

**ADMINISTRATION OF ESTATES ACT****Principal Act**

<b>Act. No. 1933-02</b>	<i>Commencement</i>	1.1.1934
	<i>Assent</i>	20.6.1933

With which is consolidated **1948-07**

Amending enactments	Relevant current provisions	Commencement date
Act. 1934-16	–	
1940-02	–	
1948-08	–	
1949-25	ss. 2(1), 45(1), 56(2)	
1964-09	ss. 51(1), 53(2)	
1972-06	ss. 22(1), 49(2)-(3), 51(1), (3), 52A	
1975-10	ss. 13, 27, 27A, 51(1), Sch. 2	
1977-15	–	

## English sources

Settled Land Act 1882 (45 & 46 Vict. c.38)  
Administration of Estates Act 1925 (15 & 16 Geo. 5 c.23)  
Administration of Estates Act 1971 (1971 c.25)

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AN ACT TO CONSOLIDATE THE LAW RELATING TO THE ADMINISTRATION OF THE ESTATES OF DECEASED PERSONS.

**PART I.**  
**PRELIMINARY.**

**Short title.**

1. This Act may be cited as the Administration of Estates Act.

**Interpretation.**

2. (1) In this Act, unless the context otherwise requires,—

*(1925 c.23, s.55).*

“administration” means, with reference to the real and personal estate of a deceased person, letters of administration, whether general or limited, or with the will annexed or otherwise;

“administrator” means a person to whom administration is granted;

“conveyance” includes a mortgage, charge by way of legal mortgage, lease, assent, vesting, declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will; and “convey” has a corresponding meaning; and “disposition” includes a conveyance, a devise, bequest and an appointment of property contained in a will; and “dispose of” has a corresponding meaning;

“the court” means the Supreme Court;

“death duty” means any estate duty, succession duty, legacy duty and every other duty leviable or payable on death;

“entailed interest” means an interest in tail, or in tail male, or in tail female or in tail special in real property;

“income” includes rents and profits;

“intestate” includes a person who leaves a will but dies intestate as to some beneficial interest in his real or personal estate;

“legal estates” mean such legal estates in or over land as have heretofore subsisted; and “equitable interests” mean all other interests and charges in or over land or in the proceeds of sale thereof;

“pecuniary legacy” includes an annuity, a general legacy, a demonstrative legacy (so far as it is not discharged out of the designated property) and any other general direction by a testator for the payment of money, including all death duties free from which any devise, bequest or payment is made to take effect;

“personal chattels” mean carriages, horses, stable furniture and effects (not used for business purposes), motor cars and accessories (not used for business purposes), garden effects, domestic animals, plate, plated articles, linen, china, glass, books, pictures, prints, furniture, jewellery, articles of household or personal use or ornament, musical and scientific instruments and apparatus, wines, liquors and consumable stores, but do not include any chattels used at the death of the intestate for business purposes nor money or securities for money;

“possession” includes the receipt of rents and profits or the right to receive the same (if any);

“probate” means the probate of a will;

“probate rules” mean rules and orders of court made by the Chief Justice for regulating the procedure and practice of the court in regard to non-contentious or common form probate business;

“purchaser” means a lessee, mortgagee, or other person who in good faith acquires an interest in property for valuable consideration, also an intending purchaser; and “valuable consideration” includes marriage, but does not include a nominal consideration in money;

“real estate” save as provided in Part V means real estate, including chattels real, which by virtue of Part II devolves on the personal representative of a deceased person;

“representation” means the probate of a will and administration; and “taking out representation” refers to the obtaining of the probate of a will or of the grant of administration;

“rent” includes a rent service or a rentcharge, or other rent, toll, duty, or annual or periodical payment in money or money's worth, issuing out of or charged upon land, but does not include mortgage interest;

“rentcharge” includes a fee farm rent;

“rules of court” include, in relation to non-contentious or common form probate business, probate rules;

“securities” include stocks, funds, or shares;

“statutory owner” means the trustees of the settlement or other persons who, during a minority, or at any other time when there is no tenant for life, have the powers of a tenant for life under the Settled Land Act, 1882, and the Land Law and Conveyancing Act, but does not include the trustees of the settlement, where by virtue of an order of the court or otherwise the trustees have power to convey the settled land in the name of the tenant for life;

“tenant for life”, “land”, “settled land”, “settlement” and “trustees of the settlement” have the same meanings as in the Settled Land Act, 1882, and the Land Law and Conveyancing Act<sup>1</sup>;

“trust corporation” means a public trustee or a corporation either appointed by the court in any particular case to be a trustee or entitled to act as custodian trustee;

“trust for sale”, in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale; and “power to postpone a sale” means power to postpone in the exercise of a discretion.

(2) References to a child or issue living at the death of any person include a child or issue en ventre sa mere at the death.

(3) References to the estate of a deceased person include property over which the deceased exercises a general power of appointment (including the statutory power to dispose of entailed interests) by his will.

## **PART II.** DEVOLUTION OF REAL ESTATE.

### **Interpretation.**

3. (1) In this Part “real estate” includes—

*(1925 c.23, s.3).*

- (a) chattels real, and land in possession, remainder or reversion, and every interest in or over land to which a deceased person was entitled at the time of his death; and

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(b) real estate held on trust (including settled land) or by way of mortgage or security, but not money to arise under a trust for sale of land, nor money secured or charged on land.

(2) A testator shall be deemed to have been entitled at his death to any interest in real estate passing under any gift contained in his will which operates as an appointment under a general power to appoint by will.

(3) An entailed interest of a deceased person shall be deemed an interest ceasing on his death, but any further or other interest of the deceased in the same property in remainder or reversion which is capable of being disposed of by his will shall not be deemed to be an interest so ceasing.

(4) The interest of a deceased person under a joint tenancy where another tenant survives the deceased is an interest ceasing on his death.

(5) On the death of a corporator sole his interest in the corporation's real and personal estate shall be deemed to be an interest ceasing on his death and shall devolve to his successor. This subsection applies on the demise of the Crown as respects all property, real and personal, vested in the Crown as a corporation sole.

#### **Devolution of real estate on personal representative.**

(1925 c.23, s.1). 4. (1) Real estate to which a deceased person was entitled for an interest not ceasing on his death shall on his death, and notwithstanding any testamentary disposition thereof, devolve from time to time on the personal representative of the deceased, in like manner as before the commencement of this Act chattels real devolved on the personal representative from time to time of a deceased person.

(2) The personal representatives for the time being of a deceased person are deemed in law his heirs and assigns within the meaning of all trusts and powers.

(3) The personal representative shall be the representative of the deceased in regard to his real estate to which he was entitled for an interest not ceasing on his death as well as in regard to his personal estate.

