



1848.

No. 12.

ORDINANCE enacted by the Governor of South Australia, with the advice and consent of the Legislative Council thereof.

For the Better Preservation and Management of the Estates of Deceased Persons in Certain Cases.

[23rd November, 1848.]

WHEREAS it is expedient to make Provision for the better Preamble.
Preservation and Management of the Estates of Persons who may die Intestate, leaving property within the Jurisdiction of the Supreme Court of this Province, and without leaving any lawful next of kin of full age, resident within such Jurisdiction, and of Persons who may die, having made a Will, but without leaving any Executor thereof resident within such Jurisdiction, who may be willing and capable of acting in the Execution of such Will, and without leaving any lawful next of kin of full age and capacity resident within such Jurisdiction, whereby the Estate and Effects of the Deceased may be exposed and liable to waste :

BE IT THEREFORE ENACTED, by THE GOVERNOR of South Australia, with the advice and consent of THE LEGISLATIVE COUNCIL thereof—
Governor may appoint Curator of Intestate Estates.

thereof—THAT it shall be lawful for the Governor, acting on HER MAJESTY'S behalf, after the passing of this Ordinance, and from time to time, as often as shall be necessary, to appoint an Officer, who shall be styled "Curator of Intestate Estates," and shall perform the Duties, and have the Powers and Rights, and be subject to the Liabilities hereinafter expressed, declared, and contained; and such Officer when so appointed shall be deemed to be an Officer of the Supreme Court, and subject to the Rules and Orders thereof, and shall from time to time annually procure and give Security to the satisfaction of the Governor, for the Collection and Due Payment of, and Accounting for, all Moneys which shall come to his hands by virtue of his Office of Curator of Intestate Estates: PROVIDED ALWAYS, that no surety for such Officer shall be liable, beyond the separate amount in which he may have bound himself; and also, that every such surety may withdraw from any further liability for the future under any Bond or Recognizance, by giving to the Colonial Secretary Three Months Notice in writing of his intended withdrawal, without prejudice nevertheless to his liability for any previous breach of the condition of such Bond or Recognizance.

Curator to give security.

Proviso.

Order to collect estate, and the effect thereof.

II. AND BE IT ENACTED, that the Curator of Intestate Estates, shall from time to time, as soon as conveniently may be, after receiving information of the death of any Person leaving Personal Estate which may be exposed and liable to waste from any such causes as aforesaid, apply to the said Court, or a Judge thereof, for an Order, authorising him to Collect, Manage, and Administer such Estate; and the said Court or Judge shall, if satisfied that the case is within the Provisions of this Ordinance, make such Order; which Order, when made, shall give to the Curator of Intestate Estates the same Power over the Personal Estate of the Deceased Person, except as hereby Enacted, as he would have had if Letters of Administration of such Personal Estate had been granted to the said Officer: SUBJECT NEVERTHELESS, to any Order or Orders which may from time to time be made by the said Court, or one of the Judges thereof, on Petition as hereinafter mentioned, touching the said Estate, or the Collection, Management, or Administration thereof: PROVIDED NEVERTHELESS, that an Order to Collect, Manage, and Administer any Estate shall not, either before or after the same shall be made, prevent the proving of any Will, or the obtaining of any Letters of Administration to the Personal Estate of any Person dying Intestate, or limit or affect the Powers or Duties of any Executor or Administrator of the same Estate.

Order to collect not to prevent the subsequent proving of a Will, &c.

Mode of proceeding under this Ordinance.

III. AND BE IT ENACTED, that after an Order to Collect, Manage, and Administer the Estate of any Deceased Person shall have been made, all disputes and matters touching the Collection, Management

ment, or Administration of the same within the Provisions of Ordinance, and all Claims and Demands thereon, except as hereinafter provided, shall be decided by the said Supreme Court, or one of the Judges thereof, on Petition in like manner as if the matter were in the Equitable Jurisdiction of the said Court; and each Judge or Judges of the said Court shall, from time to time, make such General Rules and Orders touching such Petitions and the Proceedings thereon, as to them shall seem expedient, subject to the confirmation by the Governor, with the consent of the Legislative Council, in manner required by Law with respect to all General Rules and Orders of the Supreme Court; and all Petitions and Orders presented and made under the Provisions of this Ordinance, and all Affidavits used in support of, or in opposition to such Petitions, or otherwise relating to the Estates of such Deceased Persons as aforesaid, and all Accounts of the Collection of Intestates' Estates passed or to be passed, shall be filed in such office of the Supreme Court as the said Judge or Judges shall from time to time direct: PROVIDED NEVERTHELESS, that if the said Supreme Court, or the Judge to whom any Petition shall be presented, touching the matters aforesaid, shall think it desirable that the matter in question should not be decided on Petition, the said Court or Judge shall Order such Proceedings to be Instituted at Law or in Equity as shall be considered proper for the decision hereof.

