THE LAW OF WILLS AND INTESTATES' ESTATES,

BY

A LEGAL EXPERT.

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CONTENTS.

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INTRODUCTION.

A Testament, or Will, has been variously defined as follows :—

"A Testament is a just Sentence of our will, touch-
" ing what we would have done after our death."

"The Declaration in legal form of a Man's intentions
" as to the disposal of his property after death."

"A Statement of the way in which a person wishes
" his property to be distributed after death."

The making of a Will is to be commended, and has much to be said in its favour, for even where the possessions of an individual are small, and the probability of death appears remote, the subject is one worthy of consideration; in many cases it is a moral duty, and it is always well, in the interest of survivors, to execute a Will and to appoint one or more trustworthy persons, as executors, to carry its provisions into effect.

In some cases negligence, and in others aversion to make a Will, frequently results in great loss and hardship to those nearest and dearest and who had by kinship a claim to be provided for.

Having resolved to make a Will, the testator should not regard it as a trivial matter, but as an act requiring consideration and careful attention, as it is only after a person is dead, and unable to explain his meaning, that a Will can be open to dispute.

A Will should be drawn and signed while a person is in the enjoyment of good health, both of mind and body, and not deferred, as is frequently the case, until old age, sickness or infirmity overtakes the testator, possibly rendering him mentally or physically incapable of performing so important an act.

OF PROPERTY.

Property is divided into two great classes :—

REAL PROPERTY and
PERSONAL PROPERTY.

The term "Real Property" includes freehold and copyhold land and buildings and other hereditaments, benefits which issue from land, such as New River Shares, and tithes, are also considered as real property.

Real Property, if not devised by Will, descends to the heir-at-law, to the exclusion of the next-of-kin.

Personal Property consists of leasehold land and buildings, assurance policies, stock in public companies, railway shares, money, furniture, goods, and other moveables, and such rights and profits as relate to moveables, and it is called Personal Property because, for the most part, it is connected with the person of the owner.

OF A WILL.

Formerly Wills might have been either written or verbal. As to a written Will, no witnesses were required to prove it, and if written in the testator's own hand—though it had neither his signature nor seal—it was good if it could be proved to be in his handwriting, and even if written in another man's hand, and never signed by the testator, it was good so long as it was according to his instructions and

approved by him. A verbal Will depended merely upon oral evidence, being declared by the testator on his death-bed before a sufficient number of witnesses, and afterwards reduced to writing.

But the Wills Act (1837) established one uniform rule on this subject, requiring that every Will, whether of Real or Personal Property, shall be a written document signed by the Testator, or some other person in his presence and by his direction, and attested by two or more witnesses in his presence at the same time.

Other Acts, strengthening these provisions, have since been passed.

Verbal (or nuncupative) Wills are not entirely abolished; a Will made by word of mouth before two witnesses is allowed in the case of soldiers and sailors on active service, but if they make a verbal Will, it does not extend to landed property.

A Codicil is a Supplement to a Will, whereby the testator adds to, alters, or revokes what is contained in his Will. A Will when once signed and attested cannot be altered without being re-executed, except by Codicil. As a rule all alterations that are rendered necessary should be made by a new Will, destroying the old one, or, in default of this, by a Codicil, and not by obliteration or interlineation in the original Will. A Codicil forms part of the Will, and is incorporated with it in the probate; but should any part of it be contradictory or inconsistent with the Will, the Codicil supersedes the Will, because it shows the latest intention of the testator.

Wills duly made in England are not invalidated by reason of the testator dying abroad.

OF TESTATORS.

A Testator is a Will-maker, that is a man who makes a Will and Testament, and hence he is said to die Testate, while a person who dies without having made a valid Will is said to die Intestate. When the Will-maker is a woman, the term "Testatrix" is used.

Notwithstanding the fact that the liberty of disposing of everything he possesses is a privilege permitted to an Englishman, but disallowed, partly or entirely, by other nations to their subjects, there are but few who, compared with the whole population, take upon themselves the easily-won title of "Testator"; and this is so though the legislature permits every adult person who has sufficient discretion (with very few exceptions) to make a Will. But although the general rule is that every person may make a Will, there are some whose capacity to make a Will is limited by nature or circumstances, such as lunatics, or deaf, dumb, blind, illiterate, or aged persons; but a lunatic may make a Will during a lucid interval; a deaf or dumb person, or one deaf and dumb can make a Will, and by signs get the Will witnessed in proper form. A blind person, or one who is so illiterate that he cannot read, can also make a Will, provided it be read over and explained to him in the presence of witnesses before he signs it; proof of this will be required. The Will of a very aged person will sometimes raise a doubt of capacity, but unless it can be positively shown that he did not know what he was about, or did not understand the contents of his Will, it cannot be impeached.

No person under the age of twenty-one years can make a Will, unless he be a soldier or sailor on active service.

Previously to the passing of "The Married Women's Property Act, 1882," the law was that a married woman was incapable of making a Will, except in certain cases, without her husband's express permission, which must have been given to the particular Will, and the husband must have survived the wife, for if the wife survived the husband she had to re-execute the Will to make it valid.

