

*TRUSTEES, ATTORNEYS AND EXECUTORS
(ACCOUNTS AND GENERAL)*

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**THE TRUSTEES, ATTORNEYS AND EXECUTORS
(ACCOUNTS AND GENERAL) ACT**

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THE TRUSTEES, ATTORNEYS AND EXECUTORS
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Cap. 395.

[30th May, 1904.]

1. This Act may be cited as the Trustees, Attorneys and Executors (Accounts and General) Act. Short title.

PART I. *Executors, Administrators and Trustees*

2. In this Part—

Interpreta-
tion.

“trustees” includes guardians, committees of lunatics, as well as all persons who are trustees within the meaning of the Trustee Act; and

“the Court” means the Supreme Court or a Judge thereof.

3. Executors, administrators, and trustees may invest any sum or sums of money not exceeding, as to any estate or trust in any one year, the sum of ten thousand dollars, and not exceeding in the whole the sum of twenty thousand dollars by depositing the same in the Workers Savings and Loan Bank and the Accountant-General is hereby authorized to receive the same any law or rule to the contrary notwithstanding.

Investment
of Trust
Funds in
Workers
Savings
and Loan
Bank.

4. As to the estates of persons domiciled in Jamaica and deceased prior to the thirtieth day of May, 1904, as to the estates of persons deceased prior to the date aforesaid but not domiciled in Jamaica in so far as the estate of such persons are situated in Jamaica, and as to trusts created prior to the thirtieth day of May, 1904, which respectively have not been fully administered and closed, and which are not the subject of pending litigation, the

Commis-
sion
chargeable
by
executors,
administra-
tors and
trustees in
certain
cases.

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executors or administrators in Jamaica of such deceased persons, and the trustees in Jamaica of such trusts as aforesaid, may from and after the thirtieth day of May, 1904, charge and receive such commission as the Administrator-General would be entitled to if he were, from and after the thirtieth day of May, 1904, appointed trustee of any such trust, or administrator of any such estate:

Provided always, that if commission has been paid to any such executor, administrator, or trustee on the receipt of any moneys, no commission shall be payable on the payment or transfer of any such moneys whereby more than six per cent shall be paid in respect of such moneys.

Regulations as to commissions on estates of persons dying, and of trusts created after this Act.

5. From and after the thirtieth day of May, 1904, the following regulations as to commission payable to executors, administrators, and trustees in Jamaica, shall apply in the case of the estate of all persons deceased after the date aforesaid, and of all trusts hereafter created, or coming into effect, and as to all executors, administrators, and trustees appointed after the thirtieth day of May, 1904—

- (a) where a testator does not by his will direct what remuneration shall be payable to his executors, they shall be entitled to the same remuneration as that mentioned in paragraph (c);
- (b) where the testator directs what remuneration shall be paid to his executors they shall be entitled only to such remuneration, unless at the time of proving the will they shall file in Court an instrument renouncing the specific remuneration;

- (c) save as aforesaid, all executors, administrators and trustees shall be entitled to the same commission and in like manner as provided by the Administrator-General's Act for the Administrator-General in respect of estates and trusts administered by him;
- (d) if there is more than one executor, administrator, or trustee, the commission shall be divided equally between such of them as are ready and willing to act, and absence from the Island for a period of less than twelve months shall not affect the right of an executor, administrator, or trustee to share in the commission.

6.—(1) All executors, administrators, and trustees, may within six months of the expiration of one year from the grant of probate, or letters of administration, or the creation of the trusts, and within six months of the expiration of each succeeding year as aforesaid, file in the office of the Registrar of the Supreme Court accounts duly verified of their acts and intromissions, for the preceding year:

Filing of
accounts in
Supreme
Court by
executors,
administra-
tors and
trustees.

Provided always, that the Court may, notwithstanding the expiration of the abovementioned times, allow any executor, administrator, or trustee to file his accounts at such time and for such period as the Court may think fit.

(2) The affidavit verifying such accounts shall contain a statement of the names and postal addresses of the persons to whom notices are to be sent of the appointment hereinafter mentioned for taking the said accounts.

(3) The Registrar shall, within ten days after the filing of the said accounts, prepare and issue notices stating the time when, and the place where, he will sit to hear and determine all matters relating to such accounts.

