

SCHEDULES.

SEVENTH SCHEDULE

Section 7.

ADMINISTRATION OF ESTATES

PART I

AMENDMENTS

Number of personal representatives.

- 1 The following proviso shall be inserted at the end of subsection (7) of section one hundred and fifty-five of the principal Act:—

“Provided that the court in granting administration may act on such prima facie evidence, furnished by the applicant or any other person, as to whether or not there is a minority or life interest, as may be prescribed by probate rules.”

Representation.

- 2 (1) In subsection (7) of section one hundred and fifty-six of the principal Act the words “or in respect of a trust estate ” only “shall be inserted after ” there is no personal estate. ”

- (2) The following proviso shall be inserted at the end of the said subsection :—

“Provided that where the estate of the deceased is known to be insolvent the grant of representation to the real and personal estate shall not be severed except as regards a trust estate.”

Grant of representation to a trust corporation.

- 3 (1) The following paragraph shall be inserted at the end of subsection (5) of section one hundred and fifty-seven of the principal Act:—

“This subsection does not apply to securities registered or inscribed in the name of a syndic, or to land or a charge registered under the Land Transfer Acts, in the name of a syndic, but such securities, land or charge shall be transferred by the syndic to the corporation or as the corporation may direct.”

- (2) At the end of the said section the following words shall be inserted:—

“and no such vesting or transfer as aforesaid shall operate as a breach of a covenant or condition against alienation or give rise to a forfeiture.”

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Administration granted to nominee of the Crown.

4 The following subsections shall be inserted at the end of section two of the Intestates Estates Act, 1884 :—

“(2) The Treasury Solicitor shall not be required when applying for or obtaining administration of the estate of a deceased person for the use or benefit of His Majesty, to deliver, nor shall the Probate, Divorce and Admiralty Division of the High Court or the Commissioners of Inland Revenue be entitled to receive in connexion with any such application or grant of administration any affidavit, statutory declaration, account, certificate, or other statement verified on oath; but the Treasury Solicitor shall deliver and the said Division and Commissioners respectively shall accept, in lieu thereof, an account or particulars of the estate of the deceased signed by or on behalf of the Treasury Solicitor.

(3) References in sections two, four, six and seven of the Treasury Solicitor Act, 1876, and in subsection (3) of section three of the Duchy of Lancaster Act, 1920, to “personal estate” shall include real estate.”

Assent by personal representatives.

5 The following section shall be substituted for section one hundred and fifty-eight of the principal Act:—

(1) A personal representative may assent to the vesting in any person who (whether by devise, bequest, devolution, appropriation or otherwise) may be entitled thereto, either beneficially or as a trustee or personal representative of any estate or interest in real estate to which the testator or intestate was entitled or over which he exercised a general power of appointment by his will (including the statutory power to dispose of entailed interests), and which devolved upon the personal representative.

(2) The assent shall operate to vest in that person the estate or interest to which the assent relates, and, unless a contrary intention appears, the assent shall relate back to the death of the deceased.

(3) The statutory covenants implied by a person being expressed to convey as personal representative, may be implied in an assent in like manner as in a conveyance by deed.

(4) An assent to the vesting of a legal estate shall be in writing, signed by the personal representative, and shall name the person in whose favour it is given and shall operate to vest in that person the legal estate to which it relates; and an assent not in writing or not in favour of a named person shall not be effectual to pass a legal estate.

(5) Any person in whose favour an assent or conveyance of a legal estate is made by a personal representative, may require that notice of the assent or conveyance be written or endorsed on or permanently annexed to the probate or letters of administration, at the cost of the estate of the deceased, and that the probate or letters of administration be produced at the like cost, to prove that the notice has been placed thereon or annexed thereto.

(6) A statement in writing by a personal representative that he has not given or made an assent or conveyance in respect of a legal estate, shall, in favour of a

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purchaser (but without prejudice to any previous disposition made in favour of another purchaser deriving title mediately or immediately under the personal representative), be sufficient evidence that an assent or conveyance has not been given or made in respect of the legal estate to which the statement relates, unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration.

A conveyance by a personal representative of a legal estate to a purchaser accepted on the faith of such a statement shall (without prejudice as aforesaid and unless notice of a previous assent or conveyance affecting that estate has been placed on or annexed to the probate or administration) operate to transfer or create the legal estate expressed to be conveyed in like manner as if no previous assent or conveyance had been made by the personal representative.

A personal representative making a false statement, in regard to any such matter shall be liable in like manner as if the statement had been contained in a statutory declaration.