Every woman married after the 1st January, 1883, can, on attaining twenty-one years of age, make a Will disposing of all real and personal property which belonged to her at the time of her marriage, or has been acquired by her, or has devolved upon her since her marriage; and any woman married before that date can make a Will disposing of property belonging to her for her separate use, or over which she has a testamentary power of appointment, and can also make a Will of all real and personal property, her Title to which shall accrue after the date named.

The permission of the husband is not now required, and if the husband dies the Will still holds good, and no re-execution of it is required.

Formerly a married woman might be appointed an executrix, but could not act in that capacity without the consent of her husband; but, under the provisions of "The Married Women's Property Act, 1882," a married woman is capable of being appointed an executrix. and may act as such without the assent of her husband.

DEVISES AND BEQUESTS.

A Devise is a gift of land, or interests in land made by Will, the giver being called "Devisor," and the recipient "Devisee."

A Bequest, or legacy, is a gift of personal property by Will, the recipient being called "Legatee."

There are certain persons whom the law will not allow to be legatees. The Wills Act (1837) says:—"That if any "person shall attest the execution of any Will to whom, or to "whose wife or husband, any beneficial devise, legacy, "estate, interest, gift, or appointment of or affecting any "real or personal estate" . . . . . "shall be thereby given "or made, such devise, legacy, estate, interest, gift or "appointment shall, so far only as concerns such person "attesting the execution of such Will, or the wife or "husband of such person" . . . . . "be utterly null and "void."

Although an executor may attest a Will without invalidating his appointment as executor, he cannot, in such case, take any benefit under the Will. An executor should, on that account, avoid being a witness. Creditors, or their wives or husbands, may attest a Will without losing their debts, but it is undesirable that such persons should act as witnesses.

A legacy to the testator's servants goes to those in his service at the date of his Will, whether they remain in it till his death or not; the bequest may be qualified by the words: "if they shall continue in my service until my death"; or

the legacy may be given to such of the testator's servants as have, at the date of his death, been in his service a certain time.

If executors omit to pay legacies at the expiration of one year after the testator's death, the legatee will be entitled to Interest from that period, and he may bring an action against the executors claiming to have the estate administered; but until the year has expired, unless the debts have been paid, and the assets realised, within that time, the executors cannot be compelled to pay the legatee.

An annuity begins to run from the date of the death of the testator, and is payable yearly at the end of each year, unless the testator directs, as he should, that the annuity be paid half-yearly or quarterly.

HOW TO MAKE A WILL.

Having definitely settled the different devises and bequests he intends to make, the testator should write to, or see, those persons he wishes to be his Executors, and should ask them whether they would be willing to act. It is not necessary to inform them of the contents of the proposed Will, nor need their sanction be obtained before being appointed, but as it may save the possible inconvenience of their refusing to act, and renouncing probate, it is desirable to ask their leave first, and having obtained this, the next thing is to make the Will.

Every Will should commence with the full name, address and profession, business, or occupation of the testator. If the testatrix be a married woman she should set forth the full name of her husband. A Will should contain a clause expressly revoking all former Wills and Codicils. Next, any directions as to funeral. Then comes the appointment of executors; this should be done expressly as:—"I hereby "nominate, constitute, and appoint *A B.* and *C D.* executors "of this my Will," or "executors and trustees," if any trust is confided to them. It is always better to appoint two, or even three, executors, instead of one sole executor; for in case of the death of one executor there will be the other, or others, to whom probate will be granted; whereas if a sole executor dies before or after he has taken probate, letters

of administration with the Will annexed will have to be taken out, thereby causing difficulty and expense. If either of the executors die in the testator's lifetime, the testator should at once make a Codicil appointing another executor in the place of the one deceased. If the testator have any infant children, he should add a clause to the appointment of executors appointing them or some other persons, guardians of those children. It is not necessary to appoint the mother, who is by law entitled to act as one of their guardians. The objects for which guardians are appointed to infants are various, the chief being to provide effectually for their maintenance, education and protection, because no infant can make a valid contract so as legally thereby to bind himself.

It is very usual, and only just, to bequeath to an executor a legacy, in proportion to the time and energy he will probably have to expend in administering the estate; because the position of an executor, like that of a trustee, is entirely honorary, and an executor can obtain no remuneration for his labour and trouble, however arduous it may be; but it is proper that the gift should be made conditional on the donee's accepting the executorship.

Under the "Bodies Corporate (Joint Tenancy) Act 1899," (62 & 63 Vict. Cap. 20) the Corporation of the ROYAL EXCHANGE ASSURANCE, Royal Exchange, London,* may be nominated Executor or Trustee (or Executor *and* Trustee) of a Will, and in view of the absolute safety of Trust Funds so entrusted to its care, which its position guarantees, it would appear, in many cases, very advisable to make such an appointment.

