

TRINIDAD AND TOBAGO.

Wills and Probate.

No. 6.—1902.

17th December, 1900.

AN ORDINANCE to regulate the execution of Wills and the granting of Probate and Letters of Administration.

[L.S.]

ALFRED MOLONEY,

GOVERNOR.

26th March, 1902.

BE it enacted by the Governor of Trinidad and Tobago with the advice and consent of the Legislative Council thereof as follows:—

Short Title.

1. This Ordinance may be cited as the Wills and Probate Ordinance, 1900, and shall be read together with "The Property Devolution Ordinance, 1900," and "The Distributions Ordinance, 1900," ~~and shall come into operation on the 1st day of July, 1901. Provided however that~~ the powers under Section 7 hereof may be exercised at any time after the passing of this Ordinance.

#10/1902

Interpretation.

2. In the construction of this Ordinance the term "will" shall be taken to mean any will or any codicil to any will.

"Probate," "proof" and "proved," includes the grant of letters of administration with will annexed.

"Court" means the Supreme Court and "Judge" means a Judge thereof.

"District Delegate" means a person appointed under the provisions of Section 5 hereof to receive applications

in common form, and includes the Registrar and Sub-Registrars of the Supreme Court acting under the powers conferred on them in respect of common form business.

“Common form business” includes applications for probate or administration in the ordinary course where no adverse or conflicting interests appear to be involved.

“Original affidavit” means the affidavit or affidavits tendered with any application for probate or grant of letters of administration.

“Next of kin” means the person or persons entitled under an intestacy according to the provisions of “The Distributions Ordinance 1900.”

“Estate” includes land and chattels real as well as other chattels and personalty, but the “estate” of a person deceased shall not be deemed to include any property of which the deceased died seised or possessed as a trustee only.

“Administrator-General” means the person appointed under the provisions of the Ordinance No. 5 of 1863, entitled “An Ordinance for the protection of the estates of deceased persons,” and includes also any person who may hereafter be appointed under the provisions of any future Ordinance repealing the same or amending or extending the powers of the Administrator-General.

“Representative” includes executor and administrator, and a representative under the provisions of the Property Devolution Ordinance, 1900; and in the construction of any Ordinance or rule where the word ‘heir’ or ‘heirs’ is used the same shall as regards the devolution of the legal estate in land, be held to apply to the representative, and as regards the beneficial interest to the person or persons entitled under the provisions of the Distributions Ordinance, 1900.

3. Subject to the provisions of this Ordinance and to the Rules of Court to be made hereunder, the Court shall, in the exercise of its jurisdiction under this Ordinance follow and be guided by the Ordinances in force in the Colony and the rules and orders of the Court applicable to the same, and so far as the same do not extend, by the Jurisprudence.

jurisprudence and practice of the probate Division of the High Court of Justice in England, so far as the same may be applicable.

Jurisdiction.

4. The jurisdiction of the Court in respect of probate and administration conferred by the Ordinance No. 4 of 1845 shall continue to be exercised by the Court, subject to the provisions hereof, and the Court shall also exercise all powers necessary to carry into effect all the provisions hereof: and all applications relating to the exercise of the powers of the Court which might be entertained by the Court in its equity jurisdiction relating to estates in course of administration may (if the proper parties are before the Court) be entertained by the Court in any matter commenced as a probate matter in any of the methods hereby authorized, in all respects as if the same had been commenced by writ of summons or originating summons issued out of the Court in its general equity jurisdiction.

District Delegates.

5. The jurisdiction of the Court in matters relating to probate and the grant of letters of administration may as regards common form business be exercised through delegates, who shall be appointed by the Chief Justice with the approval of the Governor from persons in the Public Service of the Colony; and who shall be termed "District Delegates," for the respective districts for which they shall have been appointed, and who in the exercise of their powers shall have no authority to decide any question of law or fact, and shall be in all respects subject to the direction of the Court and the Judges thereof.

Provided that the Registrar and Deputy Registrar of the Court shall act as district delegates for the district of Port-of-Spain and the Western district of the county of St. George, and shall as Registrar and Deputy Registrar have power to receive, and subject as aforesaid to deal with applications in common form made in such registry, wherever the deceased may have had his abode at the time of his death, concurrently with district delegates elsewhere, and the Sub-Registrar of the Court in Scarborough shall be district delegate for Tobago, and the Sub-Registrar in San Fernando shall be district delegate for the county of Victoria.

Extent of Jurisdiction of Court.

6. The Court shall have jurisdiction to determine the validity and admissibility to probate of the will or the grant-

ing of letters of administration to the estate of any person domiciled in the Colony and as regards any estate in the Colony of any person wherever domiciled, dying seised or possessed thereof or entitled thereto; and to revoke any probate or letters of administration in any suit instituted either by an executor or administrator or any person claiming under a will to have it established or to have the trusts of it carried into effect under the decree of the Court, or by any person claiming adversely to a will or administration to have it declared void, and the registration of it prevented or recalled, or claiming to have letters of administration revoked.

7. The Chief Justice with the assent of a Judge of the Court may from time to time make and prescribe rules of practice forms and schedules of fees and costs and charges, to regulate the practice both in the Supreme Court and in the offices of the district delegates in respect of all and every the several matters in this Ordinance specified and enacted, in the same manner and to the same effect and subject to the same confirmation and with the same consequences in all respects as the rules of the Court framed under the provisions of the Judicature Ordinance, and such rules, forms and schedules are herein referred to as "prescribed." Rules, etc.

8. Where any person shall die intestate or without having appointed any executor, or shall have appointed an executor, but such appointment shall fail, or the executor named by the will shall be under the age of twenty-one years, or shall be absent from the Colony and shall not have proved the will, or where any person shall die out of this Colony but leaving any estate within this Colony, letters of administration in respect of such estate shall be granted to the person entitled thereto. Right to Administration.

9. Applications for administration in cases of intestacy or in the absence of the executor may be made by the following persons as of course; and in the following order of preference:— Order of persons entitled to administration.

- (1.) The surviving husband or widow of the intestate.
- (2.) The next of kin.
- (3.) The Administrator-General.

10. In the case of a subject of a foreign country dying within the colony or dying elsewhere possessed of estate Administration to Consul in

case of foreign
subjects.

within the colony, it shall be lawful for the court, if a convention to that effect shall have been signed with the government of such country on behalf of this colony and such convention shall have been proclaimed by the Governor, to grant administration of the estate of such foreign subject to the Consul in this colony of such country in place of the Administrator-General; and in such case administration may be granted without any bond or security for due administration being given by such Consul.

Creditors.

