

*Amended
No 32 of 1947*

CHAPTER 8. No. 1.

ADMINISTRATION OF ESTATES.

Ordinances
Cap. 60—1925.
No. 14—1939;
s. 24.

AN ORDINANCE RELATING TO THE POWERS AND DUTIES OF THE ADMINISTRATOR GENERAL AND TO THE DEVOLUTION AND DISTRIBUTION OF PROPERTY ON THE DEATH OF THE OWNER THEREOF.

Commencement.

[1st February, 1914.]

Short title.

1. This Ordinance may be cited as the Administration of Estates Ordinance, and shall be read as one with the Wills and Probate Ordinance.

Interpretation.

2. In this Ordinance—

“ Court ” means the Supreme Court;

“ Judge ” means any Judge of the Court.

Meaning of
“ kin.”

3. (1) No person shall be deemed of kin to a deceased person intestate for the purpose of beneficial succession to his estate who is not either lawful issue of the deceased, or his father or mother, or a grandfather or grandmother or great grandfather or great grandmother of the deceased, or the lawful issue of any such person.

Meaning of
“ next of
kin.”

(2) By the “ next of kin ” of a deceased are meant the person or persons nearest in degree of relationship, among those of kin within the meaning of the last preceding subsection, each step to or from the common ancestor reckoning as a degree of kinship; the half-blood reckoning together immediately after the whole blood of the same degree.

PART I.

THE ADMINISTRATOR GENERAL.

4. (1) It shall be lawful for the Governor, with the approval of the Secretary of State, to appoint such person as he may see fit to be Administrator General for the Colony, and in case of the death or removal of any such person to appoint some other person in his place. Appointment.

(2) Any person in the public service of His Majesty in the Colony may be appointed to exercise the duties and office of Administrator General in conjunction with any other office, and any other persons in such service may in like manner be appointed to assist the Administrator General in his office or as his agent or delegate in conjunction with the duties of any other office; and if the Administrator General is the head of any department of the service, his powers shall be deemed to extend to the clerks or officers in his department without any special appointment of such clerks or officers to assist him as in this section provided.

5. (1) The Administrator General shall give security to His Majesty in the sum of four thousand eight hundred dollars or in such sum as, with any amount for which he may have given security to His Majesty in respect of any other office, shall make up four thousand eight hundred dollars. Security.

(2) The Administrator General shall not be called upon to give security in respect of any trust property committed to his charge under the provisions of this Ordinance, other than the security in this section mentioned.

6. Every Warden shall, on the special direction of the Administrator General, and may, by virtue of any general regulations to be made by the Governor in Council in that behalf as hereinafter authorised, make such reports as to the deaths of persons and their estates and effects, and take such steps by way of securing the possession and protection of the estates of such deceased persons as shall be directed by the Administrator General or required by such regulations, and shall for such purpose be deemed to have been appointed to assist the Administrator General. Wardens to assist.

Remunera-
tion.

7. There shall be retained by the Administrator General out of all sums received by him in respect of any estate coming into his hands such commission at a rate not exceeding five per centum as may be directed by the Court or Judge on his appointment, and in default of any direction at the rate of five per centum. And in respect of any lands or other property not converted into money which may be taken possession of by the Administrator General, his remuneration shall be such as the Court on originating summons or otherwise may direct. Such commission or remuneration shall in every case be a charge on such moneys and estates in priority to all other charges, and may be raised by sale or mortgage of such estate or any part thereof or otherwise in such manner as the Court or a Judge in the course of any action or on originating summons may direct.

Commissions.

8. (1) All commissions or remunerations authorised to be paid to or retained by the Administrator General shall in like manner be retained or paid out of all property devolving on the Administrator General as representing His Majesty.

Appropriation

(2) All sums received by the Administrator General under this and the preceding sections, whether by way of remuneration or commission, shall be paid by him into the Treasury for the use of the Colony.

Conflicting
claims and
interests.

