

CHAPTER 1.

ADMINISTRATION OF ESTATES.

AN ORDINANCE TO PROVIDE FOR THE GRANT OF PROBATE AND THE ADMINISTRATION OF ESTATES. 3 of 1949.
10 of 1950.

[1st June, 1949.]

1. This Ordinance may be cited as the Administration of Estates Ordinance. Short title.

2. In this Ordinance unless the context otherwise requires: Definitions.

“Court” means the Supreme Court in the Colony.

“Unrepresented estate” means the estate of a deceased person in respect of which there is no executor or administrator able or willing to act as such.

3. Applications for Probate and Letters of Administration shall be made by petition on oath to the Judge and shall state: Applications
for Probate
and Letters
of Adminis-
tration.

(1) in the case of an application for Probate or Letters of Administration with the will annexed, the date of death of the testator, that the document produced is to the best of the petitioner's knowledge and belief the last will and testament of the testator, and that (in the case of an application for Probate) the petitioner is the person named as executor, or (in the case of an application for Letters of Administration with the will annexed) that either no executors are appointed or that they are dead or have renounced their right to probate, and the capacity in which the petitioner is entitled;

(2) in the case of an application for Letters of Administration the date of death of the deceased, that to the best of the petitioner's knowledge and belief he died intestate and the grounds on which the petitioner applies for letters of administration.

[Note. This Ordinance is declared to be in force in the Dependencies by the Application of Colony Laws Ordinance, Cap. 1 (D.S.).]

Advertise-
ment.

4. (1) Notice of application for Letters of Administration shall be published once in the *Gazette* and once in any newspaper in the Colony.

(2) Letters of Administration shall not be granted until the expiration of three weeks after the publication of the notice in the *Gazette* except in cases where the Judge is satisfied, by affidavit or otherwise, that the grant should be made before the expiration of such three weeks and that notice of application has been given to all persons residing in the Colony who may have prior claim to such grant, when the Judge may grant to such applicant Letters of Administration, limited or otherwise as the circumstances may require, before the expiration of such three weeks.

Bonds.

5. (1) Probate or Letters of Administration shall not be granted until the applicant has entered into a bond approved by the Judge, with or without sureties, not exceeding two, as the Judge may decide. The penalty of the bond shall be double the amount or value of the estate.

(2) The Court may, on application or petition in chambers, and on being satisfied that the conditions of any bond have been broken, order the assignment of the bond to the person named in the order, and such person his executors and administrators shall thereupon be entitled as trustees for all persons interested to sue and recover the full amount due in respect of such breach of the bond as if the same had been entered into with him or them.

Caveats.

6. (1) Where a caveat has been entered before a grant of Probate or Letters of Administration shall have been made all parties interested therein shall be summoned before the Judge to show cause why a grant should not issue and after hearing the said parties and such evidence as the Judge may think necessary the Judge shall make such order as he may deem just.

(2) When any party fails to appear the Court may after proof of service, proceed as if the proceedings were *ex parte* or adjourn on such terms as it may direct.

Proof of will
in solemn
form.

7. Any person interested in a will, including any executor, may file in Court a petition verified by affidavit praying that such will be proved in solemn form and such petition shall be dealt with as other petitions to the Court.

8. (1) Any person interested in the estate of a deceased person may file in Court a petition verified by affidavit on the ground that the interests of parties concerned in the estate have suffered, or will suffer, by reason that the executor or administrator has been, or will be, absent from the Colony for the period of one year, and the Court may appoint an administrator with the will annexed or an administrator *de bonis non* to act during the absence of such executor or administrator.

Substitution of administrator for absentee personal representative.

(2) In case of dispute the Court may proceed as provided in section 6 (1).

(3) An administrator appointed under this section shall enter into a bond with or without sureties and be subject to the liabilities provided for in section 5.

9. All contentious proceedings shall be heard in open Court: non-contentious proceedings shall be heard in chambers unless the Court otherwise directs.

Proceedings.

10. Citations, writs, summons and orders shall be served personally on the person to whom they are addressed unless the Court for sufficient cause shall otherwise direct.

Service of citations, etc.

11. The Registrar shall record all grants of probate and letters of administration and maintain proper files of all papers relating thereto.