11. On producing an affidavit stating who is the person who would otherwise be entitled to probate or letters of administration and shewing that such person has renounced the right to the same or neglected or refused to apply for the same, and that the claim of the applicant is unsatisfied, but not otherwise, it shall be lawful for any person proving himself to be

- (a.) A creditor of the testator or intestate, or
- (b.) A creditor for funeral expenses,

to apply for letters of administration, provided that in either such case the application shall set out and the applicant shall swear to the alleged debt and the particulars thereof with the same particularity as is required for the special endorsement of a writ of summons in an action.

In any such case if commenced in common form the Judge in Chambers may in his discretion cause to be summoned the executor named in the will or the husband wife or next of kin as the case may be; and if there are no persons so entitled, the Administrator-General.

Persons abroad
need not be
cited.

12. It shall be lawful for the Court to grant letters of administration of the estate and effects within this Colony of any person to any person resident within the Colony who would otherwise be entitled to the same without any previous citation to or the consent of any other party having a prior right to administration, but not resident or actually living within the limits of the Colony: Provided always that such letters of administration shall be granted with reservation of the right of the party having such prior right.

Renunciation.

13. The evidence of the renunciation of an executor or that any person entitled to administration in priority has

renounced or neglected or refused to apply therefor shall be on affidavit in the prescribed form.

14. Where there shall be an executor of a will, but such executor shall not have proved the will, and shall not have signed a declaration of renunciation, or where there shall be any next of kin who shall not have signed a declaration of renunciation, a Judge may in any such case if such executor or next of kin do not appear, or if such executor or next of kin shall appear but not show any sufficient cause to the contrary, grant letters of administration to the person who would be entitled thereto, if such executor or next of kin had duly renounced.

Adminis-
tration with
will annexed,
etc.

15. At any time after the expiration of six calendar months from the death of any testator, if the executors or executor to whom probate of the will shall have been granted are or is then residing out of the jurisdiction of the Court, it shall be lawful for a Judge on the application of the Administrator-General or of any person having a beneficial interest, grounded on affidavit showing the interest of the party petitioning and that the executors or executor are or is out of the jurisdiction, to grant a special administration of the estate of the testator, such administration to be limited during the absence of such executors or executor.

Special Ad-
ministration.

16. In any proceedings in which the validity of a will is in question, or which are brought to recall any letters of administration, the Court shall have power to grant an injunction to prevent any representative from acting under such will or letters of administration.

Injunctions.

17. The executor of the executor or of the survivor of two or more executors shall be the representative of the first testator in preference to any administrator, notwithstanding the first executor or surviving executor shall have died without proving the will of his testator.

Right to pro-
bate on death
of Executor.

18. Where the executor who has proved the will shall die leaving any co-executor surviving who shall not have then proved the will, such surviving executor shall be entitled to administration in priority to any other person.

Co-executor
preferred.

19. Any executor, notwithstanding he may have proved the will of his testator, may at any time before he has intermeddled with the assets or acted as the representative

Disclaimer b
Executor.

of any person of whom his testator was executor, renounce and disclaim being the representative of such person by making a declaration in writing to that effect and registering the same with the Registrar-General, and filing a certified copy thereof in the Registry of the Court.

Effect of Administration where an Executor is living.

20. All letters of administration granted at a time when there shall be an executor who has not proved and registered the will, shall be voidable only and not void; but such letters of administration shall become void when and so soon as a will of the person of whose goods such administration shall have been granted shall be duly proved and registered by any executor, or when such letters of administration shall be revoked by order of the Court.

Voidable Administration

21. All acts done by any administrator under letters of administration which shall be voidable shall be valid notwithstanding such letters of administration shall afterwards become void or be revoked, but persons who shall have received any property as next of kin shall be liable to account for and transfer the same to the legatees or devisees or other persons entitled thereto under the will, without prejudice to the rights of purchasers for valuable consideration.

Power to discharge representative.

22. The Supreme Court may by decree in any suit discharge an executor or administrator from his office, and upon any such discharge may grant letters of administration to any person or persons, which letters of administration shall be as valid as if the executor or administrator so discharged had died.

Rights of representative.

23. Every executor of any will which shall be proved after the commencement of this Ordinance, and every administrator to whom any administration of the effects of any person shall be granted after the commencement of this Ordinance shall take and have the same estate and interest in and control over the estate of his testator or intestate, and shall have the same rights, actions, powers, and authorities, and be subject to the same actions, suits, and liabilities, in respect of such estate as any executor or administrator, would take, have, and be subject to in respect of personal estate according to the law of England; and all actions and suits and rights of action, and suit which by the

law of England would go to the executor or administrator or heir of any person dying in England, and all actions and suits to which any executor or administrator or heir would be subject according to the law of England, shall in this Colony in like manner go to and be maintainable against every representative who after the commencement of this Ordinance, shall prove the will or obtain letters of administration of the estate of any person dying and leaving effects within this Colony.

24. Nothing herein contained shall be taken to relieve or discharge any representative devisee or devisees of any person from his or their liability for the debts and contracts of such person to the extent of the property descended or devised to such representative, devisee or devisees, and where any person by bond, covenant, or other specialty, shall have bound himself and his heirs or representative every such creditor shall and may have and maintain his action of debt or covenant, upon such bond, covenant, or specialty, against the representative and the devisee or devisees of such obligor or covenantor, or the devisee or devisees of such first mentioned devisee or devisees jointly in the same manner as he might by the law of England, and such representative, devisee or devisees may plead any plea to such action which he or they would be permitted to plead by the law of England. And provided also, that all the estate which any person shall die possessed of or entitled to, shall be assets to be administered for the payment of all the just debts of such person.

Liability to discharged debts of deceased not to be affected.

25. Every person who may be appointed executor by any will or codicil shall be deemed a trustee in respect of any residue not expressly disposed of, for the person or persons (if any) who would be entitled thereto according to law, in the same manner as if this Ordinance had not been passed, unless it shall appear by the will or any codicil thereto, that the person or persons so appointed executor or executors, was or were intended to take such residue beneficially.

Executor to be a Trustee.

26. Where there is not any person who would by law be entitled to the testator's property the executor shall be entitled to the residue in such part of the estate as consists of personalty, but as to land the same shall be subject to the rights of the Crown as heretofore.

Beneficial interest of Executor in personalty.

Executor *de son tort* liable to penalty.

27. If any person shall take possession of or in any manner administer any part of the estate of any person deceased, without proving the will or taking out letters of administration of the estate of the deceased within three calendar months after the decease of such person, or within one calendar month after the termination of any suit respecting the will or the right to letters of administration, or application to the Court, whichever shall last happen, he shall be deemed guilty of an offence against this Ordinance, and in addition to all civil liabilities he may have incurred to persons entitled to any interest in such estate, he shall be liable to a penalty of One Hundred Pounds and costs of suit to be recovered on information by the Attorney-General for the use of the Colony.

