

CHAPTER 109.

PROBATE AND ADMINISTRATION.

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CHAPTER 109.

PROBATE AND ADMINISTRATION.

An Ordinance to provide for the grant of Probates of Wills and Letters of Administration to the estates of deceased persons and the appointment and powers of Official Administrators. Ord. No. 9
of 1947.

[16TH JUNE, 1947.]

1. (1) This Ordinance may be cited as the Probate and Administration Ordinance. Short title.

(2) Nothing in this Ordinance contained shall be deemed to affect the operation of the Administration of Native and Small Estates Ordinance. Cap. 1.

2. In this Ordinance unless the context otherwise requires— Interpreta-
tion.

“ administrator ” means a person appointed by competent authority to administer the estate of a deceased person when there is no executor ;

“ codicil ” means an instrument made in relation to a will and explaining, altering, or adding to its dispositions. It is considered as forming an additional part of the will ;

“ Court ” means the High Court ;

“ demonstrative legacy ” means a legacy directed to be paid out of specified property ;

“ executor ” means a person to whom the execution of the last will of a deceased person is, by the testator’s appointment, confided ;

“ probate ” means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator ;

“ Registrar ” means the Registrar of the High Court ;

“ specific legacy ” means a legacy of specified property ;

“ will ” means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death.

CHAPTER II.

GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Status and property of executor or administrator as such.

3. The executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased person vests in him as such :

Provided that nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

Notation of domicile.

4. A petitioner for a grant of probate or of letters of administration may at any time apply by summons in chambers intituled and filed in the original petition for an order that a notation be endorsed on the grant that the deceased person died domiciled in the Colony and thereupon the Registrar of the High Court upon receipt of the file containing the summons may on being satisfied by affidavit and by such further evidence as he may require and after hearing such persons as he considers ought to be heard that the testator or intestate died domiciled in the Colony write and sign a note or memorandum upon such grant stating that the testator or intestate died domiciled in the Colony.

Administration with copy annexed of authenticated copy of will proved abroad.

5. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the Colony, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

6. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

7. The appointment may be express or by necessary implication.

Illustrations.

(a) *A* wills that *C* be his executor if *B* will not. *B* is appointed executor by implication.

(b) *A* gives a legacy to *B* and several legacies to other persons, among the rest to his daughter-in-law, *C*, and adds, "but should the within-named *C* be not living, I do constitute and appoint *B* my whole and sole executrix." *C* is appointed executrix by implication.

(c) *A* appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these

words: "I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

8. Probate cannot be granted to any person who is a minor or is mentally disordered. To whom probate cannot be granted.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times. Grant of probate to several executors simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first and then to A.

10. (1) If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will. Where codicil discovered after grant of probate.

(2) If different executors are appointed by the codicil, the probate of the will must be revoked and a new probate granted of the will and the codicil together.

11. When probate has been granted to several executors and one of them dies, the entire representation of the testator accrues to the surviving executor or executors. Accrual of representation to surviving executor.

12. Probate of a will, when granted, establishes the will from the death of the testator and renders valid all intermediate acts of the executor as such. Effect of probate.

13. Letters of administration cannot be granted to any person who is a minor or mentally disordered. To whom administration cannot be granted.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death. Effect of letters of administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate. Acts not validated by administration.

Handwritten notes:
 CA
 P r

Grant of administration where executor has not renounced.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued, calling upon the executor to accept or renounce his executorship :

Provided that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

17. The renunciation may be made orally in the presence of the Court, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Where executor renounces or fails to accept within time limited.

18. If the executor renounces, or fails to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Grant of administration to universal or residuary legatee.

19. When—

(a) the deceased has made a will but has not appointed an executor, or

(b) the deceased has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

(c) the executor dies after having proved the will but before he has administered all the estate of the deceased, a universal or a residuary legatee may be admitted to prove the will and letters of administration with the will annexed may be granted to him of the whole estate or of so much thereof as may be unadministered.

See section 57

Right of representative of deceased universal or residuary legatee.

20. When a universal or a residuary legatee who has a beneficial interest survives the testator but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such universal or residuary legatee.

21. When there is no executor and no universal or residuary legatee or representative of a universal or residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Where no executor or universal or residuary legatee or representative of such legatee.

✓ 22. Letters of administration with the will annexed shall not be granted to any legatee other than a universal or a residuary legatee until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

Citation before grant of administration to legatee other than universal or residuary.

23. When the testator is a public servant not domiciled in the Colony and no executor or universal or residuary legatee or representative of such legatee can be found within fourteen days after the death of such public servant within the jurisdiction willing and capable to act, any person authorised thereto in writing by the Resident of the Residency wherein the application for letters of administration is made may be admitted to prove the will, and letters of administration may be granted to him accordingly.

When testator is a public servant not domiciled in the Colony.

✓ 24. (1) When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

To whom administration of intestate's estate may be granted.

(2) When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

(3) When no such person applies, it may be granted to a creditor of the deceased.

25. When a public servant not domiciled in the Colony has died intestate and no person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate has applied for administration within fourteen days after the death of such public servant, administration of his estate may be granted

When public servant, not domiciled in the Colony, dies intestate.

to any person authorised in writing by the Resident of the Residency wherein the application for letters of administration is made to make application in that behalf.

Commission to executors or administrators.

✓26. The Court may in its discretion allow to executors or administrators a commission not exceeding five per cent. on the value of the assets collected by them, but in the allowance or disallowance of such commission the Court shall be guided by its approval or otherwise of their conduct in the administration of the estate.

CHAPTER III.

GRANT TO, AND POWERS OF, ADMINISTRATOR-GENERAL.

Appointment of Administrator-General and Assistants.

27. (1) The Chief Secretary may from time to time appoint such person or persons as he thinks fit, to be Administrator or Administrators-General or Assistant Administrator or Administrators-General of the property of deceased persons for the purposes of this Chapter, and may define the limits within which any Administrator or Assistant Administrator-General shall exercise and perform his powers and duties.

(2) An Assistant Administrator-General shall have and may exercise all the powers of an Administrator-General within the limits defined for such Assistant Administrator-General under subsection (1) but shall act under the general control and supervision of an Administrator-General.

Grant of administration to Administrator-General.