Records.

12. (1) The Court may require the attendance of any person whom it may think fit to examine, and may order any person to be examined on interrogatories on oath, and may order any person to produce such deed, document paper or writing as it may require.

Witnesses.

(2) Any person refusing or neglecting to comply with any writ, summons or order of the Court shall be guilty of contempt of Court and shall be liable to a penalty not exceeding £50.

13. An Official Administrator appointed by the Governor shall exercise the rights, powers and duties and be subject to the liabilities of the Public Trustee established under the Public Trustee Act, 1906, in respect of the administration of estates where he is appointed an executor of the will of a deceased person, or in the case of an intestacy where there is no person able or willing to administer the estate of the deceased.

Official Administrator.

When
Official Ad-
ministrator
may act.

14. The Official Administrator shall on becoming aware of an unrepresented estate:

(1) if he thinks fit so to do immediately enter upon the estate for the purpose of sealing up or making such other dispositions for the security of such estate as he may deem necessary;

(2) as soon as possible present a petition to the Court stating the particulars of such estate and praying that he be appointed administrator of the said estate, and the Court shall upon being satisfied that such estate is unrepresented grant such order.

Notice of
Order.

15. The Official Administrator shall forthwith on an Order being made under section 14 cause a notice thereof to be published in the *Gazette* and in any paper published in the Colony, and a copy thereof to be affixed to the public notice board in Stanley.

Order may
be revoked.

16. Any person legally entitled to the administration of an estate in respect of which an order under section 14 has been made may petition the Court that he be appointed administrator of the said estate, and the Court shall, upon being satisfied thereon, revoke the said order and appoint the petitioner to be administrator of the said estate, provided that all matters and things *bona fide* done or performed prior to the revocation of such order shall be valid and effectual.

Moneys to be
paid into
Savings
Bank.

17. All moneys received by the Official Administrator shall forthwith be paid into the Government Savings Bank to the account of the Official Administrator, and he shall make a return monthly to the Judge showing the amounts standing to the credit of each estate being administered by him.

Distribution
of estate.

18. The Official Administrator shall at the expiration of one year, or such other period as the Court may direct, from the date of the Order made under section 14 dispose of the moneys arising from such estate as follows:

- (1) reimburse himself of all costs and charges incurred in administering the estate as authorised by the Court;
- (2) pay into the Treasury $7\frac{1}{2}$ per centum of the gross amount of the estate to defray the cost of administering the estate;

(3) pay the creditors of the estate in the order prescribed by law;

(4) pay the balance into the Treasury upon trust for the person legally entitled thereto.

19. The Official Administrator shall in every case in which the kindred of an intestate are unknown cause an advertisement to be inserted in the *London Gazette* and the *London Times* newspaper once a quarter for a period of one year, unless the Court shall otherwise direct, giving particulars of the name, nationality and date of death of the deceased and the value of the estate.

Kindred to be advertised for.

20. Any person, other than a creditor, claiming to be legally entitled to the balance of an unrepresented estate as mentioned in section 18 (4) may petition the Court that such balance be delivered to him, and the Court upon being satisfied as to the validity of such claim shall make such order as may be just. Where there are two or more such claimants the Court shall determine their claims and make such order as to costs or otherwise as it may deem fit.

Claims for balances of unrepresented estates.

21. (1) When a Court of Probate in any part of the Commonwealth has granted probate or letters of administration in respect of the estate of a deceased person the probate or letters, on being produced to and a copy thereof deposited with the Court, may be sealed with the seal of the Court, and shall therefrom be of like force and effect as if they had been granted by the Court.

Resealing probates, etc., granted outside the Colony.

(2) The Court shall before re-sealing a probate or letters of administration be satisfied that estate duty has been paid or that sufficient security has been given in respect of the estate in the Colony.

(3) The Court may before re-sealing on the application of any creditor require that adequate security be given for the payment of any debts due to creditors residing in the Colony.

(4) A duplicate of any probate or letters of administration sealed with the Seal of the Court granting the same, or a copy thereof certified by or under the authority to the Court granting the same, shall have the same effect as the original.

22. The Governor in Council may make rules of Court regulating the practice and procedure, including fees and costs, under this Ordinance.

Rules of Court.