9. It shall be the duty of the Administrator General, as to all estates of which he has taken or claims possession on behalf of His Majesty and as to which it is doubtful what property real or personal was in the possession of the deceased intestate, or what are the boundaries or other description of so much of such property as consists of land, or whether the intestate died without next of kin, or whether any person is entitled as against His Majesty to any legal right in or equitable claim upon the same, or whether any person is entitled as a creditor of the deceased or otherwise to any payment out of or charge upon such property, by originating summons to be served in the prescribed manner upon any person having or claiming any adverse right or interest, or in whom such adverse right is alleged to exist, to obtain the directions of a Judge in Chambers as to such estate in respect of any of the matters aforesaid as such Judge shall deem proper matters to be so determined; and such Judge may, by consent of the parties claiming to be entitled, determine such matters himself sum-

marily without appeal, or may, at the request of the Administrator General or of any person appearing to such summons and claiming to be entitled, direct any such matter to be tried in the same manner as any question or issue arising in the course of interpleader proceedings:

Provided that on the trial of any such question it shall be lawful at any time for any party interested therein to apply to the Judge for such judgment or order as he may be entitled to in consequence of the finding on such trial.

PART II.

DEVOLUTION OF PROPERTY.

10. (1) Where any real estate is vested for any term or estate beyond his life in any person without a right in any other person to take by survivorship, it shall, on his death, notwithstanding any testamentary disposition, devolve to and become vested in his executor or executors or the administrator or administrators of his estate (who and each of whom are included in the term "representative") as if it were a chattel real vesting in them or him. And if such estate is held upon any trust or by way of mortgage, it shall likewise legally devolve on the representative of any person deceased in whom it has been vested during his life.

Devolution of legal estate in realty on representative.

(2) This section shall apply to any real estate over which a person executes by will a general power of appointment, as if it were real estate vested in him.

(3) Probate and letters of administration shall be granted in respect of, and shall take effect to vest in the executor or administrator, all real estate and personal estate whatever, including chattels real. And there shall be no devolution of estate by inheritance in any case save that the beneficial interest therein shall devolve as provided in Part III. of this Ordinance.

(4) On the death of any person all his estate real and personal whatever within the Colony shall vest in law in the Administrator General until the same is divested by the grant of probate or letters of administration to some other person or persons: Provided that the Administrator General shall not, pending the grant of such probate or letters of administration, take possession of or interfere in the administration of any

estate save as in this Ordinance and in the Wills and Probate Ordinance provided.

(5) The provisions of the last preceding subsection shall be deemed to have applied to the real estate within the Colony of all persons who died prior to the 1st of January, 1903, which was, at the time of such death, liable to be escheated, in all respects as if such persons had died subsequent to that date: Provided always, that nothing herein contained shall affect the operation of the Crown Suits Limitation Ordinance, or any right conferred thereby.

Rights of
persons
beneficially
entitled.

11. (1) Subject to the powers, rights, duties, and liabilities hereinafter mentioned, the representative of a deceased person shall hold the real estate as a trustee for the persons by law beneficially entitled thereto, and those persons shall have the same power of requiring a conveyance of real estate under section 12 as persons beneficially entitled to personal estate have hitherto had of requiring a transfer or delivery of such personal estate.

(2) All enactments and rules of law relating to the effect of probate or letters of administration on chattels real, and as respects the payment of costs of administration and other matters in relation to the administration of personal estate, and the powers, rights, duties, and liabilities of personal representatives in respect of personal estate, shall apply to real estate so far as the same are applicable, as if that real estate were a chattel real vesting in the representative, save that it shall not be lawful for some or one only of several joint representatives, without the authority of the Court, to sell or transfer real estate:

Provided that where probate is granted to one or some of several persons named as executors, power being reserved to the other or others to prove, the sale or transfer of real estate may be made by the proving executor or executors without the authority of the Court, and shall be as effectual as if all persons named as executors had concurred therein:

Provided also, that the proviso lastly hereinbefore set forth shall apply to probates granted before as well as after the commencement of this Ordinance, but only as respects sales or transfers made after the commencement of this Ordinance.

(3) In the administration of the assets of a person, his real estate shall be administered in the same manner, subject to the same liabilities for debts, costs, and expenses, and with the same incidents, as if it were personal estate: Provided that nothing herein contained shall alter or affect the order in which real and personal assets respectively are now applicable in or towards the payment of funeral and testamentary expenses, debts, or legacies, or the liability of real estate to be charged with the payment of legacies.