28. (1) In any case where a person dies intestate or without appointing executors or where no executor takes out probate of the will, the Administrator-General may apply for letters of administration of the estate and effects of such intestate or of such testator.

(2) Where an order has been made for the grant of letters of administration to any person and such person has not within three months from the date of such order furnished the administration bond required under section 79 the Administrator-General may apply to the Court to set aside the said order and to grant letters of administration of the estate and effects to himself.

(3) On application being made by the Administrator-General under subsections (1) or (2) letters of administration shall be granted to the Administrator-General accordingly, unless in any particular case the Court for sufficient reasons

directs that letters of administration be granted to a person other than the Administrator-General.

29. (1) When letters of administration have been granted to the Administrator-General under this Ordinance the said letters of administration and the estate of the deceased shall pass from Administrator-General to Administrator-General and shall vest in the Administrator-General for the time being during his continuance in office without any order of the Court or any conveyance assignment or other instrument whatsoever.

Letters of administration granted to Administrator-General pass to his successor in office.

(2) Letters of administration granted on or before the commencement of this Ordinance to an Administrator-General by any Court of the Colony under the provisions of any previous Ordinance may be assumed by the Administrator-General upon his filing in the Court which granted the letters of administration a declaration in the form prescribed.

(3) Upon filing the declaration mentioned in subsection (2) the Administrator-General shall become the administrator of the estate and the estate shall vest in the Administrator-General who shall have like powers and duties as if the letters of administration had been granted to him and the letters of administration and estate shall thereupon pass from Administrator-General to Administrator-General in the same way as if the letters of administration had been granted to the Administrator-General after the commencement of this Ordinance.

(4) Nothing in subsection (2) or in subsection (3) shall relieve any person who administered the estate before the filing of the declaration mentioned in subsection (2) from any liability which may have attached to him in connection with the administration before the date upon which the declaration was filed but subject as aforesaid any such person shall be discharged from all powers duties and liabilities as from the date of the filing of the said declaration.

(5) When the Administrator-General files a declaration under subsection (2) no liability shall attach to him in respect of anything done or omitted to be done before the date of the filing of the declaration

Estates to
vest in
Administra-
tor-General.

30. From and after the decease of persons dying intestate and until letters of administration shall be granted in respect of their estates and effects, the estates and effects which were of such deceased persons shall be vested in the Administrator-General.

Administra-
tor-General
may take
possession of
property.

31. The Administrator-General, or an Assistant Administrator-General, may, so soon as he learns, on such evidence as he shall deem sufficient, that any person has died intestate leaving property in the Colony forthwith take possession thereof and provide for the safe custody thereof until letters of administration are granted by the Court.

Penalty for
removing,
etc., such
property.

32. Any person who shall without lawful authority or excuse remove or attempt to remove out of the Colony wherein the same is situate any portion of such property, or shall destroy, conceal or refuse to yield up the same on demand to the Administrator-General or Assistant Administrator-General, shall be guilty of an offence and liable on conviction to a fine of five hundred dollars and also to imprisonment for six months.

No suit
against
Administra-
tor-General;
remedy by
petition.

33. (1) No suit shall be brought against the Administrator-General or any Assistant Administrator-General for anything done by him in relation to such property under the authority or in the execution or intended execution of the powers vested in him by section 31; but any person who shall feel aggrieved thereby may apply for redress to the Court by petition supported by affidavit.

(2) Every petition under this section shall be filed with the Registrar, together with so many copies thereof as may be required for service upon the persons intended to be served therewith, and the Registrar shall mark on the original and on each copy a day on which the same is to be heard. Copies of such petitions shall be served in the manner prescribed for service of summons, and upon the hearing of such petition, in Court or in Chambers, the said Court may take such evidence as it shall think fit and may make any order in relation to such property which the justice of the case requires.

Power to
Administra-
tor-General
to assume
administra-
tion in
certain
cases.

34. (1) The Administrator-General may of his own motion or on complaint received from any beneficiary by summons under his hand require the administrator of any intestate estate the gross value of which does not exceed fifty thousand dollars to appear before him for the purpose of being examined as to his administration of such estate.

(2) The administrator so summoned shall attend at the hour and place mentioned in the summons and shall answer truthfully all questions which the Administrator-General may put to him regarding the administration of the estate.

(3) Upon the appearance to such summons of the administrator or at any future date to which the proceedings may be adjourned and after such examination as he may think fit the Administrator-General may order that the administrator exhibit within such time as may be appointed for that purpose an account of the estate shewing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(4) If the administrator fails to appear at the hour and place mentioned the Administrator-General may, if satisfied that the summons has been validly and effectually served, make such order *ex parte* and shall in such case serve a copy thereof upon the administrator.

(5) If any person ordered to exhibit an account refuses or neglects to exhibit such account within the time fixed for the purpose in the order he shall be deemed to have committed an offence under section 176 of the Penal Code.

Cap. 96.

(6) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of the Penal Code.

Cap. 96.

(7) Every summons, notice or order shall be deemed to have been validly and effectually served if served on or left with the administrator, or if he cannot be found if left at his last-known place of abode by any person authorised in that behalf by the Administrator-General.

(8) The Administrator-General may in addition to issuing a summons as provided by subsection (1) or in lieu thereof apply by summons in Chambers to the Court for an order that the letters of administration granted to such administrator as is mentioned in subsection (1) be revoked and that the administration be vested in the Administrator-General and the Court if satisfied that there is good cause for revoking the said grant of letters of administration and vesting the administration in the Administrator-General shall make an order accordingly.

(9) The Administrator-General may at the time of the issue of a summons as provided in subsection (8) or at any time thereafter apply to the Court for the appointment of

himself or some other person as receiver of the estate and the Court if satisfied that it is desirable so to do shall appoint the Administrator-General or such other person to be receiver for such period as to the Court shall seem proper.

(10) If the Administrator-General upon the issue of a summons as provided in subsection (8) or at any time thereafter shall certify under his hand that it is desirable that he or some other person should be appointed as a matter of extreme urgency as receiver of the estate he may apply to the Court *ex parte* for the appointment of himself or such other person as receiver and the Court upon reading the said certificate and without inquiry into the correctness thereof shall forthwith appoint him or such other person to be receiver of the estate until the hearing of the summons issued pursuant to subsection (8) or for a period of three months whichever shall be the shorter period but the Court shall have power if it sees fit so to do from time to time to extend the period of the receivership of the Administrator-General or such other person.

