

**PROBATE.**

**Ordinance No. 9 of 1901.**

[11th December, 1901.]

*An Ordinance relating to the granting of Probate of Wills and Letters of Administration and to provide for the Administration of Unrepresented Estates.*

Be it enacted by the Governor of the Colony of the Falkland Islands, with the advice and consent of the Legislative Council thereof, as follows :—

**1. In this Ordinance—**

Interpretation.

“Unrepresented Estate” shall mean—

(1) The estate of every person who shall die intestate and whose widow, husband or next of kin shall be unknown, or shall have refused to take out Letters of Administration, or shall be absent from the Falkland Islands without having an agent therein.

(2) The estate of every person who shall die having made a will, when owing to any cause it shall be necessary to appoint administrators *cum testamento annexo* or *de bonis non* of such estate, and the person entitled to such Letters of Administration shall be unknown or shall refuse to take out such Letters of Administration, or shall be absent from the Falkland Islands without having an agent therein.

(3) Every estate whereof the executors or administrators shall be absent from the Falkland Islands without having an agent therein.

## PART I.

## PROBATE AND LETTERS OF ADMINISTRATION.

Form of will.

2. A will partly written and partly printed, made out and duly executed in conformity with the directions therein, on a form printed under the authority of the Governor, shall be as valid to all intents and purposes as if the same had been wholly written in words at length.

Duty to be paid and bond given before Probate.

3. No Probate of the will nor Letters of Administration of the estate and effects of any person deceased shall be granted until the applicant has paid to the Colonial Treasurer the estate duty payable under this Ordinance, and has given a bond in such form as the Chief Justice shall approve. Such bond shall be in a penalty of double the amount of the value of the estate as stated in the petition on which the grant is made, or in such other amount as the Chief Justice may direct.

Penalty for taking possession of estate without authority.

4. If any person shall take possession of and in any way administer any part of the estate or effects of any person deceased without obtaining Probate of the will or Letters of Administration of such estate within six calendar months after the death, every person so offending shall be liable to a penalty not exceeding twenty pounds in addition to the estate duty payable under this Ordinance.

Petitions.

5. Applications for Probate or Letters of Administration shall be made by petition to the Chief Justice, and the allegations contained in such petition shall be verified on oath, and

By executor.

(1) In the case of a will, the petition must state the death of the testator, that the document produced is believed to be his last will and testament, that the petitioner is the person named as the executor, and that the petitioner knows of no other later will made as the last will of the testator.

In intestacy.

(2) In the case of intestacy, the petition must state the death of the intestate, and that he died

without leaving a will, and it must briefly set forth the grounds on which the petitioner has applied for Letters of Administration.

(3) In the case of a petition for Letters of Administration with the will annexed, the petition must set forth the grounds on which the application is based.

To administer.

6. Notice of application for Letters of Administration must be given in the *Gazette* for three weeks before such letters shall be granted, except in cases where the Chief Justice shall be satisfied by affidavit or otherwise of the existence of any urgent necessity that such grant should be made before the expiration of such three weeks, and shall likewise be satisfied that notice of the application has been given to all persons residing within the Colony whose claim to such grant may be prior or preferable to that of the applicant. In every such case the Chief Justice shall have the power to grant to such applicant Letters of Administration, limited or otherwise, as the circumstances of the case shall seem to require within such time before the expiration of such three weeks as to him may seem necessary :

Applications to be published.

Provided always that in no case shall such administration be granted until notice of application therefor shall have been published once at least in the *Gazette*.

7. Together with every petition for Probate or Letters of Administration there shall be delivered an account signed by the petitioner of the particulars of the estate of the deceased situate in this Colony and of the estimated value thereof in such form as shall be prescribed by any Probate Rules made under the Administration of Justice Ordinance, 1901.

Value of estate to be estimated.

8. If any executor or administrator at any time within one year after having paid estate duty shall discover that the estate of the deceased person was estimated at too high a value in the account delivered by him, and that the amount of duty paid by him was consequently greater than he was liable to pay, and shall make the same appear to be the case

Refund of excess duty.

to the satisfaction of the Governor in Council, it shall be lawful for the Governor to issue his warrant on the Public Treasury for the return to such executor or administrator of any excess of payment so shown to have been made by him.

Under payment  
of duty.

9. If any executor or administrator shall through mistake or otherwise without fraud have omitted from the account delivered by him any part of the estate situate in this Colony he shall immediately after the discovery of such omission notify the Chief Justice of the same, and within three calendar months thereafter amend his account and pay the additional duty due on the estate of the deceased without being liable to any penalty or forfeiture under this Ordinance.