Next comes the bequest of the testator's household goods, which, if he has a wife and children, should generally speaking be left to the wife absolutely; but if the testator prefer, it can be left to her for life and afterwards to the children, or in any other way he may think fit. If the testatrix be a spinster, or a widow without children, or if the testator have neither a wife or child, the bequest can be omitted, and the property directed to be sold, or realised as part of his personal property, and divided amongst his residuary legatees, or as he may think fit.

Then follow legacies and annuities.

Legacies are frequently not paid until after the lapse of a year from the testator's death; if he therefore wish them to be paid before that time, he should distinctly state so in his Will. Each legatee will have to pay his own legacy duty, unless it is specially expressed in the Will that testator intends the legacies to be paid free of duty

Legacy duty applies equally to annuities as to legacies; if therefore, the testator wish the annuitant to take the exact annuity purported to be given him, words must be inserted

* Vide Appendix (Page 32).

in the Will showing that it is to be paid free of duty. It is not uncommon to insert a clause providing that the estate shall bear the expense of all duty.

It should be remembered that if a legatee dies before the testator, the legacy is said to lapse, that is, it has no effect whatever. The exception to this rule is in the case of a legacy to a child or children, of the testator, whose children would take any benefit to which their parent would have been entitled had he or she survived the testator. If, therefore, a legacy is intended to be for the benefit of the family of the legatee, as well as for his benefit, a clause should be inserted to prevent the lapse of the legacy.

After legacies and annuities next come, assuming that testator is possessed of landed property, any devises he may wish to make.

Then follows the disposal of the residue. This is the portion of a testator's estate remaining after the satisfaction of all claims and legacies. If the testator wishes to bequeath the residue of his property to one person, free from all conditions, there is no need to say more than :—"And as to all "the rest, residue, and remainder of my estate and effects, "both real and personal, I give, devise and bequeath the same "to *A. B.*, his heirs, executors, administrators and assigns "absolutely." The person named is termed residuary legatee.

The draft of the Will having been decided on, it should be fairly copied in words at full length, no figures or abbreviations being used ; concluding as follows :—

"In witness whereof I have hereunto set my hand this ".....day of.....one thousand nine hundred "and....."

"Signed by the said testator, "(or testatrix) as his (or her) last "Will and Testament, in the pre- "sence of us, both present at the "same time, who at his (or her) "request, in his (or her) presence, "and in the presence of each other, "have hereunto subscribed our "names as witnesses." } *(Signature of Testator).*

(Signature of two Witnesses, each adding Address and Occupation).

Everything being ready the Will is now to be executed, that is, two persons who do not receive any benefit under the Will, are to be asked into the room to see the testator sign his Will, and to attest his signature. The testator should say to the witnesses:—"I declare this to be my Will, and request you to witness it." (The mere circumstance of requesting persons to attest a signature to a Will, without giving them any explanation of the nature of the document is not a compliance with the law on the subject).

The testator should then, in the presence of the witnesses, sign the Will; and the witnesses, without leaving the testator's sight, should sign their names, under the attestation clause, adding address and occupation, and that done the Will is made.

Formerly a seal was required, but it is not now necessary. Neither does a Will or Codicil need a stamp.

If the testator is blind, or cannot read, his Will must be read over and explained to him in the presence of the witnesses, and testimony should be borne to the fact by mentioning it in the attestation clause.

A Codicil should commence as follows:—"This is a "Codicil to my last Will and Testament, which Will bears "date the day of "One thousand nine hundred and ." It must be signed and witnessed with precisely the same formalities as are required to be observed in the execution of a Will.

OF REVOCATION.

Every Will is in its nature revocable, neither can it, even by the testator's express desire, be made irrevocable.

A Will may be revoked, that is, made void:—

(1). By burning, tearing off the signature of the testator, or otherwise absolutely destroying or mutilating the Will itself; the act being done by the testator, or by some person in his presence and by his direction, with the intention of revoking the Will.

(2). By the marriage of the testator or testatrix.

(3). By a subsequent Will declaring an intention to revoke.

(4). Any part of a Will may be revoked by a Codicil, and other parts confirmed.

A Will cannot be revoked by any presumption of an intention on the ground of alteration of circumstances or lapse of time, for the law requires some deliberate act to be done by the testator to revoke his Will, with the intention of so revoking it.

The case of *Sugden v. Lord St. Leonards*, of which the following is a condensed report, is an apt illustration :—

The testator (Lord St. Leonards), who died in 1875, was at one time Lord Chancellor, and is described by his biographer to have, "as nearly as possible, realised the ideal of an infallible oracle of law."

Lord St. Leonards executed a Will, to which, at different times, he added eight Codicils. The Will and Codicils were kept in a box accessible to the inmates of the house. Upon the testator's death the Will was missing, and was never found. Thereupon a daughter of the testator wrote out the contents of the Will from memory, there being no draft or copy of it. The daughter had lived with the testator all her life, and he had constantly consulted her about the Will, and explained its provisions to her. By the Will the daughter took a considerable share in the testator's property, and particularly in the residuary personal estate. Her statement of the Will was in some degree corroborated by the Codicils, and other papers found in the box, and also by the verbal declarations made by the testator, after the execution of the Will, to his friends and relatives.

