Administration de Bonis non.

In her Majesty's Court of Probate. The Principal Registry.

BE IT KNOWN, that A. B., late of in the county of deceased, died on or about 18 at intestate, and that since his death, to wit, in the month of 18 letters of administration of all and singular his personal estate and effects were committed and granted to C. D. [*insert the relationship or character of administrator*] (which letters of administration now remain of record in) who, after taking such administration upon him, intermeddled in the personal estate and effects of

the said deceased, and afterwards died, to wit, on leaving part thereof unadministered, and that on the day of 18 letters of administration of the said personal estate and effects so left unadministered were granted by her Majesty's Court of Probate to he having been first sworn well and faithfully to administer the same, to pay his just debts, and exhibit a true and perfect inventory of the said personal estate and effects so left unadministered, and render a just and true account thereof whenever required by law so to do.

(Signed) E. F.,
Registrar.
(L. S.)

Extracted by

[*To be written in margin of administration will.*] Sworn under £ and that the intestate died on the day of 18 .

No. 16.—Administration Bond.

KNOW ALL MEN by these presents, that we, A. B. of C. D. of and E. F. of . are jointly and severally bound unto G. H., the judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the judge of the said court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such, that if the above-named A. B., the [*as the case may be*] of I. J., late of deceased, who died on the day of do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have or shall come to hands, possession or knowledge, or into the hands and possession of any other person for and the same so made do exhibit or cause to be exhibited into the principal registry of her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects, and all other the personal estate and effects of the said deceased at the time of death, which at any time after shall come to the hands or possession of the said or into the hands or possession of any other person or persons for do well and truly administer according to law; (that is to say), do pay the debts which did owe at decease, and further do make or cause to be made a true and just account of said administration whenever required by law so to do; and all the rest and residue of the said personal estate and effects do deliver and pay unto such person or persons as shall be entitled thereto, under the Act of Parliament, intituled "An Act for the better settling of Intestates Estates;" and if it shall hereafter appear that any last will and testament was made by the said deceased, and the executor or executors therein named do exhibit the same into the said court, making request to have it allowed and approved accordingly, if the said being thereunto required, do render and deliver the said letters of administration (approbation of such testament being first had and made) in the said court, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed and delivered in the presence of

K. L., Registrar
[*or*
O. P., a Clerk in the Principal Registry of her Majesty's Court of Probate].

No. 17.—Administration Bond for Administrators with the Will.

KNOW ALL MEN by these presents, that we, A. B. of C. D. of and E. F. of are jointly and severally bound unto G. H., the judge of her Majesty's Court of Probate, in the sum of pounds of good and lawful money of Great Britain, to be paid to the said G. H. or to the judge of the said court for the time being, for which payment well and truly to be made we bind ourselves and of us for the whole, our heirs, executors and administrators, firmly by these presents. Sealed with our seals. Dated the day of in the year of our Lord one thousand eight hundred and .

The condition of this obligation is such that if the above-named A. B., the [*as the case may be*] of I. J., late of deceased who died on the day of do, when lawfully called on in that behalf, make or cause to be made a true and perfect inventory of all and singular the personal estate and effects of the said deceased which have or shall come to hands, possession or knowledge, and the same so made do exhibit or cause to be exhibited into the principal registry of her Majesty's Court of Probate, whenever required by law so to do, and the same personal estate and effects do well and truly administer, (that is to say,) do pay the debts of the said deceased which did owe at decease, and then the legacies contained in the said will annexed to the said letters of administration so to committed, as far as personal estate and effects will thereto extend, and the law charge and further do make or cause to be made a true and just account of said administration when shall be thereunto lawfully required, and all the rest and residue of the said personal estate and effects shall deliver and pay unto such person or persons as shall be by law entitled thereto, then this obligation to be void and of none effect, or else to remain in full force and virtue.

Signed, sealed and delivered in the presence of

K. L., Registrar
[*or*
O. P., a Clerk in the Principal Registry of her Majesty's Court of Probate].

No. 18.—Declaration of the Personal Estate and Effects of a Testator or an Intestate.

