

TRINIDAD AND TOBAGO.

No. 18.—1921.

I ASSENT,

J. R. Chancellor

Governor.

15th April, 1921.

AN ORDINANCE to consolidate the law relating to the execution of Wills and the granting of Probate and Letters of Administration.

[By Proclamation.]

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

1. This Ordinance may be cited as the Wills and Probate short title. Ordinance, 1921.

General.

2. In this Ordinance, unless the context otherwise Interpretation. requires:—

“ Administrator-General ” means the person appointed under the Administration of Property Ordinance, 1913; Ord. 35-1913.

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

[Price 1/3.]

“ Court ” means the Supreme Court and “ Judge ” means a Judge thereof ;

“ District Delegate ” means a person appointed under the provisions of section 4 hereof to receive applications in common form, and includes the Registrar and Sub-Registrars of the Court acting under the powers conferred on them in respect of common form business ;

“ 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 ;

“ Next of kin ” means the person or persons entitled under an intestacy according to the provisions of the Ord. 35-1913. Administration of Property Ordinance, 1913 ;

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

“ Probate ” “ proof ” and “ proved, ” include the grant of letters of administration with will annexed ;

“ Public Trustee ” means the Public Trustee as defined in the Act of the Imperial Parliament entitled “ the Public Trustee Act, 1906 ” or any Act amending the same ;

“ Representative ” includes executor and administrator, and a representative under the provisions of the Administration of Property Ordinance, 1913 ; 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 Administration of Property Ordinance, 1913 ;

“ Will ” means any will or any codicil to any will ;

3. In so far as the Ordinances and the rules and orders of the Court do not extend, the Court shall be guided in the exercise of its jurisdiction under this Ordinance by the jurisprudence and practice of the Probate Division of the High Court of Justice in England so far as the same may be applicable. Jurisprudence.

4. 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. District Delegates.

Provided that the Registrar and Deputy Registrar of the Court shall act as district delegates for the magisterial district of St. George West, 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 counties of Victoria and St. Patrick.

5. The Court shall have jurisdiction to determine the validity and admissibility to probate of the will or the granting 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 Jurisdiction.

administration to have it declared void, and the registration of it prevented or recalled, or claiming to have letters of administration revoked.

Probate, etc.,
required for
realty.

6. 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.

Public
Trustee.

7. The Court may grant probate or letters of administration to the Public Trustee by that name.

Rights of
representa-
tive.

8. 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.

Liability to
discharge debts
of deceased
not to be
affected.

9. 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.

10. 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.

11. 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.

12. 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, or on summary conviction before a magistrate on the complaint of the Administrator-General

Executor de son tort liable to penalty.

to a fine not exceeding twenty pounds or to imprisonment for a period not exceeding three months, with or without hard labour. The Administrator-General may take summary proceedings under this section at any time within five years from the time when the cause of complaint arose.

Executor *de son tort*, how chargeable.

13. 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.

Right to probate on death of executor.

14. 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.

Co-executor preferred.

15. 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 probate in priority to any other person.

Disclaimer by Executor.

16. 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 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.

Unproved will to have no effect.

17. No will or document purporting to be a will of any person deceased 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.

18. 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.

19. The Administrator-General or any person alleging himself to be interested in the estate of any person deceased may by summons founded on affidavit alleging and proving his interest in such estate, at any time 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 summons shall be served shall appear on the day to be named in such summons, 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 same in obedience to such summons shall be admitted to probate at any time thereafter without express leave of the Court. Summons to discover writings testamentary.

20. 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. Offence of not producing w. ll.

21. The Chief Justice with the assent of a Puisne Judge may make and prescribe rules of practice, forms and schedules of fees and costs and charges, to regulate the practice both in the 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 and fees. Ord. 34

Right to Probate and letters of administration.

Right to
administra-
tion.

22. 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.

Effect of
administra-
tion where an
executor is
living.

23. 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 estate 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 ad-
ministration.

24. 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
representa-
tive.

25. The 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.

Removal of
defaulting
representa-
tive.

26. 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.

27. 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 duly constituted attorney of such widow, husband, only child or sole next of kin or the Administrator-General, the Public Trustee, or a Consul applying under the provisions of section 29 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 issued to the applicant until such security has been perfected and given.

Security to be given by an administrator.

28. Applications for administration—

(1.) In cases of intestacy may be made by the following persons as of course ; and in the following order of preference :—

Order of persons entitled to administration.

- (i.) The surviving husband or widow of the intestate;
- (ii.) The next of kin ;
- (iii.) The Administrator-General.

(2.) In the absence of the executor may be made by the following persons as of course and in the following order of preference :—

- (a.) The residuary devisee or legatee ;
- (b.) The devisee or legatee ;
- (c.) The next of kin ;
- (d.) The Administrator-General.

29. In the case of a subject of a foreign country dying within the Colony or dying elsewhere possessed of estate 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.