Appeal.

(11) The administrator of the estate or any beneficiary may within one month from the date of such order appeal to the Court against any order made under subsection (3) and the Court may make such order thereon as the justice of the case may require.

(12) Such appeal may be brought by summons in Chambers and notice thereof shall be served upon all beneficiaries of the estate, and if the appeal is by the beneficiary upon the administrator :

Provided that the Court may dispense with service upon any beneficiary.

(13) Before proceeding to hear any appeal the Court may order the appellant or appellants to give security within a time to be fixed by the order for the payment of all costs incurred or likely to be incurred in the hearing of such appeal.

Fees for
services of
Administra-
tor-General.

35. (1) When the property of a deceased person is administered by the Administrator-General under this Ordinance no commission shall be allowed under section 26, but there shall be charged in respect of the duties of the Administrator-General such fees, whether by way of percentage or otherwise as the Chief Secretary may by notification in the *Gazette* prescribe.

(2) Such fees shall be in addition to the reasonable expenses incurred by the Administrator-General in respect of the administration of such property, and shall be paid into the public revenue.

36. (1) For the purposes of subsection (1) of section 35 the Chief Secretary may prescribe that the said percentage shall be calculated upon the gross value of any property without any deduction being made for the amount or value of any charge or other encumbrances to which the same may be subject or of any debts due by the deceased or upon the net value thereof.

Method of calculation and lien.

(2) The Administrator-General shall have a lien upon the property administered by him for the amount of such expenses and fees.

CHAPTER IV.

LIMITED GRANTS.

A.—*Grants Limited in Duration.*

37. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of copy or draft of lost will.

✓ 38. When the will has been lost or destroyed and no copy has been made nor the draft preserved, probate may be granted of its contents if they can be established by evidence.

Probate of contents of lost or destroyed will.

39. When the will is in the possession of a person residing out of the Colony who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Probate of copy where original exists.

40. When no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

Admin
HCR - (021, 26)

B.—*Grants for the Use and Benefit of Others having Right.*

Administra-
tion, with
will an-
nexed, to
attorney
of absent
executor.

41. When any executor is absent from the Colony and there is no executor within the Colony willing to act, letters of administration with the will annexed may be granted to the attorney of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administra-
tion, with
will an-
nexed, to
attorney
of absent
person
entitled.

42. When any person to whom, if present, letters of administration with the will annexed might be granted is absent from the Colony, letters of administration with the will annexed may be granted to his attorney, limited as above-mentioned.

Administra-
tion in
intestacy to
attorney of
absent per-
son entitled.

43. When a person entitled to administration in case of intestacy is absent from the Colony and no person equally entitled is willing to act, letters of administration may be granted to the attorney of the absent person, limited as above-mentioned.

Administra-
tion during
minority of
sole
executor or
residuary
legatee.

44. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administra-
tion during
minority
of several
executors or
residuary
legatees.

45. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administra-
tion for use
and benefit
of minor or
mentally
disordered
person.

46. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rules for the distribution of the estate of an intestate applicable in the case of the deceased, be a minor or mentally disordered, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority or, if there be no such person to such other person as the Court thinks fit to appoint, for the use and

benefit of the minor or mentally disordered person, until he attains majority or becomes of sound mind, as the case may be.

47. Pending any suit touching the validity of the will of a deceased person or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

Administra-
tion
pendente
lite.

C.—Grants for Special Purposes.

48. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he appoint an attorney to take administration on his behalf, the letters of administration with the will annexed shall be limited accordingly.

Probate
limited to
purpose
specified
in will.

49. If an executor appointed generally give an authority to an attorney to prove a will on his behalf and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administra-
tion with
will an-
nexed
limited to
particular
purpose.

50. Where a person dies, leaving property of which he was the sole or surviving trustee or in which he had no beneficial interest on his own account, and leaves no general representative or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to a beneficiary or to some other person on his behalf.

Administra-
tion limited
to trust
property.

51. When it is necessary that the representative of a person deceased be made a party to a pending suit and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administra-
tion limited
to suit.

Administration limited to purpose of becoming party to suit to be brought against executor or administrator.

52. If at the expiration of twelve months from the date of any probate or letters of administration the executor or administrator to whom the same has or have been granted is absent from the Colony, the Court may grant to any person whom it thinks fit letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

53. In any case in which it appears necessary for preserving the property of a deceased person, the Court may grant, to any person whom the Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased and to giving discharges for the debts due to his estate, subject to the directions of the Court.

Appointment as administrator of person other than one who under ordinary circumstances would be entitled to administration.

54. (1) When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of the Colony, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Court may in its discretion, having regard to consanguinity, amount of interest, the safety of the estate, and the probability that it will be properly administered, appoint such person as it thinks fit to be administrator.

(2) In every such case letters of administration may be limited or not, as the Court thinks fit.

D.—*Grants with Exception.*

Probate or administration with will annexed subject to exception.

55. (1) Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

Administration subject to exception.

(2) Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

E.—*Grants of the Rest.*

Probate or administration of the rest.

56. Whenever a grant with exception, of probate, or of letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take

a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

F.—Grants of Effects Unadministered.

De bonis non

57. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Grant of effects unadministered.

de bonis non

see also s. 19 & seq.

58. In granting letters of administration of an estate not fully administered the Court shall be guided by the same rules as apply to original grants and shall grant letters of administration to those persons only to whom original grants might have been made.

Rules as to grants of effects unadministered.

59. When a limited grant has expired by effluxion of time or the happening of the event or contingency on which it was limited and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

When limited grant expired and administration incomplete.

G.—Additional Administrators.

60. Whenever the nature of the case requires the Court may appoint an additional administrator or additional administrators to act jointly with the original administrator and on such terms as the Court may think fit.

Additional administrator.

CHAPTER V.

ALTERATION AND REVOCATION OF GRANTS.

61. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant may be rectified by the Court and the grant of probate or letters of administration may be altered and amended accordingly.

What errors may be rectified by Court.

62. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification; and the grant may be altered and amended accordingly.

When codicil discovered after grant of administration with will annexed.