- (7) An assent or conveyance by a personal representative in respect of a legal estate shall, in favour of a purchaser, unless notice of a previous assent or conveyance affecting that legal estate has been placed on or annexed to the probate or administration, be taken as sufficient evidence that the person in whose favour the assent or conveyance is given or made is the person entitled to have the legal estate conveyed to him, and upon the proper trusts (if any), but shall not otherwise prejudicially affect the claim of any person rightfully entitled to the estate vested or conveyed or any charge thereon.
- (8) A conveyance of a legal estate by a personal representative to a purchaser shall not be invalidated by reason only that the purchaser may have notice that all the debts, liabilities, funeral, and testamentary or administration expenses, duties, and legacies of the deceased have been discharged or provided for.
- (9) An assent or conveyance given or made by a personal representative shall not, except in favour of a purchaser of a legal estate, prejudice the right of the personal representative or any other person to recover the estate or interest to which the assent or conveyance relates, or to be indemnified out of such estate or interest against any duties, debt, or liability to which such estate or interest would have been subject if there had not been any assent or conveyance.
- (10) A personal representative may, as a condition of giving an assent or making a conveyance, require security for the discharge of any such duties, debt, or liability, but shall not be entitled to postpone the giving of an assent merely by reason of the subsistence of any such duties, debt or liability if reasonable arrangements have been made for discharging the same; and an assent may be given subject to any legal estate or charge by way of legal mortgage.
- (11) Nothing in this section shall impose any stamp duty in respect of an assent.
- (12) In this section “purchaser ” means a purchaser for money or money's worth.
- (13) This section applies to assents and conveyances made after the commencement of this Act, whether the testator or intestate died before or after such commencement.”

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Construction of documents.

- 6 The following paragraphs shall be respectively substituted for paragraphs (a) and (c) of subsection (3) of section one hundred and fifty of the principal Act:—
- “(a) references to any Statutes of Distribution in an instrument inter vivos made or in a will coming into operation after the commencement of this Act, shall be construed as references to this Part of this Act; and references in such an instrument or will to statutory next of kin shall be construed, unless the context otherwise requires, as referring to the persons who would take beneficially on an intestacy under the foregoing provisions of this Part of this Act;”
- “(c) trusts declared in an instrument inter vivos made, or in a will coming into operation, before the commencement of this Act by reference to the Statutes of Distribution, shall, unless the contrary thereby appears, be construed as referring to the enactments (other than the Intestates' Estates Act, 1890) relating to the distribution of effects of intestates which were in force immediately before the commencement of this Act.”

Death duties.

- 7 The words “or alter the incidence of death duties” shall be inserted at the end of section one hundred and fifty-three of the principal Act.

PART II

PROVISIONS FACILITATING CONSOLIDATION OF THE LAW RELATING TO ADMINISTRATION OF ESTATES

Demise of the Crown.

- 1 Subsection (5) of section one hundred and fifty-five of the principal Act applies on the demise of the Crown as respects all property real and personal vested in the Crown as a corporation sole.

Executor of executor represents original testator.

- 2 The statute 25 Edw. 3, St. 5, c. 5, and section sixteen of the Court of Probate Act, 1858, are hereby repealed, and in lieu thereof the following provisions shall have effect:—
- “(1) An executor of a sole or last surviving executor of a testator shall be the executor of that testator.
- This provision shall not apply to an executor who does not prove the will of his testator, and, in the case of an executor who on his death leaves surviving him some other executor of his testator who afterwards proves the will of that testator, it shall cease to apply on probate being granted to that other executor.
- (2) So long as the chain of representation is unbroken the last executor in the chain shall be the executor of every preceding testator.

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- (3) The chain of representation shall be broken by—
- (a) an intestacy; or
 - (b) the failure of a testator to appoint an executor; or
 - (c) the failure to obtain probate of a will ;
- but shall not be broken by a temporary grant of administration if probate is subsequently granted.
- (4) Every person in the chain of representation to a testator—
- (a) shall have the same rights in respect of the real and personal estate of that testator as the original executor would have had if living;
 - (b) shall, to the extent to which the real and personal estate of that testator has come to his hands, be answerable as if he were an original executor.”

Discretion of court.