Administration to Consul in case of foreign subjects.

Creditors.

30.—(1.) 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.

(2.) 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, residuary legatee 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.

31. 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.

32. 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.

Administra-
tion with will
annexed, etc.

33. 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 residuary or other devisee or legatee or next of kin

who shall not have signed a declaration of renunciation, a Judge may in any such case, if such executor, devisee, legatee or next of kin do not appear, or if such executor, devisee, legatee 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, devisee, legatee or next of kin had duly renounced.

34. 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 administration.

35. 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. Interim orders, etc.

36. 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 magisterial district of St. George West 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. Interim orders, etc., how obtained.

Execution of Will.

Will valid if
executed
according to
formalities of
domicile.

37. 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 His Majesty's dominions where such person had his or her domicile of origin.

Or of this
Colony.

38. 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 shall have been executed according to the forms required by the laws for the time being in force in this Colony.

Execution of
Wills.

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 twenty-one years or more: it shall either be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction; and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses of either sex competent to attest a will according to the law of England, present at the same time; and such witnesses shall attest and subscribe the will in the presence of the testator and of each other, but no form of attestation shall be necessary. 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.

40. 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 section 39 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.

41. 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 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.

Execution of
powers of
appointment.

42. 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.

Attestation by
legatee, etc.,
not to invali-
date will.

Executor
competent
to attest.

43. 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 and Construction of Wills.

Change of
domicile not
to invalidate
will.

44. Subject as in section 37 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.

Revocation
by marriage.

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

No revocation
by presump-
tion.

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 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.

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.

Construction
of general
devise.

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 in such estate which the testator had power to dispose of by will, 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 in such real estate which the testator had power to dispose of by will, 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 the parents.

Devisee of real estate not to claim payment of mortgage out of personal assets.

61. When any person shall die possessed of or entitled to any estate or interest in any land, or other hereditaments which shall at the time of his death be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not, by his will, or by any deed or other document, have signified any contrary or other intention, the person, whether devisee or next of kin, who shall become entitled to such land or hereditaments shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate, or any other real estate of the testator or intestate, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be primarily liable to the payment of all mortgage debts with which the same shall be charged, every part thereof according to its value bearing a proportionate part of the mortgage debts, charged on the whole thereof: Provided always that nothing herein contained shall affect or diminish any right of the mortgagee on such lands or hereditaments, to obtain full payment or satisfaction of his mortgage debt, either out of the personal estate of the person so dying as aforesaid or otherwise as a creditor.

Small estates.

Administration of intestate estates not exceeding £100 in value.

62. In any case in which it appears that the property real and personal of or to which a person who dies intestate is possessed or entitled does not exceed in value the sum of one hundred pounds, 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 a 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, without any advertisement or certificate and without the issue of any summons under section 19 hereof, and the entire fee payable in

respect of the issue of such letters of administration shall be ten shillings 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 ten shillings hereinbefore prescribed, either by way of estate duty, court fees, registration fees or otherwise. No certificate under section 17 (3) of the Estate Duty Ordinance, 1908 shall be required.

Ord 25-1908.

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

63. Probate of the will of any person dying entitled to or possessed of property real and personal not exceeding one hundred pounds in value may upon production of such will and of an affidavit verifying the due execution and publication thereof, be issued to the executor named in such will, or in the absence of an executor to the persons named and in the order of priority mentioned in section 28 (2) hereof.

Probate where estate does not exceed £100 in value.

Save as in this section is specially provided and when not inconsistent therewith, the provisions of the last preceding section shall apply to all applications for probate and subsequent proceedings under this section.

64. In all cases coming within the provisions of the last two preceding sections it shall be the duty of the district delegate or Registrar to whom applications shall be made to fill up the usual papers required by the Court to lead to a grant of letters of administration of the estate and effects of an intestate or to probate of the will of a testator as the case may be without the payment of any fee whatever.

Registrar or delegate to fill up papers.

Common Form business.

Common form
business.

65. Common form business in this Ordinance means the procedure for probate or grant of letters of administration from the application mentioned in section 67 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.

Procedure to
obtain probate
in common
form.

66. 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 to 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.

Administra-
tion in com-
mon form.

67. 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 last preceding section mentioned shall afford such further information and shall be in such form as may from time to time be prescribed.

68.—(1.) 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.

Procedure in common form must be within twelve months.

(2.) This section shall not apply to applications made by the Administrator-General.

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, contain similar information to that required in sections 66 and 67 hereof.

Where deceased resident abroad.

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 situate abroad and in respect of which no grant is required, and such accounts shall be in accordance with the prescribed forms.

Account of estate to be delivered with application.

71. The account so delivered shall be filed in due course, and in such form as may be convenient for its inspection

Filing of documents.

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.

Access to documents.

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, and any person may on payment of the prescribed fee for a search examine any will or document, or upon payment therefor obtain an office copy of a will or document deposited in the Probate Department of the Registry.