63. The grant of probate or letters of administration may be revoked or annulled for just cause.

Revocation or annulment for just cause.

Explanation.—"Just cause" is—

(1) that the proceedings to obtain the grant were defective in substance;

(2) that the grant was obtained fraudulently by making a false suggestion or by concealing from the Court something material to the case ;

(3) that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

(4) that the grant has become useless and inoperative through circumstances ;

✓ (5) that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter IX, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations.

(a) The Court by which the grant was made had no jurisdiction.

(b) The grant was made without citing parties who ought to have been cited.

(c) The will of which probate was obtained was forged or revoked.

(d) *A* obtained letters of administration to the estate of *B*, as his widow, but it has since transpired that she was never married to him.

(e) *A* has taken administration to the estate of *B* as if he had died intestate, but a will has since been discovered.

(f) Since probate was granted a later will has been discovered.

(g) Since probate was granted a codicil has been discovered which revokes or adds to the appointment of executors under the will.

(h) The person to whom probate was, or letters of administration were, granted has subsequently become mentally disordered.

CHAPTER VI.

THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Court's powers as to grant of probate and administration.

64. The Court shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in it in relation to any civil suit or proceeding pending in the Court.

Court may order person to produce testamentary papers.

65. (1) The Court may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shewn to be in the possession or under the control of such person.

(2) If it is not shewn that any such paper or writing is in the possession or under the control of such person but

there is reason to believe that he has knowledge of any such paper or writing the Court may direct him to attend for the purpose of being examined respecting the same.

(3) Such person shall be bound to answer such questions as may be put to him by the Court and, if so ordered, to produce and bring in such paper or writing and shall be subject to the like punishment, in case of default in not attending or not answering such questions or not bringing in such paper or writing, as he would have been subject to if he had been a party to a suit and had made such default.

(4) The costs of the proceeding shall be in the discretion of the Court.

66. The proceedings of the Court in relation to the granting of probate and letters of administration shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Sarawak, North Borneo and Brunei High Court (Civil Procedure) Rules.

Regulation of proceedings of Court. ✓

67. Probate of the will or letters of administration to the estate of a deceased person may be granted under the seal of the Court and signature of the presiding officer, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the Court.

When probate or administration may be granted by Court.

68. Probate or letters of administration shall—

(a) have effect over all the property, movable or immovable, of the deceased throughout the Colony, and

(b) be conclusive as to the representative title against all debtors of the deceased and all persons holding property which belongs to him, and

(c) afford full indemnity to all debtors paying their debts and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

Conclusiveness of probate or letters of administration.

Conclusive-
ness of
application
for probate
or adminis-
tration, if
properly
made and
verified.

69. The application for probate or letters of administration if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorising the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property, within the jurisdiction of the Court at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for
probate.

70. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English, exhibiting the will, or in the cases mentioned in sections 5, 37, 38 and 39 an authenticated copy, a copy, a draft or a statement of the contents thereof as the case may require and stating—

(a) the time of the testator's death ;

(b) that the writing so exhibited is his last will, or as the case may be ;

(c) that it was duly executed ;

(d) the amount of assets which are likely to come to the petitioner's hands ;

(e) where the application is for probate, that the petitioner is the executor named in the will ;

(f) that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Court ; and

(g) that, to the best of the petitioner's belief, no application has been made to the Court at any other place in the Colony for probate of the same will or for letters of administration with the same will annexed, or, where any such application has been made, the place at which it was made, the person or persons by whom it was made, and the proceeding, if any, had thereon.

In what
cases
translation
of will to be
exhibited
to petition.

71. In cases where the will, copy, or draft is written in any language other than English there shall be a translation thereof by a translator of the Court, if the language be one for which a translator is appointed exhibited to the petition ; or, if the will, copy, or draft be in any other language, then by any person competent to translate the same, in which

case such translation shall be verified by that person in the manner prescribed.

72. Application for letters of administration shall be made by petition distinctly written as aforesaid and stating—

Form of application for letters of administration.

- (a) the time and place of the deceased's death ;
- (b) the family or other relatives of the deceased, and their respective residences ;
- (c) the right in which the petitioner claims ;
- (d) the amount of assets which are likely to come to the petitioner's hands ;
- (e) that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Court ; and
- (f) that, to the best of the petitioner's belief, no application has been made to the Court at any other place in the Colony for letters of administration of the same estate, or, where any such application has been made, the place at which it was made, the person or persons by whom it was made and the proceeding, if any, had thereon.

73. (1) The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and be verified by the petitioner in the manner prescribed.

Petition for probate or administration to be signed and verified.

(2) Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable) in the manner prescribed.

Verification of petition for probate by one witness to will.

74. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

Punishment for false averment in petition or declaration.

75. (1) In all cases the Court may, if it thinks fit—

- (a) examine the petitioner in person upon oath or affirmation ;
- (b) require further evidence of the due execution of the will, or of the right of the petitioner to letters of administration, as the case may be ; and

Court may examine petitioner, require further evidence, and issue citations. ✓

(c) issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

(2) Every citation shall be fixed up in some conspicuous part of the Court-house, shall be served upon such persons as the Court may direct, and shall be otherwise published or made known in such manner as the Court may direct.

Caveats
against
grant of
probate or
administra-
tion.

76. (1) Caveats in the form prescribed against the grant of probate or letters of administration may be lodged with the Registrar.

(2) Immediately on a caveat being lodged, the officer with whom the same is lodged shall send a copy thereof to every other Registrar and to the Registrar of the High Court.

Effect of
caveat.

77. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Court at the place at which the application has been made, or notice thereof has been given of its entry at some other place, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

Grants to
be under
seal ; forms
of grant.

78. (1) When it appears to the Court that probate of a will should be granted the Court shall grant the same under its seal in the form prescribed.

(2) When it appears to the Court that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted the Court shall grant the same under its seal in the form prescribed.

Administra-
tion bond.