Executor *de son tort*, how chargeable.

28. If any person, not being the executor or administrator, shall take upon himself the office of executor, or intermeddle with the estate of any party deceased, such person shall be charged and chargeable as executor of his own wrong of the party deceased, and shall be subject to all actions and suits to which an executor of his own wrong is subject, according to the law of England, and where any question shall arise whether any person is chargeable by reason of any act done by him as executor of his own wrong, such question shall be decided according to the law of England in the like case.

Probate, etc., required for realty.

29. The Court shall have jurisdiction in respect of probate and letters of administration equally whether the estate of a deceased person consists of realty only or of personalty only, or partly of realty and partly of personalty.

Unproved will to have no effect.

30. No will or document purporting to be a will of any person dying after the commencement hereof shall have any effect whatever, either in law or in equity or shall pass any right, title or interest whatever, until the same has been duly proved in accordance with the provisions hereof.

Wills of persons already deceased to be proved within twelve months.

31. The will of any person who has died within sixteen years before the commencement hereof, and which has not been registered before the commencement hereof in the office of the Registrar-General shall, in order to affect any land thereby devised be duly proved and registered under the provisions hereof within twelve months of such commencement, and if not so proved and registered shall be deemed of no effect. Provided, however, that it shall be

lawful for a Judge for good cause at any time after the expiration of such twelve months on petition to make an order permitting the person entitled under or any person claiming under him to proceed to probate thereof on such terms and conditions as to such Judge shall seem fit.

32. All procedure for obtaining proof of a will in solemn form or procedure for obtaining probate or letters of administration where application has not been made within twelve months of the death of the testator or intestate and all proceedings in any application subsequent to the filing of the caveat if any, and all applications for revocation or amendment of any probate or letters of administration on any ground, and all proceedings by or against executors or administrators or by or against the Administrator-General under the probate jurisdiction of the Court, shall be deemed contentious business and shall be conducted in the Registry of the Court, and determined by the Judges.

33. All applications by the Administrator-General to take possession of the estate of any person deceased or in relation thereto shall be deemed contentious business and shall be commenced by way of originating summons returnable before the Judge in Chambers and served on the prescribed persons and dealt with in the prescribed manner as the justice of the case may require.

34. Pending the hearing of any action petition summons or other application, whether in the nature of contentious or common form business, it shall be lawful for a Judge on the application of the Administrator-General or of any party interested, on its being shown to his satisfaction that the estate of any person deceased is in danger of spoliation or that for any other reason steps require to be taken for the custody or preservation of any property forming part of such estate, to appoint an interim receiver or grant an interim injunction or order the sale of any perishable property to be made by any person, and otherwise to intervene for the protection of the estate of the deceased in such manner and on such terms as to security and otherwise as to such Judge shall seem fit.

35. Any application under the last preceding section may be made in the first instance *ex parte* by affidavit; and in common form cases arising outside of the western district

of the county of St. George any such application together with the affidavits in support thereof may be forwarded by the applicant to the Registrar of the Court through the district delegate.

Will valid if executed according to formalities of domicile.

36. Every will and other testamentary instrument made out of this Colony by a British subject (whatever may be the domicile of such person at the time of making the same, or at the time of his or her death) shall, as regards any estate of such British subject within this Colony, be held to be well executed for the purpose of being admitted to probate in this Colony, if the same be made according to the forms required either by the law of the place where the same was made, or by the law of the place where such person was domiciled when the same was made, or by the laws in force at the time of the making thereof in that part of Her Majesty's dominions where such person had his or her domicile of origin.

Or of this Colony.

37. Every will and other testamentary instrument made within this Colony by any British subject (whatever may be the domicile of such person at the time of making the same or at the time of his or her death) shall be held to have been well executed, and shall be admitted to probate, if the same have been executed according to the forms required by the laws for the time being in force in this Colony.

Subsequent change of domicile not to invalidate will.

38. Subject as in Section 35 hereof expressly provided, no will or other testamentary instrument made within this Colony by any British subject shall be held to be revoked or to have become invalid, nor shall the construction thereof be altered, by reason of any subsequent change of domicile of the person making the same.

Necessary formalities of valid execution of a will in the Colony.

39. Save as hereinbefore provided, no will executed after the commencement hereof shall be admitted to probate or annexed to any letters of administration or be deemed to have any validity for any purpose whatsoever, unless the same is in writing, and executed in manner hereinafter mentioned: that is to say, it shall be made by a person of the age of 21 years or more; it shall either be signed at the foot or end thereof by the testator in his own proper handwriting, or else his name shall be affixed by some other person in his presence, and by his directions, such person appending a

statement in writing signed by him of the fact and circumstances of his having so appended the name of the testator; and such signature shall be made by the testator, or if made by some other person, acknowledged by the testator, as the case may be, in the presence of two or more witnesses of either sex of the age of fifteen years at least, present at the same time, and such witnesses shall attest and subscribe the will in the presence of the testator and of each other and by their signatures, in their proper handwriting; and no person shall be a competent witness to any will executed or purporting to be executed after the commencement hereof, who has attested such will by making a cross or mark, or otherwise than by his signature in his own proper handwriting. And a will shall not be deemed to be duly executed by the mere affixing of a cross or mark by the testator in the presence of such witnesses.

40. No form of attestation shall be deemed necessary to the validity of a will provided it appears thereby that the signature of the testator or of the person subscribing the same in the name of and by direction of the testator as in Section 39 hereof provided was made or acknowledged, as the case may be, by the testator in the presence of both the attesting witnesses at the same time.

Form of
attestation.

41. In the case of the last will of any person dying before the commencement hereof, any such will shall be admitted to probate if shewn to have been executed according to the requirements of the law in force respecting the due execution of wills at the time of the death of such testator; and in case of a person dying after such commencement, then any will executed by such person bearing a date of execution prior to the commencement hereof may at any time afterwards be admitted to probate though not executed in compliance with the 39th Section hereof on its being proved to the satisfaction of a Judge that such will or codicil was executed in compliance with the requirements of the law with respect to the execution of wills in force at the time of such execution.

Wills executed
before com-
mencement of
Ordinance.

42. No appointment made by will in exercise of any power shall be valid, unless the same be duly executed as a will; and every will duly executed shall so far as respects the execution and attestation thereof, be a valid execution

Execution of
powers of
appointment.

of a general power of appointment by will, notwithstanding it shall have been expressly required by the instrument conferring such power that a will made in exercise of such power should be executed with some additional or other form of execution or solemnity.

Attestation by legatee, etc., not to invalidate will.