#### **Application to real estate of law affecting chattels real.**

(1925 c.23, s.2). 5. (1) Subject to the provisions of this Act, all enactments and rules of law, and all jurisdiction of the court with respect to the appointment of administrators or to probate or letters of administration, or to dealings before probate in the case of chattels real, and with respect to costs and other matters in the administration of personal estate, in force before the



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commencement of this Act, and all powers, duties, rights, equities, obligations and liabilities of a personal representative in force at the commencement of this Act with respect to chattels real, shall apply and attach to the personal representative and shall have effect with respect to real estate vested in him, and in particular all such powers of disposition and dealing as were before the commencement of this Act exercisable as respects chattels real by the survivor or survivors of two or more personal representatives, as well as by a single personal representative, or by all the personal representatives together, shall be exercisable by the personal representatives or representative of the deceased with respect to his estate.

(2) Where as respects real estate there are two or more personal representatives, a conveyance of real estate devolving under this Part shall not, save as otherwise provided as respects trust estates including settled land, be made without the concurrence therein of all such representatives or an order of the court, but where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the other or others to prove, any conveyance of the real estate may be made by the proving executor or executors for the time being, without an order of the court and shall be as effectual as if all the persons named as executors had concurred therein.

(3) Without prejudice to the rights and powers of a personal representative, the appointment of a personal representative in regard to real estate shall not, save as hereinafter provided, affect—

- (a) any rule as to marshalling or as to administration of assets;
- (b) the beneficial interest in real estate under any testamentary disposition;
- (c) any mode of dealing with any beneficial interest in real estate, or the proceeds of sale thereof; or
- (d) the right of any person claiming to be interested in the real estate to take proceedings for the protection or recovery thereof against any person other than the personal representative.

## PART III.

### EXECUTORS AND ADMINISTRATORS.

#### *General Provisions.*

#### **Summons to executor to prove or renounce.**

(1925 c.23, s.4).

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

**Cesser of right of executor to prove.**

(1925 c.23, s.5). 7. Where a person appointed executor by a will—

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

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

**Withdrawal of renunciation.**

(1925 c.23, s.6). 8. (1) Where an executor who has renounced probate has been permitted to withdraw the renunciation and prove the will, the probate shall take effect and be deemed always to have taken effect without prejudice to the previous acts and dealings of and notices to any other personal representative who has previously proved the will or taken out letters of administration, and memorandum of the subsequent probate shall be endorsed on the original probate or letters of administration.

(2) *Omitted.*

**Executor of executor represents original testator.**

(1925 c.23 s.7). 9. (1) An executor of a sole or last surviving executor of a testator is the executor of that testator. This provision shall not apply to an executor who does not prove the will of his testator, and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on such probate being granted.

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

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

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- (a) an intestacy; or
  - (b) the failure of a testator to appoint an executor; or
  - (c) the failure to obtain probate of a will,  
but is not broken by a temporary grant of administration if probate is subsequently granted.
- (4) Every person in the chain of representation to a testator–
- (a) has the same rights in respect of the real and personal estate of that testator as the original executor would have had if living; and
  - (b) is, to the extent to which the estate whether real or personal of that testator has come to his hands, answerable as if he were an original executor.

## **Right of proving executors to exercise powers.**

10. (1) Where probate is granted to one or some of two or more persons named as executors, whether or not power is reserved to the others or other to prove, all the powers which are by law conferred on the personal representative may be exercised by the proving executor or executors for the time being and shall be effectual as if the persons named as executors had concurred therein. *(1925 c.23, s.8).*

(2) *Omitted.*

## **Vesting of estate of intestate between death and grant of administration.**

11. Where a person dies intestate, his real and personal estate, until administration is granted in respect thereof, shall vest in the Chief Justice in the same manner and to the same extent as formerly in the case of personal estate it vested in the Chief Justice. *(1925 c.23,s.9).*

## **Discretion of court as to persons to whom administration is to be granted.**

12. In granting letters of administration the court shall have regard to the rights of all persons interested in the real and personal estate of the deceased person, or the proceeds of sale thereof, and in particular administration, with the will annexed, may be granted to a devisee or legatee; and in regard to land settled previously to the death of the deceased, and not by his will, *(1925 c.23, s.10).*

administration may be granted to the trustees of the settlement, and any such administration may be limited in any way the court thinks fit:

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

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

**Power to require administrators to produce sureties.**

*(1971 c.25, s.8).* 13. (1) As a condition of granting administration to any person the court may, subject to the following provisions of this section and subject to and in accordance with probate rules and orders, require one or more sureties to guarantee that they will make good, within any limit imposed by the court on the total liability of the surety or sureties, any loss which any person interested in the administration of the estate of the deceased may suffer in consequence of a breach by the administrator of his duties as such.

(2) A guarantee given in pursuance of any such requirement shall enure of the benefit of every person interested in the administration of the estate of the deceased as if contained in a contract under seal made by the surety or sureties with every such person and, where there are two or more sureties, as if they had bound themselves jointly and severally.

(3) No action shall be brought on any such guarantee without the leave of the court.

(4) Stamp duty shall not be chargeable on any such guarantee.

(5) This section does not apply where administration is granted to the Administrator-General, the Public Trustee or to the consular officer of a foreign state to which section 2 of the Consular Conventions Act<sup>2</sup> applies, or in such other cases as may be prescribed by probate rules and orders.

**Provisions as to the number of personal representatives.**

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<sup>2</sup> 1950-11

14. (1) Representation shall not be granted to more than four persons in regard to the same property and administration shall, if any beneficiary is a minor or a life interest arises under the will or intestacy, be granted either to a trust corporation (with or without an individual) or to not less than two individuals: *(1925 c.23, s.12).*

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

(2) If there is only one personal representative (not being a trust corporation) then, during the minority of a beneficiary or the subsistence of a life interest, and until the estate is fully administered, the court may on the application of any person interested or of the guardian, committee or receiver of any such person appoint in accordance with probate rules one or more personal representative in addition to the original personal representative.

(3) *Omitted.*

## **Power to grant representation of real and personal estate separately or together.**

15. Representation may be granted in respect of the real estate of a deceased person or any part thereof, and either separately or together with his personal estate, and may also be granted in respect of real estate only where there is no personal estate, or in respect of a trust estate only, and a grant of letters of administration to real estate may be limited in any way the court thinks proper: *(1925 c.23, s.13).*

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

## **Grant of representation to a trust corporation.**

16. (1) Where a trust corporation is appointed an executor in a will, either alone or jointly with another person, the court may grant probate to such corporation either solely or jointly with another person, as the case may require, and the corporation may act as executor accordingly. *(1925 c.23, s.14).*

(2) Administration may be granted to any trust corporation either solely or jointly with another person, and the corporation may act as administrator accordingly.

(3) Representation shall not be granted to a syndic or nominee on behalf of any trust corporation.