- 3 The following proviso shall be inserted at the end of subsection (8) of section one hundred and fifty-six of the principal Act—

“Provided that where the deceased died wholly intestate as to his real and personal estate administration shall—

- (a) unless by reason of the insolvency of the estate or other special circumstances the court thinks it expedient to grant administration to some other person, be granted to some one or more of the persons interested under this Act in the residuary estate of the deceased, if an application is made for the purpose;
- (b) in regard to land settled previously to the death of the deceased, be granted to the trustees, if any, of the settlement if willing to act.”

Special presentation as respects settled land.

- 4 The following subsections shall be substituted for subsections (1) and (2) of section one hundred and sixty-one of the principal Act:—

“(1) Where settled land becomes vested in a personal representative, not being a trustee of the settlement, upon trust to convey the land to or assent to the land vesting in the tenant for life or statutory owner in order to give effect to a settlement created before the death of the deceased and not by his will, or would, on the grant of representation to him, have become so vested, such representative may—

- (a) before representation has been granted, renounce his office in regard only to such settled land without renouncing in regard to other property;
 - (b) after representation has been granted, apply to the court for revocation of the grant in regard to the settled land without applying in regard to other property.
- (2) Whether such renunciation or revocation is made or not, the trustees of the settlement, or any person beneficially interested thereunder, may apply to the High Court for an order appointing a special or additional personal representative in respect of the settled land; and a special or additional personal representative, if and when appointed under the order, shall be in

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the same position as if representation had originally been granted to him alone in place of the original personal representative, if any, or to him jointly with the original personal representative, as the case may be, limited to the settled land, but without prejudice to any previous acts and dealings of and notices to the personal representative originally constituted.”

Liability for fraudently obtaining or retaining estate.

5 The statute (43 Eliz., c. 8) relating to the liability for fraudently obtaining or retaining the estate of a deceased person shall be read as follows :—

“If any person, to the defrauding of creditors or without full valuable consideration, obtains, receives or holds any real or personal estate of a deceased person or the release of any debt or liability due to the estate of the deceased, he shall be charged as executor in his own wrong to the extent of the real and personal estate received or coming to his hands, or the debt or liability released, after deducting—

- (a) any debt for valuable consideration and without fraud due to him from the deceased person at the time of his death;
- (b) any payment made by him which might properly be made by a personal representative.”

Trust for sale.

6 The following section shall be substituted for section one hundred and forty-seven of the principal Act:—

- (1) On the death of a person intestate as to any real or personal estate, such estate shall be held by his personal representatives—
 - (a) as to the real estate upon trust for sale; and
 - (b) as to the personal estate upon trust to call in sell and convert into money such part thereof as may not consist of money ;

with power to postpone sale and conversion for such a period as the personal representatives, without being liable to account, may think proper, and so that any reversionary interest shall not be sold until it falls into possession, unless the personal representatives see special reason for sale; and so also that, unless required for purposes of administration owing to want of other assets, personal chattels shall not be sold except for special reason.

- (2) Out of the net money to arise from the sale and conversion of the real and personal estate (after payment of costs), and out of the ready money of the deceased (so far as not disposed of by will), the personal representative shall pay all such funeral, testamentary and administration expenses, debts and other liabilities as are properly payable thereout having regard to the statutory rules of administration, and out of the residue of the said money the personal representative shall set aside a fund sufficient to provide for any pecuniary legacies bequeathed by the will (if any) of the deceased.
- (3) During the minority of any beneficiary or the subsistence of any life interest and pending the distribution of the whole or any part of the estate of the deceased, the personal representatives may invest the residue of the said money, or so much thereof as may not have been distributed, in any investments for the time being authorised by statute for the investment of

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trust money, with power, at the discretion of the personal representatives, to change such investments for others of a like nature.

- (4) The residue of the said money and any investments for the time being representing the same, including (but without prejudice to the trust for sale) any part of the estate of the deceased which may be retained unsold and is not required for the administration purposes aforesaid, is, in this Act, referred to as " the residuary estate of the intestate."
- (5) The income, including net rents and profits of real estate and chattels real after payment of rates, taxes, rent, costs of insurance, repairs and other outgoings properly attributable to income, of so much of the real and personal estate of the deceased as may not be disposed of by his will, if any, or may not be required for the administration purposes aforesaid, may, however such estate is invested, as from the death of the deceased, be treated and applied as income, and for that purpose any necessary apportionment may be made between tenant for life and remainderman.
- (6) Nothing in this section shall affect the rights of any creditor of the deceased or the rights of the Crown in respect of death duties.
- (7) Where the deceased leaves a will, this section shall have effect subject to the provisions therein contained."

Order of administration of assets.

