

similar writ of execution grounded upon a judgment of the Court.

Commence-  
ment of this  
Ordinance.

8. And be it enacted, That this Ordinance shall take effect upon and from and immediately after the promulgation thereof.

Passed in Council this twenty-second day of January, in the year of our Lord one thousand eight hundred and forty-five.

JAMES PORTER,

*Acting Clerk of Council.*

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## No. 4.—1845.

AN ORDINANCE to regulate the Probate of Wills and the Grant of Letters of Administration: and to ascertain and define the powers and liabilities of Executors and Administrators.

(L.S.) H. MACLEOD.

Probate of  
wills before  
the Governor  
to be dis-  
continued.

**B**E it enacted by His Excellency the Governor and Commander-in-Chief in and over the said Island and its dependencies, by and with the advice and consent of the Council of Government thereof, That from and after the commencement of this Ordinance the probate of wills before the Governor of the Colony shall be discontinued.

Probate of  
wills and grant  
of adminis-  
tration to be  
vested in the  
Supreme Civil  
Court.

2. And be it enacted, That the probate of wills and the granting of administration and the decision of all questions touching the granting or refusing of probate of any paper propounded as a will, or the granting or refusing of letters of administration of the personal estate of any person within this Island, shall belong to and be vested in and exercised by the Supreme Civil Court of the Island.

How wills to  
be proved.

3. And be it enacted, That every will shall be proved in the manner following, that is to say: the will shall be produced by the executor before the Chief Justice of the Island together with one or more witness or witnesses

who shall testify on the oath of such witness or witnesses that the instrument exhibited is the true whole and last will and testament of the deceased, and the executor or executors proving the will shall make oath that to the best of the knowledge of the deponent or deponents the paper propounded contains the last will of the deceased, and unless where the circumstances do not admit such a statement that the testator was buried on a day and at a place to be therein specified.

4. And be it enacted, That where any question shall arise before the Chief Justice touching the granting or refusing probate of any paper propounded as the will of any person or touching the evidence in proof of any such will such question shall be decided according to the law and practice of the Prerogative Court of the Archbishop of Canterbury in cases of probate in common form so far as such law and practice can be applied to this Colony.

Questions touching the probate of any will, or the evidence in proof of any will to be decided according to the law and practice of the Prerogative Court of the Archbishop of Canterbury.

5. And be it enacted, That on any will being proved a certificate of the same having been so proved under the seal of the Supreme Civil Court of the Island shall be made out and delivered to the executor, which certificate shall be and be called the probate, and such certificate shall be according to the form to this Ordinance annexed: and every will on being proved, together with such certificate, shall be recorded in the office of the Registrar of Deeds in the protocol of wills.

On will being proved a certificate under the seal of the Court to be delivered to the executor and registered.

6. And be it enacted, That 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 Island and shall not have proved the will, or where any person shall die out of this Island but leaving any personal estate within this Island, letters of administration in respect of the personal estate within this Island shall be granted by the Chief Justice in the same manner as nearly as may be as letters of administration are granted by the Prerogative Court of the Archbishop of Canterbury in respect of effects within the jurisdiction of the said Court.

In cases of intestacy, or in the failure or absence of the executor, letters of administration to be granted.

7. And be it enacted, That administration shall in all cases be committed to such and the same person being

To whom administration

shall be com- resident in this Island as would be entitled to adminis-  
mitted. tration according to the law and practice of the Preroga-  
tive Court of the Archbishop of Canterbury.

Administrator 8. And be it enacted, That security shall not in any  
not to give case be taken from any administrator for the performance  
security. of his duties.

Form of letters 9. And be it enacted, That all letters of administration  
of administra- shall be issued under the seal of the Supreme Civil  
tion. Court, and shall be, as nearly as circumstances will per-  
mit, according to the form to this Ordinance annexed,  
Letters to be and shall be recorded in the office of the Registrar of  
enregistered. Deeds in the same protocol as wills, and where such  
letters of administration shall be granted with the will  
annexed, the original will shall be recorded together with  
such letters of administration.

