

**DIGEST OF THE LAW
RELATING TO
PROBATE DUTY**

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Digest of the Law Relating to Probate Duty by Arthur F. Leach

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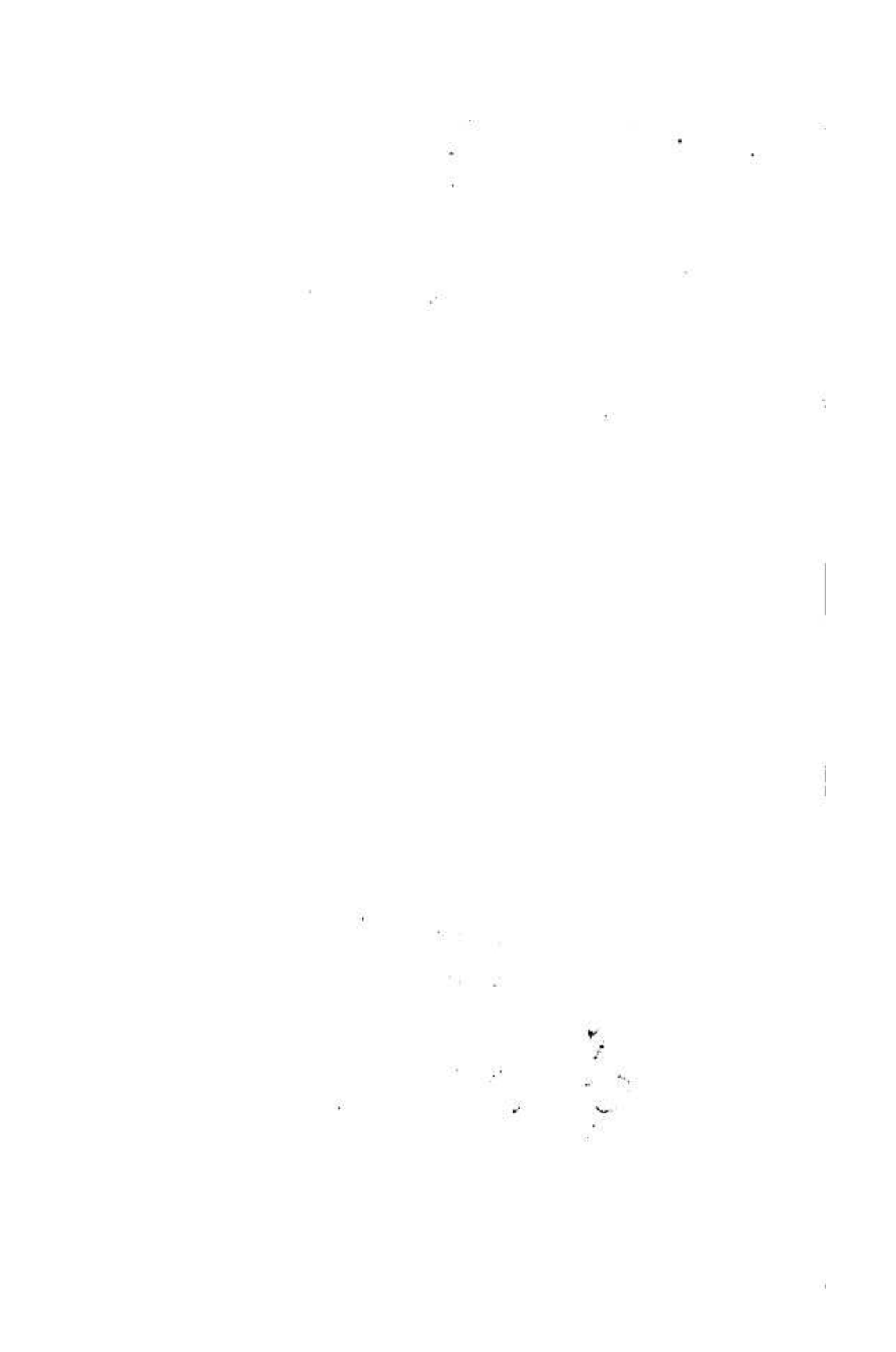
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PREFACE.

THE law relating to Probate Duty is a typical example of the confusion characteristic of English law in general, without having the same long history to account for, even if not to some extent to justify, such confusion. The creation wholly of modern statutes, there is no reason at all why a subject so limited in extent, and in its nature simple and eminently capable of exact definition, should have been involved in such confusion—a confusion the more intolerable because, being a revenue law, it as much, if not more than criminal law, demands accuracy and conciseness of statement. It is, nevertheless, impossible to conceive a subject so slight and simple plunged into a more hopeless state of muddle.

The foundation of the law is laid in the Stamp Act, 55 Geo. 3, c. 184, passed on July 11, 1815, which repealed nearly all previous Stamp Acts, and placed the Stamp Duties on a wider and more

permanent basis. The whole of that Act, except the part relating to Probate Duty and the third schedule, specifying the rates of Legacy and Succession Duty, is now repealed. It might have been expected that the remaining part also would have been repealed and re-enacted, or at least, that any alterations or additions to it would have been grafted into it and made one whole. But no one acquainted with the haphazard process of English law-making would anticipate any such rational procedure. He would expect (and his expectation would not be disappointed) to find the original law explained, changed, added to by other statutes and bits of statutes dealing with this subject, not alone but in common with many other subjects, while it had been extended, or contracted, or altogether changed in its application by judicial decisions, which had in their turn been converted from "judge-made" into substantive law by declaratory or overruling statutes; and he would further expect to find even the first principles and leading propositions of the subject confused and rendered uncertain, or refined away altogether, by a multitude of judicial decisions, distinguished from each other by hairbreadth distinctions which would never have been dreamed of, except by way of avoiding the authority of cases which the judges did not wish to follow, but either could not or would not expressly overrule.

The consequence of this process is that the law

relating to Probate Duty is to be found scattered in some five-and-twenty statutes, or bits of statutes, and some dozens of decided cases ; so that to obtain a clear idea of the law and the liabilities imposed by it requires much time and toil, whereas it might be done in ten minutes.

Luckily, Mr. Hanson's book comes to the rescue of the inquirer, and will save him a great deal of labour. But the plan of that book being a commentary on the original Act makes it less handy than it might be ; and even with that aid, such is the uncertainty of the law, that it is difficult to really arrive at any clear unhesitating general rule as to what property is subject to the duty and what not. There seems, therefore, to be room for a book which shall contain a conciser statement of the law, and take a step on the way to the sore-needed digest of the revenue laws, while at the same time being a handy guide in practice. To be such a book is the aim of this work. In carrying it out, the obligations under which the author lies to Mr. Hanson's book must be sufficiently obvious, and he has not therefore thought it necessary to acknowledge those obligations in detail. And while acknowledging once for all his indebtedness to the book, he also wishes to acknowledge his indebtedness to Mr. Hanson himself for his kind assistance and criticisms.

The form of the book is due to the author's conviction of the utility and necessity of a digest