(4) Any officer authorised for the purpose by such corporation or the directors or governing body thereof may swear affidavits, give security, and do any other act or thing which the court may require on behalf of the trust corporation with a view to the grant of representation to the corporation, and the acts of such officer shall be binding on the corporation, and he shall be entitled to be kept indemnified by the corporation in regard to matters so authorised.

(5) and (6) *Omitted.*

**Executor not to act while administration is in force.**

*(1925 c.23, s.15).* 17. Where administration has been granted in respect of any real or personal estate of a deceased person, no person shall have power to bring any action or otherwise act as executor of the deceased person in respect of the estate comprised in or affected by the grant until the grant has been recalled or revoked.

**Administration pending litigation.**

*(1925 c.23, s.16).* 18. (1) While any legal proceeding touching the validity of the will of a deceased person, or for obtaining, recalling or revoking any representation, is pending, the court may grant administration of the real and personal estate of the deceased to an administrator who shall have all the rights and powers of a general administrator, other than the right of distributing the residue of the real and personal estate, but shall be subject to the immediate control of the court and act under its direction.

(2) The court may assign to any administrator appointed under this section reasonable remuneration out of the real and personal estate of the deceased or the income thereof.

**Continuance of legal proceedings after revocation of temporary administration.**

*(1925 c.23, s.17).* 19. If, while any legal proceeding is pending in the court by or against an administrator to whom a temporary administration has been granted, that administration is revoked, the court may order that the proceeding be continued by or against the new personal representative in like manner as if the same had been originally commenced by or against him, but subject to such conditions and variations (if any) as the court directs.

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## **Grant of special administration where personal representative is abroad.**

20. (1) If, at the expiration of twelve months from the death of a person, any personal representative of the deceased to whom representation has been granted is residing out of the jurisdiction of the court, the court may, on the application of any creditor or person interested in the estate of the deceased, grant to him special administration in the form prescribed by probate rules of the real and personal estate of the deceased. *(1925 c.23, s.18).*

(2) The court may, for the purpose of any legal proceeding to which the administrator under the special administration is a party, order the transfer into court of any money or securities, belonging to the estate of the deceased person, and all persons shall obey any such order.

(3) If the personal representative capable of acting as such returns to and resides within the jurisdiction of the court while any legal proceeding to which a special administrator is a party is pending, such representative shall be made a party to the legal proceeding, and the costs of and incidental to the special administration and any such legal proceeding shall be paid by such person and out of such fund as the court directs.

## **Administration with will annexed.**

21. Subject to the provisions of this Act as to settled land, administration with the will annexed shall continue to be granted in every case where such grant has heretofore been customary, and in such case the will of the deceased shall be performed and observed in like manner as if probate thereof had been granted to an executor. *(1925 c.23, s.19).*

## **Administration during minority of executor.**

22. (1) Where a minor is appointed or becomes sole executor of a will, administration with the will annexed shall be granted to his guardian, or to such other person as the court thinks fit, until the minor attains the age of eighteen years at which time, and not before, probate of the will may be granted to him. *(1925 c.23, s.20).*

(2) The appointment in a will by a testator of a minor to be an executor shall not operate to transfer any interest in the property of the deceased to the minor or to constitute him a personal representative for any purpose unless and until probate is granted to him after he has attained full age.

## **Rights and liabilities of administrator.**

*(1925 c.23, s.21).*

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

*Special provisions as to Settled Land.*

**Special executors as respects settled land.**

(1925 c.23, s.22). 24. (1) A testator may appoint, and in default of such express appointment shall be deemed to have appointed, as his special executors in regard to settled land, the persons (if any) who are at his death the trustees of the settlement thereof, and probate may be granted to such trustees specially limited to the settled land. In this subsection, “settled land” means land vested in the testator which was settled previously to his death and not by his will.

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

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

(1925 c.23, s.23). 25. (1) Where settled land becomes vested in a personal representative, not being a trustee of the settlement, upon trust to convey the land to or assent to the vesting thereof in the tenant for life or statutory owner in order to give effect to a settlement created before the death of the deceased and not by his will, or would, on the grant of representation to him, have become so vested, such representative may—

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

(2) Whether such renunciation or revocation is made or not, the trustees of the settlement, or any person beneficially interested thereunder, may apply to the court for an order appointing a special or additional personal representative in respect of the settled land, and a special or additional personal representative, if and when appointed under the order, shall be in the same position as if representation had originally been granted to him alone in place of the original personal representative (if any) or to him



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jointly with the original personal representative, as the case may be, limited to the settled land, but without prejudice to the previous acts and dealings (if any) of the personal representative originally constituted or the effect of notices given to such personal representative.

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

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

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

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

## **Power for special personal representatives to dispose of settled land.**

26. (1) The special personal representatives may dispose of the settled land without the concurrence of the general personal representative, who may likewise dispose of the other property and assets of the deceased without the concurrence of the special personal representatives. *(1925 c.23, s.24).*

(2) In this section, “special personal representatives” mean the representatives appointed to act for the purposes of settled land and include any original representative who is to act with an additional personal representative for those purposes.

*Duties, Rights and Obligations.*

**Duty of personal representatives.**

- (1971 c.25, s.9). 27. The personal representative of a deceased person shall be under a duty to—
- (a) collect and get in the real and personal estate of the deceased and administer it according to law;
  - (b) when required to do so by the court, exhibit on oath in the court a full inventory of the estate and when so required render an account of the administration of the estate to the court;
  - (c) when required to do so by the court, deliver up the grant of probate or administration to the court.

**Retainer, preference and the payment of debts by personal representatives.**

- (1971 c.25,s.10). 27A. (1) The right of retainer of a personal representative and his right to prefer creditors are hereby abolished.
- (2) Nevertheless a personal representative—
- (a) other than one mentioned in paragraph (b), who in good faith and at a time when he has no reason to believe that the deceased's estate is insolvent, pays the debt of any person (including himself) who is a creditor of the estate; or
  - (b) to whom letters of administration have been granted solely by reason of his being a creditor and who, in good faith and at such a time pays the debt of another person who is a creditor of the estate,
- shall not, if it subsequently appears that the estate is insolvent, be liable to account to a creditor of the same degree as the paid creditor for the sum so paid.

**Rights of action by and against personal representative.**

(1925 c.23, s.26).

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28. (1) A personal representative may distrain for arrears of a rentcharge due or accruing to the deceased in his lifetime on the land affected or charged therewith, so long as the land remains in the possession of the person liable to pay the rentcharge or of the persons deriving title under him, and in like manner as the deceased might have done had he been living.