✓ 79. Every person to whom, not being an Administrator-General or Official Trustee (by whatever name called) appointed by or under any legislative provision of the United Kingdom or of any dominion of Her Majesty, any grant of letters of administration is committed, [and, if the Court so direct, any person to whom probate is granted] shall give a bond to the Registrar to enure for the benefit of the Registrar for the time being, with two sureties in the amount at which the estate within the jurisdiction is

sworn, engaging for duly collecting, getting in, and administering the estate of the deceased, which bond shall be in the form heretofore in use or in such other form as the Chief Justice, may from time to time by any general or special order direct :

Provided that the Court may for sufficient reasons increase or decrease the number of the surties or dispense with them, and may reduce or enhance the amount of the bond, and the Court in exercising its discretion shall consider the standing of the parties, the nature of the property, the amount of the debts, and the extent of the administrator's personal interest or distributive share in the estate. For the purposes of this section the words "dominion of Her Majesty" shall have the same meaning as in Chapter XVII.

80. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept, and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit, by order direct the Registrar to assign the same to some proper person, to be named in the order, who shall, upon such assignment, be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Registrar, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Assignment of administration bond.

81. Where an executor or administrator who has given a bond under section 79, or under the corresponding provisions of any law hereby repealed, and is in possession of any part of the estate of the testator or intestate has complied with the provisions of section 102 so far as is practicable but is prevented from fully complying therewith by reason of inability to ascertain or to communicate with the persons beneficially entitled to the residue in his hands, he may exhibit in the Court an account, duly audited, shewing how the estate has been administered and may thereafter, with the leave of the Court, pay into Court the residue in his hands. After such payment into Court the Court shall, unless good cause is shewn to the contrary, discharge the executor or administrator and his surety or sureties (if any) from the obligations of the said bond.

Discharge from administration bond.

Time before which probate or administration shall not be granted. ✓ 82. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the death of the testator or intestate.

Filing of wills in Court.

✓ 83. (1) There shall be filed and preserved among the records of the Court all original wills and authenticated copies of wills of which probate or letters of administration with the will annexed may be granted by the Court.

(2) The Chief Justice may make regulations for the preservation and inspection of the wills or authenticated copies of wills so filed as aforesaid.

Exclusive power of grantee of probate or administration to sue, etc.

84. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout the Colony, until such probate or letters of administration shall have been revoked.

Procedure in contentious cases.

85. In any case before the Court in which there is contention the proceedings shall take, as nearly as may be, the form of a suit, according to the provisions of the Sarawak, North Borneo and Brunei High Court (Civil Procedure) Rules, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Saving of rights where probate or administration revoked.

86. Where any probate is, or letters of administration are, revoked—

(a) all payments *bona fide* made to any executor or administrator under such probate or letters of administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same ; and

(b) the executor or administrator who shall have acted under any such revoked probate or letters of administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

87. Notwithstanding anything hereinbefore contained, it shall be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this Ordinance.

Power to refuse letters of administration.

88. (1) When a grant of probate or letters of administration is revoked or annulled under this Ordinance, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court at the place where the grant was made.

Surrender of revoked probate or letters of administration.

(2) Any person who wilfully and without sufficient cause omits so to deliver up the probate or letters, shall be liable to a fine of one thousand dollars and to imprisonment for three months.

(1981) 2 ANJ p 68.

89. The Court may on application made to it and on sufficient cause being shewn suspend, remove or discharge any executor or administrator and provide for the succession of another person to the office of any executor or administrator so suspended, removed or discharged and the vesting in such successor of any property belonging to the estate.

Removal of executor or administrator and provision for successor.

90. Where probate or letters of administration in respect of any estate have been granted under this Ordinance the Court may, on application made to it at or at any time after the time of the grant, give the executor or administrator any general or special directions in regard to the estate or in regard to the administration thereof.

Directions to executor or administrator.

CHAPTER VII.

OF EXECUTORS OF THEIR OWN WRONG.

91. A person who intermeddles with the estate of the deceased, or does any other act which belongs to the office of the executor, while there is no rightful executor or administrator in existence, thereby makes himself an executor of his own wrong.

Executor of his own wrong.

de son tort

Exceptions.—(1) Intermeddling with the goods of the deceased for the purpose of preserving them or providing for his funeral or for the immediate necessities of his family or property does not make an executor of his own wrong.

(2) Dealing in the ordinary course of business with goods of the deceased received from another does not make an executor of his own wrong.

Liability of executor of his own wrong.

92. When a person has so acted as to become an executor of his own wrong he is answerable to the rightful executor or administrator or to any creditor or legatee of the deceased to the extent of the assets which may have come to his hands after deducting payments made to the rightful executor or administrator and payments made in due course of administration.

CHAPTER VIII.

THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

Executor's power to sue.

93. (1) An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

Survival of demands and rights.

(2) All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Penal Code, or other personal injuries not causing the death of the party, and except also cases where after the death of the party the relief sought could not be enjoyed or granting it would be nugatory.

Cap. 96.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

(Note: PA - see (HCR - 0.71, r.26) where a person entitled to a grant of admin may be granted an Admin for his will benefit (intd) etc

Power of executor or administrator to dispose of property.

94. (1) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 3.

(2) The power of an executor to dispose of immovable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order.

-restrictions - active? Express or passive? Implied
If provisions provide A shall be deemed equal amongst B, C, D, are there any restrictions on disposal of A?
Must A go to B, C, D? or is it possible for A to go somewhere else?
Q - Is power above duty? or vice versa?
[Duty - an obligation - must be complied. Power - where duty does not arise. There is an option to me. power if possible.]

What is dispose? Sale? lease?

(3) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,

(a) mortgage, charge, or transfer by sale, gift, exchange, or otherwise any immoveable property for the time being vested in him under section 3, or

(b) lease any such property for a term exceeding five years.

(4) A disposal of property by an executor or administrator in contravention of subsection (2) or subsection (3), as the case may be, is voidable at the instance of any other person interested in the property.

(5) Before any probate or letters of administration is or are granted under this Ordinance there shall be endorsed thereon or annexed thereto a copy of subsections (1), (2) and (4) or of subsections (1), (3) and (4), as the case may be, and of section 102.

(6) No probate or letters of administration shall be rendered invalid by reason of the endorsement or annexure required by the last preceding subsection not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this section.

95. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Purchase by executor or administrator of deceased's property.

96. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Powers of several executors or administrators exercisable by one.

Illustrations.

(a) One of several executors has power to release a debt due to the deceased.

(b) One has power to surrender a lease.

(c) One has power to sell the property of the deceased, moveable or immoveable.

