CHAPTER 37

An Act to amend the law relating to applications for grants of representation in the case of small estates.

[19th July, 1961]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

New limits for grant of representation on application to Customs officer or sheriff clerk.

1.—(1) The limits on the operation—

(*a*) as respects England and Wales, of section thirty-three of the Customs and Inland Revenue Act, 1881 (which, as subsequently amended, enables application for a grant of representation to be made to an officer of Customs and Excise where the gross estate does not exceed five hundred pounds),

(*b*) as respects Scotland, of the Intestates Widows and Children (Scotland) Act, 1875, and the Small Testate Estates (Scotland) Act, 1876 (which, as subsequently amended, enable such an application to be made either to an officer of Customs and Excise or to the sheriff clerk where the gross estate does not exceed five hundred pounds),

shall be that the value of the net estate is less than one thousand pounds and that of the gross estate is less than three thousand pounds; and accordingly the enactments specified in the First Schedule to this Act shall be amended as provided by that Schedule.

(2) In this Act, and in the enactments specified in the First Schedule to this Act, " gross estate " means the aggregate of the property real and personal (but excluding property settled otherwise than by the will of the deceased), in respect of which estate duty would be payable if the duty were payable in respect of estates however small the principal value thereof, and for the purposes of this Act and those enactments the value of the net estate shall be taken to be the amount appearing from the affidavit for the Commissioners of Inland Revenue referred to in section thirty of the Customs and Inland Revenue Act, 1881, to be the value of the net real and personal estate passing under the grant of representation.

(3) The foregoing subsection shall have effect in its application to Scotland as if for the words " property, real and personal " there were substituted the words " property, heritable and moveable," and as if for the words from " the amount appearing " to the end there were substituted the words " the value of the

gross estate less the aggregate of all funeral expenses, debts and incumbrances for which an allowance falls to be made under subsection (1) of section seven of the Finance Act, 1894, in determining the value of the estate for the purpose of estate duty."

Fees.

2. So much of subsection (1) of the said section thirty-three as provides for a fixed fee (irrespective of the amount of the estate) shall cease to have effect, and the fees payable on the giving of notice under that subsection shall be such as may be fixed under section two hundred and thirteen of the Supreme Court of Judicature (Consolidation) Act, 1925.

Short title, commencement, application, repeals and extent.

3.—(1) This Act may be cited as the Small Estates (Representation) Act, 1961.

(2) This Act shall come into operation on such date as the Lord Chancellor and the Secretary of State may by order made by statutory instrument appoint.

(3) This Act shall not apply where the death occurred before the tenth day of April, nineteen hundred and forty-six.

(4) The enactments specified in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(5) The provisions of this Act, other than this subsection, shall not extend to Northern Ireland, but notwithstanding anything in the Government of Ireland Act, 1920, the Parliament of Northern Ireland shall have power to make laws for purposes similar to any of the purposes of those provisions.

SCHEDULES

FIRST SCHEDULE

CONSEQUENTIAL AMENDMENTS OF ENACTMENTS

1.—(1) In section three of the Intestates Widows and Children (Scotland) Act, 1875, for the words from " the whole personal estate " to " one hundred and fifty pounds " there shall be substituted the words " the net estate of an intestate is of a value less than one thousand pounds, and his gross estate is of a value less than three thousand pounds ".

(2) In section five of that Act for the words from " the whole personal estate " to " one hundred and fifty pounds " there shall be substituted the words " the estate and effects of which the intestate died possessed exceed either of the values specified in section three of this Act ".

2.—(1) In section three of the Small Testate Estates (Scotland) Act, 1876, for the words from " the whole real and personal estate " to " one hundred and fifty pounds " there shall be substituted the words " the net estate of a testate is of a value less than one thousand pounds, and his gross estate is of a value less than three thousand pounds ".

(2) In section five of that Act for the words from " the whole real and personal estate " to " one hundred and fifty pounds " there shall be substituted the words " the estate and effects of which the testate died possessed exceed either of the values specified in section three of this Act ".

3.—(1) In subsection (1) of section thirty-three of the Customs and Inland Revenue Act, 1881, for the words from " the whole personal estate " to " three hundred pounds " there shall be substituted the words " the net estate of any person is of a value less than one thousand pounds and the gross estate is of a value less than three thousand pounds ".

(2) In subsection (2) of that section, for the words from " the whole personal estate " to " three hundred pounds " there shall be substituted the words " the estate and effects of the deceased exceed either of the values specified in the foregoing subsection ".

4. In subsection (1) of section thirty-four of the Customs and Inland Revenue Act, 1881, after the words " Sheriff Courts (Scotland) Act, 1876 " there shall be inserted the words " and the Small Estates (Representation) Act, 1961 ".

5. In subsection (1) of section nine of the Executors (Scotland) Act, 1900, for the words " the Finance Act, 1894, section sixteen ", there shall be substituted the words " the Small Estates (Representation) Act, 1961 ".

6. In section one hundred and sixty-nine of the Supreme Court of Judicature (Consolidation) Act, 1925, in subsection (2) for the words " under the said section sixteen " there shall be substituted the words " in pursuance of section thirty-three of the Customs and Inland Revenue Act, 1881 ".

SECOND SCHEDULE

ENACTMENTS REPEALED

Session and Chapter	Short title	Extent of Repeal
44 & 45 Vict. c. 12.	The Customs and Inland Revenue Act, 1881.	In section thirty-three, in subsection (1), the words from "and to deposit" to the end. In section thirty-four, in subsection (1), the words from "to any case" to "three hundred pounds".
57 & 58 Vict. c. 30.	The Finance Act, 1894	In section sixteen, subsections (1) and (2). In section twenty-three, in paragraph (7), the words from the beginning to "five hundred pounds, and".
10 Edw. 7 and 1 Geo. 5. c. 8	The Finance (1909–10) Act, 1910.	In section sixty-one, subsection (2).

Table of Statutes referred to in this Act

Short title	Session and Chapter
Intestates Widows and Children (Scotland) Act, 1875.	38 & 39 Vict. c. 41.
Small Testate Estates (Scotland) Act, 1876 ...	39 & 40 Vict. c. 24.
Sheriff Courts (Scotland) Act, 1876	39 & 40 Vict. c. 70.
Customs and Inland Revenue Act, 1881 ...	44 & 45 Vict. c. 12.
Finance Act, 1894	57 & 58 Vict. c. 30.
Executors (Scotland) Act, 1900	63 & 64 Vict. c. 55.
Government of Ireland Act, 1920	10 & 11 Geo. 5. c. 67.
Supreme Court of Judicature (Consolidation) Act, 1925.	15 & 16 Geo. 5. c. 49.