IV. AND BE IT ENACTED, that all Orders which shall be made by the said Court, or a Judge thereof, shall be enforced by the same Process as the like Orders would be enforced by, if they were made by the said Supreme Court in its Equitable Jurisdiction; and that all Affidavits made in respect of the Collection, Management, or Administration of the Estates of Deceased Persons, under the Provisions of this Ordinance, or relating thereto, or to any Proceedings at Law or in Equity, under the Provisions of this Ordinance, or relating thereto, may be sworn before a Judge, or Commissioner of the Supreme Court for taking Affidavits, or (in places beyond Twenty Miles from the Supreme Court House), before any Justice of the Peace, who is hereby empowered to Administer the Oath in every such case.

V. AND BE IT ENACTED, that the Curator of Intestate Estates shall apply for an Order to Collect, Manage, and Administer the Estate of any Deceased Person, and the said Court or Judge thereof shall have Authority to make such Order, whenever such Person shall have Died beyond the Jurisdiction of the said Court, but leaving Personal Property within the Jurisdiction thereof, and there shall be no lawful next of kin of such Deceased Person, who shall be of full age, resident within such Jurisdiction.

VI. AND

Course to be pursued where Probate is not taken out within 6 Calendar Months.

VI. AND BE IT ENACTED, that when any Person shall have died, having made a Will, and named Executors or an Executor thereof, bequeathing Personal Property within the Jurisdiction of the said Court, and Probate thereof, or Letters of Administration, with the Will annexed, shall not have been obtained within Six Calendar Months after the death of the Testator, the Curator of Intestate Estates, upon receiving information of the said facts, shall cite the Executors named in the said Will to come in and prove the same, or shew cause within Fourteen Days after such citation, why an order should not be made for the said Officer to Collect, Manage, and Administer the said Estate; and such citation shall be by Notice under the hand of the Curator of Intestate Estates, which Notice shall (with respect to such of the said Executors as shall have a Place of Residence within this Colony known to the said Curator) be served personally, or by delivery at such Residence; and (with respect to such of them as may be out of the Colony, or have no known place of Residence within it), shall be twice inserted in the *South Australian Government Gazette*; and if at the expiration of the said Fourteen Days, the said Will shall not be proved, or cause shewn to the satisfaction of the said Court, or a Judge thereof, why the Order should not be made, such Order shall, upon the Petition of the said Officer, be made accordingly.

The like, when no Executor named, or no Will made.

VII. AND BE IT ENACTED, that when any Person shall have died Intestate (or, if he shall have made a Will, without naming any Executor thereof resident within the Province), leaving Personal Property within the Jurisdiction of the said Supreme Court, and Letters of Administration shall not have been obtained within Three Calendar Months after the death of such deceased Person, the Curator of Intestate Estates, upon receiving information of the said facts, shall cite in manner aforesaid the Widow and next of kin, who may be entitled to administer, to apply for and obtain Letters of Administration, or shew cause, within One Calendar Month after such citation, why an Order should not be made for the said Officer to Collect, Manage, and Administer the said Estate; and if at the expiration of One Calendar Month, Letters of Administration shall not have been obtained, or cause shewn to the Court, or a Judge thereof, why such Order should not be made, such Order, upon the Petition of the said Officer, shall be made.

Suits by or against Curator.

VIII. AND BE IT ENACTED, that in all Proceedings under this Ordinance, and in all Proceedings at Law or in Equity, the said Officer shall sue and be sued by his name, with the addition of the words "Curator of Intestate Estates," and it shall not be necessary for him, or the Person or Persons suing him, to state or prove his general Authority to Collect, Manage, and Administer the Estates

Estates of the Deceased Persons leaving Property within the Provisions of this Ordinance, but merely the Order made on the Petition of the said Curator for such purposes, in the specific Estate to which the Proceedings may relate; and whenever the Office of "Curator of Intestate Estates" shall become vacant by the Death or Removal of the Officer for the time being, and another Person shall be appointed to that Office during the pendency of any Petition, Action, Suit, or other Proceeding, such Petition, Action, Suit, or Proceeding shall not abate or become defective, but the Petition, Action, Suit, or other Proceeding, shall be continued by or against the Officer newly appointed, and his name be used in all future Proceedings, in lieu of the name of the Officer so deceased or removed.