Before ad- 10. And be it enacted, That before any letters of ad-  
ministration ministration shall be granted, a notice shall, on the order  
granted notice of the Chief Justice to be made on the petition praying  
to be inserted in the *Royal Gazette*, and at least one of the public newspapers  
in the *Royal Gazette* and of the Island, stating the name of the person applying  
one of the *Royal Gazette*, and at least one of the public newspapers  
Island papers. of the Island, stating the name of the person applying  
for the grant of administration; and that in default of  
cause being shown to the contrary within a term to be  
specified in such notice, and not less than fourteen days  
from the date of such notice, letters of administration  
will on the expiration of such term be granted to the  
person applying for such grant; and every administration  
granted after such notice shall be voidable only and not  
void.

Where execu- 11. And be it enacted, That where any executor  
tor refuses to refuses to act, or any next of kin refuses administration,  
act, or next of a declaration of such renunciation in writing signed by  
kin refuses ad- such executor or next of kin in the presence of two  
ministration, a witnesses who shall subscribe the same, and proved by  
declaration in the affidavit of one such witness shall be admitted as  
writing signed sufficient evidence of such renunciation to enable a  
to be admitted residuary legatee or any next of kin, or a creditor, to  
as evidence of obtain letters of administration.

Where no de- 12. And be it enacted, That where there shall be an  
claration of re- executor of a will, but such executor shall not have  
nunciation the proved the will, and shall not have signed a declaration  
Chief Justice of renunciation, or where there shall be any next of kin  
to proceed on petition if the

who shall not have signed a declaration of renunciation, the Chief Justice may in any such case upon petition if such executor or next of kin do not appear to oppose the same, and on proof being given that due notice of the petition was served on such executor or next of kin, 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.

executor or next of kin do not oppose it.

13. And be it enacted, That if it shall be made to appear to the Chief Justice on the oath of any party having, or supposing himself to have, any interest under any will, or being a creditor of the testator, that any person detains such will in his possession or under his control and refuses to prove the same or to deliver up the same to be proved, it shall be lawful for the Chief Justice to cite such person being named as executor in the said will to prove the said will and to take upon himself the execution thereof, or else to refuse the same, and if such person shall not be named as executor in the said will, then to exhibit the same before the Chief Justice and deliver up the same for probate; and if such person being cited shall refuse to appear, or appearing shall refuse to obey the order of the Chief Justice to be made thereon, then it shall be lawful for the Chief Justice to commit such person to the Royal Gaol, there to remain until he shall submit himself and obey such order.

Chief Justice may enforce the appearance of executor to accept or refuse the executorship, and the production of any will for the purpose of the same being proved.

14. And be it enacted, That at 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 Supreme Civil Court of this Island, it shall be lawful for the Chief Justice on the petition of any creditor, next of kin or legatee, 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.

If at the expiration of six calendar months from the death of the testator, the executor having proved the will shall be absent, the Chief Justice may grant administration *ad interim*.

15. And be it enacted, That every executor proving any will, and every administrator to whom letters of

Every executor and

administrator  
to be sworn.

administration shall be granted shall be sworn before the Chief Justice well and faithfully to administer the goods, chattels, and credits of the deceased, and to make a true and perfect inventory and appraisement of the same, and to exhibit such inventory and appraisement in the registry of the said Supreme Civil Court, on or before a day to be limited in that behalf by the Chief Justice, and also to render a just and true account of such goods, chattels, and credits when duly required so to do.

Inventory and  
appraisement  
to be made  
and returned  
into the regis-  
try of the  
Court.

16. And be it enacted, That on the grant of probate of any will, or of any letters of administration of the personal estate of any person deceased, the Chief Justice shall appoint such persons, two at the least, as to him shall seem fit, and to whom the testator or intestate was indebted or made any legacy, and upon their refusal or absence two other honest persons being next of kin to the person so dying, and in their default and absence two other honest persons; And the executor or administrator shall in the presence of the persons so appointed, and by their discretion, make or cause to be made a true and perfect inventory and appraisement of all the personal estate and effects that were of the said person so deceased, and shall return such inventory and appraisement certified under the hands of the persons so appointed into the registry of the said Court.

Before proof  
of will or grant  
of administra-  
tion a caveat  
may be filled.

17. And be it enacted, That before a will shall have been proved, or letters of administration shall have been granted, any person interested in disputing such will or administration may deposit with the Registrar of the Court a caveat in writing under his hand to prevent such will being admitted to proof or letters of administration being granted, and such caveat shall be in force for the space of three calendar months unless in the meantime the same shall be withdrawn or the will shall be established by a decree of the Court.