The Court held it proved that the Will was not destroyed by the testator for the purpose of revoking it, and being also satisfied that the contents of the Will were as stated by the daughter, whose veracity and honesty of purpose were not called in question, granted Probate of the Will, as written down by the daughter, and the eight Codicils.

The recent action in the Probate Division of *Beal v. Lord Grimthorpe* for the appointment by the Court of Receivers and Administrators *pendente lite*, illustrates the desirability of a testator expressly revoking all previous testamentary instruments, and making a new Will.

Lord Grimthorpe executed a Will in 1901, and subsequently added fourteen Codicils. The multiplicity of Codicils, frequently conflicting, almost invariably, and of necessity create complications with the consequent result of an appeal to the Court.

Another case in point recently before the Court is that of *Lord St. Helier v. Jeune.* This action referred to the Will of Lord St. Helier, better known as Sir Francis Henry Jeune, for many years President of the Probate, Divorce and Admiralty Division of His Majesty's High Court of Justice, and therefore a leading authority upon all questions relating to the legality of Wills.

Lord St. Helier executed a Will in 1892, and subsequently desiring to make certain alterations, caused several pages of it to be re-written, and, after inserting the new pages in place of the former ones, executed the Will in its amended form. No objection was offered to the Will being admitted to probate, but, in view of the unusual circumstances of the case, a question arose respecting the validity of the Will, and an appeal to the Court was considered desirable in order to set at rest any doubt which might exist on the point. The Court, after hearing evidence, pronounced in favour of the Will.

OF PROBATE.

The term "Probate" is applied to the document evidencing the proof of a Will. "Obtaining Probate," is the proving of a Will.

A testator may appoint any number of executors, and probate will be granted to all, but any one of them may prove the Will alone, power being reserved to the others to obtain a grant of probate to them, should it become necessary, and they think fit to apply for it, and such other executor, or executors, may prove the Will at any time, either during the lifetime or after the death of the acting executor. When probate has been granted to one executor it enables all to act upon it, so that, in most cases, there is no need for the other executors to prove the Will.

A Will can only be proved by the executor, or executors, named in it. Should they, however, predecease the testator, or become incapable, or decline to act, and renounce probate, which they are entitled to do before dealing with the testator's estate, or should no executor be appointed, the Will is not thereby rendered void, but letters of administration (with the Will annexed) will be granted, and the administrator will be bound to deal with, and distribute the property according to the provisions, and carry out, so far as he is able, the directions contained in the Will, so that there is, for administrative purposes, very little difference between the duties of an administrator (with the Will annexed) and an executor.

In appointing an administrator (with the Will annexed) the Probate Court will consider which of the claimants has the greatest interest under the Will in the estate and effects of the deceased and will grant letters of administration to such person in preference to the next-of-kin, or creditors, so that, for instance, the residuary legatee is the person first entitled to such administration. Should there be no residuary legatee named in the Will, then letters of administration will be granted to one of the next-of-kin, who is interested under the Will ; or if there should be none such, then to a legatee or creditor.

DUTIES OF EXECUTORS.

The executor should obtain the Will as soon as possible after the death, and read it to the family and friends assembled after the funeral, and, should he decide to prove the Will without the intervention of a solicitor (which he is at perfect liberty to do) he must prepare affidavits to be sworn to before a Registrar of the Probate Division. The Will is then to be deposited in the Principal Probate Registry, Somerset House, London, or in the Probate Registry of the district in which the testator at the time of his death had a fixed place of abode, with a registrar's certificate of the death ; an account of the estate of the deceased ; and a list of the debts and funeral expenses. The estate duty and fees are then to be paid, and after the lapse of a few days, the executor may obtain the probate duly sealed.

The executor should then proceed to pay :—

1. The funeral expenses.
   The cost of mourning or tombstone forms no part of "funeral expenses," and will not be allowed against Assets.
2. The expense of proving the Will.
3. Taxes.
4. Poor and local rates.
5. Judgment debts.
6. All other debts.
7. The legacies and bequests contained in the Will.
8. Legacy or succession duty, and
9. Dispose of the residue of the property as directed by the Will.

Should it happen that the personal property is insufficient, after paying all the debts, to pay the legacies in full, then the legacies will abate rateably.

If the testator has not in his Will provided for the disposition of his residuary personal property, then, as in the case of an intestacy, the residue must be divided amongst the next-of-kin of the deceased.

Before paying out the assets, the executor (or administrator) should insert an advertisement in *The London Gazette*, and in two local newspapers, calling upon all claimants against the estate to send in their claims within one month from the date of the advertisement. At the expiration of the notice the executor (or administrator) may distribute the assets of the testator (or intestate) among the parties entitled, having regard only to those claims that have been sent in, and he is not liable for the assets to any person of whose claim he had no notice at the time of distribution. But this does not prejudice the right of the creditor to follow the assets into the hands of any person who has received them.