43. 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 estate (other than and except charges and directions for the payment of any debt or debts) 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, or any person claiming under such person, or wife or husband, be null and void; but such person so attesting may if otherwise admissible be admitted as a witness to prove the execution of such will, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift, or appointment mentioned in such will.

Executor competent to attest.

44. No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will or the validity or invalidity thereof.

Revocation by marriage.

45. Every will made by a man or woman shall be revoked by his or her marriage.

No revocation by presumption.

46. No will shall be revoked by any presumption of an intention, on the ground of an alteration in circumstances.

Nor except in prescribed manner.

47. Save as in Section 45 provided, no will or codicil, or any part thereof, shall be revoked otherwise than by another will or codicil executed in manner hereinbefore required, or by some writing declaring an intention to revoke the same, and executed in the manner in which a will is required to be executed, or by the burning, tearing, or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

Interlineation, etc., how to be verified.

48. No obliteration, interlineation, or other alteration made in any will after the execution thereof shall be admitted to probate or have any effect, except so far as the

words or effect of the will before such alteration shall not be apparent, unless such alteration shall be executed in like manner as hereinbefore is required for the execution of the will; but the will with such alteration as part thereof, shall be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses be made in the margin, or on some other part of the will, opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

49. No will or any part thereof which shall be in any manner revoked, shall be held to be revived otherwise than by the re-execution thereof, or by a codicil executed in manner hereinbefore required, and shewing an intention to revive the same; and when any will which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shewn.

Revoked will not to be revived by implication.

50. No conveyance or other act made or done subsequently to the execution of a will or relating to any estate therein comprised, except an act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such estate as the testator shall have power to dispose of by will at the time of his death.

Conveyance *inter vivos* no revocation.

51. Every will shall be construed, with reference to the estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

Construction of Will as to time.

52. Unless a contrary intention shall appear by the will, any estate or interest therein that shall be comprised or intended to be comprised in any bequest or devise in such will contained, which shall fail or be void by reason of the death of the devisee or legatee in the lifetime of the testator, or by reason of such devise or bequest being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise or bequest (if any) contained in such will.

Lapsed interest to fall into residue.

53. A devise of the land of the testator, or of the land of the testator in any place, or in the occupation of any

Construction of general devise.

person mentioned in his will, or otherwise described in a general manner; and any other general devise which would describe a leasehold estate, if the testator had no freehold estate which could be described by it, shall be construed to include the leasehold estates of the testator, or any of them to which such description shall extend, as the case may be, as well as freehold estates, unless a contrary intention shall appear by the will.

Construction
of general
devise.

54. A general devise of the real estate of the testator, or of the real estate of the testator in any place, or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; and in like manner a bequest of the personal estate of the testator, or any bequest of personal property described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend, as the case may be, which he may have power to appoint in any manner he may think proper, and shall operate as an execution of the power, unless a contrary intention shall appear by the will.

Idem.

55. Where any estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the whole estate or interest which the testator had power to dispose of by will in such estate, unless a contrary intention shall appear by the will.

Construction
of limitation
by devise.

56. In any devise or bequest the words "die without issue," or "die without leaving issue," or "have no issue," or any other words which may import either a want or failure of issue of any person in his lifetime, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean the want or failure of issue in the lifetime, or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will;

Provided that this Ordinance shall not extend to cases where such words as aforesaid import the meaning "if there

shall be born no issue described in a preceding gift" or "if there shall be no issue, who shall live to attain the age, or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue."

57. Where any real estate shall be devised to any trustee or executor, such devise shall be construed to pass the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a different intention shall appear by the will.

Devise to a trustee—How construed.

58. Where any real estate shall be devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate or in the surplus rents and profits thereof shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person; such devise shall be construed to vest in such trustee the whole estate which the testator had power to dispose of by will in such real estate, and not an interest determinable when the purposes of the trust shall be satisfied.

Idem.

59. Where any real estate shall be devised to any person in such manner, that such person would, according to the law of England, take an estate tail, or an estate in quasi entail; and such person shall die in the lifetime of the testator, leaving issue who shall be inheritable under such entail, and any such issue shall be living at the time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

Construction of devise with words of limitation in tail.

60. Where any person being a child or other issue of the testator to whom any estate shall be devised or bequeathed for any estate or interest not determinable at or before the death of such person, shall die in the lifetime of the testator, leaving issue; and any such issue of such person shall be living at the time of the death of the testator; such devise or bequest shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

..... issue of testator to represent their parents.

Unproved will
not to be
registered.

61. The will of any person, whether dying before or after the commencement of this Ordinance, shall not after the commencement hereof be registered as a document of title affecting land or be entered as affecting such land in the register of land under the Real Property Ordinance until probate of the same has been granted. All original wills that shall be proved after such commencement shall be deposited in the Registry of the Court and not with the Registrar-General. But a certified office copy of every will proved, and of every administration granted, shall immediately on probate or administration with such will annexed being granted, be sealed with the seal of the Court and transmitted to the Registrar-General, and be registered in the same manner as the original will has hitherto been registered, in the protocol of wills in the office of the Registrar-General, and in the case of any land under the Real Property Ordinance being affected thereby, shall be duly entered on the Register of Land under such Ordinance.

If will declared
void, or letters
revoked and
another will
established,
or other
administration
granted, a copy
of the decree
to be
enregistered.

62. If in any suit the Court shall declare a will to be void, or shall revoke any letters of administration, or shall declare one will to be void and establish another will, or shall revoke any letters of administration and grant new letters of administration in lieu thereof, the Registrar of the Court shall send a copy of the decree to the office of the Registrar-General which shall be forthwith entered in the protocol of wills, and noted or referred to in the margin of the will or letters of administration so declared void or revoked or of the official copy thereof as the case may be, and be entered on the register of land if affecting land under the Real Property Ordinance.

Certified
copies.

63. The contents of every such certified copy and of any other certified copy of a proved will under the seal of the Court shall be conclusive evidence of the language of such will, and presumptive evidence of the due execution and attestation thereof.

Common form
business.

64. Common form business in this Ordinance means the procedure for probate or grant of letters of administration from the application mentioned in Section 65 hereof up to and including the caveat, if any, and if there is no caveat or caveat is withdrawn, then up to grant of probate or letters of administration, and shall be commenced by application

in writing, and save as hereinafter expressly provided shall be conducted by the applicant at the office of the Registrar, Sub-Registrar or district delegate.

