ANNO VICESIMO PRIMO & VICESIMO SECUNDO

VICTORIÆ REGINÆ.

****

CAP. XCV.

An Act to amend the Act of the Twentieth and Twenty-first *Victoria*, Chapter Seventy-seven.

[2d *August* 1858.]

WHEREAS in the last Session of Parliament an Act was passed, intituled *An Act to amend the Law relating to Probates and Letters of Administration in* England, herein-after designated "The Court of Probate Act:" And whereas it is expedient to amend the same: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows: 20 & 21 Vict. c. 77.

I. It shall be lawful for the Judge of the High Court of Admiralty to sit in open Court or in Chambers for the Judge of Her Majesty's Court of Probate, and it shall be lawful for the Judge of Her Majesty's Court of Probate to sit in open Court or in Chambers for the Judge of the High Court of Admiralty; and all Orders, Decrees, or Sentences, and other Acts whatsoever, made, decreed, pronounced, or done by either of the Judges aforesaid acting for the other, shall, in the Court Books, be stated to have been made, decreed, pronounced, or done by such Judge sitting and acting on behalf of The Judge of the High Court of Admiralty and the Judge of the Court of Probate may sit for each other.

of such other Judge; and such Orders, Decrees, Sentences, and other Acts so made, decreed, pronounced, or done shall have the same Force and Validity in Law as if they had been made, decreed, pronounced, or done by the Judge on whose Behalf they purport to have been so made, decreed, pronounced, or done.

Serjeants and Barristers may practise in Court of Probate.

II. All Serjeants and Barristers-at-Law shall be entitled from and after the passing of this Act to practise in all Causes and Matters whatsoever in the Court of Probate.

The Judge of the Court of Probate may sit in Chambers.

III. It shall be lawful for the Judge of the Court of Probate for the Time being to sit in Chambers for the Dispatch of such Part of the Business of the said Court as can in the Opinion of the said Judge, with Advantage to the Suitors, be heard in Chambers; and the Times at which such Sittings shall be held shall from Time to Time be fixed by the Judge: Provided always, that no Question shall be heard in Chambers which either Party shall require to be heard in open Court.

The Treasury to cause Chambers to be provided.

IV. The Commissioners of Her Majesty's Treasury shall from Time to Time provide Chambers in which the Judge of the Court of Probate shall sit for the Dispatch of such Business as aforesaid; and until such Chambers are provided elsewhere the said Judge shall sit in Chambers in any Room which he may find convenient for the Purpose.

Powers of Judge when sitting in Chambers.

V. The Judge of the Court of Probate, when so sitting in Chambers, shall have and exercise the same Power and Jurisdiction in respect of the Business to be brought before him as if sitting in open Court.

Power to appoint an additional Registrar.

VI. Whereas there are now Three Registrars only of the Principal Registry of the said Court, that is to say, *Augustus Frederic Bayford*, the Senior Registrar; *Charles John Middleton*, the Second Registrar; and *Edward Francis Jenner*, the Third Registrar: And whereas the Duties of the said Principal Registry cannot be efficiently discharged by Three Registrars: Be it enacted, That it shall be lawful for the Judge of the said Court to appoint a Fourth Registrar for the Principal Registry of the said Court, in addition to the Three Registrars appointed under the Court of Probate Act; and from and after the Appointment of such Fourth Registrar there shall be paid to each of the said Registrars the annual Salary mentioned in the Schedule to this Act, in lieu of the Salary provided by the Court of Probate Act, such Salaries to be paid out of any Monies provided by Parliament for the Purposes of the said Act: Provided always, that nothing

nothing herein contained shall be construed to diminish the Salary of any of the Three Registrars appointed before the passing of this Act.

Vacancy in Office of Registrar how to be filled up.

VII. On the Death, Resignation, or Removal of any of the Four Registrars of the said Principal Registry, other than the Junior Registrar for the Time being, the Vacancy thereby occasioned shall be filled up by the Registrar next in Seniority to whom no sufficient Objection shall be made to the Satisfaction of the Judge of the said Court.

Clerks in the Principal Registry eligible to be Registrars, &c.

VIII. Clerks having served Five Years in the Principal Registry of the Court of Probate shall be eligible to be appointed Registrars or District Registrars of the said Court.

Certain Articled Clerks to be admitted Proctors of the Court of Probate.

