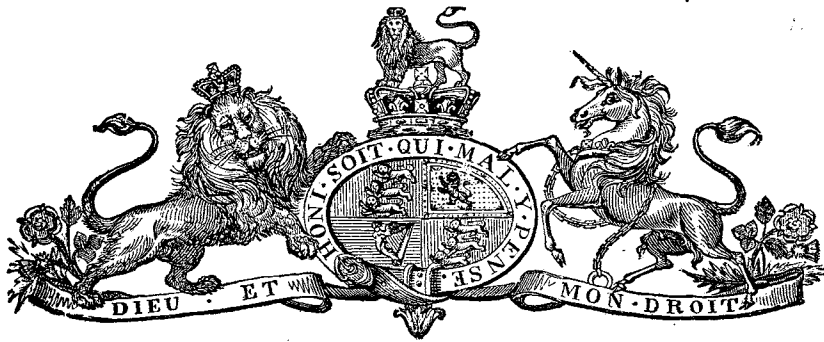


T A S M A N I A.



1857.

ANNO VICESIMO-PRIMO

VICTORIÆ REGINÆ,

No. 4.

Repealed by 62 Vic No 35

AN ACT for the Relief of Executors and Administrators. [4 December, 1857.]

WHEREAS it is expedient to provide means for enabling Executors and Administrators to administer the Assets in their hands without the expense of Suits for that purpose:—Be it therefore enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

PREAMBLE.

1 An Executor or Administrator shall be at liberty, at any time after the expiration of twelve months from the decease of the Testator or Intestate, to advertise for Claims against the Estate of such Testator or Intestate, in the manner hereinafter mentioned.

Executor or Administrator may advertise for Claims.

Repealed by 62 Vic 35

2 Such Advertisement shall contain the name and addition of the Testator or Intestate, as the case may be, and also of the Executor or Administrator; and shall require all Claims against the Estate of the Testator or Intestate to be sent in to, and filed with, the Registrar of the Supreme Court of this Colony in writing, on or before a certain day to be therein specified.

Contents of such Advertisement.

3 Every Advertisement shall be published in the *Hobart Town Gazette*, and in one newspaper published at *Hobart Town* and one published at *Launceston*.

How published,

Mode and place of publication.

4 As respects Claimants in *Tasmania*, no publication other than that already mentioned shall be requisite; and as respects Claimants in any other of the *Australian Colonies*, the Advertisement shall also be published in the *Gazette* and in two of the public Newspapers of any of such Colonies; and as respects Claimants elsewhere than in any of the *Australian Colonies*, the Advertisement shall also be published in the *London Gazette*, and in two Newspapers published in *London*.

See 22nd 1855 56.

Gazettes, &c. to be evidence of publication.

5 The Gazettes and the Newspapers in which the Advertisement is published shall be filed with the Registrar, and shall be *prima facie* evidence of such publication, and of the date or several dates thereof.

Registered by 22/11/55

Time within which Claims to be sent in to be stated in Advertisement.

6 The Executor or Administrator, having regard to the business carried on by the Testator or Intestate in his lifetime, may publish the Advertisement in such of the before-mentioned places as he may think proper, but only one day shall be specified in all the Advertisements on or before which Claims are to be sent in to the Registrar as aforesaid.

Times within which Claims to be sent in.

7 If the Advertisement is published in *Tasmania* only, the day on or before which Claims are to be sent in as aforesaid shall be not less than Six nor more than Nine months after the date of the last publication of the Advertisement; and if the Advertisement is also published in any other of the *Australian Colonies*, such day shall be not less than Nine nor more than Twelve months after the date of the last publication of the Advertisement; and if the Advertisement is also published in *London*, such day shall be not less than Fifteen nor more than Eighteen months after the date of the last publication of the Advertisement.

Registered by 22/11/55

After the day named in Advertisement, the Executor or Administrator may distribute Assets.

8 After the day specified in the Advertisement for Claims to be sent in, the Executor or Administrator shall be at liberty to pay and distribute the Assets of the Testator or Intestate in his hands, in a due course of Administration, so far as respects the Claims of which he then has notice, either by the same being filed as aforesaid or otherwise; and if after satisfying, or retaining sufficient to satisfy, the Claims of which he has notice as aforesaid there is any residue or surplus of Assets, he may pay or distribute the same among the legatees or next of kin entitled thereto.