- (d) One has power to assent to a legacy.
 (e) One has power to endorse a promissory note payable to the deceased.
 (f) The will appoints A, B, C and D to be executors and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

97. Upon the death of one or more of several executors or administrators all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Powers of administrator of effects unadministered.

98. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

99. An administrator during minority has all the powers of an ordinary administrator.

CHAPTER IX.

THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

Deceased's funeral ceremonies.

100. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

101. (1) An executor or administrator shall—

(a) within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character; and

(b) in like manner within one year from the grant, or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, shewing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(2) The Chief Justice may prescribe the form in which an inventory or account under this section is to be exhibited.

In the case of doubt, or anything which affects land that may not be beneficial to estate or beneficiaries, then could apply for Controver to which is paid beneficial order will be granted.
 → P/A potentially disposal of the land?

* Note: As executor/administrator is one a trustee - it is the ultimate duty to see to the benefit to the estate & the beneficiaries, hence, anything which defeats this is not allowed. [Cap. 109. 1863]

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Penal Code.

hence, if a sublease is due for renewal, executor able to sign for it.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of the Penal Code.

Cap. 96.

Probate & Admin. appear to be a private right hence any irregular or voidable, same may be voided.

Cap. 96.

102. The executor or administrator shall with all reasonable expedition and diligence collect the property of the deceased and the debts due to him and shall pay all debts due by the deceased's estate and the legacies under the will (if any), in accordance with the provisions hereinafter contained, and shall forthwith proceed, when there is no minority or other special reason to the contrary, to hand over the residue of the estate (if any), to the person or persons entitled thereto and to make his final report to the Court setting forth the manner in which he has discharged his duties.

Collection of and dealing with the property.

Any delay in distribution of residue is only actionable by beneficiary.

Would special reason include exercise of executor's power? No.

All property taken by family & subject to all encumbrances.

Hence as long as beneficiary agrees, executor may delay distribution?

Expenses to be paid first.

Get a letter from beneficiary's solicitor for proof?

103. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all other debts.

Expenses to be paid next after such expenses.

Probate & Administration as private rights of beneficiaries.

104. Testamentary and administration expenses, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Wages for certain services to be next paid, and then other debts.

But if taking properties as same form of securities by third party, just because it is normally not enforced, don't mean that's the right way.

105. Wages due for services rendered to the deceased within the three months next preceding his death by any labourer, artisan, clerk or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Save as aforesaid, all debts to be paid equally and rateably.

Probate & Administration clear duty of executor/administrator is to distribute only unless with authority of Court order.

106. Save as aforesaid, no creditor shall have a right of priority over another, but the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

18 more reasons for minority

no discretion

Contingency

Debts to
be paid
before
legacies.

✓ 107. Debts of every description shall be paid before any legacy.

Executor or
administra-
tor not
bound to pay
legacies
without
indemnity.

108. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement
of general
legacies;
no
preferential
payment.

109. (1) If the assets, after payment of debts, necessary expenses, and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions.

(2) In the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

No abate-
ment of
specific
legacy when
assets
sufficient
to pay
debts and
expenses.

110. Where there is a specific legacy and the assets are sufficient for the payment of debts and necessary expenses the thing specified shall be delivered to the legatee without any abatement.

Right under
demonstra-
tive legacy
when assets
sufficient to
pay debts
and
expenses.

111. Where there is a demonstrative legacy and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Rateable
abatement
of specific
legacies.

112. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

A has bequeathed to B a diamond ring, valued at \$500, and to C a horse, valued at \$1,000. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only \$750. Of this sum \$250 are to be paid to B and \$500 to C.

113. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER X.

EXECUTOR'S ASSENT TO A LEGACY.

114. The assent of the executor is necessary to complete a legatee's title to his legacy.

Assent necessary to complete legatee's title.

Illustrations.

(a) *A* by his will bequeaths to *B* debentures which are on deposit with the Chartered Bank. The Bank has no authority to deliver the securities, nor *B* a right to take possession of them, without the assent of the executor.

(b) *A* by his will has bequeathed to *C* his house in Jesselton in the tenancy of *B*. *C* is not entitled to receive the rents without the assent of the executor.

115. (1) The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Executor's assent to specific legacy.

(2) This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(a) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(b) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(c) A bequest is made of a fund to *A*, and after him to *B*. The executor pays the interest of the fund to *A*. This is an implied assent to the bequest to *B*.

(d) Executors die after paying all the debts of the testator but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(e) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional
assent.

116. The assent of an executor to a legacy may be conditional, and if the condition is one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(a) *A* bequeaths to *B* his lands at Papar, which at the date of the will and at the death of *A* were subject to a charge for \$10,000. The executor assents to the bequest on condition that *B* shall within a limited time pay the amount due on the charge at the testator's death. The amount is not paid. There is no assent.

(b) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of
executor to
his own
legacy.

117. (1) When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it in the same way as it is necessary when the bequest is to another person, and his assent may in like manner be express or implied.

(2) Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of securities bequeathed to him and applies it to his own use. This is assent.

Effect of
executor's
assent.

118. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(a) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser and completes his title to the legacy.

(b) *A* bequeaths \$1,000 to *B* with interest from his death. The executor does not assent to this legacy until the expiration of a year from *A*'s death. *B* is entitled to interest from the death of *A*.

Time for
payment of
legacies.

119. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER XI.

PAYMENT AND APPORTIONMENT OF ANNUITIES.

120. Where an annuity is given by the will and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Commencement of annuity when no time fixed by will.

121. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death and shall, if the executor think fit, be paid when due ; but the executor shall not be bound to pay it till the end of the year.

When annuity, to be paid quarterly, or monthly, first falls due.

122. (1) Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments shall be made on the anniversary of the earliest day on which the will authorises the first payment to be made.

Date of successive payments when first payment directed to be made within given time or on day certain.

(2) If the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER XII.

INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

123. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities, as the Chief Justice, may by notification in the *Gazette* prescribe, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of sum bequeathed where legacy, not specific, given for life.

124. (1) Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in any of the securities prescribed under section 123.

Investment of general legacy, to be paid at future time.

(2) The intermediate interest shall form part of the residue of the testator's estate.

125. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, an annuity to be approved by the Court of the specified amount shall be purchased :

Where no fund charged with or appropriated to annuity.