12. (1) At any time after the death of the owner of any land, his representative may by deed assent to any devise contained in his will, and may convey or transfer the land or any estate or interest therein to any person entitled thereto as next of kin, devisee, or otherwise, and may make the assent, conveyance, or transfer either subject to a charge for the payment of any money which the personal representatives are liable to pay, or without any such charge; and on such assent, conveyance, or transfer, subject to a charge for all moneys (if any) which the representative is liable to pay, all liabilities of the representative in respect of the land shall cease, except as to any acts done or contracts entered into by him before such assent, conveyance, or transfer.

Transfer to
persons
beneficially
entitled.

(2) At any time after the expiration of one year from the death of the owner of any land, if his representative has failed on the request of the person entitled to the land to assent, or to convey or transfer the land to that person, the Court may, if it thinks fit, on the application of that person, and after notice to the representative, order that the assent, conveyance, or transfer be made, or, in the case of land under the Real Property Ordinance, that the person so entitled be registered as a proprietor of the land, either solely or jointly with the representative.

(3) The production of an assent or transfer by the representative of a deceased proprietor of land under the Real Property Ordinance shall, subject to the provisions of such Ordinance, authorise the Registrar General to make the prescribed entry in the Real Property Register of the title of the person named in the assent or transfer as proprietor of the land, and such instrument shall not be deemed to affect the title to such land until such entry has been made.

Deed of
assent to be
registered.

13. A deed or instrument under the last preceding section shall have validity only when duly registered. No registration fee beyond the sum of twenty-four cents and no stamp duty shall be chargeable in respect of any such deed or instrument.

Appropriation of estate in satisfaction of legacy or share.

14. (1) The representative of a deceased person may, in the absence of any express provision to the contrary contained in the will of such deceased person, with the consent of the person entitled to any legacy or interest given by the deceased person or to a share in his residuary estate, or, if the person entitled is a person of unsound mind or an infant, with the consent of his committee, trustee, or guardian, appropriate any part of the residuary estate of the deceased in or towards satisfaction of that legacy or share, and may for that purpose value in the prescribed manner the whole or any part of the property of the deceased person in such manner as they think fit: Provided that before any such appropriation is effectual, notice of such intended appropriation shall be given to all persons interested in the residuary estate, any of whom may thereupon, within the prescribed time, apply to the Court, and such valuation and appropriation shall be conclusive save as otherwise directed by the Court.

(2) In the case of land under the Real Property Ordinance, the production of sufficient evidence of an appropriation under this section shall, subject to the provisions of the Real Property Ordinance, authorise the Registrar General to register the person to whom the property is appropriated as proprietor of the land, and the sufficiency of such evidence shall be determined by the Registrar General, subject to any directions which may be given by a Judge as in such Ordinance provided.

Partition by representative.

15. The representative may, in lieu of conveying the real estate or residuary real estate of the intestate to any persons interested therein jointly or in common, convey the same or any part thereof to each of several persons entitled jointly or in common, in severalty by way of partition by deed or deeds under section 12:

Provided that the partition effected by such deed or deeds shall be with the consent of such persons as are *sui juris*, and by order of the Court to be obtained on originating summons in the case of such as are infants or of unsound mind. In the

absence of agreement among the persons entitled of full age as to any such conveyance by way of partition, it shall be lawful for the executor or administrator or any party entitled *sui juris* or the next friend of any infant or committee of any insane person entitled, to apply in the prescribed manner by originating summons for directions in respect of such proposed partition; and the Judge upon such summons shall have all the powers of a Judge on the hearing of an action or summons for partition or for sale in lieu of partition.

16. The provisions of sections 13 and 14 of this Ordinance shall, with the necessary modifications, apply to registration under the Real Property Ordinance of any assent by an executor or administrator to any scheme for the division by way of partition among parties entitled of land being under the provisions of such Ordinance. The assent shall in such cases be in the prescribed form.

Land under
Real Property
Ordinance.

PART III.

ADMINISTRATION OF ESTATES, DISTRIBUTION OF ESTATES, AND WAIVER OF RIGHTS OF THE CROWN.

Administration of estates.

17. The Administrator General may, subject as is provided in and by the Wills and Probate Ordinance, apply to the Court for letters of administration, general or restricted as the case may be, to the estate and effects of any person, whether domiciled in the Colony or not, who shall have died possessed of property, real or personal, therein intestate, or of any person so dying having made a will in any case in which the executor or executors named in such will shall renounce and disclaim the execution of such will, or being duly cited shall refuse or neglect to prove such will, and in case of the death of any representative of any such person deceased, for administration or administration with will annexed of the estate unadministered.

