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# Senior Courts Act 1981

## 1981 CHAPTER 54

### PART V

#### PROBATE CAUSES AND MATTERS

##### *Powers of court in relation to personal representatives*

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

The High Court may summon any person named as executor in a will to prove, or renounce probate of, the will, and to do such other things concerning the will as the court had power to order such a person to do immediately before the commencement of this Act.

#### **113 Power of court to sever grant.**

- (1) Subject to subsection (2), the High Court may grant probate or administration in respect of any part of the estate of a deceased person, limited in any way the court thinks fit.
- (2) Where the estate of a deceased person is known to be insolvent, the grant of representation to it shall not be severed under subsection (1) except as regards a trust estate in which he had no beneficial interest.

#### **114 Number of personal representatives.**

- (1) Probate or administration shall not be granted by the High Court to more than four persons in respect of the same part of the estate of a deceased person.
- (2) Where under a will or intestacy any beneficiary is a minor or a life interest arises, any grant of administration by the High Court shall be made either to a trust corporation (with or without an individual) or to not less than two individuals, unless it appears to the court to be expedient in all the circumstances to appoint an individual as sole administrator.

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- (3) For the purpose of determining whether a minority or life interest arises in any particular case, the court may act on such evidence as may be prescribed.
- (4) If at any time during the minority of a beneficiary or the subsistence of a life interest under a will or intestacy there is only one personal representative (not being a trust corporation), the High Court may, on the application of any person interested or the guardian or receiver of any such person, and in accordance with probate rules, appoint one or more additional personal representatives to act while the minority or life interest subsists and until the estate is fully administered.
- (5) An appointment of an additional personal representative under subsection (4) to act with an executor shall not have the effect of including him in any chain of representation.

## 115 Grants to trust corporations.

- (1) The High Court may—
  - (a) where a trust corporation is named in a will as executor, grant probate to the corporation either solely or jointly with any other person named in the will as executor, as the case may require; or
  - (b) grant administration to a trust corporation, either solely or jointly with another person;
 and the corporation may act accordingly as executor or administrator, as the case may be.
- (2) Probate or administration shall not be granted to any person as nominee of a trust corporation.
- (3) Any officer authorised for the purpose by a trust corporation or its directors or governing body may, on behalf of the corporation, swear affidavits, give security and do any other act which the court may require with a view to the grant to the corporation of probate or administration; and the acts of an officer so authorised shall be binding on the corporation.
- [<sup>F1</sup>(4) Subsections (1) to (3) shall also apply in relation to any body which is exempt from the provisions of section 23(1) of the Solicitors Act 1974 (unqualified persons not to prepare papers for probate etc.) by virtue of any of paragraphs (e) to (h) of subsection (2) of that section.]

### Textual Amendments

**F1** S. 115(4) added (*prosp.*) by Courts and Legal Services Act 1990 (c. 41, SIF 76:1), ss. 54(2), 59(1)

## 116 Power of court to pass over prior claims to grant.

- (1) If by reason of any special circumstances it appears to the High Court to be necessary or expedient to appoint as administrator some person other than the person who, but for this section, would in accordance with probate rules have been entitled to the grant, the court may in its discretion appoint as administrator such person as it thinks expedient.
- (2) Any grant of administration under this section may be limited in any way the court thinks fit.

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### **117 Administration pending suit.**

- (1) Where any legal proceedings concerning the validity of the will of a deceased person, or for obtaining, recalling or revoking any grant, are pending, the High Court may grant administration of the estate of the deceased person in question to an administrator pending suit, who shall, subject to subsection (2), have all the rights, duties and powers of a general administrator.
- (2) An administrator pending suit shall be subject to the immediate control of the court and act under its direction; and, except in such circumstances as may be prescribed, no distribution of the estate, or any part of the estate, of the deceased person in question shall be made by such an administrator without the leave of the court.
- (3) The court may, out of the estate of the deceased, assign an administrator pending suit such reasonable remuneration as it thinks fit.

### **118 Effect of appointment of minor as executor.**

Where a testator by his will appoints a minor to be an executor, the appointment shall not operate to vest in the minor the estate, or any part of the estate, of the testator, or to constitute him a personal representative for any purpose, unless and until probate is granted to him in accordance with probate rules.

### **119 Administration with will annexed.**

- (1) Administration with the will annexed shall be granted, subject to and in accordance with probate rules, in every class of case in which the High Court had power to make such a grant immediately before the commencement of this Act.
- (2) Where administration with the will annexed is granted, the will of the deceased shall be performed and observed in the same manner as if probate of it had been granted to an executor.

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

- (1) As a condition of granting administration to any person the High Court may, subject to the following provisions of this section and subject to and in accordance with probate rules, 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 for 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 High Court.
- (4) Stamp duty shall not be chargeable on any such guarantee.
- (5) This section does not apply where administration is granted to the Treasury Solicitor, the Official Solicitor, the Public Trustee, the Solicitor for the affairs of the Duchy of Lancaster or the Duchy of Cornwall or the Crown Solicitor for Northern Ireland, or to

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the consular officer of a foreign state to which section 1 of the <sup>M1</sup>Consular Conventions Act 1949 applies, or in such other cases as may be prescribed.

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**Marginal Citations**

**M1** 1949 c. 29.

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