Suits not to abate by death or removal of Curator.

IX. AND BE IT ENACTED, that the Curator of Intestate Estates shall make or cause to be made an Inventory or List of all the Personal Estate of the Persons whose Estates he shall have been ordered to Collect, Manage, and Administer, and shall retain the same in his Office, and shall keep an Account of all his Receipts, Payments, and Dealings in every such Estate, and shall retain all Letters received, and copies of all Letters written by him, and all Deeds, Papers, and Writings, of and relating to such Estates, and shall permit all Persons to inspect and take copies of the same, and of all Proceedings relating thereto, at all reasonable hours, and shall convert into Money all such Personal Estate as shall not consist of Money, unless Order be made to the contrary by the said Court, or a Judge thereof.

Curator to make inventory and keep accounts, &c., and permit persons to inspect them.

Personal estate to be converted into money.

X. AND BE IT ENACTED, that the Curator of Intestate Estates shall, at such times as he shall think fit, cause Advertisements to be inserted in the *South Australian Government Gazette*, and such other Public Papers as he shall deem expedient, calling upon Creditors of the Persons whose Estates he shall have been ordered to Collect, Manage, and Administer, to come in and prove their Debts before him; and the said Curator of Intestate Estates shall allow any Claim which may be made before him, if the same shall amount to the sum of Twenty Pounds or upwards, upon the like proof as would be required by the Master in Equity for proof of a Claim made before him, upon a reference to take an Account of Debts in a Suit instituted by a Creditor on behalf of himself and others, against an Executor or Administrator; and shall allow any Claim not amounting to the sum of Twenty Pounds, upon the Affidavit of the Claimant alone, or where he shall think fit to call for further Evidence, upon such further Evidence as he shall require; and the said Curator of Intestate Estates shall, as soon after the expiration

Payment of debts.

Kind of proof to be made of debts being due.

ration of the time allowed for proof of Debts, as he conveniently can, pay the Debts proved, if the whole thereof can be paid, and if not, shall declare and pay a Dividend thereon; and if he shall collect any further Assets after making such payment, he shall, in case any part of the Debts proved remain unpaid, pay the same, and any Debts subsequently proved before him (or a Dividend thereon, as the case may be), but such Debts as shall be subsequently proved shall first be paid a Dividend, in proportion to their amount, equal to the Dividend paid to Creditors having previously proved their Debts; and after payment of all Debts, Fees, and Expenses incident to the Collection, Management, and Administration of such Personal Estate, shall pay over the residue to the Personal Representative of the Intestate or Testator (as the case may be) so soon as such Representative shall have been duly constituted.

As to paying money
into Savings Bank.

XI. PROVIDED ALWAYS, AND BE IT ENACTED, that nothing herein contained shall affect the Power of the Supreme Court, or any Judge thereof, from time to time, to direct that any Money belonging to the Estate of any Intestate in the hands of the Curator shall be invested in the Savings Bank at Adelaide, in such manner as the said Court or Judge shall think fit, under the Provisions for that purpose made by the Ordinance of the Governor and Council of this Province, No. 15, of 1847, "To Establish a Savings Bank in South Australia, to provide for the Management thereof, and for the Security of Deposits therein."

Payment to next of
kin or legatees in small
cases.

XII. AND BE IT ENACTED, that after the expiration of Twelve Calendar Months from the time fixed by the Advertisement for Creditors to come in and Prove their Debts, if no Debt shall be Proved, or no Creditor having Proved his Debt shall remain unpaid, it shall be lawful for any Judge of the Supreme Court, if he shall think fit so to do, to Order the Curator of Intestate Estates to pay any Sum, not exceeding Fifty Pounds, to any Person claiming to be a Party in Distribution, or to be a Legatee under a Will, without Letters of Administration having been obtained, or the Will being Proved, and without Legal Proof of the Right or Title of the Party so Claiming; and the said Curator of Intestate Estates shall Pay the Money so Ordered to be Paid, or, if necessary, shall remit the same in such manner as he shall think most safe and convenient.