A true declaration of all and singular the personal estate and effects of A. B., late of deceased, who died on the day of at and had at the time of his death a fixed place of abode at within the district of which have at any time since his death come to the hands, possession or knowledge of C. D., the administrator with the will of the said A. B., [*or* administrator, *as the case may be*], made and exhibited upon and by virtue of the corporal oath [*or* solemn affirmation] of the said C. D., as follows, to wit:

	£	s.	d.
First, this declarant declares that the said deceased was at the time of his death possessed of or entitled to [*The details of the deceased's effects must be here inserted, and the value inserted opposite to each particular.*]			

Lastly, this declarant saith, that no personal estate or effects of or belonging to the said deceased have at any time since his death come to the

hands, possession or knowledge of this declarant, save as is hereinbefore set forth.

(Signed) C. D.

On the day of 18 the said C. D. was duly sworn to [*or* solemnly affirmed] the truth of the above inventory.

Before me,

[*person authorized to administer oaths under the act*].

No. 19.—Justification of Sureties.

In her Majesty's Court of Probate. The Principal Registry.

In the goods of A. B., deceased.

The day of 18 .

WE, C. D. of and E. F. of jointly and severally make oath, that we are the proposed sureties on behalf of G. H., the intended administrator of all and singular the personal estate and effects of the said A. B., late of deceased, in the penal sum of pounds, for his faithful administration of the said personal estate and effects of the said deceased: and I the said C. D. for myself make oath, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of ; and I the said E. F. for myself make oath, that I am, after payment of all my just debts, well and truly worth in money and effects the sum of pounds.

Same day the said C. D. and E. F. were duly sworn to the truth of this affidavit,

Before me,

[*person authorized to administer oaths under the act*].

No. 20.—Election by Minors of a Guardian.

In her Majesty's Court of Probate. The Principal Registry.

WHEREAS A. B., late of in the county of deceased, died on or about the day of 18 at intestate, a widower, leaving C. D., E. F. and G. H., his natural and lawful children and only next of kin, the said C. D. being a minor of the age of twenty years only, the said E. F. being also a minor of the age of nineteen years only, and the said G. H. being an infant of the age of six years only:

Now we, the said C. D. and E. F., do hereby make choice of and elect K. L. of in the county of our lawful maternal uncle and one of our next of kin, to be our curator or guardian, for the purpose of his obtaining letters of administration of the personal estate and effects of the said A. B., deceased, to be granted to him, for our use and benefit, and until one of us attain the age of twenty-one years [*or* for the purpose of renouncing for us, and on our behalf all our right, title and interest to and in the letters of administration, &c. *as the case may be*] [*add, in cases where a proctor, solicitor or attorney appears for the minors*, and we hereby appoint M. N. of our proctor, solicitor *or* attorney, to file or cause to be filed this our election for us in the said principal registry of her Majesty's Court of Probate].

IN WITNESS whereof we have hereunto set our hands and seals this day of in the year 18 .

Signed, sealed and delivered in the presence of

[*One disinterested witness sufficient*].

No. 21.—Renunciation of Probate and Administration with the Will annexed.

In her Majesty's Court of Probate. The Principal Registry.

WHEREAS A. B., late of in the county of deceased, died on the day of 18 at ; and whereas he made and duly executed his last will and testament, bearing date the day of 18 [*if there are codicils their dates should be also inserted*], and thereof appointed C. D. executor and residuary legatee in trust [*or as the case may be*]:

Now I, the said C. D., do hereby declare, that I have not intermeddled in the personal estate and effects of the said deceased, and will not hereafter intermeddle therein with intent to defraud creditors, and I do hereby expressly renounce all my right and title to the probate and execution of the said will [and codicils, *if any*], and to the letters of administration with the said will [and codicils, *if any*] annexed, of the personal estate and effects of the said deceased [*add in cases where a proctor, solicitor or attorney appears for the person renouncing*, and I hereby appoint E. F. of my proctor, solicitor *or* attorney, to file or cause to be filed this renunciation for me in the said principal registry of her Majesty's Court of Probate].

IN WITNESS whereof I have hereto set my hand and seal this day of in the year 18 .

C. D.

Signed, sealed and delivered by the said C. D. in the presence of
G. H.,
[*One disinterested witness sufficient*].