7 Section one of the Administration of Estates Act, 1869, and section ten of the Judicature Act, 1875, as amended by subsection (10) of section one hundred and fifty-six of the principal Act are hereby repealed and the following provisions shall have effect in lieu thereof :—

“(1) Where the estate of a deceased person is insolvent, his real and personal estate shall be administered in accordance with the rules set out in Part I. of the following table and all other rules of administration of assets are abolished.

- (2) The right of retainer of a personal representative and his right to prefer creditors may be exercised in respect of all assets, but the right of retainer shall only apply to debts owing to the personal representative in his own right whether solely or jointly with another person.

Subject as aforesaid, nothing in the foregoing provisions shall affect the right of retainer of a personal representative, or his right to prefer creditors.

- (3) Where the estate of a deceased person is solvent his real and personal estate shall, subject to rules of court and the statutory provisions as to charges on property of the deceased, and to the provisions (if any) contained in his will, be applicable towards the discharge of the funeral, testamentary and administration expenses, debts and liabilities payable thereout in the order mentioned in Part II of the following table:—

THE TABLE ABOVE REFERRED TO.

PART I.

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**RULES AS TO PAYMENT OF DEBTS
 WHERE THE ESTATE IS INSOLVENT.**

1. The funeral, testamentary, and administration expenses have priority.
2. Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities, as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt.

PART II.

**ORDER OF APPLICATION OF ASSETS
 WHERE THE ESTATE IS SOLVENT.**

- (1) Property of the deceased undisposed of by will, subject to the retention thereof of a fund sufficient to meet any pecuniary legacies.
- (2) Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.
- (3) Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.
- (4) Property of the deceased charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.
- (5) The fund (if any) retained to meet pecuniary legacies.
- (6) Property specifically devised or bequeathed rateably according to value.
- (7) Property appointed by will under a general power, including the statutory power to dispose of entailed interest rateably according to value.
- (8) The following provisions shall also apply—
 - (a) The order of application may be varied by the will of the deceased.
 - (b) This part of the Table does not affect the liability of land to answer the death duty imposed thereon in exoneration of other assets.”

Charges on property of deceased.

- 8 The Real Estate Charges Acts, 1854, 1867 and 1877 are hereby repealed, and in lieu thereof the following provisions shall have effect:—

“(1) Where a person dies possessed of, or entitled to, or under a general power of appointment (including the statutory power to dispose of entailed interests) by his will disposes of, an interest in property which at the time of his death is charged with the payment of money, whether by way of legal mortgage, equitable charge or otherwise (including a lien for unpaid purchase money), and the deceased has not by will, deed or other document signified a contrary or other intention, the interest so charged shall, as- between the different persons claiming through the deceased, be primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

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- (2) Such contrary or other intention shall not be deemed to be signified—
- (a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate, or his residuary real and personal estate, or his residuary real estate; or
 - (b) by a charge of the debts upon any such estate,
- unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.
- (3) Nothing in the foregoing provisions shall affect the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other asset of the deceased or otherwise.”

The right to follow property and powers of the court in relation thereto.

9 The enactments relating to the right to follow property and for enabling effect to be given to the rights of creditors and other persons interested shall be read as follows :

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- “(1) An assent or conveyance by a personal representative to a person other than a purchaser does not prejudice the rights of any person to follow the property to which the assent or conveyance relates, or any property representing the same, into the hands of the person in whom it is vested by the assent or conveyance, or of any other person (not being a purchaser) who may have received the same or in whom it may be vested.
- (2) Notwithstanding any such assent or conveyance the court may, on the application of any creditor or other person interested—
- (a) order a sale, exchange, mortgage, charge, lease, payment, transfer or other transaction to be carried out which the court considers requisite for the purpose of giving effect to the rights of the persons interested;
 - (b) declare that the person, not being a purchaser in whom the property is vested is a trustee for those purposes;
 - (c) give directions respecting the preparation and execution of any conveyance or other instrument or as to any other matter required for giving effect to the order;
 - (d) make any vesting order, or appoint a person to convey in accordance with the provisions of the Trustee Acts.
- (3) Nothing in the foregoing provisions shall prejudice the rights of a purchaser or a person deriving title under him, but the said provisions shall apply whether the testator or intestate died before or after the commencement of the principal Act.”

Power of appropriation.