65. Any person who is desirous to establish and prove any document as being the last will and testament of any person deceased may within twelve months of the death of such person produce the same to the delegate for the district in which the deceased had his fixed abode, or to the Registrar of the Court, together with an affidavit or affidavits by the persons attesting or one of them, exhibiting the will and stating in effect that the requirements hereof have been complied with, and that the will produced was executed by the testator in accordance therewith, and also stating the date and place of the death of the testator and shall hand in therewith a written application for probate or letters of administration, as the case may be, and also a written and signed valuation of the real and personal property of or to which the testator died possessed and entitled, and such valuation shall be annexed to the affidavit of the applicant, who shall depose that the same comprises all the real and personal estate of the testator to the best of the knowledge and belief of the deponent or with such exceptions as in such affidavit shall be pointed out. And there shall be excepted what the deceased shall have been possessed of or entitled as a trustee for any other person or persons, but not beneficially, and also any property therein specified which is so situate or circumstanced as to appear incapable of immediate valuation.

Procedure to
probate in
common form.

66. Any person who is desirous to obtain letters of administration to the estate of any person deceased may within the like time and in like manner apply on affidavit proving the time and place of the death of the deceased and that he has left no last will or testament (or as the case may be, exhibiting any last will and testament of the deceased which the applicant desires to have annexed to such letters of administration) and showing the relationship or other circumstances alleged as entitling the applicant to such administration, and also a similar valuation of the amount, extent and nature of the real and personal property of or to which the deceased died possessed similarly annexed to be verified by an affidavit. The affidavits in this and the preceding

Adminis-
tration in com-
mon form.

section mentioned shall afford such further information and shall be in such form as may from time to time be prescribed by Rules of Court.

As to security
to be given
by an
administrator.

67. Where the person applying for administration of the estate of an intestate or in default of an executor is a widow or husband or only child or sole next of kin of the deceased, or the Administrator-General or, a Consul applying under the provisions of Section 10 hereof, no security shall be required for the due administration of the estate; but in all other cases the Court in granting administration may in its discretion require the administrator to give security for the due performance of his duties to such amount and in such form as in the circumstances shall be deemed fit. And in such case the letters of administration shall not be handed out to the applicant until such security has been perfected and given.

Procedure in
common form
must be within
twelve months.

68. No will of a person dying after the commencement hereof and more than twelve months before application for probate of the same is made shall be admitted to probate in common form nor shall administration be granted of the estate of any such person except on application in solemn form.

Applications
in common
form in cases
where deceased
resident
abroad.

69. Applications for probate or administration in common form where the deceased person was resident elsewhere than in the Colony, shall be made to the Registrar of the Court, and shall, subject as may be prescribed by Rule, contain similar information to that required in Sections 65 and 66 hereof.

Account of
estate to be
delivered with
application.

70. There shall be delivered to the Registrar of the Court together with the original affidavits an account of the particulars of the estate for or in respect of which the probate or letters of administration is or are to be granted, and of the estimated value of such particulars, and an account of the estate if any, of the deceased locally situate abroad and in respect of which no grant is required, and such accounts shall be in accordance with the prescribed forms.

Filing of
documents.

71. The account so delivered shall be filed in due course, and in such form as may be convenient for its inspection by the Receiver-General, together with the following documents respectively, that is to say: in the case of probate

a copy of the will or an abstract thereof, and in all cases the original affidavits and valuation, and in all cases such certificates or notes as the Receiver-General may from time to time require.

72. The Receiver-General and his Officers and the Administrator-General shall at all times have free access to all probate documents in the Registry of the Court, but documents other than original wills shall not be open to the inspection of the public.

Custody of
and access to
documents.

Provided always that any person may on payment of the prescribed fee bespeak and obtain an office copy of any document deposited in the probate department of the Registry.

73. The valuation shall be independent of any debts owed by the testator, and shall set out the several items of property real and personal of which the estate consists with the value set upon each.

Valuors.

74. The valuer shall be selected by the applicant, and if not one of the persons nominated by the Governor as Assessors under the provisions of "The Lands Acquisition Ordinance," shall in his valuation set forth and describe his qualifications for valuing.

Valuator.

75. On receipt of an application under Section 65 or 66 hereof, the District Delegate or Registrar shall require and obtain such further information, identification or verification as may be prescribed by Rule, or as he may deem necessary before transmitting the application. And after the application is transmitted, the Judge in Chambers may refer the same back to the District Delegate or Registrar with directions to make such further investigation as such Judge may deem necessary, and the applicant shall not be entitled to probate or administration until he has complied with any requirement of such Judge in the course of investigation.

Procedure on
receipt of
application.

76. On receipt of an application for probate or letters of administration duly supported by affidavit and valuation, the district delegate shall cause the same to be advertised in the prescribed manner in the *Royal Gazette*, and cause a copy of such advertisement to be screened or posted in a conspicuous place in the office of such delegate, and shall otherwise advertise the same in any prescribed manner, and

Procedure on
receipt of
application.

if the deceased died possessed of any real property or house shall, if he shall think fit, cause a copy of such advertisement to be affixed to the door of a dwelling house on such property, and if there is no such dwelling house, then on some conspicuous place on such land. And such advertisement and notice shall be in the prescribed form, and shall contain a statement that if no caveat is lodged on or before the expiration of the prescribed period, the Court will proceed to issue probate or letters of administration, as the case may be, to the party applying for the same.

Caveats.

77. Any person claiming as against the applicant to be entitled to administration to the estate of the deceased, and any person objecting to the proof of the alleged will or any codicil thereto, may within the prescribed time lodge a caveat against the issue of probate or letters of administration to the applicant by delivering the same either to the District Delegate who has issued the notice of application or to the Registrar of the Court. A caveat may be in the prescribed form, but any written document signed by the party objecting, or by a solicitor on his behalf, and stating the objection of the caveator and a sufficient ground of objection shall be deemed a caveat if delivered within the prescribed time.

The sufficiency of a ground of objection so stated shall be determined by a Judge in Chambers, the papers being laid before him for that purpose by the Registrar of the Court and if insufficient on the face of it the Judge may direct the application to be proceeded with as if there were no caveat, or may at his discretion direct the caveat to be returned to the caveator for amendment.

To be forwarded.

78. If any caveat is delivered to the District Delegate the same shall be forwarded by registered letter to the Registrar of the Court at the expiration of the prescribed time, together with the application and the affidavit and other documents lodged in support thereof, and the applicant shall be informed of the lodgment of the same in the prescribed manner and form. And unless the caveat is withdrawn after warning no further proceeding in the matter shall be had or taken in the office of the District Delegate.

Procedure if no caveat.

79. If no caveat shall have been entered in the office of the District Delegate, such delegate shall, at the expiration

of the prescribed time, forward the application and other documents and a report by him in the prescribed form to the Registrar of the Court who shall lay the same before a Judge in Chambers.