Copy of any  
will or letters  
of administra-  
tion certified  
by the  
registrar to be  
evidence of the  
validity of the  
will or letters.

18. And be it enacted, That a copy duly certified by the Registrar of Deeds of any will or of any letters of administration which shall have been registered in the office of the Registrar, shall, unless such will shall have been declared to be invalid or such letters of administration shall have been revoked by the decree of the Supreme Civil Court, be received as evidence of the validity of the will or the letters of administration,

except in suits brought for the establishing or setting aside such will or revoking such letters of administration.

19. And be it enacted, That the Supreme Civil Court shall have jurisdiction to determine the validity of any will or to revoke any letters of administration in any suit instituted either by an executor or administrator or any legatee claiming under the will to have it established or to have the trusts of it carried into effect under the decree of the Court, or by any heir or next of kin or other person claiming adversely to the will to have it declared void and the registration of it prevented or recalled, or claiming to have the letters of administration revoked.

Supreme Civil Court to have jurisdiction, to determine the validity of any will or revoke letters of administration.

20. And be it enacted, That in any such suit, when the validity of a will is disputed an issue triable by a jury shall if the Court in its discretion shall think fit, but not otherwise, be directed to try the validity of the will, and the conduct of the prosecution and defence upon such trial shall be respectively given to such parties as the Supreme Civil Court shall think proper.

The Court may direct an issue to be tried by a jury to try the validity of any will.

21. And be it enacted, That upon any suit brought to dispute the validity of a will or to recall any letters of administration it shall be lawful for the Supreme Civil Court to grant an injunction to prevent any executor or administrator from acting under such will or letters of administration.

The Court may grant an injunction to prevent executor or administrator from acting.

22. And be it enacted, That if on any suit the Supreme Civil 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 of Deeds 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.

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

23. And be it enacted, That in suits for carrying into execution the trusts of a will with respect to real or personal property, or for the administration of assets in payment of debts or legacies, it shall not be necessary to establish the will nor to make the heirs or next of kin defendants, and in any such suit an office copy of the

In suits for carrying a will into execution or for payment of debts, it shall not be necessary to establish the will nor to

make the heirs or next of kin defendants. will or of the letters of administration shall be received as evidence of the validity of the will, or of the grant of administration, but the decision in such suit shall not be binding on any heir or next of kin not being a party to the suit.

The Court may set aside a will for fraud. 24. And be it enacted, That the Supreme Civil Court shall have jurisdiction to set aside a will of real or personal estate on the ground of fraud.

The legal title to any legacy not to pass by mere assent of the executor. 25. And be it enacted, That the assent of an executor or administrator shall not pass the legal title to any legacy, and that such title shall not pass from an executor or administrator to a legatee without assignment or release except as to chattels which pass by delivery.

The Court may set aside any assignment or release of a chattel without prejudice to the rights of purchasers. 26. And be it enacted, That the Supreme Civil Court shall have jurisdiction to set aside any assignment or release of a chattel real which may have been made by any executor or administrator to or for the benefit of a legatee or to decree the restoration or re-delivery to any person of any moveable chattel which may have been delivered to a legatee but without prejudice to the rights of purchasers for valuable consideration.

The executor of the executor to be the personal representative of the first testator. 27. And be it enacted, That the executor of the executor or of the survivor of two or more executors shall be the personal 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.

A surviving co-executor who has not proved shall be the personal representative and entitled to administration. 28. And be it enacted, That where the executor who has proved the will shall die leaving any other co-executor surviving who shall not have then proved the will, such surviving executor shall be the personal representative and be entitled to administration of the will of the testator.

The executor of a deceased executor may renounce being the representative of the first testator. 29. And be it enacted, That 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 personal representative of any person of whom his immediate testator was executor, renounce and disclaim being the personal representative of such other person by making a declaration in writing

to that effect and registering the same with the Registrar of Deeds.

30. And be it enacted, That 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 or decree of the court.

Administration granted, when there is an executor who has not proved to be voidable only.

31. And be it enacted, That 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 persons entitled thereto under the will, without prejudice to the rights of purchasers for valuable consideration.

Act of administrator under a voidable administration to be valid.