Intestates'
estates
generally.

18. The Administrator General shall, as such, have power, if there is no executor appointed by will or if there is no person who has obtained letters of administration to the estate of any deceased person and in any case that appears to him to require

Small estates
under \$960,
in absence of
executor or
adminis-
trator.

him so to do, pending the grant of probate of any will or of letters of administration to such estate, to take possession of, seize, reduce into possession, sell, realise, and get in the estate, real and personal, of any person dying in the Colony or possessed of property in the Colony, whenever such estate and effects are shown not to amount in gross value to the sum of nine hundred and sixty dollars, without applying for probate of any will or grant of letters of administration:

Provided that nothing herein contained shall be construed to limit the power to issue administration conferred by rule 5 in the First Schedule to the Wills and Probate Ordinance. And administration under the said rule shall, if granted in respect of any estate so taken possession of as hereinbefore mentioned, be deemed equivalent to a grant of administration of the estate unadministered by the Administrator General:

Provided also, that in the event of its being made to appear at any time after the Administrator General has proceeded to take possession of any estate under the provisions of this section, that such estate equals or exceeds in gross value the sum of nine hundred and sixty dollars, then such possession and the acts done to obtain the same and any sale or realisation of such estate and effects or of any part thereof shall not be in any way invalidated, but the Administrator General may forthwith proceed to apply for probate or letters of administration to be granted to him or to any person or persons entitled.

Intestates'
estates under
\$960.

19. In any case in which it appears that the property, real and personal, of or to which a deceased intestate has died possessed or entitled does not exceed in value the sum of nine hundred and sixty dollars, and no application has been made by any person entitled under rule 5 in the First Schedule to the Wills and Probate Ordinance, it shall be lawful for the Administrator General to make application as in such rule provided for the benefit of any person who may appear to him to have established a legal, equitable, or moral claim, and in default of any such person, for the use of the Colony; and in such first mentioned case to pay or divide or grant the estate of the deceased, when administration shall have been granted, among the persons who shall have established a legal claim, and, in default of any such persons, with the assent of the Governor, among persons who shall establish an equitable or

moral claim, in such proportions and subject to such conditions and the payment of such costs as the Governor may approve.

20. Where any person shall have died intestate and without leaving next of kin, the Administrator General may, if the estate does not exceed nine hundred and sixty dollars, without obtaining letters of administration, and in other cases after obtaining letters of administration, take possession of and administer the real and personal estate of such deceased intestate on behalf of His Majesty without limit of amount: Provided that in the event of such estate, real and personal, proving to exceed in value the sum of nine hundred and sixty dollars, such Administrator General shall, as soon as may be after it has so been made to appear, apply to the Court for letters of administration to the estate of such intestate to be granted to him on behalf of His Majesty.

Dealing with estates of intestates not leaving next of kin.

21. In the event of the death of any person beneficially entitled to an estate or any part of an estate vested in and under administration by the Administrator General, the Administrator General, without obtaining the proof of any will of such person or the grant of any letters of administration to his estate and effects, shall be deemed the person entitled to represent the deceased person so beneficially entitled until proof of the will of such person or the grant of letters of administration to the estate and effects of such person by or to some person in the Colony, irrespective of the amount or value of the beneficial interest of the person deceased.

Estate of party interested in administration.

22. It shall be lawful for the Court, on the petition of the Administrator General or of any person interested, to make order for the administration of any estate which shall have been taken possession of by the Administrator General or whereof administration shall have been granted to such Administrator General under any of the preceding sections of this Ordinance, and to order that it be referred to a Judge to take the accounts of the funeral and testamentary expenses and debts of the testator or intestate and of his estate, and for the application of the same in payment of the costs of suit of such Administrator General, to be taxed as between solicitor and client, and of the debts and legacies, if any, in due course of administration, and to enquire and ascertain who are the

Court may order administration and refer accounts, etc., to Judge.

persons entitled to the residue of such estate; and such proceedings shall be had on such order as if an action had been filed for the administration of such estate.

Distribution of estates.

Undisposed
residuary
estates.