80. The Judge may refer the matter back to the delegate for further affidavits or information, and the delegate shall in such case make such further investigation into the subject and require such further affidavits as shall be so directed and report accordingly; or the Judge may direct the issue of the probate or letters of administration applied for, or may refuse the same; or may adjourn the matter for the appearance before him of the applicant; of which notice shall be given to the applicant through the District Delegate.

Judge may deal with application.

81. On such appearance the applicant may appear before the Judge by counsel or solicitor or in person, and the Judge may at any time order any other person to be notified to attend any further hearing of the application, or may direct the proof of any will or the application for administration to be made in solemn form, or may grant or refuse the application.

Appearance of applicant.

82. On any refusal of a Judge in Chambers to grant an application for probate or letters of administration arising in the course of common form business, there shall be the same right of appeal to the applicant as if such refusal had been a refusal to make an order on an interlocutory application in Chambers *ex parte* in an ordinary action. But no appeal other than by an action for revocation of probate or grant, shall lie from the decision of the Judge in Chambers on behalf of any party other than the applicant.

Appeal from refusal of application.

83. The Judge granting probate or letters of administration shall append his fiat to the application, and the probate or letters of administration shall thereupon be drawn up signed and sealed by the Registrar and forwarded by him to the District Delegate (if other than the Registrar) to be handed to the applicant, or may be handed to the applicant or his solicitor direct from the Registry, if he shall so require.

Granting of application.

84. The executors or one of the executors appointed by a will shall be entitled to lodge an application for probate without further documents than as in Section 65 hereof provided, and if application is made by any person for

Further affidavits in certain cases.

administration of the effects and estate of the deceased with the will annexed then there shall be lodged with such application further affidavits sufficient to satisfy the Registrar that the persons named as executors are dead or out of the island or unwilling to accept probate, and shewing the claims of the applicant to such letters of administration.

Fees.

85. The prescribed fees shall be paid to the Delegate or Registrar as the case may be for the use of the Colony on all applications for probate and letters of administration, whether commenced by common form proceedings or otherwise.

Cost of advertisements.

86. Where any advertisement other than in the *Royal Gazette* is required, the applicant shall in addition prepay to the Registrar or Delegate the cost of the advertisement.

Application may be set down for hearing.

87. In any case in which it does not seem fit to the Judge in Chambers to authorize the issue of probate, the Judge shall, if the applicant so requires, direct the application to be set down on the list of the Court for hearing as an application for probate or letters of administration in solemn form, and may direct such persons to be served with notice of the application as shall seem fit.

Application in solemn form.

88. It shall be competent for any person claiming probate, in the first instance to make application to be heard as an application for grant in solemn form, by commencing an action to establish the will against any person with any opposite interest; but in such case the Judge shall at the trial not allow to the applicant the costs or any part of the costs of such action out of the estate unless satisfied that the action was necessary.

Trial thereof.

89. On the trial of such action the applicant shall at the hearing produce satisfactory evidence of the several matters and things required to be established according to Sections 65 and 66 hereof, in addition to any special matter the subject of controversy and in respect of which it is necessary for him to adduce evidence; and the defendants shall be at liberty to adduce evidence in support of any plea which they may have respectively pleaded.

Affidavits in all cases.

90. No probate or letters of administration shall in any case issue without the production of the original affidavit and valuation mentioned in Sections 65 and 66 hereof or without the certificate required by Section 112 hereof.

91. Applications for probate or for grant of letters of administration whether with or without will annexed in solemn form shall be by writ of summons the endorsement thereof stating the reason for the application being made for proof or grant in solemn form.

Form of applications in solemn form.

The writ shall be served upon any party as against whom the applicant desires to establish his right and if no such party is alleged then upon the Administrator-General, and any party so served may enter appearance thereto in the prescribed manner and may attend the hearing thereof.

92. Any application for grant of letters of administration after the expiration of twelve months from the death of an intestate shall in like manner be by action and the claim therein shall state the reason for delay, and if there is no other party against whom such action can be brought then the Administrator-General shall be defendant to such action.

Actions for administration after twelve months.

Provided that it shall be lawful for a Judge at any stage of such action to direct the Administrator-General to be made a party thereto, and to adjourn any hearing summons or other proceeding to admit of service on and appearance by the Administrator-General.

93. A summons in the action in the way of a summons for directions shall in all cases be taken out in the prescribed form, and be heard before a Judge in Chambers, who may order the service of the proceeding on such person or persons as seem just to him, including the Administrator-General.

Summons for directions.

94. If a caveat is entered to any application in common form within the prescribed time it shall be noted in the caveat book in the Registry; and the applicant may within the prescribed time warn the caveator in the prescribed manner that unless the caveat is withdrawn he will proceed to issue a writ of summons in an action to obtain probate or administration as the case may be.

Caveat and record thereof.

95. If all caveats are withdrawn, the probate or administration; shall issue and if not withdrawn then such action shall be commenced in the prescribed form and within three months of the warning or such other time as a Judge in Chambers may for special reason direct. And if the applicant does not commence action within such time he

Limit of time after entry of caveat for action.

shall not thereafter proceed to obtain probate except by an action *de novo* in solemn form, to which the caveator or his personal representative is made a party.

Trial in
solemn form.

96. Applications for probate or administration in solemn form shall be tried before a Judge in Court, and it shall be competent for the person propounding the will or applying for administration and for any person desirous of opposing the same to claim on the grounds of and adduce evidence in respect of the following matters :—

- (a.) The due execution of the will by the testator or the fact of intestacy as the case may be ;
- (b.) Whether the testator executed the will when possessed of due testamentary capacity according to the law of England ;
- (c.) Whether the will was or was not procured to be executed by duress or under undue influence or the testator was not in a fit state mentally to execute the same ;
- (d.) As to the construction of the will, and whether the same extends to affect any particular property claimed to be affected thereby ;
- (e.) Whether any property claimed to be affected by any will or letters of administration was the property of the testator or intestate ;
- (f.) Whether the applicant has proved the capacity in which, or right by virtue of which he claims to be entitled to letters of administration ;
- (g.) With respect to any application for administration by a person claiming to be a creditor or creditor for funeral expenses of a testator or intestate, whether such person is a creditor or creditor for funeral expenses and to what extent.

Pleadings and
discovery.

97. It shall be lawful for the Court or a Judge on summons for directions at any time after proceedings for probate in solemn form have been commenced to direct such pleadings and notices, and the issue of such interrogatories or other process for compelling discovery as the Court or Judge shall deem relevant for the purpose of determining and deciding any issue between the parties.