Provided that if no such annuity can conveniently be obtained, then a sum sufficient to produce the annuity shall be invested for that purpose in any of the securities prescribed under section 123.

Transfer to residuary legatee subject to contingent bequest.

126. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Bequest of residue—
(a) with direction to invest ;

127. (1) Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

(b) without direction.

(2) Where the testator has bequeathed the residue of his estate to a person for life without any direction to invest it in any particular securities, so much thereof as is not at the time of the testator's decease invested in securities of the kind prescribed under section 123 shall be converted into money and invested in such securities.

Time and manner of conversion and investment.

128. (1) Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit.

(2) Until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at a rate to be fixed by the Court having regard to the market value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Where minor entitled to immediate payment of bequest.

129. (1) Where a legatee entitled by the terms of the bequest to the immediate payment or possession of the money or thing bequeathed is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court at the place where the probate was, or letters of administration with the will annexed were, granted to

the account of the legatee and such payment into Court shall be a sufficient discharge for the money so paid.

(2) Such money, when paid in, shall be invested in any of the securities prescribed under section 123, which securities, with the interest thereon, shall be transferred to the person entitled thereto, or otherwise applied for his benefit as the Court may direct.

CHAPTER XIII.

PRODUCE AND INTEREST OF LEGACIES.

130. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Legatee's title to produce of specific legacy.

Exception.—A specific bequest contingent in its terms does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(a) *A* bequeaths securities to *B* but postpones the delivery of them till the death of *C*. The interest which falls due between the death of *A* and the death of *C* belongs to *B* and must, unless he is a minor, be paid to him as it is received.

(b) The testator bequeaths all his shares in *X* Company to *A* when he shall complete the age of 21. *A*, if he complete that age, is entitled to receive the shares, but the interest which accrues in respect of them between testator's death and *A*'s completing the age of 21 forms part of the residue.

131. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Residuary legatee's title to produce of residuary fund.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(a) The testator bequeaths the residue of his property to *A*, a minor, to be paid to him when he shall complete the age of 21. The income from the testator's death belongs to *A*.

(b) The testator bequeaths the residue of his property to *A* when he shall complete the age of 21. *A*, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

132. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy bears interest from the death of the testator.

(3) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest runs from the death of the testator.

Interest when time fixed.

133. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy bears interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

134. The rate of interest shall be fixed by the Court.

No interest on arrears of annuity within first year after testator's death.

135. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity.

136. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XIV.

THE REFUNDING OF LEGACIES.

Refund of legacy paid under Court's order.

137. An executor who has paid a legacy under the order of the Court is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

138. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

139. (1) When the time prescribed by the will for the performance of a condition has elapsed without the condition having been performed and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has under subsection (2) been allowed for the performance of the condition and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Refund when legacy becomes due on performance of condition within further time allowed.

(2) Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed or as a condition upon the nonfulfilment of which the subject-matter of the bequest is to go over to another person or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

140. When the executor has paid away the assets in legacies and is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

When each legatee liable to refund in proportion.

141. (1) Any executor or administrator, after giving notice in the most public manner reasonably possible, as, for instance, by the publication of notices in newspapers likely to be seen by creditors, by the distribution of handbills in Asiatic languages, or in other manner reasonably likely to attract the attention of creditors and others, calling upon all concerned to send in to him their claims against the estate of the deceased and stating his intention to proceed to a distribution of the assets on and after a certain date, of which not less than three months' notice shall be given, shall, at the expiration of the time so named, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution.

Distribution of assets.

(2) Nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may call upon legatee to refund.

142. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund, whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

When legatee unsatisfied or compelled to refund cannot oblige one paid in full to refund.

143. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund under section 142, cannot oblige one who has received payment in full to refund, whether the legacy was paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When unsatisfied legatee must first proceed against executor, if solvent.

144. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit of refund by one legatee to another.

145. The refunding by one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed \$240 to B, \$480 to C, and \$720 to D. The assets are only \$1,200 and if properly administered would give \$200 to B, \$400 to C, and \$600 to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund \$80 and D to refund \$120.

Refund to be without interest.

146. The refunding shall in all cases be without interest.

Residue after usual payments to be paid to residuary legatee.

147. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Transfer of assets from the Colony to executor or administrator in country of domicile for distribution.

148. Where—

(a) a person not having domicile in the Colony has died leaving assets both in the Colony and in the country in which he had his domicile at the time of his death, and

(b) there has been a grant of probate or letters of administration in the Colony with respect to the assets

there and a grant of probate or letters of administration in the country of domicile with respect to the assets in that country,

the executor or administrator, as the case may be, in the Colony, after having given such notice as is mentioned in section 141 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of, may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of the Colony who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

CHAPTER XV.

LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

149. When an executor or administrator misapplies the estate of the deceased or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned. Misapplication of estate.

Illustrations.

(a) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(b) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(c) The deceased had a lease of less value than the rent payable for it but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

150. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount. Neglect to get in any part of property.

Illustrations.

(a) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b) The executor neglects to sue for a debt till the debtor is able to plead the law for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XVI.

RE-SEALING OF PROBATE AND LETTERS OF ADMINISTRATION GRANTED BEFORE THE COMMENCEMENT OF THIS ORDINANCE.

Power of
Court to
re-seal.

151. Where probate or letters of administration in respect of the estate of a deceased person has or have been granted by a competent Court before the commencement of this Ordinance, such probate or letters of administration may, on being produced to the Court, be sealed with the seal of the Court and thereupon shall be of the like force and effect and have the same operation throughout the Colony as if granted under this Ordinance.

Application
to be by
petition

152. Applications for sealing probates or letters of administration under this Chapter shall be by petition, verified by affidavit, and may be made by the executors or administrators or one or more of them or by a person holding a power of attorney from them or of one or more of them, either in person or through a legal practitioner.

Stamp law.

153. The provisions of the law applicable to the case relating to duties on estates of deceased persons (including any penal provisions thereof) shall, so far as relates to property of the deceased person situate outside the jurisdiction of the Court by which the probate or letters of administration produced, or any other probate or letters of administration, was or were granted, apply as if the person who applies for sealing under this Chapter were a person applying for probate or letters of administration.