32. And be it enacted, That every assurance executed by an executor who shall die without having proved and registered the will of his testator, and also every assurance by an executor who shall not have proved and registered the will, executed during the life-time of any other person who shall have obtained and registered letters of administration of the assets of the testator, which letters shall not have become void nor been revoked, shall be void and of none effect.

Assurance of an executor who shall die without proving the will, or during the lifetime of an administrator whose administration shall not have become void or revoked to be void.

33. And be it enacted, that the Supreme Civil 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.

Court may discharge executor or administrator.

34. And be it enacted, That 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

Executors and administrators to have the same interest and authority and to be subject to the same liabilities as in England.

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

Proviso that heirs and devisees shall still continue liable to the extent of assets descended or devised.

35. Provided always, and be it enacted, That nothing herein contained shall be taken to relieve or discharge any heir or heirs, 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 heir or heirs, devisee or devisees, and that where any person by bond, covenant, or other specialty, shall have bound himself and his heirs, every such creditor shall and may have and maintain his action of debt or covenant, upon such bond, covenant, or specialty, against the heir or heirs, and the devisee or devisees of such obligor or covenantor, or the devisee or devisees of such first-mentioned devisee or devisees jointly, or if there be no such heir then against such devisee or devisees solely, in the same manner as he might by the law of England, and such heir or heirs, 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 shall be liable for any false plea by him or them pleaded, or for not confessing the property descended or devised, or upon judgment or demurrer, or by *nil dicit*, in the same manner as he or they would be by the law of England; and provided also, that all property, as well real as personal, 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, but all creditors by specialty shall be paid the full amount of

How liable for false plea or for not confessing property descended or devised.

the debts due to them according to their several priorities and preferences in law before creditors by simple contract, shall be paid any part of their demands.

36. And be it enacted, That every person who may be appointed executor by any will or codicil, proved after the commencement of this Ordinance, 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; Provided always, that where there is not any person who would by law be entitled to the testator's personal property, the executor shall be entitled to the same right in such residue as he would be entitled to according to the law of England.

Every executor to be deemed a trustee in respect of any residue not disposed of for the persons who would have been entitled thereto if this Ordinance had not passed.

37. And be it enacted, That if any person shall take possession of or in any manner administer any part of the personal property of any person deceased, without proving the will or taking out letters of administration of the estate and effects of the deceased within three calendar months after the decease of such person, or within one calendar month after the termination of any suit or dispute respecting the will or the right to letters of administration, if there shall be any such suit which shall not be ended within three calendar months from the death of the deceased, every person so offending shall forfeit the sum of one hundred pounds sterling, which sum shall be recoverable only for the Crown by the Attorney-General, by information in the Court for the trial of criminal prosecutions.

Penalty on executor or administrator taking possession of the property of any person deceased and not proving the will or taking out administration.

38. And be it enacted, That if any person, not being the executor or administrator, shall take upon himself the office of executor, or intermeddle with the goods 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

Executor de son tort, how chargeable.

question shall be decided according to the law of England in the like case.

Judges of the Court to make rules and tables of fees, to be approved by the Governor.

39. And be it enacted, That it shall and may be lawful for the Judges of the Supreme Civil Court, from time to time, to make and establish such rules as to them shall seem meet, for regulating the mode of proceeding for obtaining probate of any will, or the grant of letters of administration, and also tables of the fees to be paid on the grant of probate, or of letters of administration, and of the costs to be allowed to the officers and practitioners of the Court on the suing out or grant of any probate or letters of administration, or other services incident thereto, and such rules and tables of fees from time to time, to alter and amend, which rules and tables of fees shall be forthwith transmitted, under the seal of the Court, to the Governor, and, if approved of, the same shall be promulgated by the Governor, and shall come into force immediately after the promulgation thereof.

Interpretation clause.

40. And be it enacted, That in the construction of this Ordinance, the word "will" shall be taken to mean any will or any codicil thereto; the words "personal property" shall be taken to mean all such goods and chattels, real or personal, credits and effects, as by the law of England would go to the executor and not to the heir, and the words "real property" shall be taken to mean all such property and rights and interests in property as by the law of England would go to the heir and not to the executor, and every word importing the singular number only shall extend and be applied to several persons, matters or things; every word importing the plural number shall extend and be applied to one person, matter or thing, as well as to several persons, matters or things; and every word importing the masculine gender only, shall extend and be applied to a female as well as a male, unless in any of the cases aforesaid it be otherwise specially provided, or there be something in the subject or context repugnant to such construction.