IX. It shall be lawful for the Judge of the Court of Probate to admit any Person who at the Time of the passing of the Court of Probate Act was articled to a Proctor in *Doctors Commons*, or to a Proctor belonging to any Ecclesiastical Court, so soon as he shall have served the full Term for which he was articled, or within the Period of One Year therefrom, to be a Proctor of Her Majesty's Court of Probate, upon the Payment of such Fees as shall be fixed by the Judge of the said Court, with the Sanction of the Commissioners of Her Majesty's Treasury.

Where Personalty is under 200*l.* County Court to have Jurisdiction.

X. Where it appears by Affidavit to the Satisfaction of a Registrar of the Principal Registry that the Testator or Intestate in respect of whose Estate a Grant or Revocation of a Grant of Probate or Letters of Administration is applied for had at the Time of his Death his fixed Place of Abode in One of the Districts specified in Schedule (A.) to the said "Court of Probate Act," and that the Personal Estate in respect of which such Probate or Letters of Administration are to be or have been granted, exclusive of what the Deceased may have been possessed of or entitled to as a Trustee, and not beneficially, but without deducting anything on account of the Debts due and owing from the Deceased, was at the Time of his Death under the Value of Two hundred Pounds, and that the Deceased at the Time of his Death was not seised or entitled beneficially of or to any Real Estate of the Value of Three hundred Pounds or upwards, the Judge of the County Court having Jurisdiction in the Place in which the Deceased had at the Time of his or her Death a fixed Place of Abode shall have the contentious Jurisdiction and Authority of the Court of Probate in respect of Questions as to the Grant and Revocation of Probate of the Will or Letters of Administration of the Effects

Effects of such deceased Person, in case there be any Contention in relation thereto.

Sect. 54. of 20 & 21 Vict. c. 77. repealed.

XI. Section Fifty-four of the said Court of Probate Act shall be and the same is hereby repealed.

Sect. 59. of 20 & 21 Vict. c. 77. to apply to Applications for Revocation of Grants.

XII. The said Court of Probate Act, Section Fifty-nine, shall, so far as the County Courts or a Judge thereof are concerned, apply to an Application for the Revocation of a Grant of Probate or Administration as well as to an Application for any such Grant.

Power to make Rules and Orders and frame Scales of Fees for the County Courts.

XIII. The Power and Authority to make Rules and Orders for regulating the Proceedings of the County Courts shall extend and be applicable to all Proceedings in the County Courts under this Act, and also to framing a Scale of Costs and Charges to be paid to Counsel, Proctors, Solicitors, and Attornies, in respect of Proceedings in County Courts, under the said Court of Probate Act or this Act.

Noncontentious Business pending in any Ecclesiastical Court to be transferred.

XIV. All Noncontentious Business pending in any Ecclesiastical Court at the Time when "The Court of Probate Act" came into operation shall be deemed to have been transferred to the Court of Probate, in the same Way as all pending Suits were transferred to the said Court under the said Act, and all Acts executed under the Authority of any such Ecclesiastical Court with reference to such Business which would have been valid if the Authority of such Court had not been abolished shall be valid, and all Oaths and Bonds sworn and executed in manner required by any such Ecclesiastical Court in reference to such Business, prior to the Eleventh Day of *January* One thousand eight hundred and fifty-eight, shall continue to have and be deemed to have had the same Force and Effect in Law as they would have had if sworn and executed in pursuance of the Provisions of the said Act or of this Act.

Bonds given before Jan. 11, 1858, to remain in force.

XV. Bonds given to any Archbishop, Bishop, or other Person exercising Testamentary Jurisdiction in respect of Grants of Letters of Administration made prior to the Eleventh Day of *January* One thousand eight hundred and fifty-eight, or in respect of Grants made in pursuance of the Court of Probate Act or of this Act, whether taken under a Commission or Requisition executed before or after the said Eleventh Day of *January*, shall enure to the Benefit of the Judge of the Court of Probate, and, if necessary, shall be put in force in the same Manner and subject to the same Rules (so far as the same may be applicable to them) as if they had been given to the Judge of the said Court subsequently to that Day.

XVI. When-

XVI. Whenever an Executor appointed in a Will survives the Testator, but dies without having taken Probate, and whenever an Executor named in a Will is cited to take Probate, and does not appear to such Citation, the Right of such Person in respect of the Executorship shall wholly cease, and the Representation to the Testator and the Administration of his Effects shall and may, without any further Renunciation, go, devolve, and be committed in like Manner as if such Person had not been appointed Executor.

An Executor not acting or not appearing to a Citation to be treated as if he had renounced.