23. Subject to the provisions of this Ordinance, when any person shall die intestate or partially intestate domiciled in the Colony, or entitled to real estate in the Colony wherever domiciled, the undisposed of residuary estate of such person, whether real or personal in its nature, shall be distributed amongst the same persons, being of kin within the meaning of section 3, in the same manner and in the same proportions as the personal estate of such person dying domiciled in England and intestate would be distributed by the law of England.

Rights of
husband or
wife.

24. The widow or surviving husband of an intestate person dying after the commencement of this Ordinance shall be beneficially entitled as follows:—

(a) If there is no lawful issue of the deceased, to the whole estate of the deceased;

(b) If there is lawful issue of the deceased, to one-third thereof.

Saving right
to courtesy.

Ord. 14-1939,
s. 24.

25. Provided that in case the deceased intestate was a married woman, married to a surviving husband before the 1st of January, 1903, and has died seised in fee simple of any freehold land, such surviving husband shall, in a case where under the law of England he would have been entitled to a right to the courtesy, at his option be held entitled, in lieu of the beneficial interest in his wife's estate conferred by the last preceding section, to a beneficial estate by the courtesy in such land according to the law of England, but not any legal estate in such land. And in such case the surviving husband shall (subject to the right of the real representative to dispose of such land in the course of administration) be deemed beneficially entitled to a life estate in such land, or in the produce or value thereof if sold, or in so much thereof as has not been sold and duly expended in course of administration. But subject to his beneficial life interest, such land or the produce or value thereof, as the case may be, shall be deemed to belong to the next of

kin of the deceased intestate at her death, as if such husband had pre-deceased her.

26. In any such case as in the last preceding section provided for, it shall be competent for such surviving husband, at any time within twelve months of the death of his wife, at his election by deed under his hand duly registered to waive the right thereby conferred and avail himself instead thereof of the right in and to the estate of the intestate conferred by section 24. In default of such election, the surviving husband shall, as regards any land of his deceased wife, be deemed to have elected at the expiration of one year from the death of the intestate to accept his beneficial life estate by the courtesy in such land, and to have waived the benefit of the said section 24 in respect of her general estate and the produce and value thereof.

Election of
surviving
husband.

Waiver of rights of Crown.

27. Whenever the Administrator General on behalf of His Majesty has obtained administration to the estate of a deceased person intestate, and no person appears to be legally entitled to the beneficial interest in the residue of such estate under the provisions of sections 23 and 24, it shall be lawful for the Governor in Council, by warrant, to order the payment or transfer of the whole or any part of such residuary estate if got in and converted into money, or the transfer, delivery, or grant of any part thereof unconverted, whether consisting of real or personal estate, to any person who shall have established to the satisfaction of the Governor in Council a legal, equitable, or moral claim thereto. And in the case of any part of such residuary estate consisting of land, then the Administrator General shall, by virtue of such warrant, execute and deliver to such person a deed of transfer under the provisions of section 12, vesting such land in such person in accordance with the terms of such warrant. And in the case of such residue consisting of money which has been paid to the Treasurer on behalf of the Colony, then the Treasurer shall, on such warrant, pay the amount therein specified to the person in such warrant mentioned, and any such warrant as aforesaid may be granted on such terms and conditions as to the costs and fees attendant on transfer and as to the payment of such duties and otherwise, as to the Governor in Council may seem fit.

Grant of
Crown rights
after adminis-
tration.

Grant of
Crown rights
without
adminis-
tration.

28. Where a person has died intestate, and the value of the estate, real and personal, of such person does not exceed nine hundred and sixty dollars, and such estate of such person shall have vested in the Administrator General under the provisions of subsection (4) of section 10, and no administration to the estate of such person has been granted, it shall be lawful for the Governor in Council, at any time after the expiration of six months from such death, on its being made to appear by affidavit, that the deceased person has died intestate, and that there is no evidence that there is any person in the Colony entitled to his estate under the provisions of sections 23 and 24, to transfer to any person who shall have established a legal, equitable, or moral claim thereto within the meaning of the last preceding section, such part of the residuary estate of the intestate, consisting of land, as shall then be so vested in the Administrator General, to such persons and for such estates as shall in such warrant be directed. Such warrant may be granted subject to such terms and conditions as in the last preceding section specified.