- 10 (1) The following paragraphs shall respectively be substituted for paragraphs (i), (ii) and (v) of subsection (1) of section one hundred and sixty of the principal Act:—
- “(i) An appropriation shall not be made under this section so as to affect prejudicially any specific devise or bequest.
 - (ii) An appropriation of property, whether or not being an investment authorised by law or by the will (if any) of the deceased for the investment of money subject to the trust,

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shall not (save as hereinafter mentioned) be made under this section except with the following consents :—

- (a) When made for the benefit of a person absolutely and beneficially entitled in possession, the consent of that person;
- (b) When made in respect of any settled legacy share or interest, the consent of either the trustee thereof, if any (not being also the personal representative), or the person who may for the time being be entitled to the income :

Provided that, if the person whose consent is required under the foregoing provisions is an infant or a lunatic or defective, the consent shall be given on his behalf by his parents or parent or testamentary or other guardian, committee or receiver, or if in the case of an infant, there is no such parent or guardian by the court on the application of his next friend :

- (v) If, independently of the personal representative, there is no trustee of a settled legacy share or interest, and no person of full age and capacity entitled to the income thereof, no consent shall be required to an appropriation in respect of such legacy share or interest, provided that the appropriation is of an investment authorised as aforesaid.”

- (2) The following subsections shall respectively be substituted for subsections (2) and (9) of the said section one hundred and sixty:—

“(2) For the purposes of such appropriation, the personal representative may ascertain and fix the value of the respective parts of the real and personal estate and the liabilities of the deceased as he may think fit, and shall for that purpose employ a duly qualified valuer in any case where such employment may be necessary; and may make any conveyance (including an assent) which may be requisite for giving effect to the appropriation.”

“(9) This section shall apply whether the deceased died intestate or not, and whether before or after the commencement of this Act, and shall extend to property over which a testator exercises a general power of appointment, including the statutory power to dispose of entailed interests, and shall authorise the setting apart of a fund to answer an annuity by means of the income of that fund or otherwise.”

Appointment of trustees of infant's property.

- 11 Subsection (7) of section one hundred and ten of the principal Act shall apply to a devise as well as to a bequest.

Succession.

- 12 (1) Nothing in section one hundred and forty-eight of the principal Act shall affect the descent or devolution of an entailed interest.

- (2) In paragraph (vii) of subsection (1) of section one hundred and fifty of the principal Act after the words “Duke may” the words “without prejudice to the powers reserved by section nine of the Civil List Act, 1910, or any other powers” shall be inserted.

Lunatics and infants.

- 13 The following subsections shall be substituted for subsections (2) and (3) of section one hundred and fifty-four of the principal Act:—

“(2) The foregoing provisions of this Part of this Act shall not apply to any beneficial interest in real estate (not including chattels real) to which a lunatic or defective living and of full age at the commencement of this Act, and unable, by reason of his incapacity, to make a will, who thereafter dies intestate in respect of such interest without having recovered his testamentary capacity, was entitled at his death; and such beneficial interest (not being an interest ceasing on his death) shall, without prejudice to any will of the deceased, devolve in accordance with the general law in force before the commencement of this Act applicable to freehold land, and that law shall, notwithstanding any repeal, apply to the case.

For the purposes of this subsection a lunatic or defective who dies intestate as respects any beneficial interest in real estate shall not be deemed to have recovered his testamentary capacity unless his committee or receiver has been discharged.

- (3) Where an infant dies after the commencement of this Act without having been married, and independently of this subsection he would, at his death, have been equitably entitled under a settlement (including a will) to a vested estate in fee simple or absolute interest in freehold land, or in any property settled to devolve therewith or as freehold land, such infant shall be deemed to have had an entailed interest, and the settlement shall be construed accordingly.

Nothing in this Part of this Act shall affect the devolution of an entailed interest as an equitable interest.”

Personal chattels.

- 14 In the definition of “personal chattels” in subsection (1) of section one hundred and fifty-four of the principal Act, the words “live and dead stock and” shall be omitted and the words “used at the death of the intestate” shall be substituted for the word “acquired.”

Application to the Crown.

- 15 (1) Part VIII. of the principal Act binds the Crown and the Duchy of Lancaster and the Duke of Cornwall for the time being as respects the estates of persons dying after the commencement of the principal Act, but not so as to affect the time within which proceedings for the recovery of real or personal estate vesting in or devolving on His Majesty in right of His Crown, or His Duchy of Lancaster, or on the Duke of Cornwall, may be instituted.
- (2) Nothing in the said Part shall in any manner affect or alter the descent or devolution of any property for the time being vested in His Majesty either in right of the Crown

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or of the Duchy of Lancaster or of any property for the time being belonging to the Duchy of Cornwall.