(2) A personal representative may distrain upon land for arrears of rent due or accruing to the deceased in like manner as the deceased might have done had he been living. Such arrears may be distrained for after the termination of the lease or tenancy as if the term or interest had not determined, if the distress is made—

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

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

### **Protection of persons acting on probate or administration.**

29. (1) Every person making or permitting to be made any payment or disposition in good faith under a representation shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the representation. *((1925 c.23, s.27)).*

(2) Where a representation is revoked, all payments and dispositions made in good faith to a personal representative under the representation before the revocation thereof are a valid discharge to the person making the same and the personal representative who acted under the revoked representation may retain and reimburse himself in respect of any payments or dispositions made by him which the person to whom representation is afterwards granted might have properly made.

### **Liability of person fraudulently obtaining or retaining estate of deceased.**

30. If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives or holds any real or personal estate of a deceased person or effects the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the real and personal estate received or coming to his hands, or the debt or liability released, after deducting— *(1925 c.23, s.28).*

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

**Liability of estate of personal representative.**

*((1925 c.23, s.29).)* 31. Where a person as personal representative of a deceased person (including an executor in his own wrong) wastes or converts to his own use any part of the real or personal estate of the deceased, and dies, his personal representative shall to the extent of the available assets of the defaulter be liable and chargeable in respect of such waste or conversion in the same manner as the defaulter would have been if living.

**Provisions applicable where administration granted to nominee of the Crown.**

*((1925 c.23,s.30).)* 32. (1) Where the administration of the real and personal estate of any deceased person is granted to a nominee of the Crown, any legal proceeding by or against that nominee for the recovery of the real or personal estate, or any part or share thereof, shall be of the same character, and be instituted and carried on in the same manner, and be subject to the same rules of law and equity (including, except as otherwise provided by this Act, the rules of limitation under the Limitation Act or otherwise), in all respects as if the administration had been granted to such nominee as one of the persons interested under this Act in the estate of the deceased.

(2) No proceeding shall be instituted by or against the Crown in respect of the real or personal estate of any deceased person or any part or share thereof, or any claim thereon, except within the same time and subject to the same rules of law and equity within and subject to which a proceeding for the like purposes might be instituted by or against a subject.

(3) The nominee of the Crown shall not be required, when applying for or obtaining administration of the estate of a deceased person for the use or benefit of Her Majesty, to deliver, nor shall the court be entitled to receive in connection with any such application or grant of administration, any affidavit, statutory declaration, account, certificate or other statement verified on oath, but the nominee of the Crown shall deliver and the court shall accept, in lieu thereof, an account or particulars of the estate of the deceased signed by or on behalf of the nominee of the Crown.

**Power to make rules of court.**

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33. Provision may be made by rules of court for giving effect to the provisions of this Part so far as relates to real estate and in particular for adapting the procedure and practice on the grant of letters of administration to the case of real estate. *(1925 c.23, s.31).*

## PART IV. ADMINISTRATION OF ASSETS.

### **Real and personal estate of deceased are assets for payment of debts.**

34. (1) The real and personal estate, whether legal or equitable, of a deceased person, to the extent of his beneficial interest therein, and the real and personal estate of which a deceased person in pursuance of any general power (including the statutory power to dispose of entailed interests) disposes by his will, are assets for payment of his debts (whether by speciality or simple contract) and liabilities, and any disposition by will inconsistent with this enactment is void as against the creditors, and the court shall, if necessary, administer the property for the purpose of the payment of the debts and liabilities. This subsection takes effect without prejudice to the rights of incumbrancers. *((1925 c.23,s.32)).*

(2) A person to whom any such beneficial interest devolves or is given, or in whom any such interest vests, and who disposes thereof in good faith before an action is brought or process is sued out against him, is personally liable for the value of the interest so disposed of by him, but that interest is not liable to be taken in execution in the action or under the process.

### **Trust for sale.**

35. (1) On the death of a person intestate as to any real or personal estate, such estate shall be held by his personal representatives— *(1925 c.23, s.33).*

(a) as to the real estate upon trust to sell the same; and

(b) as to the personal estate upon trust to call in, sell and convert into money such part thereof as may not consist of money, with power to postpone such sale and conversion for such a period as the personal representatives, without being liable to account, may think proper, and so that any reversionary interest be not sold until it falls into possession, unless the personal representatives see special reason for sale, and so also that, unless required for purposes of administration owing to want of other assets, personal chattels be not sold except for special reason.

(2) Out of the net money to arise from the sale and conversion of such real and personal estate (after payment of costs), and out of the ready money of the deceased (so far as not disposed of by his will, if any), the personal

representative shall pay all such funeral, testamentary and administration expenses, debts and other liabilities as are properly payable thereout having regard to the rules of administration contained in this Part and out of the residue of the money the personal representative shall set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will (if any) of the deceased.

(3) During the minority of any beneficiary or the subsistence of any life interest and pending the distribution of the whole or any part of the estate of the deceased, the personal representatives may invest the residue of the money, or so much thereof as may not have been distributed, in any investments for the time being authorised by statute for the investment of trust money, with power, at the discretion of the personal representatives, to change such investments for others of a like nature.

(4) The residue of the money and any investments for the time being representing the same, including (but without prejudice to the trust for sale) any part of the estate of the deceased which may be retained unsold and is not required for administration purposes, is in this Act referred to as “the residuary estate of the intestate.”

(5) The income (including net rents and profits of real estate and chattels real after payment of rates, taxes, rent, costs of insurance, repairs and other outgoings properly attributable to income) of so much of the real and personal estate of the deceased as may not be disposed of by his will (if any) or may not be required for administration purposes, may, however such estate is invested, as from the death of the deceased, be treated and applied as income, and for that purpose any necessary apportionment may be made between tenant for life and remainderman.

(6) Nothing in this section affects the rights of any creditor of the deceased or the rights of the Crown in respect of death duties.

(7) Where the deceased leaves a will, this section has effect subject to the provisions contained in the will.

#### **Administration of assets.**

(1925 c.23, s.34). 36. (1) Where the estate of a deceased person is insolvent, his real and personal estate shall be administered in accordance with the rules set out in Part I of the Schedule.

(2) *Omitted.*

(3) Where the estate of a deceased person is solvent his real and personal estate shall, subject to rules of court and the provisions hereinafter

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contained as to charges on property of the deceased, and to the provisions (if any) contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II of the Schedule.

37. *Omitted.*

38. *Omitted.*

**Charges on property of deceased to be paid primarily out of the property charged.**

39. (1) Where a person dies possessed of, or entitled to, or under a general power of appointment (including the statutory power to dispose of entailed interests) by his will disposes of, an interest in property, which at the time of his death is charged with the payment of money, whether by way of legal mortgage, equitable charge or otherwise (including a lien for unpaid purchase money), and the deceased has not by will, deed or other document signified a contrary or other intention, the interest so charged shall, as between the different persons claiming through the deceased, be primarily liable for the payment of the charge and every part of the interest, according to its value, shall bear a proportionate part of the charge on the whole thereof. *(1925 c.23, s.35).*

(2) Such contrary or other intention shall not be deemed to be signified—

(a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate; or

(b) by a charge of debts upon any such estate, unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) Nothing in this section affects the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

**Effect of assent or conveyance by personal representative.**

40. (1) A personal representative may assent to the vesting, in any person who (whether by devise, bequest, devolution, appropriation or otherwise) may be entitled thereto, either beneficially or as a trustee or personal representative, of any estate or interest in real estate to which the testator or intestate was entitled or over which he exercised a general power of *(1925 c.23, s.36).*

appointment by his will, including the statutory power to dispose of entailed interests, and which devolved upon the personal representative.