No. 22.—Renunciation of Administration.

In her Majesty's Court of Probate. The Principal Registry.*

WHEREAS A. B., late of in the county of deceased, died on the day of 18 at intestate, a widower; and whereas I, C. D. of am his natural lawful child, and his only next of kin:

Now I, the said C. D. do hereby declare that I have not intermeddled in the personal estate and effects of the said deceased, and do hereby expressly renounce all my right and title to the letters of administration of the personal estate and effects of the said deceased [*add in cases where a proctor, solicitor or attorney appears for the person renouncing*, and I hereby appoint E. F. of my proctor, solicitor *or* attorney, to file or cause this renunciation to be filed for me in the principal registry of her Majesty's Court of Probate.

IN WITNESS whereof I have hereto set my hand and seal this day of 18 .

C. D.

Signed, sealed and delivered by the said C. D. in the presence of
G. H.,
[*One disinterested witness sufficient*].

* This is to be varied according to the fact.

No. 23.—Subpœna in a Proceeding in Common Form to bring in a Script.

VICTORIA, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith.

To of .

WHEREAS it appears by a certain affidavit filed in the principal registry of our Court of Probate [*or* filed in the district registry of attached to our Court of Probate], bearing date the day of 18 and made by of that a certain original paper or script, being or purporting to be testamentary, to wit [*here describe the paper*], bearing date the day of 18 is now in your possession or under your control:

NOW THIS IS TO COMMAND YOU, that within eight days after service hereof on you, inclusive of the day of such service, you do bring into and leave in the principal registry of our said court [*or* the district registry of attached to our said court] the said original paper now in the possession of you the said or in case the said original paper be not in your possession or under your control, that you, within eight days after the service hereof on you, inclusive of the day of such service, do file in the principal registry of our said court [*or* in the district registry of attached to our said court], an affidavit to that effect, and therein set forth what knowledge you have of and respecting the said script: And this you shall in nowise omit under the penalty of one hundred pounds. Witness [*insert the name of the judge*], at the Court of Probate, the day of 18 in the year of our reign.

Indorsement to be made of the Service.

This subpœna was served by G. H. on of on the day of 18 .

(Signed) G. H.

No. 24.—Affidavit of Handwriting.

In her Majesty's Court of Probate. The Principal Registry.

I, A. B. of in the county of make oath [*or* solemnly affirm], that I knew and was well acquainted with C. D., late of in the county of deceased, who died on the day of at for many years before and down to the time of his death, and that during such period I have frequently seen him write and also subscribe his name to writings, whereby I have become well acquainted with his manner and character of handwriting and subscription, and having now with care and attention perused and inspected the paper writing hereunto annexed, purporting to be and contain the last will and testament of the said deceased, beginning thus ending thus and being subscribed thus [*include in these recitals the date of the will*], "C. D." I further make oath, that I verily and in my conscience believe the whole body, series and contents of the said will, together with the names "C. D." subscribed thereto as aforesaid, to be of the true and proper handwriting and subscription of the said "C. D." deceased.

On the day of 18 the said A. B. was duly sworn at to the truth of this affidavit [*or* made this solemn affirmation],

Before me,
E. F.,
[*person authorized to administer oaths under the act*].

No. 25.—Affidavit of Plight and Condition and Finding.

In her Majesty's Court of Probate. District Registry of .

I, A. B. of in the county of make oath [*or* solemnly affirm], that I am the sole executor named in the paper writing now hereunto annexed, purporting to be and contain the last will and testament of E. F., late of in the county of deceased (who died on the day of at), the said will bearing date the day of beginning thus ending thus and being subscribed thus "C. D.," and having viewed and perused the said will and particularly observed that [*here recite the finding of the will, and the various obliterations, interlineations, erasures and alterations (if any), and the general plight and condition of the will, or any other matters requiring to be accounted for, and clearly trace the will from the possession of the deceased in his lifetime up to the time of making this affidavit*]; I the deponent lastly make oath that the same is now in all respects in the same state, plight and condition as when found [*or as the case may be*].

On the day of 18 the said A. B. and C. D. were duly sworn at to the truth of this affidavit [*or* made this solemn affirmation],

Before me,
I. J.,
[*person authorized to administer oaths under the act*].