Accounts to be passed
quarterly before a
Judge.

XIII. AND BE IT ENACTED, that the Curator of Intestate Estates shall, once in every Quarter of a Year, on a day to be fixed by the Supreme Court or a Judge thereof, or oftener if required by the said Court; pass his Accounts in each Estate before one of the Judges

Judges of the said Court; but the passing of such Accounts shall not prevent his being thereafter liable to any Claim which may be at any time made on him in respect of any Sum received and not accounted for, or any Sum which might have been received by him but for his wilful neglect or default; and the Curator of Intestate Estates shall, in every Year, in the Month of January, transmit to HER MAJESTY'S Principal Secretary of State for the Colonies, a Return of all Moneys Paid, Received, and Invested in the Savings Bank, in respect of all the Estates of Deceased Persons, intrusted to him for Collection during the preceding Year, distinguishing the particular Estate in which the same have been so Received, Paid, or Invested; and he shall also Publish, twice in every Year, in the Months of January and July, a like Return in the *South Australian Government Gazette* in respect of the Six Months preceding.

Curator to transmit yearly to Her Majesty's Principal Secretary of State for the Colonies, a return of money paid, received, and invested in the Savings Bank.

XIV. AND BE IT ENACTED, that the Curator of Intestate Estates shall have the same Power to require a Release and Discharge upon the winding up any Estate in his charge, and handing over the Property which may be in his hands to the Person or Persons entitled thereto, as any Executor, Administrator, or any other Trustee, now has in the like circumstances.

Curator may require a release on winding up estate.

XV. AND BE IT ENACTED, that in the First Week of January, which will be in the Year of our Lord One Thousand Eight Hundred and Fifty, and in the First Week of the same Month in every succeeding Year, the Trustees of the Savings Bank shall pay all Sums of Money which shall, on the First Day of that Month, have been in the said Bank, to the Credit of any Intestate Estate Unclaimed for the Term of Six Years next preceding, to the Colonial Treasurer of the Colony, for the Public Uses of the said Colony, and in support of the Government thereof; and the said Sums shall be applied thereto, in such Manner as shall be directed by any Act or Acts of the said Governor and Legislative Council, subject to the Provisions hereinafter contained; and that the Curator of Intestate Estates, shall, on the said First Day of January, in every Year, or within Two Days next following, furnish to the Trustees of the Savings Bank, and also to the Colonial Treasurer, an Account of all Sums of Money which shall be so Payable, which Account shall be a sufficient Authority for the said Trustees to Pay the Sums mentioned therein to the said Colonial Treasurer.

Payment to be made to the Colonial Treasurer of all sums which have been to the credit of any Intestate Estate for 6 Years unclaimed.

XVI. AND BE IT ENACTED, that if at any time after any such Sum of Money shall have been so Paid to the said Colonial Treasurer, any Person shall present a Petition to the Supreme Court, or one of the Judges thereof, praying for the Payment to him of such

Provision for parties subsequently claiming who may petition the Supreme Court, &c.

Upon order being made
for payment Governor
to issue Warrant, &c.

such Sum, or any part thereof (a Copy of such Petition being previously served on the Curator of Intestate Estates), and the said Court or Judge shall be of opinion, upon any Affidavit or other sufficient Evidence adduced, that the Person petitioning is entitled to the same Sum, or any Part thereof, the said Court or Judge shall make an Order for payment thereof, after deducting any Costs and Expenses which may have been incurred by the Curator of Intestate Estates, or otherwise in respect of such Application, or shall make such other Order touching the Premises as shall be just; and on any such Order being served on the Colonial Secretary, the same shall be immediately communicated to His Excellency the Governor, and thereupon it shall be Lawful for the said Governor, and he is hereby required to Issue a Warrant under his Hand to the Colonial Treasurer of the said Colony, to Pay the Money mentioned in such Order to the Party entitled to Receive the same in pursuance thereof; but no Interest shall be Paid or be Payable on any such Sum of Money by virtue of any such Order, or otherwise, from the Time the same shall have been paid to the Colonial Treasurer as aforesaid.

Treasurer to pay under
Governor's Warrant.