(2) The assent shall operate to vest in that person the estate or interest to which the assent relates, and, unless a contrary intention appears, the assent shall relate back to the death of the deceased.

(3) The statutory covenants implied by a person being expressed to convey as personal representative, may be implied in an assent in like manner as in a conveyance by deed.

(4) An assent to the vesting of a legal estate shall be in writing, signed by the personal representative, and shall name the person in whose favour it is given and shall operate to vest in that person the legal estate to which it relates and an assent not in writing or not in favour of a named person shall not be effectual to pass a legal estate.

(5) Any person in whose favour an assent or conveyance of a legal estate is made by a personal representative may require that notice of the assent or conveyance be written or endorsed on or permanently annexed to the probate or letters of administration, at the cost of the estate of the deceased, and that the probate or letters of administration be produced, at the like cost, to prove that the notice has been placed thereon or annexed thereto.

(6) (a) A statement in writing by a personal representative that he has not given or made an assent or conveyance in respect of a legal estate, shall, in favour of a purchaser, but without prejudice to any previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative, be sufficient evidence that an assent or conveyance has not been given or made in respect of the legal estate to which the statement relates, unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration.

(b) A conveyance by a personal representative of a legal estate to a purchaser accepted on the faith of such a statement shall (without prejudice as aforesaid and unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration) operate to transfer or create the legal estate expressed to be conveyed in like manner as if no previous assent or conveyance had been made by the personal representative.



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(c) A personal representative who makes a false statement, in regard to any such matter, is liable in like manner as if the statement had been contained in a statutory declaration.

(7) An assent or conveyance by a personal representative in respect of a legal estate shall, in favour of a purchaser, unless notice of a previous assent or conveyance affecting that legal estate has been placed on or annexed to the probate or administration, be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person entitled to have the legal estate conveyed to him, and upon the proper trusts (if any) but shall not otherwise prejudicially affect the claim of any person rightfully entitled to the estate vested or conveyed or any charge thereon.

(8) A conveyance of a legal estate by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral and testamentary or administration expenses, duties and legacies of the deceased have not been discharged or provided for.

(9) An assent or conveyance given or made by a personal representative shall not, except in favour of a purchaser of a legal estate, prejudice the right of the personal representative or any other person to recover the estate or interest to which the assent or conveyance relates, or to be indemnified out of such estate or interest against any duties, debt or liability to which such estate or interest would have been subject if there had not been any assent or conveyance.

(10) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any such duties, debt or liability, but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of any such duties, debt or liability if reasonable arrangements have been made for discharging the same and an assent may be given subject to any legal estate or charge by way of legal mortgage.

(11) This section shall not operate to impose any stamp duty in respect of an assent, and in this section “purchaser” means a purchaser for money or money's worth.

(12) This section applies to assents and conveyances made after the commencement of this Act, whether the testator or intestate died before or after such commencement.

**Validity of conveyance not affected by revocation of representation.**

*(1925 c.23, s.37).*

41. (1) All conveyances of any interest in real or personal estate made to a purchaser by a person to whom probate or letters of administration have been granted are valid, notwithstanding any subsequent revocation or variation of the probate or administration.

(2) This section takes effect without prejudice to any order of the court made before the commencement of this Act, and applies whether the testator or intestate died before or after such commencement.

**Right to follow property and powers of the court in relation thereto.**

*((1925 c.23, s.38).*

42. (1) An assent or conveyance by a personal representative to a person other than a purchaser does not prejudice the rights of any person to follow the property to which the assent or conveyance relates, or any property representing the same, into the hands of the person in whom it is vested by the assent or conveyance, or of any other person (not being a purchaser) who may have received the same or in whom it may be vested.

(2) Notwithstanding any such assent or conveyance the court may, on the application of any creditor or other person interested,—

- (a) order a sale, exchange, mortgage, charge, lease, payment, transfer or other transaction to be carried out which the court considers requisite for the purpose of giving effect to the rights of the persons interested;
- (b) declare that the person, not being a purchaser in whom the property is vested is a trustee for those purposes;
- (c) give directions respecting the preparation and execution of any conveyance or other instrument or as to any other matter required for giving effect to the order;
- (d) make any vesting order, or appoint a person to convey in accordance with the provisions of the Trustees Act<sup>3</sup>.

(3) This section does not prejudice the rights of a purchaser or a person deriving title under him, but applies whether the testator or intestate died before or after the commencement of this Act.

**Powers of management.**

*(1925 c.23, s.39).*

43. (1) In dealing with the real and personal estate of the deceased his personal representative shall, for purposes of administration, or during a

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<sup>3</sup> 1895-18

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minority of any beneficiary or the subsistence of any life interest, or until the period of distribution arrives, have—

- (a) the same powers and discretions, including power to raise money by mortgage or charge (whether or not by deposit of documents), as a personal representative had before the commencement of this Act with respect to personal estate vested in him, and such power of raising money by mortgage may, in the case of land, be exercised by way of legal mortgage;
- (b) all the powers, discretions and duties conferred or imposed by law on trustees holding land upon an effectual trust for sale (including power to overreach equitable interests and powers as if the same affected the proceeds of sale); and
- (c) all the powers conferred by statute on trustees for sale, and so that every contract entered into by a personal representative shall be binding on and be enforceable against and by the personal representative for the time being of the deceased, and may be carried into effect, or be varied or rescinded by him, and, in the case of a contract entered into by a predecessor, as if it had been entered into by himself.

(2) Nothing in this section shall affect the right of any person to require an assent or conveyance to be made.

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

## **Powers of personal representative for raising money, etc.**

44. (1) For giving effect to beneficial interests the personal representative may mortgage the land for raising or securing any principal sum and the interest thereon for which the land, or any part thereof, is liable, and may grant a rentcharge for giving effect to any annual or periodical sum for which the land or the income thereof or any part thereof is liable. *(1925 c.23, s.40).*

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

## **Powers of personal representative as to appropriation.**

45. (1) The personal representative may appropriate any part of the real or personal estate, including things in action, of the deceased in the actual condition or state of investment thereof at the time of appropriation in or towards satisfaction of any legacy bequeathed by the deceased, or of any *(1925 c.23, s.41).*

other interest or share in his property, whether settled or not, as to the personal representative may seem just and reasonable, according to the respective rights of the persons interested in the property of the deceased:

Provided that—

- (a) an appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest;
- (b) an appropriation of property, whether or not being an investment authorised by law or by the will (if any) of the deceased for the investment of money subject to the trust, shall not (save as hereinafter mentioned) be made under this section except with the following consents:—
  - (i) when made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person;
  - (ii) when made in respect of any settled legacy, share or interest, the consent of either the trustee thereof, if any (not being also the personal representative), or the person who may for the time being be entitled to the income.