Executors are allowed one year from the death of the testator to get in the estate and are not compelled to pay legacies until that time has expired.

Executors are only entitled to out-of-pocket and travelling expenses incurred in carrying out the provisions and directions contained in the Will (these come under the head of *Executorship Expenses.* or *Testamentary Expenses*, such terms being identical). Executors cannot legally claim any allowance for personal inconvenience or loss of time.

When there is more than one executor, as a rule one of the number is only liable for his own acts, and not for the acts of his co-executors.

On paying money legacies or handing over specific legacies (such as a horse, a carriage or the like) to legatees, the executor should take a receipt therefor on the proper printed form (deducting from the legacy the legacy duty, unless given by the Will duty free). Every such receipt must be dated on the day of signing and the duty thereon paid within twenty-one days from the date thereof. If this is not done it becomes a debt due to the Crown, which can recover the same, with interest at Four per cent. per annum, from the time when the legacy was paid, either from the executor or the legatee.

OF INTESTACY.

When a person dies without having made a Will which disposes of his property he is said to die intestate, and the property he thus leaves behind undisposed of and which was absolutely at his disposal will be dealt with under the General Rules of Inheritance, or Distribution, as the case may be. The real property descends according to the Law of Inheritance, and the personal property is distributed amongst his relatives and next-of-kin according to the rules contained in the Statutes of Distribution. But as regards both real and personal property, these Rules of Inheritance and Distribution are slightly modified by the Intestates' Estates Act, 1890, in favour of the widow.

By this Act it is provided that:—"the real and personal "estates of every man who shall die intestate . . leaving "a widow, but no issue, shall, in all cases where the net value "of such real and personal estates shall not exceed £500, "belong to his widow absolutely and exclusively."

In the case of a Will (perfect in other respects), which does not provide for the disposal of residuary personal estate, such portion of the property will be dealt with in the same manner as if the deceased had died intestate.

It is said that in ancient times the King was entitled to take possession of the goods of an intestate; but the law is now more lenient; indeed it was as far back as the reign of Charles II. that the present law as to the distribution of intestates' estates was passed, but even at the present time the Crown is entitled by law to one-half of the personal estate of a person dying intestate, leaving a wife only and no blood relations. In such cases, however, the legal right is now generally waived; but in the case of an unmarried person dying intestate, without any known relatives, the whole property will belong to the Sovereign. Two cases in point have recently occurred in which letters of administration to estates amounting in value to £150,000 and £50,000 respectively, have been granted to the Crown.

Few nations allow their subjects the absolute disposal of all their property; for instance, if a Frenchman die leaving a wife surviving, one-half of his goods *must* go to her, whether he wish it or not, and the same is, to a less extent, the case in Scotland; but Englishmen are not so restricted.

OF ADMINISTRATION.

Letters of Administration may be described as:—"An "authority granted by the Court of Probate to an individual "to get in the personal estate of a person who has died "without making a Will, or who has omitted to appoint an "executor, to pay his debts, and distribute the residue "according to law"; such person is called "administrator," or "administratrix."

Though a husband and wife are of no kin at all to each other, yet a husband has an exclusive right to administer the estate of his deceased wife; and a wife, in most cases, is entitled, in preference to the next-of-kin, to take out administration to the estate and effects of her deceased husband.

If the intestate die unmarried, or a widow or widower, letters of administration will be granted to one of the next-of-kin.

A married woman may, under the provisions of "The "Married Women's Property Act, 1882," accept the office of administratrix without the consent of her husband.

DUTIES OF ADMINISTRATORS.

To obtain a grant of letters of administration the applicant is required to take to the Principal Probate Registry, Somerset House, London, or to the probate registry of the district in which the deceased at the time of his death had a fixed place of abode, a registrar's certificate of the death, an account of the estate of the deceased, and a list of the debts and funeral expenses. The applicant will then be required to make an affidavit that, if he is appointed administrator, he will duly administer the estate, and will be required to enter into a bond, with two sureties, for the faithful performance of his duties, unless the applicant is the husband of the deceased, or the estate does not exceed £50, when one surety is sufficient. The estate duty and fees having been paid, letters of administration duly sealed will in a few days be ready for delivery.

An administrator (unlike an executor, who can act immediately after the testator's death), can do very little until he is empowered to act; it is therefore very desirable that application be made for letters of administration as soon as may be after the funeral. The duties of an administrator are almost identical with those of an executor, and he should proceed in the same manner to realise the property, pay the Debts, and discharge the Liabilities of the deceased. When this has been done, the residue of the estate is to be divided between the widow (if any) and the next-of-kin in the shares and proportions prescribed by the Statutes of Distribution (see appendix).

OF STAMP DUTIES.

The duties payable on the death of a person are of three kinds:—"Estate," "Legacy," and "Succession" Duty.