Registration
of warrant.

29. A transfer of land under either of the two last preceding sections shall be entered, in the case of land subject to the provisions of the Real Property Ordinance, on the Real Property Register, and in the case of land not so subject, in the protocol of deeds, on the delivery thereof to the Registrar General within twelve days from the same being signed, and at the expiration of one year from such registration shall be deemed to have passed the legal estate in such land according to the terms of such transfer; and administration obtained to the estate of such intestate after the expiration of such year shall not be deemed to vest in the real representative to whom such administration shall have been granted or in the next of kin the legal or beneficial estate respectively in such land:

Provided that in the case of lands subject to the provisions of the Real Property Ordinance, on the entry of any such transfer the Registrar General shall enter a caveat on behalf of the Administrator General and all persons entitled to take out letters of administration, and shall remove the same at the expiration of one year from such registration.

Registration
in ordinary
register.

30. The registration in the protocol of deeds of transfers or warrants under sections 10 and 11 of the Distributions Ordinance,

No. 102, granting land not subject to the provisions of the Real Property Ordinance shall, as regards transfers or warrants which at the time of the commencement of this Ordinance have been entered in such protocol for a period of two years and upwards, or if not so entered for the full period of two years on the 7th of March, 1912, then upon the completion thereof, be deemed to be in all respects valid and effectual for the purposes set forth in the last preceding section.

31. A transfer under section 27 shall, as to any land therein comprised, be deemed in like manner to take effect by way of entitling the person therein named to possession, and shall bind the legal and beneficial estate in such land according to the tenor thereof after the expiration of one year from its registration, unless in the meantime application has been made on behalf of persons claiming to be entitled as against the Crown to set aside the administration granted to the Administrator General, or thereafter in the event of all such applications being unsuccessful.

Effect of
transfer
under
section 27.

PART IV.

ESTATES OF PERSONS OF UNSOUND MIND.

32. The Administrator General may be constituted the committee or a joint committee of the estate and effects of any person of unsound mind in the same manner as any other person capable of being so constituted and appointed, at the discretion of the Court having jurisdiction in that behalf.

Administra-
tor General
may be
constituted
committee of
insane person.

33. The Administrator General shall possess himself of the estate, real and personal, of any person of unsound mind resident in the Colony where such estate does not exceed in value the sum of four hundred and eighty dollars, without any inquisition found, and may administer such estate for the benefit of such person, and may take possession of, sell, and realise the estate, real and personal, of such person and make such payments out of such estate for the maintenance of such person, including any payment to or on account of the Superintendent of the mental hospital for the maintenance of such person in such hospital, as he may think fit, and generally may exercise all the powers which could be exercised by the

Insane
persons'
estates.

legal personal representative of such person if he were dead, without any proceedings being instituted for the purpose.

PART V.

GENERAL.

Savings Bank
deposits.

34. Nothing in this Ordinance contained shall be deemed in any way to affect the powers of the Governor and the Postmaster General under the Post Office Savings Bank Ordinance to pay, apply, and distribute moneys standing to the credit of a depositor in the Savings Bank to the several classes of persons in such Ordinance specified.

Rules as to
procedure.

35. In respect of all applications to be made to or entertained by the Court under the provisions of this Ordinance, and of the Court fees, charges, and costs of parties, solicitors, and counsel payable in respect of the same, and of the forms to be used in respect of the same, and generally for carrying the provisions of this Ordinance into effect, it shall be lawful for the Chief Justice, with the concurrence of a Puisne Judge, to make such rules and orders as may be deemed necessary for regulating and providing for the same; and such rules and orders when made shall be laid before the Legislative Council for confirmation and have validity in the same manner and subject to the same conditions in all respects as rules made under the provisions of the Judicature Ordinance.

Regulations
for conduct
of office of
Administrator
General.

36. In respect of the duties of the Administrator General and of his officers, and of any persons assisting him or acting for him, and in respect of the manner of all applications to be made to and all business to be transacted by or with the Administrator General or such officers and other persons other than proceedings in the Court, the Governor in Council may make such regulations as may be deemed expedient; and such regulations when made shall be published in the *Royal Gazette* and shall be binding on the Administrator General and his officers and all persons assisting him or acting for him and all persons affected thereby in the same manner as if the same were embodied in this Ordinance.