If the person whose consent is so required is a minor or person suffering from mental disorder, the consent shall be given on his behalf by his parents or parent, testamentary or other guardian or receiver, or if, in the case of a minor, there is no such parent or guardian or receiver, by the court;
- (c) no consent (save of such trustee as aforesaid) shall be required on behalf of a person who may come into existence after the time of appropriation, or who cannot be found or ascertained at that time;
- (d) if no receiver of a person suffering from mental disorder has been appointed, then, if the appropriation is of an investment authorised by law or by the will (if any) of the deceased for the investment of money subject to the trust, no consent shall be required on his behalf;
- (e) if, independently of the personal representative, there is no trustee of a settled legacy, share or interest, and no person of full age and capacity entitled to the income thereof, no consent shall

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be required to an appropriation in respect of such legacy, share or interest provided that the appropriation is of an investment authorised as aforesaid.

(2) Any property duly appropriated under the powers conferred by this section shall thereafter be treated as an authorised investment, and may be retained or dealt with accordingly.

(3) For the purposes of such appropriation, the personal representative may ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased as he may think fit, and shall for that purpose employ a duly qualified valuer in any case where such employment may be necessary and may make any conveyance (including an assent) which may be requisite for giving effect to the appropriation.

(4) An appropriation made pursuant to this section shall bind all persons interested in the property of the deceased whose consent is not hereby made requisite.

(5) The personal representative shall, in making the appropriation, have regard to the rights of any person who may thereafter come into existence, or who cannot be found or ascertained at the time of appropriation, and of any other person whose consent is not required by this section.

(6) This section does not prejudice any other power of appropriation conferred by law or by the will (if any) of the deceased, and takes effect with any extended powers conferred by the will (if any) of the deceased, and where an appropriation is made under this section, in respect of a settled legacy, share or interest, the property appropriated shall remain subject to all trusts for sale and powers of leasing, disposition and management or varying investments which would have been applicable thereto or to the legacy, share or interest in respect of which the appropriation is made, if no such appropriation had been made.

(7) If after any real estate has been appropriated in purported exercise of the powers conferred by this section, the person to whom it was conveyed disposes of it or any interest therein, then, in favour of a purchaser, the appropriation shall be deemed to have been made in accordance with the requirements of this section and after all requisite consents (if any) had been given.

(8) In this section, “a settled legacy, share or interest” includes any legacy, share or interest to which a person is not absolutely entitled in possession at the date of the appropriation, also an annuity; and “purchaser” means a purchaser for money or money's worth.

(9) This section applies whether the deceased died intestate or not, and whether before or after the commencement of this Act, and extends to property over which a testator exercises a general power of appointment, including the statutory power to dispose of entailed interests, and authorises the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.

**Power to appoint trustees of minor's property.**

*(1925 c.23, s.42).*

46. (1) Where a minor is absolutely entitled under the will or on the intestacy of a person (in this subsection called “the deceased” ) to a devise or legacy, or to the residue of the estate of the deceased, or any share therein, and such devise, legacy, residue or share is not under the will (if any) of the deceased, devised or bequeathed to trustees for the minor, the personal representatives of the deceased may appoint a trust corporation or two or more individuals not exceeding four (whether or not including the personal representatives or one or more of the personal representatives), to be the trustee or trustees of such devise, legacy, residue or share for the minor, and to be trustees of any land devised or any land being or forming part of such residue or share for the purposes of the Settled Land Act, 1882, and the Land Law and Conveyance Act and of the statutory provisions relating to the management of land during a minority, and may execute or do any assurance or thing requisite for vesting such devise, legacy, residue or share in the trustee or trustees so appointed. On such appointment the personal representatives, as such, shall be discharged from all further liability in respect of such devise, legacy, residue or share, and the same may be retained in its existing condition or state of investment, or may be converted into money, and such money may be invested in any authorised investment.

(2) Where a personal representative has before the commencement of this Act retained or sold any such devise, legacy, residue or share, and invested the same or the proceeds thereof in any investments in which he was authorised to invest money subject to the trust, then, subject to any order of the court made before such commencement, he shall not be deemed to have incurred any liability on that account, or by reason of not having paid or transferred the money or property into court.

**Obligations of personal representative as to giving possession of land and powers of the court.**

*(1925 c.23, s.43).*

47. (1) A personal representative, before giving an assent or making a conveyance in favour of any person entitled, may permit that person to take possession of the land, and such possession shall not prejudicially affect the right of the personal representative to take or resume possession nor his power to convey the land as if he were in possession thereof, but subject to

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the interest of any lessee, tenant or occupier in possession or in actual occupation of the land.

(2) Any person who as against the personal representative claims possession of real estate, or the appointment of a receiver thereof, or a conveyance thereof, or an assent to the vesting thereof, may apply to the court for directions with reference thereto, and the court may make such vesting or other order as may be deemed proper, and the provisions of the Trustees Act, relating to vesting orders and to the appointment of a person to convey, shall apply.

(3) *Omitted.*

### **Power to postpone distribution.**

48. Subject to the foregoing provisions of this Act, a personal representative is not bound to distribute the estate of the deceased before the expiration of one year from his death. *(1925 c.23, s.44).*

## **PART V. DISTRIBUTION OF RESIDUARY ESTATE.**

### **Interpretation of Part V.**

49. (1) In this Part, “real and personal estate” means every beneficial interest (including rights of entry and reverter) of the intestate in real and personal estate which (otherwise than in right of a power of appointment) he could, if of full age and capacity, have disposed of by his will. *(1925 c.23, s.52).*

(2) This Part shall have effect as if–

- (a) any reference to the issue of the intestate included a reference to any illegitimate child of his and to the issue of any such child;
- (b) any reference to the child or children of the intestate included a reference to any illegitimate child or children of his; and
- (c) in relation to an intestate who is an illegitimate child, any reference to the parent, parents, father or mother of the intestate were a reference to his natural parent, parents, father or mother.

(3) In subsection (2), “illegitimate child” does not include an illegitimate child who is–

- (a) a legitimated person within the meaning of the Legitimacy Act<sup>4</sup> or a person recognised by virtue of that Act or at common law as having been legitimated; or
- (b) an adopted person under an adoption order made in Gibraltar or in any part of the United Kingdom, the Isle of Man or the Channel Islands or under an overseas adoption as defined in section 4(3) of the Adoption Act 1968.