ESTATE DUTY is payable upon the principal value of all property, real or personal, settled or not settled, which

passes on the death of a person who dies after 1st August, 1894. This duty supersedes the former probate and account duty, and when estate duty is paid the legacy and succession duties are modified. Estate duty is not payable on the property of common seamen, marines, or soldiers who are slain or die in His Majesty's service.

The rates of estate duty are according to the following scale :–

Principal Value of the Estate.					Rate per cent.
	£			£	
		Not above		100	0
Above	100	but not above		500	1
„	500	„	„	1,000	2
„	1,000	„	„	10,000	3
„	10,000	„	„	25,000	4
„	25,000	„	„	50,000	4½
„	50,000	„	„	75,000	5
„	75,000	„	„	100,000	5½
„	100,000	„	„	150,000	6
„	150,000	„	„	250,000	7
„	250,000	„	„	500,000	8
„	500,000	„	„	750,000	9
„	750,000	„	„	1,000,000	10

Special rates apply in cases where the gross value of the whole Estate passing on the death is not more than £500. Thus if it is between £100 and £200 the duty is £1, if it is less than £300 a fixed duty of thirty shillings may be paid, and where it exceeds £300 and does not exceed £500 a fixed duty of fifty shillings.

Legacy Duty. With some few exceptions, legacy duty, varying according to relationship, is payable on every legacy, whether pecuniary or specific, or share of residue of personal estate.

Where the whole personal property does not amount to £100 no legacy duty is chargeable.

Legacy duty is payable upon annuities in proportion to their value, which is calculated according to Government Tables. It is payable by four annual instalments. If the annuitant dies within four years no further duty is payable.

The forgiveness of a debt by a testator constitutes a legacy and the debtor is required to pay duty thereon.

The husband or wife of a deceased person is not chargeable with duty and there are some other cases in which no duty is payable.

Description of Legatee.	Rate per cent.
Children of the deceased, and their descendants, or the father or mother or any lineal ancestor of the deceased, or the husbands or wives of any such persons	1
Brothers and sisters of the deceased, and their descendants, or the husbands or wives of any such persons	3
Brothers and sisters of the father or mother of the deceased, and their descendants, or the husbands or wives of any such persons	5
Brothers and sisters of a grandfather or grandmother of the deceased, and their descendants, or the husbands or wives of any such persons	6
Any person in any other degree of collateral consanguinity, or strangers in blood to the deceased	10

Succession Duty is payable on all successions to real estate, or leasehold property and upon all personal property to which any one succeeds under any instrument except a Will. A person is considered to succeed to such property if he becomes entitled to it beneficially on the death of any person, whether by the disposition of any person, or by devolution by law.

Succession duty is payable by eight half-yearly instalments. If the successor dies within four years no further duty is payable.

Where the value of the whole succession does not amount to £100, no succession duty is chargeable.

The exceptions from succession duty are the same as those from legacy duty.

Forms for the payment of legacy duty and succession duty can be obtained at the Principal Probate Registry, Somerset House, London or from an Inland Revenue Office in the Country.

Description of Successor.	Rate per cent.
Lineal issue or lineal ancestor of the predecessor	1
Brothers and sisters of the predecessor and their descendants	3
Brothers and sisters of the father or mother of the predecessor and their descendants	5
Brothers and sisters of a grandfather or grandmother of the predecessor and their descendants	6
Persons of more remote consanguinity or strangers in blood	10

PROBATE REGISTRIES.

Up to the year 1858 the probate and safe custody of Wills was entirely within the jurisdiction of the ecclesiastical courts.

Searches for, and Copies of, Wills.

All Wills proved since 1858 may be seen, and copies obtained, at the Principal Probate Registry, Somerset House, Strand, London. Previously to that date Wills proved in the country must be sought for in the district registries.

A copy of any Will deposited at the Principal Registry, or at any district registry, may be read and inspected.

The fees payable are as follows :—

For search and reading copy of Will	1/-
„ inspection of the original Will (additional)	1/-
„ an office copy of, or extract from, a Will, per folio of 90 words	6d.
If the will is 200 years old, per folio	9d.

For certified copies an additional fee is charged.

It is not permitted to copy any part of a Will or Codicil, but a note may be taken (*in pencil writing only*) without extra charge, of the following particulars :—

Name and address of testator (or intestate), and of executor (or administrator) and of witnesses to a Will.

Date of Will and Codicils and of grant of probate (or administration).

Date and place of death.

Amount of property sworn to.

DEPOSITORY FOR WILLS OF LIVING PERSONS.

In pursuance of the provisions of the " Court of Probate Act," (1857) the Principal Probate Registry is a depository provided for Wills of living persons, and testators are at liberty to deposit their Wills or Codicils therein under certain regulations, a printed copy of which may be obtained (free) at such registry.

Wills (enclosed in a sealed envelope) are received at district probate registries for transmission to the Principal Registry, to be placed in the depository.

Wills (enclosed in a sealed envelope) may also be deposited for safe custody with " The corporation of the Royal Exchange Assurance," on payment of a fee of 10s. 6d.