Certified
copy of
probate, etc.,
of same
effect as
original.

154. For the purposes of section 151 a copy of any probate or letters of administration certified as correct by or under the authority of the Court shall have the same effect as the original.

Evidence
to be
produced
to Court
before
sealing.

155. The Court shall, before sealing a probate or letters of administration under this Chapter—

(a) require production of a certificate under the hand of the Registrar that all affidavits required by the provisions of section 153 for Collectors of Stamp Duties or the Commissioner of Estate Duties have been duly delivered and that such affidavits, if liable to stamp duty, were duly stamped or that duty was duly paid or postponement allowed ;

(b) be satisfied, in the case of letters of administration, if security is required by law to be given, that security

has been given in a sum which is in the opinion of the Court sufficient.

156. On application to seal letters of administration, the administrator, not being the Administrator-General or Official Trustee as referred to in section 79, shall give a bond to the Registrar, to enure for the benefit of the Registrar for the time being, with one or more surety or sureties, to cover such property of the deceased as is referred to in section 153. The provisions of sections 79, 80 and 81 shall be deemed to apply to any such bond. Bond.

CHAPTER XVII.

RE-SEALING OF PROBATES AND LETTERS OF ADMINISTRATION.



157. In this Chapter, unless the context otherwise requires— Interpretation.

“ British Court in a foreign country ” means any British Court having jurisdiction out of the dominions of Her Majesty in pursuance of an Order of Her Majesty in Council, whether made under any Act or otherwise ;

“ Court of probate ” means any Court or authority, by whatever name designated, having jurisdiction in matters of probate ;

“ the dominions of Her Majesty ” includes any British protectorate or protected State and any territory in respect of which a mandate on behalf of the League of Nations has been accepted by Her Majesty ;

“ probate ” and “ letters of administration ” include confirmation in Scotland and any instrument having in the United Kingdom or in any part of the dominions of Her Majesty the same effect which under the law of the Colony is given to probate and letters of administration respectively.

158. Where a Court of probate in the United Kingdom or in any part of the dominions of Her Majesty or a British Court in a foreign country, has, either before or after the passing of this Ordinance, granted probate or letters of administration in respect of the estate of a deceased person, the probate or letters of administration so granted may, on being produced to, and a copy thereof deposited with the High Court, be sealed with the seal of that Court, and there- Sealing of probates and letters of administration granted outside the Colony.

upon shall be of the like force and effect, and have the same operation in the Colony as if granted by that Court.

Conditions
to be
fulfilled
before
sealing.

159. The High Court shall, before sealing a probate or letters of administration under this Chapter, be satisfied—

(a) that estate duty has been paid or postponement of payment allowed in respect of so much, if any, of the estate as is liable to estate duty in the Colony; and

(b) in the case of letters of administration, that security has been given in a sum sufficient in amount to cover the property, if any, in the Colony to which the letters of administration relate;

and may require such evidence, if any, as it thinks fit as to the domicile of the deceased person.

✓ Security for
payment of
debts.

160. The High Court may also, if it thinks fit, on the application of any creditor, require before sealing, that adequate security be given for the payment of debts due from the estate to creditors residing in the Colony.

Duplicate
or copy
admissible.

161. For the purposes of this Chapter, a duplicate of any probate or letters of administration sealed with the seal of the Court granting the same, or a copy thereof certified as correct by or under the authority of the Court granting the same, shall have the same effect as the original.

Bond.

162. On application to seal letters of administration, the administrator, not being the Administrator-General or Official Trustee as referred to in section 79, or his attorney shall give a bond to the Registrar of the High Court, to enure for the benefit of the Registrar of the High Court for the time being, with one or more surety or sureties, to cover the property of the deceased within the jurisdiction of the Court. The provisions of sections 79, 80 and 81 shall be deemed to apply to any such bond.

Estate duty.

163. The provisions of the law applicable to the case relating to duties on estates of deceased persons (including any penal provisions thereof) shall apply as if the person who applies for sealing under this Chapter were a person applying for probate or letters of administration.

CHAPTER XVIII.

MISCELLANEOUS.

164. In Chapters X, XI, XII and XIV of this Ordinance the provisions as to an executor shall apply also to an administrator with the will annexed.

Provisions applied to administrator with will annexed.

165. Nothing contained in this Ordinance shall—

Saving clause.

(a) validate any testamentary disposition which would otherwise have been invalid ;

(b) invalidate any such disposition which would otherwise have been valid ;

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled ;

(d) affect the provisions of any Ordinance in force for the time being to facilitate succession to the land of deceased persons ;

(e) affect the provisions of any law relating to duties on estates of deceased persons ; or

(f) affect any rules of Islamic law as varied by local custom in respect of the distribution of the balance of the estate of a deceased person after the debts have been satisfied.

CHAPTER XIX.

GENERAL.

166 (1) When probate or letters of administration have been granted under this Ordinance any person may apply to the Court by summons in the suit in which such probate or letters of administration have been granted for a decision upon any questions not being contentious relating to the collection, administration, distribution or winding up of an estate or trust upon which such executor, administrator or trustee may desire the guidance of the Court :

Jurisdiction of Court to decide certain questions.

Provided that notice of any order or direction made under this subsection shall forthwith be served upon any person affected thereby other than the party applying for such direction.

(2) Notwithstanding anything to the contrary contained in this Ordinance or in any law for the time being in force in the Colony an appeal shall lie from any order, decree, decision, direction or judgment made or given under this

section by any person affected thereby as if such order, decree, decision, direction or judgment were a decree of a Court exercising original jurisdiction.

✓ (3) (a) An application for a summons shall be supported by affidavit and the summons shall be in the form prescribed and shall be served in the manner prescribed by rules of court for the service of a summons.

(b) The application shall be supported by such further evidence as the Court may require and directions may be given as to the Court seems just for the trial of any questions arising thereout.

(c) All persons whose interests may be adversely affected by any order, decision or direction applied for under this section shall be served with a copy of the summons.

Power to
make rules.

167. The Chief Justice may make rules—

(a) to fix the duties and fees payable on receipt of any applications or other proceedings ;

(b) to prescribe all matters which under this Ordinance are required to be prescribed ;

(c) to provide for the posting and service of notices of applications ; and

(d) generally to give effect to the provisions of this Ordinance.

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