**Abolition of descent to heir, curtesy, dower and escheat.**

*(1925 c.23, s.45).*

50. (1) With regard to the real estate and personal inheritance of every person dying after the commencement of this Act, there shall be abolished—

- (a) all existing modes, rules and canons of descent, and of devolution by special occupancy or otherwise, of real estate, or of a personal inheritance, whether operating by the general law or by any custom or otherwise howsoever;
- (b) tenancy by the curtesy and every other estate and interest of a husband in real estate as to which his wife dies intestate, whether arising under the general law or by custom or otherwise;
- (c) dower and freebench and every other estate and interest of a wife in real estate as to which her husband dies intestate, whether arising under the general law or by custom or otherwise:

Provided that where a right (if any) to freebench or other like right has attached before the commencement of this Act which cannot be barred by a testamentary or other disposition made by the husband, such rights shall, unless released, remain in force as an equitable interest; and

- (d) escheat to the Crown for want of heirs.

(2) Nothing in this section affects the descent or devolution of an entailed interest.

*(1925 c.23, s.46).*

**Succession to real and personal estate on intestacy.**

51. (1) The residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section, namely:—

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- (a) if the intestate leaves a husband or wife (with or without issue) the surviving husband or wife shall take the personal chattels absolutely, and in addition the residuary estate of the intestate, (other than the personal chattels) shall stand charged with the payment of a net sum of £5,000, free of death duties and costs, to the surviving husband or wife with interest thereon from the date of the death at the rate of £5 per cent per annum until paid or appropriated, and, subject to providing for that sum and the interest thereon, the residuary estate (other than the personal chattels) shall be held—
  - (i) if the intestate leaves no issue, upon trust for the surviving husband or wife during his or her life;
  - (ii) if the intestate leaves issue, upon trust, as to one half, for the surviving husband or wife during his or her life, and, subject to such life interest, on the statutory trusts for the issue of the intestate; and, as to the other half, on the statutory trusts for the issue of the intestate, but if those trusts fail or determine in the lifetime of a surviving husband or wife of the intestate, then upon trust for the surviving husband or wife during the residue of his or her life;
- (b) if the intestate leaves issue but no husband or wife, the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate;
- (c) if the intestate leaves no issue but both parents, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the father and mother in equal shares absolutely;
- (d) if the intestate leaves no issue but one parent, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the surviving father or mother absolutely;
- (e) if the intestate leaves no issue or parent, then, subject to the interests of a surviving husband or wife, the residuary estate of the intestate shall be held in trust for the following persons living at the death of the intestate, and in the following order and manner, namely:—

- (i) first, on the statutory trusts for the brothers and sisters of the whole blood of the intestate; but if no person takes an absolutely vested interest under such trusts; then
  - (ii) secondly, on the statutory trusts for the brothers and sisters of the half blood of the intestate; but if no person takes an absolutely vested interest under such trust; then
  - (iii) thirdly, for the grandparents of the intestate and, if more than one survive the intestate, in equal shares; but if there is no member of this class; then
  - (iv) fourthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate); but if no person takes an absolutely vested interest under such trusts; then
  - (v) fifthly, on the statutory trusts for the uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the intestate); but if no person takes an absolutely vested interest under such trusts; then
  - (vi) sixthly, for the surviving husband or wife of the intestate absolutely;
- (f) in default of any person taking an absolute interest under the foregoing provisions, the residuary estate of the intestate shall belong to the Crown as bona vacantia, and in lieu of any right to escheat. The Crown may, out of the whole or any part of the property devolving on it, provide, in accordance with the existing practice, for dependants, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision.

(2) A husband and wife shall for all purposes of distribution or division under the foregoing provisions of this section be treated as two persons.

(3) This section does not affect any rights under the intestacy of a person who died before the 1st day of September 1972.

**Statutory trusts in favour of issue and other classes of relatives of intestate.**

52. (1) Where under this Part the residuary estate of an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely:—

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- (a) in trust, in equal shares if more than one, for all or any of the children or child of the intestate, living at the death of the intestate, who attain the age of eighteen years or under that age, and for all or any of the issue living at the death of the intestate who attain the age of eighteen years\* or marry under that age of any child of the intestate who predeceases the intestate, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at the death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking;
  - (b) the statutory power of advancement, and the statutory provisions which relate to maintenance and accumulation of surplus income, shall apply, but when a minor marries such minor shall be entitled to give valid receipts for the income of the minor's share or interest;
  - (c) where the property held on the statutory trusts for issue is divisible into shares, then any money or property which, by way of advancement or on the marriage of a child of the intestate, has been paid to such child by the intestate, or settled by the intestate for the benefit of such child ( including any life or less interest and including property covenanted to be paid or settled) shall, subject to any contrary intention expressed or appearing from the circumstances of the case, be taken as being so paid or settled in or towards satisfaction of the share of such child or the share which such child would have taken if living at the death of the intestate, and shall be brought into account, at a valuation (the value to be reckoned as at the death of the intestate), in accordance with the requirements of the personal representatives;
  - (d) the personal representatives may permit any minor contingently interested to have the use and enjoyment of any personal chattels in such manner and subject to such conditions (if any) as the personal representatives may consider reasonable, and without being liable to account for any consequential loss.
- (2) If the trusts in favour of the issue of the intestate fail by reason of no child or other issue attaining an absolutely vested interest,–

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\* *In respect of a person who died before 1 September 1972, there should be substituted the age of twenty-one (Ord. 1972-06, s.4(2)).*

- (a) the residuary estate of the intestate and the income thereof and all statutory accumulations (if any) of the income thereof, or so much thereof as may not have been paid or applied under any power affecting the same, shall go, devolve and be held under the provisions of this Part as if the intestate had died without leaving issue living at the death of the intestate;
- (b) references in this Part to the intestate “leaving no issue” shall be construed as “leaving no issue who attain an absolutely vested interest”;
- (c) references in this Part to the intestate “leaving issue” or “leaving a child or other issue” shall be construed as “leaving issue who attain an absolutely vested interest.”

(3) Where under this Part the residuary estate of an intestate or any part thereof is directed to be held on the statutory trusts for any class of relatives of the intestate, other than issue of the intestate, the same shall be held on trusts corresponding to the statutory trusts for the issue of the intestate (other than the provision for bringing any money or property into account) as if such trusts (other than as aforesaid) were repeated with the substitution of references to the members or member of that class for references to the children or child of the intestate.