DEPARTMENT FOR PERSONAL APPLICATIONS.

At the Principal Registry, Somerset House, London, and at each of the district registries, there is established a " Department for Personal Applications," where executors, or representatives of deceased persons, who desire to prove a Will, or to take out letters of administration, are afforded all information and assistance (free) to enable them to obtain a grant of probate of a Will, or letters of administration *without the intervention of a Solicitor.*

Application for a grant of probate, or administration may be made :—

(1.) At the Principal Registry in all cases.

(2.) At a district registry in cases where the deceased at the time of his death had a fixed place of abode within the district in which application is made.

(3.) At certain inland revenue offices in the country, in cases where the value of the property does not exceed £500.

Printed "*Instructions as to personal applications for probate or administration*," and printed forms of "*Account of the estate of the deceased*" may be obtained (free) at the Principal Registry or at any district registry.

One great disadvantage of Wills being proved in a district registry is that Wills so proved do not, until two or three years have elapsed, appear in the general index of Wills kept at Somerset House, but only in a separate index kept there for each district, so that unless a person searching for a Will knows in what district registry the Will was proved, the task of finding the Will is rendered very difficult.

APPENDIX.

DISTRICT PROBATE REGISTRIES AND THEIR DISTRICTS.

Registries	Districts
Bangor	Counties of Carnarvon and Anglesea.
Birmingham	County of Warwick, including city of Coventry.
Blandford	County of Dorset, including the town of Poole.
Bodmin	County of Cornwall.
Bristol	Bristol and Bath present county courts districts.
Bury St. Edmunds ...	Western division of the county of Suffolk.
Canterbury	East division of the county of Kent, including the city of Canterbury, and such of the Cinque Ports and their dependencies as are locally situate in the county of Kent.

Registries	Districts
Carlisle	Counties of Cumberland and Westmoreland.
Carmarthen	Counties of Cardigan, Carmarthen, including the town of Carmarthen, and Pembroke, including the town of Haverfordwest, with the deaneries of East and West Gower, in the County of Glamorgan.
Chester	County and city of Chester.
Chichester	Western division of the county of Sussex.
Derby	County of Derby.
Durham	County of Durham.
Exeter	County of Devon, including the city of Exeter.
Gloucester	County and city of Gloucester, except the present Bristol County Court district.
Hereford	Counties of Radnor, Brecknock and Hereford.
Ipswich	Eastern division of the county of Suffolk and north division of the county of Essex.
Lancaster	County of Lancaster, except the hundred of Salford and West Derby, and the city of Manchester.
Leicester	Counties of Leicester and Rutland.
Lewes	Eastern division of the county of Sussex, including such of the Cinque Ports and their dependencies as are locally situate in the county of Sussex.
Lichfield	County of Stafford, including the city of Lichfield.

Registries	Districts
Lincoln	County and city of Lincoln.
Liverpool	Hundred of West Derby in Lancashire.
Llandaff	Counties of Glamorgan (with the exception of the deaneries of East and West Gower) and Monmouth.
Manchester	City of Manchester and hundred of Salford.
Newcastle-upon-Tyne	County of Northumberland, including the towns and counties of Newcastle-on-Tyne and Berwick-upon-Tweed.
Northampton... ...	Town of Northampton, county of Bedford, and Southern division of Northamptonshire.
Norwich	County of Norfolk, including the city of Norwich.
Nottingham	County and city of Nottingham.
Oxford	Counties of Oxford (including the University), Berks and Bucks.
Peterborough ...	Northern division of Northampton and counties of Huntingdon and Cambridge, including the University of Cambridge.
St. Asaph	Counties of Flint, Denbigh, and Merioneth.
Salisbury	County of Wilts.
Shrewsbury	Counties of Salop and Montgomery.
Taunton	Western division of the county of Somerset.
Wakefield	West Riding of the county of York.
Wells	Eastern division of the county of Somerset, except the present Bath County Court district, and the part of Somersetshire of the present Bristol County Court district.

Registries	Districts
Winchester	County of Hants, including the town of Southampton and Isle of Wight.
Worcester	City and county of Worcester.
York	North and East ridings of the county of York, including the city of York and Ainsty, and the town and county of Kingston-upon-Hull.

HEIR-AT-LAW.

To ascertain who is the heir-at-law it is necessary to take into consideration the "*Rules of Descent*" (or "*Rules of Succession*") partly settled by the Inheritance Act (1883), and partly by the common law. The result of these rules, in ordinary cases, would be as follows:—

On the death of an owner of freehold land and houses he would be succeeded by his eldest son, then by his eldest grandson, (if there were one), if not by his granddaughters, collectively. Supposing the granddaughters all died without issue, the next person to succeed would be the deceased's eldest brother and then his descendants in similar order.

I.

An "heir-at-law" is he, who, after the death of an absolute Owner, has a right to inherit all his lands, tenements and hereditaments.

An "heir-apparent" is he whose right of inheritance is indefeasible, provided he outlives the ancestor, as the eldest son who must, by course of common law, be heir to the father whenever the latter happens to die.