No. 26.—Affidavit of Search.

In her Majesty's Court of Probate. The Principal Registry.

I, A. B. of in the county of make oath [*or* solemnly affirm], that I am the sole executor named in the paper writing hereunto annexed, purporting to be and contain the last will and testament of C. D., late of deceased, who died on the day of in the year 18 at the said will beginning thus, " ," ending thus, " In witness " whereof I have hereunto set my hand this day of in the year " of our Lord one thousand eight hundred and fifty-four" [*or as the case may be*], and being thus subscribed, " C. D." And referring particularly to the fact that the blank spaces originally left in the said will for the insertion of the day and month of the date thereof have never been supplied [*or* that the said will is without date, *or as the case may be*], I further make oath [*or* solemnly affirm] that I have made inquiry of E. F., the solicitor of the said deceased, and that I have also made diligent and careful search in all places where he the said deceased usually kept his papers of moment and concern, and in his depositories, in order to ascertain whether he had or had not left any other will, but that I have been unable to discover any such will. And I lastly make oath [*or* solemnly affirm], that I verily believe the said deceased died without having left any will, codicil or testamentary paper whatever other than the said will by me hereinbefore deposed of.

A. B.

On the day of 18 the said A. B. was duly sworn at to the truth of this affidavit [*or* made this solemn affirmation],

Before me,
G. H.,
[*person authorized to administer oaths under the act*].

[*This form of affidavit to be used when it is shown by affidavit that neither the subscribed witnesses nor any other person can depose to the precise time of the execution of the will.*]

No. 27.—Caveat.

In her Majesty's Court of Probate. The Principal Registry.

Let nothing be done in the goods of A. B. late of deceased, who died on the day of at unknown to C. D. of having interest [*or* to E. F. of proctor, solicitor *or* attorney of parties having interest].

Dated this day of 18 *.

(Signed) C. D. of [*or* E. F. of the proctor, solicitor *or* attorney of parties having interest].

No. 28.—Warning to Caveat.

In her Majesty's Court of Probate. The Principal Registry.

To A. B. of [*or* to C. D. of proctor, solicitor *or* attorney of parties having interest].

You are hereby WARNED within six days* after the service of this warning upon you, inclusive of the day of such service, to cause an appearance to be entered for you in the said district registry attached to the said Court of Probate to the caveat entered by you in the personal estate and effects of E. F., late of deceased, who died at on or about the day of 18 and to set forth your [*or* your client's] interest; and take notice, that in default of your so doing the said court will proceed to do all such acts, matters and things as shall be needful and necessary to be done in and about the premises.

(Signed) X. Y., District Registrar.

Indorsement to be made after Service.

This warning was served by I. K. on A. B. of [*or* on C. D. of the proctor, solicitor *or* attorney] by whom the caveat was entered in respect of the personal estate and effects of the within-named deceased at on the day of 18 .

(Signed) I. K.

[*or*, The duplicate of this warning, signed by the said X. Y., was sent by the public post, directed to the said A. B. (*or* C. D.) by whom the caveat was entered in respect of the personal estate and effects of the within-named deceased at on the day of 18 .

(Signed) I. K.]

* [*To be inserted in margin.*] *Note.*—These six days are to be exclusive of Sunday.

Probates—*continued.*	£	s.	d.
If the personal estate is sworn to be—			
Under the value of £500,000	43	8	9
600,000	46	16	3
700,000	49	3	9
800,000	52	16	3
900,000	55	18	9
1,000,000	59	1	3
Above 1,000,000	62	3	9
For registering and collating wills, if three folios of ninety words each, or under	0	4	6
If above three folios of ninety words each, per folio	0	1	6
In cases of probate for Queen's pay or prize money, the effects being under 100*l.*, without reference to the length of the will	0	4	6
For engrossing and collating a will for a double, or duplicate, or triplicate, or litigated, or cessate probate, if the will is four folios of ninety words each or under, including parchment ..	0	6	0
If above four folios of ninety words each, per folio, including parchment	0	1	6
For every double or cessate probate, when the personal estate is under 450*l.* or any smaller sum:—The same fee as on the first probate.			
For every double or cessate probate, when the personal estate is of the value of 450*l.* and upwards	0	12	6
For every duplicate and triplicate probate, when the personal estate is under 450*l.* or any smaller sum:—The same fee as on the first probate.			
For every duplicate and triplicate probate, when the personal estate is of the value of 450*l.* and upwards	0	12	6
For engrossing, exemplifying and collating a will of four folios of ninety words each or under, including parchment	0	6	0
If above four folios of ninety words each, per folio, including parchment	0	1	6
For every exemplification of probate	1	1	0

Letters of Administration.