XVII. The Judge of the Court of Probate shall have and exercise the same Power of altering and amending Grants of Probate and Letters of Administration made before the Eleventh Day of *January* One thousand eight hundred and fifty-eight as any Ecclesiastical Court had and exercised in respect of such Grants.

Judge of the Court of Probate may amend Grants made before Jan. 11, 1858.

XVIII. The Provisions of an Act passed in the Thirty-eighth Year of *George* the Third, Chapter Eighty-seven, and of "The Court of Probate Act," shall be extended to all Executors and Administrators residing out of the Jurisdiction of Her Majesty's Courts of Law and Equity, whether it be or be not intended to institute Proceedings in the Court of Chancery, and to all Grants made before and subsequently to the passing of the last-mentioned Act, and it shall be lawful to alter the Language of the Grant prescribed by the first-named Statute so as to make it apply to Grants made in the Court of Probate under the said last-mentioned Act.

Provisions of 38 G. 3. c. 87. and 20 & 21 Vict. c. 77. extended to all Cases of Executors and Administrators.

XIX. From and after the Decease of any Person dying intestate, and until Letters of Administration shall be granted in respect of his Estate and Effects, the Personal Estate and Effects of such deceased Person shall be vested in the Judge of the Court of Probate for the Time being, in the same Manner and to the same Extent as heretofore they vested in the Ordinary.

Between the Death of the Person deceased and the Grant the Property to vest in the Judge Ordinary.

XX. All Second and subsequent Grants of Probate or Letters of Administration shall be made in the Principal Registry, or in the District Registry where the original Will is registered or the original Grant of Letters of Administration has been made, or in the District Registry to which the original Will or a registered Copy thereof, or the Record of the original Grant of Administration, have been transmitted, by virtue of a Requisition issued in pursuance of Section Eighty-nine of "The Court of Probate Act;" and for and in respect of such Second or subsequent Grants of Probate or Letters of Administration to be made in a District Registry it shall not be requisite that it should appear by Affidavit that the Testator or Intestate had

Second and subsequent Grants to be made where the original Will or the original Letters of Administration are deposited.

a fixed Place of Abode within the District in which the Application is made.

The Court of Probate may require Security from a Receiver of Real Estate.

XXI. It shall be lawful for the Court of Probate to require Security by Bond, in such Form as by any Rules and Orders shall from Time to Time be directed, with or without Sureties, from any Receiver of the Real Estate of any deceased Person appointed by the said Court, under Section Seventy-one of "The Court of Probate Act;" and the Court may, on Application, made on Motion or in a summary Way, order One of the Registrars of the Court to assign the same to some Person to be named in such Order; and such Person, his Executors or Administrators, shall thereupon be entitled to sue on the said Security, or put the same in force in his or their own Name or Names, both at Law and in Equity, as if the same had been originally given to him instead of to the Judge of the said Court, and shall be entitled to recover thereon, as Trustee for all Persons interested, the full Amount due in virtue thereof.

Administration pending Suit deemed to apply to Appeals.

XXII. All the Provisions contained in the Court of Probate Act respecting Grants of Administration pending Suit shall be deemed to apply to the Case of Appeals to the House of Lords under the said Act.

Registrar may issue Subpœnas to produce Papers, &c.

XXIII. It shall be lawful for a Registrar of the Principal Registry of the Court of Probate, and whether any Suit or other Proceeding shall or shall not be pending in the said Court, to issue a Subpœna requiring any Person to produce and bring into the Principal or any District Registry, or otherwise, as in the said Subpœna may be directed, any Paper or Writing being or purporting to be testamentary, which may be shown to be in the Possession, within the Power, or under the Control of such Person; and such Person, upon being duly served with the said Subpœna, shall be bound to produce and bring in such Paper or Writing, and shall be subject to the like Process of Contempt in case of Default as if he had been a Party to a Suit in the said Court, and had been ordered by the Judge of the Court of Probate to produce and bring in such Paper or Writing.

The Registrars to do all Acts heretofore done by Surrogates.

XXIV. The Registrars of the Principal Registry shall be invested with and shall and may exercise with reference to Proceedings in the Court of Probate the same Power and Authority which Surrogates of the Judge of the Prerogative Court of *Canterbury* could or might before the passing of the Court of Probate Act have exercised in Chambers with reference to Proceedings in the said Prerogative Court.

XXV. Copies

Copies of Wills may be certified by a Stamp.

XXV. Copies of Wills required to be transmitted by a District Registrar, and certified by him to be correct Copies, under Section Fifty-one of the Court of Probate Act, may be so certified and transmitted under a Stamp provided by the District Registrar for that Purpose, and approved of by the Judge of the Court of Probate.