An "heir-presumptive" is he who, if the ancestor should die immediately, would in the present circumstances of things be his heir, but whose right of inheritance may be defeated by the contingency of some nearer heir being born, as, for instance, a brother or nephew, whose presumptive succession may be destroyed by the birth of a son or daughter; or a daughter whose present hopes may hereafter be cut off by the birth of a son.

II.

An "heir-at-law" is a person entitled in law to succeed to an estate of inheritance on the death of a person next before him in the line of inheritance. No person can have an heir in his lifetime. But he may have an heir-apparent, or an heir-presumptive.

An "heir-apparent" is he who is certain to succeed to the inheritance if he survives the present owner.

An "heir-presumptive" is he who would succeed to the inheritance should the present owner die immediately, but whose right may at any moment be ousted by the birth of an heir-apparent.

An "heir-expectant" is one who may come into the position of an heir-apparent or heir-presumptive in the event of the death of another person now standing before him in the line of inheritance.

"Co-heirs" or "co-heiresses" are two or more persons who inherit together.

NEXT-OF-KIN.

The kindred of a deceased person who are in the nearest degree of consanguinity, and so entitled to share in the distribution of his property to the exclusion of kindred of a more remote degree.

TABLE OF DISTRIBUTION OF INTESTATES' ESTATES.

RULES BY WHICH THE PERSONAL ESTATES OF PERSONS DYING INTESTATE ARE DISTRIBUTED.

If the Intestate die, leaving	*His representatives take in the proportion following:—*
Wife and child, or children ...	One-third to wife, rest to child or children; and if children are dead, then to the representatives (that is, their lineal descendants), except such child or children, not heirs-at-law, who had estate by settlement of intestate, or were advanced by him in his lifetime, equal to other shares.
Wife only, no blood relations...	Half to wife, other half to the Crown.
Wife, no near relations... ...	Half to wife, rest to next-of-kin in equal degree to intestate.
No wife or child	All to next-of-kin and their legal representatives.
No wife, but child, children, or representatives of them, whether such child or children by one or more wives ...	All to him, her, or them.
Children by two wives ...	Equally to all.
If no child, children, or representatives of them	All to next-of-kin in equal degree to intestate.
Child and grandchild by deceased child	Half to child, half to grandchild, who takes by representation.
Husband	Whole to him.
Father, and brother or sister ...	Whole to father.
Mother, and brother or sister ...	Whole to them equally.
Wife, mother, brothers, sisters, and nieces	Half to wife, residue to mother, brothers, sisters, and nieces.
Wife and father	Half to wife, and half to father.
Wife, mother, nephews, and nieces	Half to wife, one-fourth to mother, and other fourth to nephews and nieces.
Wife, brothers or sisters, and mother	Half to wife, half to brothers or sisters, and mother.

NOTE.—By the Intestates' Estates Act, 1890, where an intestate dies leaving a widow and no issue, and his property does not exceed £500, the whole property passes to the widow; and if his property exceeds £500, she is to have a charge on his property to that amount, with interest at 4 per cent. from the intestate's death; and such charge is to be in addition to the share to which she may be entitled according to this table.

If the Intestate die, leaving	*His representatives take in the proportion following :—*
Mother, but no wife, child, father, brother, sister, nephew, or niece	Whole to mother.
Wife, and mother	Half to wife, and half to mother.
Brother or sister of whole blood, and brother or sister of half blood	Equally to both.
Posthumous brother or sister, and mother	Equally to both.
Posthumous brother or sister, and brother or sister born in lifetime of father	Equally to both.
Father's father, and mother's mother	Equally to both.
Uncle's or aunt's children, and brother's or sister's grandchildren	Equally to all.
Grandmother, uncle or aunt ...	All to grandmother.
Two aunts, nephew, and niece	Equally to all.
Uncle, and deceased uncle's child	All to uncle.
Uncle by mother's side, and deceased uncle or aunt's child	All to uncle.
Nephew by brother, and nephew by half-sister	Equally to both.
Nephew by deceased brother, and nephews and nieces by deceased sister	Each in equal shares *per capita*, and not *per stirpes*.
Brother and grandfather ...	Whole to brother.
Brother's grandson, and brother or sister's daughter	All to daughter.
Brother and two aunts	All to brother.
Brother and wife	Half to brother, half to wife.
Mother and brother	Equally.
Wife, mother, and children of a deceased brother (or sister) ...	Half to wife, a fourth to mother, and a fourth *per stirpes* to deceased brother's or sister's children.
Wife, brother, or sister and children of a deceased brother or sister	Half to wife, one-fourth to brother or sister *per capita*, one-fourth to deceased brother's or sister's children *per stirpes*.
Brother or sister, and children of a deceased brother or sister ...	Half to brother or sister *per capita*, half to children of deceased brother or sister *per stirpes*.
Grandfather, no nearer relation	All to grandfather.

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[*Incorporated A.D. 1720.*]

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