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He shall cause such notice to be inserted in the *Gazette*, and shall not less than eight days before the day appointed as aforesaid, forward through the post a copy of such notice to the person or persons filing the accounts, and all persons named in the affidavit as persons to whom the notice is to be sent.

(4) Upon the day appointed the Registrar shall sit and hear the parties interested or their solicitors, and shall be at liberty to take evidence *viva voce* or by affidavit. Thereafter he shall certify to the Court the result of the taking of the accounts by him, and such certificate shall be deemed and dealt with as a certificate given by the Registrar on accounts directed by the Court to be taken by him. Such certificate if not varied, or if varied then in accordance with such variation, shall be binding on the accounting party and all persons having notice of the taking of the accounts, and shall as to persons not having notice of the taking of the accounts be deemed correct unless and until the contrary be shown.

Penalty
for
receiving
excessive
commis-
sion.

7. Any executor, administrator, or trustee who shall take, or receive commission in excess of that authorized by this Act, shall repay to the estate or trust any sum so wrongfully taken or received with interest, and shall forfeit the whole or such part of his commission as the Court shall think fit, and shall also forfeit a sum not less than twenty dollars and not exceeding two hundred dollars to be recovered by action in the Resident Magistrate's Court for Kingston or the Supreme Court, at the instance of some person beneficially interested in the estate or trust, and no more than one action shall be brought in respect of any one default.

8. The Court may on petition of the Administrator-General or any person beneficially interested, remove any executor, administrator, or trustee receiving, or taking commission in excess of that authorized by this Part, or failing to account for any moneys in respect of which he shall have been found liable to account, and may appoint the Administrator-General or such other person as the Court shall think fit, administrator of the estate or trustee of the property in respect of which such default has been made.

Removal of executor, administrator or trustee.

9. The Court may give leave to any executor or administrator to retire, or be released from the office of executor or administrator upon the passing of his accounts in accordance with this Part, or otherwise as the Court may direct and on such terms as the Court may think fit. The Court may by such order appoint the Administrator-General or such other person as the Court may think fit administrator of the estate in the place of such executor or administrator so permitted to retire as aforesaid.

Retirement of executor or administrator with leave of Court.

10. All executors, administrators and trustees shall have the same right of applying to the Court as the Administrator-General has.

Power of executors, etc., to apply to Court.

11. If the same person is appointed executor and trustee the same commission shall be payable as if the Administrator-General had been so appointed and any person so appointed must accept or refuse both offices.

Commission to person appointed executor and trustee.

12. The payment of commission in respect of income is payable out of such income, but is otherwise declared to be one of the expenses of administering the estate or trust.

Payment of commission in respect of income.

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Appoint-
ment of
attorney by
executor,
adminis-
trator or
trustee.

13.—(1) A sole executor, administrator or trustee may from time to time appoint the Administrator-General as his attorney during his absence from the Island.

(2) An executor, administrator, or trustee who is not a sole executor, administrator, or trustee may from time to time appoint a fit and proper person to be his attorney during his absence from the Island for the purpose of executing and signing deeds and documents, and other acts not requiring an exercise of discretion.

Part III not
to apply to
executors,
etc., filing
accounts
under this
Act.

14. Part III shall not, nor shall any section thereof apply to the Administrator-General, or to executors, administrators and trustees filing their accounts in pursuance of the provisions of this Part, and such executors, administrators, and trustees shall, for all purposes, be deemed to have complied with the provisions of Part III.

The
Adminis-
trator-
General.

15. This Part shall not apply to the Administrator-General except when he is specifically mentioned.

PART II. Commissions of Attorneys

Commis-
sions of
attorneys,
etc.