Repeals certain laws and rules.

41. And be it enacted, That all laws in any way contrary or repugnant to the provisions of this Ordinance and the additional rules for the Court of First Instance of Civil Jurisdiction, on testamentary proceedings and in proceedings of cases of persons dying intestate, of the

twenty-second day of March, one thousand eight hundred and twenty-three, except so far as regards any testamentary proceedings, or proceedings on intestacy, which may have been commenced previously to the commencement of this Ordinance, shall be and the same are hereby repealed.

42. And be it enacted, That this Ordinance shall commence and take effect upon and from and after the expiration of one calendar month from and next after the day of the promulgation of the same. Commence-  
ment of Ordi-  
nance.

Passed in Council this twenty-second day of January, in the year of our Lord one thousand eight hundred and forty-five.

JAMES PORTER,  
*Acting Clerk of Council.*

(L. s.)            FORM OF GRANT OF PROBATE.

We the Supreme Civil Court of the Island of Trinidad, do by these presents make known to all men, that on the day of            A. D., at Port of Spain before the Honorable G.....S....., Chief Justice of the said Island, the last will and testament of A. B., late of            deceased, hereunto annexed, was proved and approved, the said deceased having whilst living and at the time of his death goods, chattels or credits, within the jurisdiction of the said Court, and that the administration of all and singular the goods, chattels, and credits of the said deceased, and any way concerning his will was granted to C. D. the sole executor named in the said will [or as the case may be] he having been already sworn well and faithfully to administer the same and to make a true and perfect inventory of all and singular the said goods, chattels and credits, and to exhibit the same in the Registry of the said Court on or before the day of            next ensuing, and also to render a just and true account thereof; In witness whereof the said Honorable G....S..., Chief Justice of the said Island, has hereunto set his hand and caused the seal of the said Court to be hereunto affixed.

Dated at the Court House in the town of Port of Spain, in the said Island of Trinidad, this            day of            in the year of our Lord

G. S., *Chief Justice.*

## (L. s.) FORM OF LETTERS OF ADMINISTRATION.

The Supreme Civil Court of the Island of Trinidad to A. B. of \_\_\_\_\_ the lawful nephew (or as the case may be) and one of the next of kin of C. D., late of \_\_\_\_\_

in the said Island of Trinidad, deceased, Greeting :  
Whereas the said C. D. as is alleged lately died intestate, having whilst living, and at the time of his death, goods, chattels or credits in the said Island of Trinidad, We being desirous that the said goods, chattels, and credits may be well and faithfully administered, applied, and disposed of according to law, do therefore by these presents grant full power and authority to you in whose fidelity we confide, to administer and faithfully dispose of the said goods, chattels, and credits; and to ask, demand, recover, and receive whatever debts and credits which whilst living, and at the time of his death did in any way belong to his estate, and to pay whatever debts the said deceased at the time of his death did owe, so far as such goods, chattels, and credits will therefore extend, and the law requires, you having been already sworn well and faithfully to administer the same, and to make a true and perfect inventory of all and singular the said goods, chattels, and credits, and to exhibit the same into the Registry of the said Court on or before the \_\_\_\_\_ day of \_\_\_\_\_ and also to render a just and true account thereof, on or before the \_\_\_\_\_ day of \_\_\_\_\_ which will be

in the year of our Lord \_\_\_\_\_; and We do by these presents ordain, depute, and constitute you administrator of all and singular the goods, chattels, and credits of the deceased. In witness whereof the Honorable G. S., Chief Justice of the said Island of Trinidad, has hereunto set his hand and caused the seal of the said Court to be hereunto affixed.

Dated at the Court House in the town of Port of Spain, in the said Island of Trinidad, this \_\_\_\_\_ day of \_\_\_\_\_ in the year of our Lord \_\_\_\_\_

G. S., *Chief Justice.*

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## No. 9.—1845.

AN ORDINANCE for shortening the time of Prescription in certain cases.

(L. s.) H. MACLEOD.

**W**HEREAS it is expedient that the laws relating to Prescription in certain cases should be amended,