

A CONCISE TREATISE
ON
THE LAW
RELATING TO
EXECUTORS AND ADMINISTRATORS.

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SECOND EDITION.

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THE RIGHT HONOURABLE SIR SAMUEL THOMAS EVANS

PRESIDENT OF THE

PROBATE, DIVORCE AND ADMIRALTY DIVISION

OF THE

HIGH COURT OF JUSTICE.

PREFACE

TO THE SECOND EDITION.



DURING the period of five years since the publication of the First Edition of this work I have endeavoured to note in the preparation of this Second Edition every decision bearing on the subject-matter. In so doing nearly 500 additional cases have been inserted. References have also been made to twenty-three additional statutes. The Finance Acts, 1910 and 1911, have necessitated many alterations in the Chapter on Death Duties, and it is hoped that with these alterations and a few other additions it will continue a useful aid, in a concise and what may be styled an authoritative form, to mastering this intricate subject. The revision entailed in introducing each new case has resulted in considerable modification and addition to parts of the work, which it is hoped will add greatly to its value. At the same time every effort has been made to keep the work within reasonable dimensions. The cases from the current Law Reports have been noted to the month of September, 1913. Great care has been taken during the process of revision to perfect the General Index. I am indebted to my son Mr. Arthur Lockyer Ingpen, of the Chancery Bar, for assistance in revising the proof sheets in going through the press.

A. R. I.

September, 1913.

PREFACE

TO THE FIRST EDITION.

THIS work is intended not merely as a book of easy reference, but as an attempt to express in a concise form the general principles of the law relating to executors and administrators. As a model for guidance it follows the great work of Sir Edward Vaughan Williams on that subject, to which frequent references are made. It is intended for the use of the practitioner and student, and as an introduction to the greater work, which is recognised by the Courts as an authoritative statement of the law, and where alone is to be found collected the mass of authorities showing the gradual growth of the subject. At the same time the present work contains much that is new, and the subject has been considerably rearranged. For convenience, references are made to the 10th edition (1905) of Williams on Executors, but in most instances they will be found to be in the learned author's own words taken from the early editions which he himself supervised. Whenever of late years the authorities have been reviewed and a principle re-stated by the Court, the principle so stated has been embodied in this treatise with a reference to the case, omitting earlier authorities, which can easily be ascertained when necessary from the report itself or from the larger work on the subject.

The Public Trustee Act, 1906, which came into operation on the 1st January, 1908, constituting a Public Trustee, as a

corporation sole with perpetual succession, and authorising the Public Trustee, under that name, to be appointed to and to accept the offices of executor and administrator, and vesting in him extensive administrative powers, introduces a useful innovation into the law relating to executors and administrators which may have important results. This Act, with the rules made under it, is given in full in the Appendix.

A. R. I.

July, 1908.

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THE LAW RELATING TO EXECUTORS AND ADMINISTRATORS.

INTRODUCTION.

THE legal personal representative of a deceased person is either the executor or person to whom the execution of a last Will and Testament of personal estate is, by the testator's appointment, confided (*a*), or the administrator or person deputed by the Court to administer the estate of the deceased in case of intestacy or where there is no executor or no executor willing or capable to act.

Meaning of legal personal representative.

The personal estate of the deceased vests in the executor or administrator, and in the case of deaths after the 31st of December, 1897, that is, after the commencement of the Land Transfer Act, 1897, the real estate also, except land of copyhold tenure or customary freehold in any case in which an admission or any act by the lord of the manor is necessary to perfect the title of a purchaser from the customary tenant.

Property which vests in him.

Executors and administrators differ in little else than in the manner of their constitution (*b*).

Difference between executor and administrator. Title.

The executor derives his title from the Will, and the property of the deceased vests in him from the moment of the testator's death (*c*). The probate is only evidence of the

(*a*) Toller (1822 ed.) 30.

(*c*) Woolley *v.* Clark, (1822) 5 B. &

(*b*) Fonblanque on Equity (5th ed.), Ald. 744.
vol. 2, p. 378.