Executor or Administrator to file Account.

9 After the day specified in the Advertisement for Claims to be sent in as aforesaid, the Executor or Administrator shall file with the Registrar an account in writing, under the hand of such Executor or Administrator, of all the Assets of the Testator or Intestate which have come to the hands, possession, or knowledge of such Executor or Administrator, or to the hands or possession of any other person for him; and of the payment and distribution, or retainer, of so much of the same Assets as have been paid, distributed, or retained, and of the Assets (if any) then remaining in his hands, and with the names and additions of the legatees or next of kin to whom any of the Assets have been paid or delivered.

And in such Account to have credit for certain payments.

10 In such Account the Executor or Administrator shall be entitled to have credit for payments made by him before the day specified in the Advertisement for Claims to be sent in, except as against Claimants of whose Claims he has notice as aforesaid, and who are prejudiced by such payments.

11 Upon such Account being filed, the Executor or Administrator shall be deemed to have duly administered the Assets so accounted for, so far as the same have been paid or distributed, and shall be released from all claims and demands on him as Executor or Administrator in respect of the Assets so paid or distributed, except at the suit or on the behalf of Claimants who have filed their Claims on or before the day specified for that purpose, or of whose Claims the Executor or Administrator has otherwise then had notice, and except also at the suit or on the behalf of Claimants in any *Australian* Colony (except *Tasmania*), in which Colony the Advertisement has not been published as aforesaid, and Claimants elsewhere than in any of the *Australian* Colonies where the Advertisement has not been published in *London* as aforesaid.

Upon Account being filed, the Executor or Administrator to be released, except as to certain Claims.

12 Save as respects such release, nothing herein contained shall prevent any claimant, legatee, next of kin, or other person from taking such proceedings at law or in equity as he might have done if this Act had not been made; and nothing herein contained shall prevent an Executor or Administrator from declaring the Estate in his hands insolvent.

Rights of Claimants to sue preserved in certain cases. Executor to be at liberty to declare Estate insolvent.

13 If any Suit or other proceeding in the said Supreme Court shall be instituted for the administration of the Estate of a Testator or Intestate, the Executor or Administrator shall stay all proceedings under this Act from the time he receives notice of such Suit or other proceeding; but he shall be allowed his Costs of any proceedings he may have taken under this Act up to that time.

Proceedings under this Act to be stayed after the institution of proceedings in the Supreme Court.

14 If after such Account as aforesaid, or any account of future Assets, as hereinafter mentioned, has been filed, it is made to appear that any Claim entered therein was erroneously allowed or satisfied, or that any payment entered therein was erroneously made or charged, or that any part of the Assets had been omitted in such Account, the release to the Executor or Administrator hereinbefore mentioned shall nevertheless be and remain in force, save only as respects such error or omission.

Release to be in force except as to errors or omissions in Account.

15 Nothing herein contained shall prejudice or affect any right or remedy which a Claimant at present has against any legatee or next of kin who has received Assets of the Testator or Intestate; and an Executor or Administrator having or retaining Assets as a legatee or next of kin shall be responsible to a Claimant in the same way as any other legatee or next of kin.

Rights of Claimants against legatees and next of kin preserved.

16 If, after filing such Account as hereinbefore is mentioned, any further Assets shall come to the hands, possession, or knowledge of the Executor or Administrator, or to the hands or possession of any other person for him, then, and as often as the same happens, the Executor or Administrator shall be at liberty to dispose of and account for, and shall be deemed to have duly administered, and shall be released from the same, in the same manner, and to the same extent, as is hereinbefore provided with respect to the original Assets; save only that Claimants of whose Claims he has notice at the time of the payment or distribution of such future Assets shall have the same rights and remedies as respects those Assets which Claimants of whose Claims the Executor or Administrator had notice at the time of the payment or distribution of the original Assets had with respect to such original Assets.

Further Assets to be disposed of and accounted for in same manner as original Assets.

Administration may be granted to the Agent of an Executor on his own Bond without Sureties.

17 Where any person resident in this Colony has been, or hereafter may be, appointed to act in the affairs of a Testator by an Executor not resident in this Colony, Administration of the effects of such Testator, with an exemplification or other authenticated copy of the Will or Probate annexed, shall be granted by the Supreme Court to the person so appointed, upon such person giving his own Bond to administer without any Sureties.