98. For the purpose of determining the extent of the property alleged to have passed by any will or under any intestacy, or of the right to probate or administration, it shall be competent for a Judge in his discretion on summons to order notice of the application to be served on any person in possession of or claiming any right in respect of the whole or any part of the estate alleged to pass by virtue of such will or intestacy; and such party may appear to the summons or at any adjournment thereof, and if he claims any interest adverse to the testator or to the party applying for probate or administration as the case may be, shall enter an appearance to the petition or other proceeding and may by direction of the Judge be admitted to intervene as such claimant, and may be ordered to file such particulars, pleadings or notices as the Judge shall deem necessary in order that his claim may be entertained and considered on the hearing of the application or action.

Parties interested may be cited.

99. The hearing of any application petition or summons shall be deemed a cause or matter proceeding in the Supreme Court and be subject to such of the Rules of Court regulating actions and other proceedings as may be applicable to the determination of any issue properly before the Court.

Proceedings subject to general rule of Court.

On the hearing of the application the Judge shall direct a declaration in respect of the rights submitted to him together with judgment for or against issue of probate or letters of administration, and if for such issue then subject to such terms, conditions and otherwise as the Judge shall direct.

100. The Administrator-General or any person alleging himself to be interested in the estate of any person deceased, may by originating summons in the Court founded on affidavit alleging and proving his interest in such estate at any time by summons call upon any person whom he alleges to be in possession of any will or letters testamentary of the deceased to produce the same for probate and the party upon whom such petition shall be served shall appear in Court on the day to be named by order to be made *ex parte* on such petition, and shall be bound to produce any such will or letters testamentary, and no will afterwards propounded by the person omitting or refusing to produce the

Summons to discover writings testamentary.

same in obedience to such summons shall be admitted to probate at any time thereafter without express leave of the Court.

Offence of not
producing
will.

101. Any person refusing or omitting in obedience to such summons to produce at the time mentioned in such summons any such will or document purporting to be a will and to have been executed by the testator, if it is at any time proved that any such will or document was at the time of the service on him of such summons in his custody or control, shall be deemed guilty of the offence of concealment of a will and shall if convicted thereof on indictment be imprisoned for any time not exceeding three years with or without hard labour.

Destroying
will.

102. Any person who shall be convicted of destroying any document purporting to be the will of a person deceased shall be guilty of felony, and on conviction thereof shall be liable to be imprisoned with hard labour for any term not exceeding five years.

Forgery of
will.

103. Any person who shall be convicted of forging or being accessory to forging or feloniously altering any document purporting to be the will of any person deceased or of uttering the same knowing it to be forged or feloniously altered shall be deemed guilty of felony and on conviction thereof shall be liable to be imprisoned with hard labour for any term not exceeding seven years.

Estates under
£300.

104. Where the whole estate of any person dying after the passing of this Ordinance (inclusive of any estate other than land or chattels real situate out of the Colony), without any deduction for debts or funeral expenses, shall not exceed the value of Three Hundred Pounds, it shall be lawful for the person intending to apply for probate or letters of administration in the Colony, to forward with his application, or (as the case may be) deliver to the Registrar of the Court a notice in writing in the prescribed form, setting forth the particulars of such estate and effects, and such further particulars as may be required to be stated therein, which notice shall be stamped with a stamp or stamps of the value of the prescribed sum for fees of Court and expenses, and also, in case the estate and effects shall exceed the value of One Hundred Pounds, and, if the person applying shall so think fit, with a view to commuting

the legacy and succession duties on such estate and effects, with a further stamp or stamps of the value of Forty Shillings over and above the aforesaid prescribed sum.

105. If the Registrar has good reason to believe that the whole estate of the deceased except as aforesaid exceeds the value of Three Hundred Pounds, he shall refuse to accept the notice until he is satisfied of the true value thereof.

Estates under £300.

106. When representation has been obtained, and the fees and duty compounded for in conformity with the preceding sections, and it shall be at any time afterwards discovered that the whole of the personal estate and effects of the deceased except as aforesaid were of a value exceeding Three Hundred Pounds, then no allowance shall be made to the person acting in the administration of such estate and effects in respect of the stamps affixed to the notice, nor shall the relief afforded by the next succeeding section be allowed or claimed by reason of the stamp duty of Forty Shillings paid in lieu of legacy duty.

If estate proves to exceed £300 amount paid not to be allowed.

107. The payment of the sum of Forty Shillings by way of stamps affixed to or impressed upon the notice referred to in Section 104 and in conformity with this Ordinance, shall be deemed to be in full satisfaction of any claim to legacy or succession duty in respect of the estate or effects to which such notice relates.

Payment to be a composition for legacy duty, etc.

108. In any case in which it appears that the property real and personal of or to which the deceased died possessed or entitled does not exceed in value the sum of Fifty Pounds, and no will of the deceased has been proved, the district delegate or Registrar to whom application has been made by any person being husband, wife, child, descendant, father, mother, brother or sister, or issue of a brother or sister of the deceased at any time after six months have elapsed from the death of the deceased, shall so report after investigating the circumstances, and such report shall be laid before the Judge in Chambers, who may if satisfied therewith, and that the applicant is the person entitled to possession of the estate of the deceased, direct letters of administration to issue to the applicant, irrespective of the production of any will and without any such will being proved, and without any adver-

Small estates not exceeding £50.

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tisement or certificate, and without the issue of any summons under Section 100 hereof, and the entire fee payable in respect of the issue of such letters of administration shall be One Pound payable at the office of the District Delegate or Registrar, as the case may be; and such letters of administration may issue without the applicant depositing any valuation of the estate other than is contained in the affidavit accompanying the application and without any bond being entered into or security given by the applicant, and without any further charge than the payment of the said sum of One Pound hereinbefore prescribed either by way of legacy duty succession duty Court fees or otherwise, and in such case no will shall be thereafter proved or registered nor shall the grant of letters of administration be liable to be thereafter revoked by the production of any will.

Provided that in the office of the Registrar of the Court there shall be kept a register known as the "Small estates administration Register," in which such applications and the orders made thereon shall be entered.

Certificate of Receiver-General as to stamping.

109. Save under the provisions of the last section no probate or letters of administration shall be granted unless the same bears a certificate in writing under the hand of the Registrar showing that the original affidavit has been delivered, and that such affidavit, if liable to stamp duty, was duly stamped, and stating the amount of the gross value of the estate and effects as shown by the account.

Allowance of excess of value estimated.

110. If at any time after the grant of probate or letters of administration and during the administration of the estate, the value mentioned in the certificate shall be found to exceed the true value of the personal estate and effects of the deceased, it shall be lawful for the Receiver-General, upon proof of the facts to his satisfaction, to cause to be written by an authorized officer a supplemental certificate on the probate or letters of administration setting forth such true value, and such supplemental certificate shall have the same force and effect as if the amendments and alterations therein contained had been incorporated in the original certificate.