XVII. AND BE IT ENACTED, that the Colonial Treasurer shall Issue and Pay the Money mentioned in such Warrant as aforesaid, to the Person or Persons to whom the same shall be Payable by virtue of such Order as aforesaid.

Treasurer to receive
credit for the same in
passing his accounts.

XVIII. AND BE IT ENACTED, that the said Colonial Treasurer shall in his Accounts be allowed Credit for all Sums of Money paid by him in Pursuance of any such Warrant as aforesaid, and that the Receipts of the respective Persons to whom the same shall be so Paid, shall be full and valid Discharges to the said Treasurer in Passing his said Accounts, for any such Sum or Sums as shall be therein mentioned to have been Received.

Bonds to secure due
accounting by Admin-
istrators.

XIX. AND WHEREAS it is Provided by the Ordinance passed in the Seventh Year of the Reign of His late Majesty King William the Fourth, intituled "An Act for the Establishment of a Court, to be called the Supreme Court of the Province of South Australia;" "That every person to whom Letters of Administration shall be committed, shall by himself, with one or more sufficient and able sureties before the granting thereof, give and enter into sufficient security by Bond, to such Ministerial Officer of the Supreme Court, as the Judge of the said Court shall for that purpose appoint, and that the condition of the said Bond shall be for the making and exhibiting a true and just Account and Administration of the Chattels and Credits of the Deceased to the satisfaction of the said Court, and according to the directions thereof:"

“thereof:” NOW BE IT ENACTED, that the condition of every such Bond shall be for the making and exhibiting, by the Administrator, to the Supreme Court of a just and true Account of the Goods, Chattels, Credits, and Effects of the Deceased, within Six Calendar Months after the granting of such Letters of Administration, and for the making and exhibiting, by the Administrator, to the Supreme Court of a just and true Account of his Administration of such Goods, Chattels, Credits, and Effects, within Twelve Calendar Months after the granting of such Letters of Administration; and that the Curator of Intestate Estates shall be the Ministerial Officer of the Supreme court, to whom such Bond as aforesaid shall in every case be granted.

XX. AND BE IT ENACTED, that every person to whom Letters of Administration shall be granted, shall make and exhibit such Accounts as aforesaid to the Supreme Court, or to a Judge or the Master thereof, within the respective times mentioned in his Bond for that purpose, and shall verify such Accounts by his Declaration in writing, made in the presence of the Court, or a Judge or Master thereof, that the account exhibited by him is, to the best of his knowledge and belief, a true and just account of the Chattels, Credits, and Effects of the Deceased, or of his, the Administrator's Administration thereof, as the case may be; which Declaration, the said Court, or a Judge or a Master thereof, is hereby empowered to Administer. And in case any such Administrator shall neglect to make and exhibit to the Supreme Court either of such Accounts, verified as aforesaid, for the space of One Calendar Month after the time appointed by his Bond for that purpose, it shall be the duty of the Curator of Intestate Estates to cause such Administrator to be summoned by a Judge of the Court, to shew cause before him why he should not be ordered to exhibit such Account to the Court forthwith; and in case such Administrator being duly served with such Summons, shall not attend before the Judge at the time and place mentioned therein, or shall not shew any reasonable cause to the contrary, it shall be lawful for the Judge to order the Administrator to exhibit such Account, verified as aforesaid, either forthwith or within such further time as the Judge shall think fit to allow; and if such Administrator shall not within the prescribed time, or within such further time as shall be allowed him by a Judge, make and exhibit such Account in manner aforesaid, it shall be lawful for any Judge of the Court to impose such Fine upon the Administrator making such default, not exceeding One Hundred Pounds, as the Judge shall see fit, and so from time to time as often as default shall be made; and every such Fine shall be levied by Writ directed to the Sheriff in the same manner, and applied to the same purposes, as Fines imposed by the

Regulating such Accounts.

Proviso.

the Supreme Court for contempt are now levied and applied : PROVIDED, that it shall not be the duty of the Court or Judge, or of the Curator of Intestate Estates, to investigate the truth or correctness of any such Account, nor further to interfere with the Administration of the Estate than the compelling such Account to be rendered in any case when there shall be any lawful next of Kin of the Deceased of full Age and Capacity, resident within the Jurisdiction of the Supreme Court: PROVIDED ALSO, that nothing herein contained shall prevent the Curator from taking Proceedings on such Bond as aforesaid, at the request of any person interested, and on Security being given in the manner provided by the said in part-recited Act.