For every grant of letters of administration, when the personal estate is sworn to be under 100*l.* or any sum less than 100*l.*, a fee of	0	1	0
For every grant of letters of administration, when the personal estate is of the value of 100*l.* and under 2,000*l.*, or any sum less than 2,000*l.*, a fee of 1*s.* 6*d.* in the pound on the amount of stamp duty payable on such letters of administration.			
For every grant of letters of administration, when the personal estate is of the value of 2,000*l.* and upwards, the following fees:—			
If the personal estate is sworn to be—			
Under the value of £3,000	4	13	9
4,000	4	17	6
5,000	5	5	0
6,000	5	12	6
7,000	6	0	0
8,000	6	7	6
9,000	6	15	0

Letters of Administration—*continued.* If the personal estate is sworn to be—	£	s.	d.
Under the value of £10,000	7	2	6
12,000	7	10	0
14,000	7	17	6
16,000	8	8	9
18,000	9	0	0
20,000	9	11	3
25,000	9	16	3
30,000	11	5	0
35,000	12	3	9
40,000	13	11	3
45,000	15	0	0
50,000	16	7	6
60,000	17	16	3
70,000	20	12	6
80,000	23	8	9
90,000	26	5	0
100,000	29	1	3
120,000	30	9	6
140,000	33	5	9
160,000	36	2	0
180,000	38	18	3
200,000	41	14	6
250,000	44	10	9
300,000	46	17	6
350,000	49	4	6
400,000	51	11	3
500,000	53	18	3
600,000	58	12	0
700,000	63	5	9
800,000	67	19	6
900,000	72	13	3
1,000,000	77	7	0
Above 1,000,000	82	0	9
For every duplicate and triplicate letters of administration when the personal estate is under 300*l.* or any sum less than 300*l.* :—The same fee as on the first grant of letters of administration.			
For every duplicate and triplicate letters of administration when the personal estate is of the value of 300*l.* and upwards ..	0	12	6
For every exemplification of letters of administration	1	1	0
For every grant of letters of administration with will annexed de bonis non or cessate, when the personal estate is under 450*l.* or any smaller sum :—The same fee as on the first grant.			
For every grant of letters of administration with will annexed de bonis non or cessate, when the personal estate is of the value of 450*l.* and upwards	0	12	6
For engrossing and collating a will for a grant of letters of administration with will annexed de bonis non or cessate, if the will is four folios of ninety words each or under, including parchment	0	6	0
If above four folios of ninety words each, per folio, including parchment	0	1	6
For every grant of letters of administration de bonis non or cessate, when the personal estate is under 300*l.* or any smaller sum :—The same fee as on the first grant.			
For every grant of letters of administration de bonis non or cessate, when the personal estate is of the value of 300*l.* and upwards	0	12	6