Enforcing bond.

10. The Court may, on application made on motion or petition in chambers in a summary way and on being satisfied that the condition of any bond given to the Chief Justice has been broken, order the assignment of the same to some person to be named in such order, and such person, his executors, or administrators, shall thereupon be entitled to sue in his or their own name as if the same had been originally given to him instead of to the Chief Justice, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond.

Caveats.

11. Where a caveat shall be entered against the grant of any Probate or any application for Letters of Administration before any grant of Probate or of Administration shall have been made or when in the opinion of the Chief Justice sufficient objection shall appear against the making of any such grant, before such grant shall be made all parties concerned or interested therein, or so many of them as the Chief Justice may think necessary shall be cited to show cause before the Chief Justice why Probate or Administration, as the case may be, should not be granted to the applicant, and the Chief Justice having heard the case and the parties and having considered the evidence, shall make such order touching the premises as may seem just.



12. When any of the parties do not appear and answer (due proof of citation on them having been made) the proceedings may be heard and determined *ex parte* or such further time may be given for appearance and on such terms as the Court may direct.

Hearing *ex parte*.

13. The Court may require the attendance of any person whom it may think fit to examine or cause to be examined in any proceedings in respect of matters testamentary, and may examine or cause to be examined upon oath or affirmation, as the case may require, parties and witnesses by word of mouth, and may either before or after, or with or without such examination cause them or any of them to be examined on interrogatories, or receive their or any of their affidavits or solemn affirmations, as the case may be, and the Court may by writ require such attendance, and order to be produced before itself or otherwise any deed, evidences, or writings being, or purporting to be, testamentary or otherwise in the same form, or as nearly as may be as that in which a writ of "*subpoena ad testificandum*," or of "*subpoena duces tecum*," is now issued out of the Supreme Court, and every person disobeying any such writ shall be considered as in contempt of Court and also be liable to forfeit a sum not exceeding fifty pounds.

Attendance of witnesses.

14. Any party interested in a will may by a petition verified by affidavit pray that such will be proved in solemn form, and such petition shall be dealt with as other petitions to the Supreme Court.

Proof of will in solemn form.  
By person interested.

15. Any executor or party desiring or having execution of a will may have the same proved in solemn form at any time before the Court by filing a petition therefor verified as aforesaid, and such petition shall be dealt with as provided in the last preceding section.

By executor.

16. The Court upon sufficient cause being shown may set aside any order or decree obtained in a default upon such terms as to the payment of costs or otherwise as to the Court may seem just.

When order may be varied.

Administrator  
may be  
substituted for  
absentee.

17. When an executor or administrator to whom Probate or Administration has been or shall be granted shall be absent from this Colony for the period of one year without having appointed an attorney to act for and represent him the Court may, on petition verified by affidavit showing to the satisfaction of the Court that the interests of parties concerned in the estate are or will be prejudiced by the absence of such executor or administrator, appoint an administrator with the will annexed or an administrator *de bonis non* as the case may be, who shall respectively during the absence of such executor or administrator, on giving sufficient security, have, possess, and exercise the same power and authority as the executor or administrator so absent as aforesaid would have had if personally present, and in case of contested proceedings the practice and procedure shall be similar to that provided by Section 11 hereof.

Suits in open  
Court.  
Business in  
chambers.

18. In any contested suit for Probate or Letters of Administration the hearing and adjudication thereof shall be in open Court, and, subject thereto, all other proceedings and business under this Ordinance may, unless the Court shall otherwise direct, be transacted in chambers.

Citation,  
how served.

19. Service of citations shall be made personally upon the party to whom the same shall be directed unless in cases where for sufficient cause the Court otherwise direct.

Records,  
how kept.

20. All grants of administration and all wills of which Probate is granted shall be recorded, and such grants and wills, together with all the papers in any wise relating thereto, shall be in all cases made up and filed together in a convenient form, and arranged and preserved in alphabetical order.

Real estate  
vests in  
administrator.

21. On the grant by the Supreme Court of the Falkland Islands of Probate of the will or Letters of Administration of the estate of a deceased person who dies after this Ordinance has come into operation, the real estate of the deceased person shall vest in the executor or administrator in the same manner as his personal estate, and the executor or adminis-

trator shall have the same power of dealing with such real estate for the purpose of administration as he has of dealing with such personal estate, but nothing herein contained shall affect the beneficial interest in such real estate.