Repealed by 57 Victoria

Payments by such Administrator to the Executor to be equivalent to payments to legatees.

18 The remittance, delivery, or payment by such last-mentioned Administrator of any Assets of the Testator to the Executor of the Will shall, for the purposes of this Act, be equivalent to a payment to a legatee, upon such Administrator specifying in the Accounts to be filed by him as aforesaid the name and addition of such Executor.

Registrar to indorse dates of filing Accounts, Claims, &c.

19 The Registrar shall indorse on each Account, Claim, or other document filed with him the date on which the same was filed, and shall also enter the date of filing the same in a book to be kept for that purpose, in which the entries relating to each estate shall be kept separately.

Fees payable to Registrar, and by him to Colonial Treasurer.

20 The fees specified in the Schedule to this Act shall be payable to the Registrar, and shall by him be paid to the Colonial Treasurer to the credit of the General Revenue.

Definition of terms "Claim" and "Claimant."

21 For the purposes of this Act the word "Claim" shall signify any debt due by a Testator or Intestate, and also any matter or thing for which an Executor or Administrator is in that character liable or responsible at law or in equity; and the word "Claimant" shall signify any creditor or other person having a Claim as defined by this Section.

Act to extend to parties who have already obtained Probate or Administration.

22 This Act shall extend to parties who have already obtained, as well as to those who may hereafter obtain, Probate or Administration from the said Supreme Court.

Forms in Schedule

23 The forms in the Schedule hereto annexed, or any other forms to the same or the like effect, shall be sufficient.

SCHEDULE.

FORM OF ADVERTISEMENT.

WHEREAS *A.B.*, late of _____ in _____ Merchant, [*or as the case may be*] departed this life on or about the _____ day of _____ last past; and the undersigned *C.D.* of _____ in *Tasmania* has obtained Probate of the Will [*or Administration of the Effects, or Administration with an exemplification of the Will annexed of the Effects*] of the said *A.B.* Notice is hereby given, that all parties having Claims on the Estate of the said *A.B.* are required to send in to the Registrar of the Supreme Court of *Tasmania* the particulars of such Claims in writing, on or before the _____ day of _____ now next [*or in the year 18* _____], otherwise they will be excluded from any benefit of the Assets in the hands of the said Executor [*or Administrator*].

Dated this _____ day of _____ 1857.

C.D.

FORM OF ACCOUNT.

This form of Account may be varied by the Registrar of the Supreme Court. See Act 62 Vic 35 § 11.

IN the Estate of *A.B.* late of Merchant [or as the case may be] who departed this life on or about the day of 18

The Account of the undersigned *C.D.* of of to whom Probate of the Will [or Administration, or Administration with an Exemplification of the Will annexed, of the Effects] of the said *A.B.* was granted on the day of 18

ASSETS.

£ s. d.

1. Money in the Bank of
2. Money in the house
3. Household Furniture, sold by Auction, by Mr. for [or given to valued at]
4. Goods in the Store as follows: [specifying them generally] Sold for [or valued at]
5. The following outstanding Debts received by the Executor [or Administrator] :—
From *E.F.*
- From *G.H.*
6. The following Debts due to the Testator [or Intestate] disputed, or considered doubtful or desperate :—
From *K.L.*
- From *M.N.*
7. Bond not yet due for £100 and interest at per cent.
8. 500 Sheep on Farm at which by the Will are bequeathed to valued at £

PAYMENTS.

£ s. d.

- Funeral Expenses
- Expense of proving Will
- Servants' Wages
- Debt due to *E.F.*
- Retained by the Executor to pay his own debt due by the Testator
- Retained to answer the contingent claim of under a Bond given by the Testator [or Intestate] as Surety for *G.H.*
- Paid *K.L.* of in *Tasmania* a legatee under the said Will [or one of the next of kin of the said] the sum of
- Or, remitted to *K.L.* of in the Colony of *Victoria*, the Executor of the Will of the said *A.B.* the sum of

The following Assets remain undisposed of:—

- The said doubtful and disputed Debts.
- Shares in the Company, not yet sold [or as the case may be]

FEEES TO THE REGISTRAR.

£ s. d.

- Filing each Account
- Filing each Claim, Gazette, Newspaper, or other Document ..
- For every Search
- For Office-copies, per folio

