



ANNO DECIMO QUINTO

VICTORIÆ REGINÆ.

By His Excellency SIR CHARLES AUGUSTUS FITZ ROY, Knight Companion of the Royal Hanoverian Guelphic Order, Governor-General of all Her Majesty's Australian Possessions, and Captain-General and Governor-in-Chief of the Territory of New South Wales and its Dependencies, and Vice-Admiral of the same, with the advice and consent of the Legislative Council.

No. VIII.

An Act to amend, in certain particulars, the Act passed for the better preservation of the Estates of deceased persons. [Assented to, 9th December, 1851.]

WHEREAS under the Act of His Excellency the Governor of New South Wales and the Legislative Council thereof, passed in the eleventh year of the reign of Her present Majesty, intituled, "*An Act for the better preservation and management of the Estates of deceased persons in certain cases,*" an Order for the Curator of Intestate Estates to collect the personal estate of a deceased person cannot be applied for, in certain cases, until after the expiration of three months from the time of the death of the party, or in certain other cases until after the expiration of six months from such death: And whereas it is expedient that in the cases hereinafter mentioned provision should be made for the granting of Orders to collect, before the expiration of those periods, and for the granting of such Orders when Executors or the persons primarily entitled to Letters of Administration shall renounce Probate, or shall be unwilling or unable from any cause to take out Letters of Administration: Be it therefore enacted by His Excellency the Governor of New South Wales, with the advice and consent of the Legislative Council thereof, That the Curator of Intestate Estates shall apply for, and may at any time after the death of any deceased person, and without previous citation, obtain an Order

Recital.

11 Vict., No. 24, s.s. 6 and 7.

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Cases where the goods will probably be purloined or destroyed.

Order to collect, manage, and administer the estate of such person, in any of the cases mentioned respectively in the sixth and seventh sections of the said recited Act, where the Supreme Court of New South Wales, or the Judge applied to for such Order, shall be satisfied by affidavit that the effects of the deceased will otherwise be probably purloined, lost, or destroyed, or that great expense will be incurred by delay in the matter.

Cases where no Probate or Letters will probably be obtained.

II. And be it enacted, That the like Order shall or may be applied for and may be obtained in any of the said cases (after due citation, as mentioned in the said sections respectively, and after the expiration of thirty days after the death of the deceased person,) where the said Court or the Judge applied to shall be satisfied by affidavit that there is no reasonable probability of Probate or Letters of Administration being obtained within the aforesaid periods of six months or three months (as the case may be) after the death of such deceased person.

Cases of renunciation.

III. And be it enacted, That whenever the Curator of Intestate Estates shall have received information on oath that any person has died either having made a Will or Intestate, and that the several persons named as Executors have renounced Probate of such Will, or that all the persons primarily entitled to Letters of Administration have, by a memorandum or declaration in writing filed in the Office of the Registrar of the Supreme Court, declined to take out such Letters, the said Curator shall apply for an Order to collect, manage, and administer the estate of such deceased person; and the Supreme Court of New South Wales, or any Judge thereof, shall or may thereupon, without citation, and at any time after the death of the deceased person, if satisfied of those facts, make such Order accordingly.

Curator to act as the Court or a Judge shall direct.

IV. And be it enacted, That in all cases where an Order to collect shall have been or shall be made under the said recited Act, or under this Act, or under the Statute passed in the ninth year of the reign of King George the Fourth, in that behalf, it shall be lawful for the Court, or any Judge thereof, on the Petition of the Curator, or any person interested in the estate, to make such Order or Orders from time to time touching the collection, sale, investment, and disposal of the estate, as to such Court or Judge shall seem meet.

Curator may, with consent of a Judge, depute an Official Assignee in Insolvency, as Collector, &c.

V. And be it enacted, That it shall be lawful for the Curator at any time or times hereafter, with the consent in writing of one of the Judges, to depute the actual collection of any Estate or Estates, and the goods, debts, and moneys therein, to one of the Official Assignees in Insolvency; and thereafter every Assignee so deputed in respect of every Estate committed to him under this section, shall be deemed an Agent of the Curator within the meaning of the aforesaid recited Act, and shall be bound to account from time to time to him, as and when such Curator (or as the Supreme Court, or any Judge thereof) shall from time to time require, and shall pay over all balances in his hands to the Curator monthly or oftener if so required, and shall be entitled to retain to his own use, out of the property realized and moneys collected by him, a commission of not less than three, nor more than five per cent., as one of the Judges may in each case appoint, as a remuneration for his services therein.

Curator or his Agents not liable for acts done in the performance of their duties.

VI. And be it enacted, That neither the Curator of Intestate Estates, nor any of his Agents, shall be personally liable to any person in respect of goods or chattels in the possession of any Intestate at the time of his death, which shall be sold by the Curator, or any such Agent, as the goods of such Intestate, unless such Curator or Agent shall know, or have actual notice before the sale, that such goods or chattels were not in fact the property of such Intestate; and generally neither the Curator nor any of his Agents shall be liable for any act done by him or them *bona fide* in the supposed and intended performance of their duties respectively, unless it shall be shewn that such act was done not only illegally but wilfully or

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with gross negligence: Provided always, that in case of any sale by the Curator or his Agents, of goods or chattels belonging in fact to any third person, the amount realised by such sale thereof shall be paid over by him or them to the owner upon proof by him of such ownership, unless the same shall have been applied in the payment of the debts of the deceased, or shall have been distributed according to any Will of the deceased, or in the ordinary course of administration, whilst the said Curator or any such Agent was in ignorance and without actual notice of the claim of such person to the goods or chattels so sold.

*Passed the Legislative Council, this twentieth }
day of November, one thousand eight hun- }
dred and fifty-one.*

CHARLES NICHOLSON,
SPEAKER.

WM. MACPIERSON,
CLERK OF THE COUNCIL.

In the name and on the behalf of Her Majesty, I assent to this Act.

CHS. A. FITZ ROY,
GOVERNOR-GENERAL.

Govt. House, Sydney, 9th December, 1851.