22. The following duties shall be payable to His Majesty for the service of this Colony by the Official Administrator in respect of all unrepresented estate in this Colony and by the executor or administrator on the granting of Probate or Letters of Administration in respect of the net proceeds of the estate of the deceased situate in this Colony, that is to say :—

When such estate shall be—				
Under the value of	£50 ...	...	...	2s.
Of the value of	£50 and under	£100		4s.
"	"	£100	"	£200 12s.
"	"	£200	"	£500 £2
				per cent.
"	"	£500	"	£1,000 £2 10s.
				per cent.
"	"	£1,000	"	£5,000 £3
				per cent.
"	"	£5,000 and over	...	£4
				per cent.

23. The Probate of any will or Letters of Administration granted by a Court of Probate in the United Kingdom, or in any British possession may, on being produced to the Chief Justice, and a copy thereof deposited in the Supreme Court, be sealed with the seal of the Supreme Court, and thereupon shall be of the like force and effect and have the same operation in the Falkland Islands as if granted by the said Court :

When Probate,  
granted  
elsewhere,  
valid here.

Provided that the Court shall, before sealing a Probate or Letters of Administration under this section, be satisfied—

(a) That duty has been paid in respect of so much of the estate as is liable to duty in this Colony.

(b) In the case of Letters of Administration, that security has been given under and in accordance with the provisions of this Ordinance.

## PART II.

## UNREPRESENTED ESTATE.

Creditor may  
not act.

24. Letters of Administration shall not be granted to any person in the character of a creditor, but in every case where but for this Ordinance Letters of Administration of any estate would be granted to a creditor thereof, such estate shall be considered as unrepresented within the meaning of this Ordinance :

Provided that, under special circumstances where it may appear to the Court to be just or expedient, Probate or Administration may be granted to some person other than the person ordinarily or by law entitled to such Probate or Administration.

Official  
Administrator.

25. There shall continue to be an Official Administrator, and whenever that office shall be vacant the Governor may appoint an Official Administrator, who, previously to entering upon the duties hereinafter defined, shall enter into recognisances with two sureties in such sum as the Governor shall order, and shall take and subscribe the following oath :—

“I, \_\_\_\_\_, do swear that I will faithfully, honestly and diligently perform the duties of Official Administrator without fear or favour, partiality or affection. So help me God.”

And until such appointment is made and thereafter whenever there shall be no Official Administrator so appointed the Colonial Secretary shall be *ex-officio* Official Administrator.

When he may  
not act.

26. The Official Administrator shall not act as the agent of any person, nor as executor or administrator of any deceased person, unless of any member of his own family not more remote than the fourth degree, and shall be personally responsible for the honesty and fidelity of every clerk and other person whom he may deem it necessary to employ in the execution of the duties of his office.

27. Upon the death, resignation or removal from office of any Official Administrator for the time being all property in his hands or under his control as such Official Administrator, and all rights, powers and duties vested in him under any order made under this Ordinance shall devolve upon and be vested in his successor, whether *ex-officio* or by appointment, and upon every appointment of an Official Administrator all property, rights, powers and duties (if any) then in the hands or under the control of or vested in the Colonial Secretary of the Colony as *ex-officio* Official Administrator shall devolve upon and be vested in the person so appointed; and no legal process commenced by or against any Official Administrator in his office as such shall abate or be prejudiced by the death, resignation or removal of such Official Administrator, but the same may continue by or against his successor.

Perpetual  
succession.

28. The Official Administrator shall, whenever he shall become aware of any estate which he shall consider unrepresented, present a petition to the Court in the form in the Schedule hereto, stating the particulars of such estate, and praying for an order to collect and receive the same, and the Court shall, upon being satisfied that such estate is unrepresented, grant such order accordingly, and thereupon the Official Administrator shall forthwith cause an inventory to be made of the estate mentioned in such order, and shall file the same in the Court.

To petition  
Court for  
order to act.

29. The Official Administrator shall, if he think fit so to do, immediately on becoming aware of any unrepresented estate, and before obtaining the order in the preceding section mentioned, 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.

When he may  
act before  
order.

30. If upon the representation of any person claiming to be legally entitled to the administration or management of any estate in respect of which any such order shall have been made as aforesaid, the Court shall be satisfied that the applicant is so entitled, the Court may revoke such order and direct

Order may be  
revoked.

the Official Administrator to desist from interfering with such estate, or may make such other order as to the Court shall seem meet :

Provided always that all matters and things which shall have been *bona-fide* done or performed by the Official Administrator previously to the determination of such order shall be valid and effectual to all intents and purposes whatsoever.