Valuation.

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.

Valuer.

74. The valuer shall be selected by the applicant, and if not an assessor appointed by the Governor under the Land Acquisition Ordinance, (No. 42) shall in his valuation set forth and describe his qualifications for valuing.

Procedure on receipt of application.

75. On receipt of an application under section 66 or 67 hereof, the District Delegate or Registrar shall require and obtain such further information, identification or verification as may be prescribed, 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 the prescribed manner, and 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.

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. Caveats.

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.

78. If any caveat is delivered to the District Delegate, the same shall forthwith be forwarded by registered letter to the Registrar of the Court 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. Caveat to be forwarded.

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.

Judge may
deal with
application.

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.

Appearance of
applicant.

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.

Appeal from
refusal of
application.

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.

Granting 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 of the Court, and a certified copy thereof shall be forwarded by him to the Registrar-General to be registered by him in manner provided by section 100 hereof, and another certified copy shall be forwarded by him to the District Delegate (if other than the Registrar of the Court).

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 67 hereof provided, and if application is made by any person for 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 Colony or unwilling to accept probate, and shewing the claims of the applicant to such letters of administration.

Further affidavits in certain cases.

85. 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 may be set down for hearing.

86. 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.

Application by Administrator-General to take possession.

Contentious business.

87. 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.

Contentious business.

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.

Form of appli-
cations in
solemn form.

89. 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.

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.

Actions for
administration
after twelve
months.

90. 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.

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.

Summons for
directions.

91. 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 seems just to him, including the Administrator-General.

Pleadings and
discovery.

92. 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.

93. 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.

94. 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 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. Limit of time after entry of caveat for action.

95. 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:— Trial in solemn form.

- (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.

Trial thereof.

96. 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 66 and 67 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.

97. No probate or letters of administration shall in any case issue without the production of the original affidavit and valuation mentioned in sections 66 and 67 hereof or without the certificate required by section 105 hereof.

Filing of accounts.

Duty to file accounts.

98. 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 estate duty have been duly paid, and showing also the debts of the deceased and the extent to which the same have been paid by such executor or administrator.

If any person shall neglect or omit to file the account in this section provided for, it shall be lawful for the Administrator-General, or any person alleging himself to be interested in the estate of the deceased, to call upon such executor or administrator by summons entitled "In the matter of the estate of A. B. deceased and the Wills and Probate Ordinance," to show cause why he should not file such account; and upon the return of such summons it shall be lawful for the Court to direct that such account be filed within such time as the Court may direct, and in case of default such executor or administrator shall be liable to attachment.

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.

99. 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 preceding section mentioned, if rendered within twelve months, but not otherwise. Costs of filing accounts.

Miscellaneous.

100. 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 Unproved will not to be registered. Deposit and registration.

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.

Copy of decree
to be
registered.

101. 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.

102. 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.

Fees.

103. 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.

Destroying
will.

104. 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.

Certificate of
Registrar as to
stamping.

105. Save under the provisions of sections 62 and 63 hereof, 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 valuation,

106. 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.

Allowance of
excess of value
estimated.

107. 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.

Recovery of
excess of
value realized.

The Receiver-General, upon being informed of the receipt of such affidavit, shall cause to be written by an authorized 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 estate duty shall be payable in accordance therewith.

108. 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.

Conveyancing fee where estate does not exceed £200 in value.

109. In all cases in which the value of the legal and personal estate shall not exceed two hundred pounds the fee payable to a solicitor or conveyancer for the preparation and execution of any deed of conveyance or memorandum of transfer of land to the person or persons beneficially entitled thereto shall be one pound and no more.

Registration fees.

110. Except as otherwise herein provided, the following registration fees shall be payable:—

For the registration or the exemplification of a will with probate, and all letters of administration where the estate and effects within this Colony for or in respect of which probate or letters of administration shall be granted, and exclusive of what the deceased shall have been possessed of or entitled to as a trustee for any other person and not beneficially, shall

exceed the value of £50 and shall not exceed the value of £100	...	...	...	£0 10 0
exceed the value of £100 and shall not exceed the value of £300	...	...	...	1 0 0
exceed the value of £300 and shall not exceed the value of £700...	...	...	...	2 0 0
exceed the value of £700	...	...	...	3 0 0

Such fees shall be payable at the office of the Registrar-General, and no application under this Ordinance shall be received by the Registrar of the Court except on the production of the Registrar-General's receipt.

Repeal.

111. Section 11 of Ordinance No. 55 and the Ordinances Nos. 99, 29 of 1907, 32—1911, 41 of 1912, 12 of 1914 and 3 of 1918 are hereby repealed.

Commencement.

112. This Ordinance shall come into operation on a day to be fixed by the Governor by proclamation in the *Royal Gazette*, which shall be judicially noticed.

Passed in Council this first day of April, in the year of Our Lord one thousand nine hundred and twenty-one.


Clerk of the Council.