16. All commissions of attorneys or agents of persons absent from this Island, arising from their several and respective receipts, payments, transactions, managements, and disposals after that time of the rents, profits, produce and increase of any the estates and interests for which they are or shall be respectively concerned, shall be, and the same is hereby, reduced to six *per centum*, including the factorage-commission for supplies made in this Island for such real estates for which such persons shall or may be concerned; and the commissions for receiving and remitting of moneys lent, or remaining at interest in this Island, and the interest of such moneys, shall be, and the same is hereby declared to be reduced to five *per centum*; to wit, two and one-half *per centum* for receiving, and two and

one-half *per centum* for remitting, and no more; and mortgagees in possession shall not be entitled to any commission for their management or transactions of or concerning such possessions, except what shall be paid to the factor for his commission: And in case any person or persons acting in either of the capacities above mentioned shall demand or receive more or a greater commission than what is hereinbefore prescribed, such person or persons, shall, for every such offence, forfeit the sum of two hundred dollars, to be recovered in the Supreme Court by action of debt, one moiety whereof shall go to the Consolidated Fund, and the other moiety to him or them that shall sue for the same; and shall also forfeit the whole commission on such sums as he shall receive commissions on contrary to the true intent and meaning of this Part:

Provided always, that nothing herein contained shall extend, or be construed to extend, to commissions for the sale of goods or other commodities, sent to this Island from Great Britain, or elsewhere.

PART III. *Recording of Accounts by Attorneys, Agents, Trustees and Others*

17. All persons who are acting as attorneys, or agents of persons who have real estate in this Island, but are absent from this Island, and all trustees, guardians, executors or administrators, acting on behalf of minors and others, and all mortgagees, their heirs, executors, administrators, or assigns in possession, sequestrators and committees of lunatics appointed by the Court, or any of them having thereby the management and direction, and receipt or disposal of the rent, profits, and produce of any real estate whatsoever shall, and are hereby directed and required between the first day of January and thirty-first day of March in every year, to render

Persons acting as attorneys, agents and trustees and others in a fiduciary character to record crop accounts.

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and exhibit into the Record Office, therein to be recorded, a true and just account in writing upon their oath or affirmation, or the oath or affirmation of their overseer or principal servant upon such real estate of all the rents, profits, produce, and proceeds thereof (hereinafter in this Part referred to as the crop account), and shall in such account particularly set forth the quantity and description of all such produce, and of the increase and decrease of all horned stock, horses and other cattle, in the preceding year ending the thirty-first day of December last, before the rendering and exhibiting such account of or from any such estate.

Form of
oath or
affirmation.

18. The oath or affirmation hereinbefore directed to be taken shall be in the form following, and may be administered by any Judge of any Court in this Island or by any Justice acting within his jurisdiction, who is hereby directed to make a memorandum of such oath upon or under such account—

I, *A.B.*, do swear (or affirm) that the above contains a just and true account of all the rents, profits, produce and proceeds of
plantation, in the parish of _____ made
and accrued for the year ending the thirty-first day of
December, 19 _____

(Signed)

A.B.

Sworn at _____ before me this
day of _____ 19 _____

Judge, or J.P.

Penalty
for
neglect.

19. In case any person by this Part required to render such account as last aforesaid shall neglect to render and exhibit the same in manner and between the days herein-

before limited for that purpose yearly, such person shall, for such neglect or omission forfeit forty dollars, to be recovered as hereinafter mentioned, and shall over and above such penalty, lose the benefits of his commissions for such year.

20. Every attorney or agent of any person absent from this Island, and every trustee, guardian, mortgagee, or other fiduciary in the actual possession and management as such of any real estate in this Island shall, under the penalty of forty dollars, and in case of attorneys, agents, and trustees, guardians, and other fiduciaries aforesaid, of forfeiture of commissions upon each year's crop, within eighteen months after recording each crop account, record in the Record Office upon his oath or affirmation, to be taken in the form hereinbefore mentioned, the whole account of every such real estate, and the account current respecting the same, showing what, if anything, remains due to such attorney, agent, guardian, mortgagee, or other fiduciary trustee.

Attorneys,
agents,
trustees,
etc., to
record
accounts
current.

21. Every penalty recoverable by virtue of this Part shall be recoverable in the Resident Magistrate's Court for the parish of St. Catherine.

Recovery
of
penalties.

PART IV. Distribution of Assets after Notice

22. Where an executor or administrator shall have given such or the like notices as, in the opinion of the Court in which such executor or administrator is sought to be charged, would have been given by the Supreme Court in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time limited in the said notices, or the last of the said notices for

As to
distribution
of the
assets of
testator or
intestate
after
notice
given by
executor or
adminis-
trator.

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sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of the distribution of the said assets, or a part thereof, as the case may be; but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.