	£	s.	d.
For every special or limited grant of probate or letters of administration, with or without will annexed, in addition to the ordinary fees, as under:—			
If the personal estate is under the value of 20*l.*, 1*s.* per folio of ninety words each on the bond, on the act, and on the grant of probate or letters of administration.			
If the personal estate is of the value of 20*l.* and upwards, 2*s.* per folio of ninety words each on the bond, on the act, and on the grant of probate or letters of administration.			
For articles entered into by administrators to pay creditors *pro rata*, per folio of ninety words each	0	2	0
For the bond for the performance of the articles, per folio of ninety words	0	2	0
For noting on the grant of letters of administration with or without will annexed, and on the act, that additional security has been given	0	5	0
For every certificate that additional security has been given ..	0	1	0
For every search for will or grant of letters of administration or any other document filed in the principal registry, including the looking up and inspecting an original will before the same is registered, or a registered copy of a will or an administration act	0	1	0
For every third will or administration act looked up in addition to the above	0	1	0
For looking up and inspecting an original will after the same is registered, in addition to the search	0	1	0
For looking up and producing any document filed in the registry other than an original will or administration act	0	1	0
For every office copy or extract of a record, will or probate, or administration act, or other document filed in the principal registry, if five folios of ninety words or under	0	2	6
If exceeding five folios of ninety words, per folio	0	0	6
If the will or other document is 200 years old and five folios of ninety words or under	0	5	0
If exceeding five folios of ninety words, per folio..	0	0	9
If the office copy of a will or any part of a will or other document is required to be made fac simile, and such will or part of a will or other document is five folios of ninety words in length or under	0	3	6
If exceeding five folios of ninety words, per folio..	0	0	9
For collating a probate or copy of a will or other document left in place of the original, if twenty folios in length or under ..	0	5	0
If exceeding twenty folios, for every additional two folios ..	0	0	3
If a copy is required to be printed, for every eight folios of ninety words (in addition to a manuscript copy for the printer, at 6*d.* per folio of ninety words)	0	5	0
For every copy of a will made for the Inland Revenue Office, per folio	0	0	6
For every abstract of an administration act for the Inland Revenue Office	0	3	3
For every attendance with any book or original document in any of the courts of law or equity in London or Westminster, or elsewhere, within three miles of the principal registry, except in the Court of Probate and the Court for Divorce and Matrimonial Causes at Westminster	1	1	0
For second and each subsequent attendance in any of the courts of law or equity in London or Westminster, except as aforesaid, in the same term or sittings after term	0	10	6

	£	s.	d.
For each day's attendance with any book or original document in any of the courts of law or equity, or elsewhere beyond the distance of three miles from the principal registry, exclusive of travelling expenses	1	1	0
For every receipt for a document or documents delivered out of the principal registry	0	1	0
For the entry of every caveat	0	1	0
For each notice of such caveat to the district registrars	0	1	0
For every warning to a caveat issuing from the principal registry	0	5	0
For messengers' attendance with warning to caveat within three miles of the principal registry	0	2	6
For a search for a will or grant of letters of administration, and for reading the will when the party applying is unable or unwilling to search for or read the same, such a reasonable fee as shall be agreed upon at the time.			
For every search by an officer of the principal registry in order to ascertain whether any probate or grant of letters of administration has already issued, or any application has been made for a grant of probate or administration, as under:—			
For every year after the year in which the deceased died ..	0	0	6
In case it be requisite to extend the search to one or more district registries, a similar additional fee for the search in each of such district registries.			
For filing affidavit for the Inland Revenue Office on granting probate on letters of administration for Queen's pay or prize money	0	1	0
For filing every other affidavit and other document brought into and deposited in the principal registry, except the oaths for executors, administrators, or administrators with the will, the first administration bond and the testamentary papers in respect of which probate or administration with will annexed is granted	0	2	6
For every receipt for documents left in the principal registry in order to obtain a grant of probate or letters of administration with or without will annexed	0	1	0
For depositing every will of a person deceased in the principal registry for safe custody	0	10	0
For depositing every will of a living person for safe custody, including the deposit receipt	1	1	0
For taxing every bill of costs, inclusive of the registrar's certificate	0	5	0
For every oath administered by the registrars	0	1	0
For transfer of an articled clerk	1	0	0

FEES

To be taken for their own use by Proctors, Solicitors and Attornies practising in the Court of Probate and in the District Registries thereof, in

NON-CONTENTIOUS BUSINESS.

Fees of Probates.