Recovery of excess of value realized.

111. If at any time it shall be discovered that the estate of the deceased was at the time of the grant of probate or letters of administration of greater value than the value

mentioned in the certificate, the person acting in the administration of such estate shall, within six months after the discovery, deliver a further affidavit with an account of such excess to the Registrar of the Court to be filed with the papers and communicated to the Receiver-General.

The Receiver-General, upon being informed of the receipt of such affidavit shall cause to be written by an authorised officer a certificate on the probate or letters of administration, setting forth the true value of the estate as then ascertained, and such certificate shall be substituted for and have the same force and effect as the certificate of the officer of the Court, and legacy or succession duty shall be payable in accordance therewith.

112. Where it appears that the value of the whole personal estate does not amount to the sum of One Hundred Pounds, no succession or legacy duty shall be charged in respect thereof or of any portion thereof. No legacy duty under £100.

113. It shall be lawful for the Receiver-General at any time and from time to time after one year and within three years after the grant of probate or letters of administration as he may think necessary, to require the person acting in the administration of the estate and effects of any deceased person, to furnish such explanations, and to produce such documentary or other evidence respecting the contents of or particulars verified by the affidavit, notice or inventory as the case may seem to him to require. Powers of Receiver-General.

114. Every person to whom probate of a will has been granted, and every administrator shall within twelve months from the date of granting of probate or letters of administration as the case may be, file with the Registrar of the Court entitled "in the matter of the estate of" the deceased, an account showing his receipts and disbursements of the estate of the testator or intestate, and that all sums due in respect of the said estate for legacy and succession duty have been duly paid, and showing also the debts of the testator and the extent to which the same have been paid by such executor or administrator: And if any person shall have neglected or omitted to file the account in this section provided for, such person shall forfeit the sum of One Hundred Pounds in the case of an estate sworn under Two Thousand Pounds value, or a sum amounting to 5 per cent. Duty to pass accounts.

of the sworn value of the estate in cases in which such sworn value shall exceed Two Thousand Pounds. And the penalty in this section provided shall be recoverable for the use of the Colony by information of the Attorney-General, and such information and the proceedings thereunder shall be conducted in manner for the time being applicable to informations for penalties recoverable by the Crown.

Provided that nothing in this section contained shall be deemed to take away the right of the Attorney-General to prosecute any executor or administrator who shall have been guilty of any offence against the criminal law.

Provided also that a prosecution for the penalty herein provided for shall not be deemed to excuse the representative from the obligation to render such account, but such representative may at any time after the expiration of such twelve months be ordered by a Judge of the Supreme Court on the application of the Receiver-General or the Administrator-General or any person entitled in the estate to render and file such account, and shall be liable to attachment in case of disobedience to such order.

Costs of passing accounts.

115. The representative shall as against the estate be entitled to the costs and expenses of and attendant on the rendering and filing the account in the last section mentioned and of the passing of the same, if rendered within twelve months, but not otherwise.

Accounts how passed.

116. On receipt of the account in Section 114 mentioned the Registrar shall notify the Receiver-General and shall appoint a day for the taking of the account by him and may cause notification of the time and place for the taking of such account to be sent by post to the Receiver-General and to any parties interested in the estate, and may in his discretion require an advertisement of such time and place to be advertised by the representative.

Accounts how passed.

117. The Receiver-General and any person interested in the estate may attend the taking of the account and object to any item of expenditure or surcharge the representative with any item of receipt, and the account shall be taken by the Registrar in the same manner as accounts

and enquiries directed by a judge in the ordinary jurisdiction of the Court, and shall be certified at the foot thereof with such omissions and additions as the Registrar shall decide under the hand of the Registrar and sealed with the seal of the Court and when so sealed shall, saving fraud, be binding and conclusive.

118. The Registrar may in his discretion before certifying such account refer any question of principle arising thereon to a Judge in chambers, who may in his discretion direct such question to be argued before him in chambers, and for the purpose of such argument the parties interested in such question shall without entering any appearance be deemed to be properly before the Judge in the matter of such account. Or the Judge may in his discretion decide the question without argument and direct the Registrar to certify accordingly. Or he may if he shall think fit refer any such question for the decision of the full court on a special case. Accounts how passed.

119. If the Registrar finds that moneys belonging to the estate have been improperly withheld or not accounted for by the representative, or for any good cause, he may report to a Judge, who may direct the representative to be summoned before him in chambers, and may if he shall so think fit direct any portion of the estate that has been converted into money, to such extent as may be proved or admitted to have come into the hands of such representative, to be paid into Court and such order shall be served on the representative who shall be liable to attachment for disobedience thereto. Idem.

120. Any representative may be removed by order of a Judge for any disobedience to any order of the Court, and some other person appointed in his stead by order, and the outstanding estate of the deceased shall in such case vest in the person so appointed by virtue of his appointment. Removal of defaulting representative.

121. It shall be lawful for the Governor to direct that the fees payable under this Ordinance and the rules to be framed thereunder shall be paid by means of stamps and to provide for the issue of stamps for that purpose to and by the District Delegates accordingly. Fees payable by stamps.

Repeal.

122. The following enactments are hereby repealed:—

ORDINANCE.	TITLE.	EXTENT OF REPEAL.
6 of 1843 ...	An Ordinance to amend the Laws which restrain the free disposition of Property, etc., etc.	The whole, so far as regards Wills and codicils.
1 of 1844 ...	An Ordinance for assimilating the Law with respect to Wills to the Law of England.	The whole.
4 of 1845 ...	An Ordinance to regulate the probate of Wills, etc.	The whole.
10 of 1854 ...	An Ordinance for facilitating the granting of letters of administration.	The whole.
7 of 1858 ...	An Ordinance for explaining an Ordinance to alter and amend the Laws which restrain the free disposition of property, etc.	Sections 5, 6, 7, 8, 9 and 11.
6 of 1862 ...	An Ordinance to amend the Law with respect to Wills made by British Subjects.	The whole.
11 of 1888 ...	The Wills and Legacy Duty Ordinance, 1888.	The whole except Section 17.

Saving clause.

123. Save as in this Ordinance is expressly provided the repeals hereby enacted shall not affect the validity or invalidity of anything done or suffered, or any right accrued or liability incurred before or any proceedings pending or uncompleted at the commencement of this Ordinance. And nothing herein contained shall be construed to revive any claim by way of legitima or share adverse to a Will, which would be barred by any Ordinance hereby repealed if the same had not been repealed.

Passed in Council this Seventeenth day of December, in the year of Our Lord one thousand nine hundred.

HARRY L. KNAGGS,
Acting Clerk of the Council