#### **Protection of personal representatives.**

52A. Personal representatives may convey or distribute any real or personal property to or among the persons entitled thereto without having ascertained that there is no person who is or may be entitled to any interest therein by virtue of—

- (a) section 14 of the Legitimacy Act<sup>4</sup> so far as it confers any interest on illegitimate children or their issue or on the father of an illegitimate child; or
- (b) section 15 of the Legitimacy Act<sup>4</sup> or section 10 of the Wills Act<sup>5</sup>,

and shall not be liable to any such person of whose claim they have not had notice at the time of the conveyance or distribution; but nothing in this section shall prejudice the right of any such person to follow the property, or any property representing it, into the hands of any person, other than a purchaser, who may have received it.

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<sup>4</sup> 1927-05

<sup>5</sup> 1964-08

## **Powers of personal representative in respect of interest of surviving spouse.**

53. (1) Where a surviving husband or wife is entitled to a life interest in the residuary estate or any part thereof the personal representative may, either with the consent of any such tenant for life (not being also the sole personal representative) or, where the tenant for life is the sole personal representative, with the leave of the court, purchase or redeem such life interest (while it is in possession) by paying the capital value thereof (reckoned according to tables selected by the personal representative) to the tenant for life or the persons deriving title under him or her and the costs of the transaction, and thereupon the residuary estate of the intestate may be dealt with or distributed free from such life interest. *(1925 c.23, s.48).*

(2) The personal representatives may raise—

- (a) the net sum of £5,000, or any part thereof and the interest thereon payable to the surviving husband or wife of the intestate on the security of the whole or any part of the residuary estate of the intestate (other than the personal chattels), so far as that estate may be sufficient for the purpose or the said sum and interest may not have been satisfied by an appropriation under the statutory power available in that behalf; and
- (b) in like manner the capital sum (if any) required for the purchase or redemption of the life interest of the surviving husband or wife of the intestate, or any part thereof not satisfied by the application for that purpose of any part of the residuary estate of the intestate,

and in either case the amount (if any) properly required for the payment of the costs of the transaction.

## **Application to cases of partial intestacy.**

54. Where any person dies leaving a will effectively disposing of part of his property, this Part shall have effect as respects the part of his property not so disposed of subject to the provisions contained in the will and subject to the following modifications:— *(1925 c.23, s.49).*

- (a) the requirements as to bringing property into account shall apply to any beneficial interests acquired by any issue of the deceased under the will of the deceased, but not to beneficial interests so acquired by any other persons;

- (b) the personal representative shall, subject to his rights and powers for the purposes of administration, be a trustee for the persons entitled under this Part in respect of the part of the estate not expressly disposed of unless it appears by the will that the personal representative is intended to take such part beneficially.

#### **Construction of documents.**

(1925 c.23, s.50). 55. (1) References to any statutes of distribution in an instrument inter vivos made or in a will coming into operation after the commencement of this Act, shall be construed as references to this Part, and references in such an instrument or will to statutory next of kin shall be construed, unless the context otherwise requires, as referring to the persons who would take beneficially on an intestacy under the foregoing provisions of this Part.

(2) Trusts declared in an instrument inter vivos made, or in a will coming into operation, before the commencement of this Act by reference to the statutes of distribution, shall, unless the contrary thereby appears, be construed as referring to the enactments (other than the Intestates' Estates (Widows) Act, 1912)<sup>6</sup> relating to the distribution of effects of intestates which were in force immediately before the commencement of this Act.

#### **Savings.**

(1925 c.23, s.51). 56. (1) Nothing in this Part affects the right of any person to take beneficially, by purchase, as heir either general or special.

(2) The foregoing provisions of this Part do not apply to any beneficial interest in real estate (not including chattels real) to which a person suffering from mental disorder living and of full age at the commencement of this Act, and unable, by reason of his incapacity, to make a will, who thereafter dies intestate in respect of such interest without having recovered his testamentary capacity, was entitled at his death, and any such beneficial interest (not being an interest ceasing on his death) shall, without prejudice to any will of the deceased, devolve in accordance with the general law in force before the commencement of this Act applicable to freehold land, and that law shall, notwithstanding any repeal, apply to the case. For the purposes of this subsection, a person suffering from mental disorder who dies intestate as respects any beneficial interest in real estate shall not be deemed to have recovered his testamentary capacity so long as a finding by the Chief Justice that he is a patient within the meaning of Part IV of the Mental Health Act<sup>7</sup> remains in force.

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<sup>6</sup> 1912-04

<sup>7</sup> 1968-24

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(3) Where a minor dies after the commencement of this Act without having been married, and independently of this subsection he would, at his death, have been equitably entitled under a settlement (including a will) to a vested estate in fee simple or absolute interest in freehold land, or in any property settled to devolve therewith or as freehold land, such minor shall be deemed to have had an entailed interest, and the settlement shall be construed accordingly.

(4) This Part does not affect the devolution of an entailed interest as an equitable interest.

## PART VI FAMILY PROVISION

57-61. *Repealed.*

## PART VII. SUPPLEMENTAL.

### General savings.

62. (1) Nothing in this Act shall derogate from the powers of the court *(1925 c.23, s.53)* which exist independently of this Act.

(2) Nothing in this Act shall affect any unrepealed enactment in a public general Act or Act dispensing with probate or administration as respects personal estate not including chattels real.

(3) Nothing in this Act shall—

- (a) alter any death duty payable in respect of real estate or impose any new duty thereon;
- (b) *omitted*; or
- (c) alter the incidence of any death duties.

### Application of Act.

63. Save as otherwise expressly provided, this Act does not apply in any *(1925 c.23, s.54)* case where the death occurred before the commencement of this Act.

64. *Omitted.*

### Application to Crown.

*(1925 c.23, s.57).*

65. (1) The provisions of this Act bind the Crown as respects the estates of persons dying after the commencement of this Act, but not so as to affect the time within which proceedings for the recovery of real or personal estate vesting in or devolving on Her Majesty in right of Her Crown may be instituted.

(2) Nothing in this Act in any manner affects or alters the descent or devolution of any property for the time being vested in Her Majesty in right of Her Crown.



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## SCHEDULE.

Section 36.

### PART I.

#### RULES AS TO PAYMENT OF DEBTS WHERE THE ESTATE IS INSOLVENT.

1. The funeral, testamentary and administration expenses have priority.
2. Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.

### PART II.

#### ORDER OF APPLICATION OF ASSETS WHERE THE ESTATE IS SOLVENT.

1. Property of the deceased undisposed of by will, subject to the retention thereof of a fund sufficient to meet any pecuniary legacies.
2. Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.
3. Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.
4. Property of the deceased charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.
5. The fund (if any) retained to meet pecuniary legacies.
6. Property specifically devised or bequeathed, ratably according to value.
7. Property appointed by will under a general power, including the statutory power to dispose of entailed interests, ratably according to value.

8. The following provisions shall also apply:–
- (a) the order of application may be varied by the will of the deceased;
  - (b) this Part of this Schedule does not affect the liability of land to answer the death duty imposed thereon in exoneration of other assets.