Effects sworn under	Oath of Executors and attendance on the party being sworn.		Affidavit for the Inland Revenue Office and attendance on the party being sworn.		Engrossing and collating the Will, three folios of ninety words or under.		Probate under seal.			Extracting.		Clerk's fee.		
£	s.	d.	s.	d.	s.	d.	£	s.	d.	s.	d.	£	s.	d.
5	2	6	2	6	4	6	0	1	0	1	0		—	
20	2	6	2	6	4	6	0	1	0	3	4	0	1	0
100	5	0	5	0	4	6	0	1	0	6	8	0	2	0
200	6	8	6	8	4	6	0	3	0	6	8	0	2	0
300	10	0	10	0	4	6	0	7	6	6	8	0	2	0
450	10	0	10	0	4	6	0	12	0	6	8	0	2	0
600	10	0	10	0	4	6	0	16	6	6	8	0	2	0
800	10	0	10	0	4	6	1	2	6	6	8	0	2	0
1,000	10	0	10	0	4	6	1	13	0	6	8	0	2	0
1,500	10	0	10	0	4	6	2	5	0	6	8	0	5	0
2,000	10	0	10	0	4	6	3	0	0	6	8	0	5	0
3,000	10	0	10	0	4	6	3	15	0	13	4	0	5	0
4,000	10	0	10	0	4	6	4	10	0	13	4	0	5	0
5,000	10	0	10	0	4	6	4	15	0	13	4	0	7	6
6,000	10	0	10	0	4	6	5	0	0	13	4	0	7	6
7,000	10	0	10	0	4	6	5	5	0	13	4	0	7	6
8,000	10	0	10	0	4	6	5	10	0	13	4	0	7	6
9,000	10	0	10	0	4	6	5	15	0	13	4	0	7	6
10,000	10	0	10	0	4	6	6	0	0	13	4	0	7	6
12,000	10	0	10	0	4	6	6	5	0	13	4	0	7	6
14,000	10	0	10	0	4	6	6	10	0	13	4	0	7	6
16,000	10	0	10	0	4	6	6	17	6	13	4	0	7	6
18,000	10	0	10	0	4	6	7	5	0	13	4	0	7	6
20,000	10	0	10	0	4	6	7	12	6	13	4	0	7	6
25,000	10	0	10	0	4	6	8	2	6	13	4	0	7	6
30,000	10	0	10	0	4	6	8	15	0	13	4	0	7	6
35,000	10	0	10	0	4	6	9	7	6	13	4	0	7	6
40,000	10	0	10	0	4	6	10	6	3	13	4	0	7	6
45,000	10	0	10	0	4	6	11	5	0	13	4	0	7	6
50,000	10	0	10	0	4	6	12	3	9	13	4	0	7	6
60,000	10	0	10	0	4	6	13	2	6	13	4	0	7	6

Fees of Probates—*continued.*

Effects sworn under	Oath of Executors and attendance on the party being sworn.	Affidavit for the Inland Revenue Office and attendance on the party being sworn.	Engrossing and collating the Will, three folios of ninety words or under.	Probate under seal.	Extracting.	Clerk's fee.
£	s. d.	s. d.	s. d.	£ s. d.	s. d.	£ s. d.
70,000	10 0	10 0	4 6	15 0 0	13 4	0 7 6
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100,000	10 0	10 0	4 6	20 12 6	13 4	1 1 0
120,000	10 0	10 0	4 6	21 11 3	13 4	1 1 0
140,000	10 0	10 0	4 6	23 8 9	13 4	1 1 0
160,000	10 0	10 0	4 6	25 6 3	13 4	1 1 0
180,000	10 0	10 0	4 6	27 3 9	13 4	1 1 0
200,000	10 0	10 0	4 6	29 1 3	13 4	1 1 0
250,000	10 0	10 0	4 6	30 18 9	13 4	1 1 0
300,000	10 0	10 0	4 6	35 12 6	13 4	1 1 0
350,000	10 0	10 0	4 6	40 6 3	13 4	1 1 0
400,000	10 0	10 0	4 6	41 17 6	13 4	1 1 0
500,000	10 0	10 0	4 6	43 8 9	13 4	1 1 0
600,000	10 0	10 0	4 6	46 6 3	13 4	1 1 0
700,000	10 0	10 0	4 6	49 13 9	13 4	1 1 0
800,000	10 0	10 0	4 6	52 16 3	13 4	1 1 0
900,000	10 0	10 0	4 6	55 18 9	13 4	1 1 0
1,000,000	10 0	10 0	4 6	59 1 3	13 4	1 1 0
Above that sum	10 0	10 0	4 6	62 3 9	13 4	1 1 0

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In addition to the above fees for attendance on execution of the bond if the effects are—

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