Certificates from the Principal Registry may be stamped.

XXVI. Certificates issued from the Principal Registry with reference to Notices of Applications transmitted from the District Registrars under Section Forty-nine of the Court of Probate Act need not be made under the Hand of a Registrar of the Principal Registry, as required by the said Act, but may be issued under a Stamp provided for that Purpose, and approved of by the Judge of the Court of Probate.

Requisitions may be issued for the Transmission of a single Paper.

XXVII. Whereas Doubts have been entertained whether a Requisition can be issued under Section Eighty-nine of the Court of Probate Act for the Transmission of One or more Papers only, not being all the Papers and Documents in the Custody of the Person to whom any such Requisition may be addressed: Be it therefore enacted and declared, That the said Section shall be construed to extend to all Requisitions, whether for the Transmission of One or of more Records, Wills, Grants, Probates, Letters of Administration, Administration Bonds, Notes of Administration, Court Books, Calendars, Deeds, Processes, Acts, Proceedings, or other Instruments relating exclusively or principally to Matters and Causes Testamentary.

Power to enforce Decree as to Costs.

XXVIII. The Judge of the Court of Probate, and the Registrars of the Principal Registry thereof, shall respectively, in any Case where an Ecclesiastical or other Court having Testamentary Jurisdiction had previously to the Eleventh Day of *January* One thousand eight hundred and fifty-eight made any Order or Decree in respect of Costs, have the same Power of taxing such Costs, and enforcing Payment thereof, or of otherwise carrying such Order or Decree into effect, as if the Cause wherein such Decree was made had been originally commenced and prosecuted in the said Court of Probate: Provided that in taxing any such Costs, or any other Costs incurred in Causes depending in any such Courts before the Time aforesaid, all Fees, Charges, and Expenses shall be allowed which might have been legally made, charged, and enforced according to the Practice of the Prerogative Court of *Canterbury*.

Letters of Administration granted in Ireland not

XXIX. Letters of Administration granted by the Court of Probate in *Ireland* shall not be resealed, under Section Ninety-five of the Twentieth and Twenty-first *Victoria*, Chapter Seventy-nine, until a Certificate

to be re-sealed in England, until sufficient Bond is given.

a Certificate has been filed under the Hand of a Registrar of the Court of Probate in *Ireland* that Bond has been given to the Judge of the Court of Probate in *Ireland* in a Sum sufficient in Amount to cover the Property in *England* as well as in *Ireland* in respect of which such Administration is required to be resealed.

Commissioners may be appointed in the Isle of Man, &c.

XXX. It shall be lawful for the Judge of the Court of Probate to appoint, by Commission under Seal of the Court, any Persons practising as Solicitors in the *Isle of Man*, in the *Channel Islands*, or any of them, to administer Oaths, and to take Declarations or Affirmations, and to exercise any other Powers which can be exercised by Commissioners of Her Majesty's Court of Probate; and such Persons shall be entitled from Time to Time to charge and take such Fees as any other Persons performing the same Duties in the Court of Probate may charge and take.

Affidavits, before whom to be sworn when Parties making them reside in Foreign Parts.

XXXI. In Cases where it is necessary to obtain Affidavits, Declarations, or Affirmations to be used in the Court of Probate from Persons residing in Foreign Parts out of Her Majesty's Dominions, the same may be sworn, declared, or affirmed before the Persons empowered to administer Oaths under the Act of the Sixth of *George* the Fourth, Chapter Eighty-seven, or under the Act of the Eighteenth and Nineteenth of *Victoria*, Chapter Forty-two; provided that in Places where there are no such Persons as are mentioned in the said Acts such Affidavits, Declarations, or Affirmations may be made, declared, and affirmed before any Foreign local Magistrate or other Person having Authority to administer an Oath.

Affidavits, before whom to be sworn.

XXXII. Affidavits, Declarations, and Affirmations to be used in the Court of Probate may be sworn and taken in *Scotland*, *Ireland*, the *Isle of Man*, the *Channel Islands*, or any Colony, Island, Plantation, or Place out of *England* under the Dominion of Her Majesty, before any Court, Judge, Notary Public, or Person lawfully authorized to administer Oaths in such Country, Colony, Island, Plantation, or Place respectively, or, so far as relates to the *Isle of Man* and the *Channel Islands*, before any Commissary, Ecclesiastical Judge, or Surrogate, who, at the Time of the passing of the Court of Probate Act, was authorized to administer Oaths in the *Isle of Man* or in the *Channel Islands* respectively, and all Registrars and other Officers of the Court of Probate shall take judicial Notice of the Seal or Signature, as the Case may be, of any such Court, Judge, Notary Public, or Person, which shall be attached, suspended, or subscribed to any such Affidavit, Declaration, or Affirmation, or to any other Document.