Proviso.

As to management of Real Estate.

XXI. AND BE IT ENACTED, that where any Person Dying Intestate, and not leaving any Heir or lawful Representative within the Jurisdiction of the Supreme Court, shall, at the time of his Death, be Seized, or Possessed of any Real Estate within the Province, which may be liable to be Injured or the Profits thereof lost unless some Care and Superintendence be had thereof, it shall be lawful for the Curator, upon receiving information thereof, to apply to the said Court or Judge for an Order authorising him to take charge of such Estate; and it shall be lawful for the Court or a Judge, if satisfied that the case is within the provision of this Ordinance, to make such Order, and such Order when made shall give to the Curator of Intestate Estates power to enter upon any such Estate, and to receive the Rents of any part thereof which may have been Demised or Let, and to Demise any part thereof which may not be already Demised or Let for any term not exceeding Seven years, and to Distrain for Arrears of Rent accruing since the Decease of the Intestate, and to Sue for and Recover in such form of Action as the circumstances of the case may require, all Arrears of Rent which may have become Due in respect of any part of such Estate in the Life Time of the Intestate, and may then be in Arrear and unsatisfied, or which may have become Due since his Death, either under a Demise made by the Intestate, or by such Curator since his Death; and to Sue for and recover compensation for the Use and Occupation of any part of such Estate since the Death of the Intestate, and with the sanction of the Court or a Judge thereof, to bring an Action or Actions of Ejectment for the recovery of any part of such Real Estate, all which last-mentioned Actions may be brought by such Curator in his own Name, with the addition of his Title as Curator of Intestate Estates; and such Curator shall have authority to expend any part of the Proceeds of such Real Estate, in the execution of such Repairs and Improvements as may be necessary or advantageous for such Estate: PROVIDED, that no Sum exceeding

Proviso.

exceeding Twenty Pounds shall be expended on such Repairs or Improvements at any one time, without the previous Order of the Court or Judge, obtained upon a statement of the circumstances of the case, and verified in such manner as the Court or Judge shall direct; and the Curator of Intestate Estates shall have all such further Powers and Authorities for the execution of his charge of Real Estate as are hereinbefore given to him with respect to Personal Estate, so far as the same are applicable, and also all such Powers and Authorities as can be ordinarily exercised by Receivers of Real Estate appointed by the Authority of the High Court of Chancery in England, and shall render his Accounts and Pay all Balances in his Hands, in the manner herein directed with regard to Personal Estate.

XXII. AND BE IT ENACTED, that in cases when the estimated value of any such Real Estate shall not exceed Two Hundred Pounds, or when the personal property of any Intestate Estate and the rents and profits of the Real Estate, shall be insufficient to pay the debts of the Intestate and the charges attending the Administration of the same; or when the yearly income or revenue derived from the Real Estate is insufficient to pay the charges upon such Estate, or when there shall be an absolute necessity to repair or reconstruct Buildings, the decay of which would materially diminish the value of the property, and there shall be no assets in the hands of the Curator available for the purpose of the required repairs or reconstruction; or it would be more advantageous that such Real Estate should be sold than that any portion of the available personal assets in the hands of the Curator should be applied to making the repairs or reconstruction, it shall be lawful for the Curator to apply to the said Court or Judge, for an order authorising the sale of such Real Estate, and it shall be lawful for the said Court or Judge, in their or his discretion, on proof to their or his satisfaction that the case is within the provisions hereof, to order such Real Estate to be sold by public auction after such advertisement, and in such manner and form, and subject to such terms and conditions as the said Court or Judge shall deem most advantageous to the interests of the parties concerned, and to direct a conveyance to the purchaser to be made and executed by the said Curator, in such form as shall be approved of by the Court or a Judge thereof; and such conveyance shall be as valid and sufficient to vest the Real Estate thereby conveyed in the purchaser or purchasers thereof, as if the same were executed by the party having the legal or beneficial estate or interest therein; and the proceeds of the sale, after paying all the costs and charges of and attending the same, including the Commission of the Curator, and after paying all debts of the Intestate, and all sums of Money charged

Power of sale of Real Estate.

Proviso.

charged or chargeable upon such Real Estate, such costs and charges, commission, debts, and charges being first ascertained by the said Court or some Judge or Officer thereof, shall be disposed of, and accounted for in like manner as the proceeds of Personal Estate under the provisions of this Ordinance: PROVIDED ALWAYS, that in the Deed of Conveyance to be executed by the Curator, no covenant shall be required to be entered into by him with the purchaser, nor shall any covenant be implied against him, except a covenant with the purchaser that he, the said Curator, hath not done any act whereby the Hereditaments comprised in such Deed of Conveyance can be impeached, incumbered, charged or affected in title, charge, or estate, or otherwise.

Receipt of Curator a sufficient discharge.

XXIII. AND BE IT ENACTED, that the receipts in writing of the said Curator for any moneys payable to him under and by virtue of this Ordinance, shall be sufficient discharges for the same to the persons paying the same, who shall not afterwards be liable for any misapplication thereof.

Moneys received by Curator to be paid into a Chartered Bank within 2 days after receipt thereof.

XXIV. PROVIDED ALWAYS, AND BE IT ENACTED, that, subject to the provisions of this Ordinance, all sums of money, bills, and drafts which shall be received by the said Curator, shall from time to time, within Two Days after the same shall have been received, or within Two Days after any bill shall have been accepted, completed, and perfected, if the same shall not be accepted, completed, and perfected at the time it shall be received, be paid by him into the hands of the Manager and Company of any Chartered Colonial Bank, for which the receipt of the Cashier of the said Bank shall be a sufficient discharge; and all such moneys, bills, and drafts, so to be paid as aforesaid, shall from time to time be placed to the account, in the books of the said Manager and Company, intituled the "Account of the Curator of Intestate Estates," and shall be applied and disposed of by the said Curator according to the provisions of this Ordinance: PROVIDED, that any such moneys, bills, or drafts, which may be received at a greater distance than Twenty Miles from Adelaide, shall be paid as aforesaid as soon as practicable after receipt thereof.

Proviso.

Curator to make payments by drafts, and to keep counterpart of such drafts.

XXV. AND BE IT ENACTED, that the said Curator shall make all payments required to be made, exceeding Twenty Shillings, out of the moneys to be deposited in some Bank as aforesaid to the "Account of the Curator of Intestate Estates," by drafts on such Bank, and shall specify in every such draft the particular charge, purpose, or cause for which such draft shall be given; and every such

such draft shall also have marked in the margin thereof a figure corresponding to the page of a book to be kept by the said Curator, wherein entry shall be made of the particular charge, purpose, or cause for which such draft shall be given: PROVIDED ALWAYS, that no draft for any sum exceeding Fifty Pounds, or drafts in any one week together amounting to a sum exceeding the sum of Two Hundred Pounds shall be drawn by the said Curator, or paid by the Bank, unless the same shall be countersigned by a Judge, or the proper Officer of Court authorised in that behalf.

Proviso — Drafts exceeding £50.

XXVI. AND BE IT ENACTED, that all drafts drawn pursuant to the directions of this Ordinance shall be sufficient authority to any Bank, in which there shall be sufficient funds to the account of the Curator of Intestate Estates, to pay the amount thereof to the persons mentioned in such drafts, or to the bearer of them, and that the said Curator observing the Rules and Regulations hereby prescribed, shall not be answerable for any money which the said Curator shall have so paid into such Bank, and that the Manager and Company of such Bank shall be answerable for all Moneys which shall be actually received by them from the said Curator.

Drafts drawn pursuant to this Ordinance to be a sufficient authority to the Bank to pay them.

XXVII. AND BE IT ENACTED, that the Curator of Intestate Estates shall take, retain, and receive as a remuneration for his services, a Commission at the rate of Five Pounds per centum on moneys collected.

Curator to be paid by Commission.

XXVIII. AND BE IT ENACTED, that the said Curator shall, at such times, and in such form and manner, and to such person, as shall be from time to time appointed by the Governor, furnish just and true accounts of all moneys received, retained, and paid by him under and by virtue of this Ordinance.

Curator to account as required by the Governor.

XXIX. AND BE IT ENACTED, that this Ordinance shall commence and take effect from and after the Passing thereof.

Commencement.

H. E. F. YOUNG,
Lieutenant-Governor.

Passed the Legislative Council, this Twenty-third day of November, One Thousand Eight Hundred and Forty-eight.

W. L. O'HALLORAN,
Clerk of Council.