XXXIII. If

XXXIII. If any Person shall forge any such Seal or Signature as last aforesaid, or any Seal or Signature impressed, affixed, or subscribed, under the Provisions of the said Act of the Sixth of *George* the Fourth, or of the said Act of the Eighteenth and Nineteenth *Victoria*, to any Affidavit, Declaration, or Affirmation to be used in the Court of Probate, or shall tender in Evidence any such Document as aforesaid with a false or counterfeit Seal or Signature thereto, knowing the same to be false or counterfeit, he shall be guilty of Felony, and shall upon Conviction be liable to Penal Servitude for the Term of his Life, or for any Term not less than Seven Years, or to be imprisoned, with or without Hard Labour, for any Term not exceeding Three Years nor less than One Year; and whenever any such Document has been admitted in Evidence by virtue of this Act, the Court or the Person who has admitted the same may, at the Request of any Party against whom the same is so admitted in Evidence, direct that the same shall be impounded, and be kept in the Custody of some Officer of the Court or other proper Person, for such Period and subject to such Conditions as to the said Court or Person shall seem meet; and every Person charged with committing any Felony under this Act may be dealt with, indicted, tried, and, if convicted, sentenced, and his Offence may be laid and charged to have been committed, in the County, District, or Place in which he may be apprehended or be in Custody; and every Accessory before or after the Fact to any such Offence may be dealt with, indicted, tried, and, if convicted, sentenced, and his Offence laid and charged to have been committed, in any County, District, or Place in which the principal Offender may be tried.

Persons forging Seal or Signature guilty of Felony.

XXXIV. Any Person who shall wilfully give false Evidence, or who shall wilfully swear, affirm, or declare falsely, in any Affidavit or Deposition before any Surrogate having Authority to administer Oaths under the Court of Probate Act, or before any Person who before the passing of the said Act was a Surrogate authorized to administer Oaths in any of the *Channel Islands*, or before any Person authorized to administer Oaths under this Act, shall be liable to the Penalties and Consequences of wilful and corrupt Perjury.

Persons taking a false Oath before a Surrogate guilty of Perjury.

XXXV. In case any Officer appointed or to be appointed by virtue of the Court of Probate Act, 1857, or of this Act, shall, by reason of Ill-health or other Infirmity, become temporarily incapable of performing the Duties of his Office, it shall be lawful for the Judge to appoint some other fit and proper Person to discharge the Duties of such Office for any Period not exceeding Six Calendar Months at any One Time, and the Person so appointed shall, during such Period, have all the Power and Authority of the Officer in whose

Provision for the necessary Absence of Officers.

whose Place he shall be so appointed, and shall be paid by such Officer such Sum by way of Salary or Allowance as shall be agreed upon between them respectively or be fixed by the Judge, and the Judge may, at his Discretion, give Leave of Absence to any Officer of the Court for any Period not exceeding Two Months in any Year, and shall have the like Power of making Provision for the Discharge of the Duties of the Office during such Absence.

The Judge to have the same Powers over Practitioners as Judges of other Courts.

XXXVI. The Judge of the Court of Probate shall have and exercise, over Proctors, Solicitors, and Attornies practising in the said Court, the like Authority and Control as is now exercised by the Judges of any Court of Equity or Common Law over Persons practising therein as Solicitors or Attornies.

Provision for Expenses of indexing, &c. Documents required to be removed under Requisition.

XXXVII. When any Requisition shall issue in pursuance of Section Eighty-nine of "The Court of Probate Act, 1857," it shall be lawful for the Commissioners of Her Majesty's Treasury, out of such Monies as may be provided and appropriated by Parliament for that Purpose, to cause to be paid all such Expenses attending the arranging, Classification, Indexing, Carriage, or otherwise connected with the Removal of the Documents or Books required by such Requisition to be removed, as the Judge shall from Time to Time certify to the said Commissioners to be proper and necessary.

Short Title of Act.

XXXVIII. In citing the Act of the Twentieth and Twenty-first *Victoria*, Chapter Seventy-seven, in any Instrument, Document, or Proceeding, it shall be sufficient to use the Expression "The Court of Probate Act, 1857." and in citing this Act, the Expression "Court of Probate Act, 1858."

SCHEDULE.

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

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