Shall collect  
estate.

31. The Official Administrator shall, as soon as possible after obtaining an order to collect any estate, get in and collect all debts due to the same and institute such legal process as may be requisite for compelling payment thereof. All such process shall be carried on in the name of the Official Administrator.

Shall claim  
interest on  
money detained  
after demand.

32. If any person shall retain in his hands or employ for his own benefit or knowingly permit any person so to retain or employ any sum of money or other effects, part of any unrepresented estate, after a demand therefor shall have been made by the Official Administrator, every such person shall be charged and pay interest on such money or on the value of such effects at the rate of 12 per centum per annum for the time during which he shall have retained or employed the same, or permitted the same to be retained or employed as aforesaid, and the Official Administrator is hereby authorised and required to demand and sue for such interest either together with the principal money or effects, or separately, as he may think fit.

Shall give  
notice to  
creditors.

33. The Official Administrator shall, immediately after obtaining an order to collect any estate, publish in the *Falkland Islands Gazette*, and shall also affix on the Government notice board in Stanley a notice calling upon the creditors of the estate mentioned in such notice to come in and prove their claims on or before a certain day to be therein named, or in default thereof to be excluded from any benefit arising from such estate, and if so ordered by the Court shall also publish such notice in one or more papers published out of the Colony to be selected by the Court, and shall repeat such notices as often as the Court shall order, and claimants or creditors

residing within the Colony shall be bound to file their claims at the office of the Official Administrator within three months after such notice aforesaid; and claimants or others residing out of the Colony shall be bound to file their claims within six months after the publication of the last notice in such foreign paper as aforesaid, on pain, in default thereof, of being excluded from any benefit arising from such estate.

34. All claims filed by creditors or claimants shall express the name and place of abode of the creditor or claimant, the origin of the debt or claim, the degree or class of such debt, and the particulars and exact amount thereof, verified by affidavit, and there shall also be annexed to every such claim the documents purporting to be evidence thereof.

Claims, how made.

35. In the event of any dispute arising as to the validity of any claim, the parties, or on their default or where the Official Administrator himself entertains doubt of the validity of any claim, the Official Administrator shall draw up and settle a statement in writing of the grounds of such dispute, and shall submit the same to the Court, and the Court shall thereupon make such order thereon as the circumstances of the case may require. But no action or suit shall be brought against the Official Administrator in respect of any debt due from an estate under his administration.

Disputed claims.

36. The Court may at any time make an order for the immediate sale by the Official Administrator of such part of any estate as shall be of a perishable nature or from any cause whatever deteriorating in value.

Immediate sale of perishable estate.

37. The Official Administrator shall, within three months after entering into possession of any estate, sell and dispose of all the personal property belonging to such estate by public auction after such public notice thereof as is usual in the case of sales by order of the Court:

Sale of personal estate

Provided that the Court may by any order in that behalf extend the time for such sale, or direct

such personal property to be disposed of by private contract or any portion thereof retained for transmission to the next of kin.

Sale of  
real estate.

38. In case the Court shall be satisfied that the proceeds of the sale of the personal property belonging to any estate are insufficient to discharge the debts and liabilities attaching to such estate, the Court may by its order direct the Official Administrator to sell the whole or such part of the real property belonging to such estate as the Court may deem necessary for the purpose aforesaid, and such sale shall be subject to all the incidents of a sale of real property by order of the Court :

Provided that nothing hereinbefore contained shall be taken or construed to give any purchaser any other or better title to such property than shall have been possessed by the last owner thereof.

Moneys to be  
paid into  
Savings Bank.

39. All moneys received by the Official Administrator in the execution of his office, whether of debts due to the estate, the proceeds of sale, or from whatsoever source they may be derived, shall forthwith be paid into the Government Savings Bank to the account of the Official Administrator, and the Official Administrator shall submit monthly to the Chief Justice a return showing all such sums with the date when paid into the Government Savings Bank and the estate to whose credit they have been received.

Distribution  
of estate.

40. After the expiration of 12 months from the date of the order for taking possession of any estate, the Official Administrator shall dispose of the moneys arising out of such estate as follows, that is to say :—

(1) He shall reimburse himself of all such costs and charges as he shall reasonably have incurred in administering the estate, such costs and charges having been previously authorised by the Court.

(2) He shall pay into the Treasury  $7\frac{1}{2}$  per centum upon the gross amount of the money arising out of the estate, to be applied as hereinafter mentioned.



(3) He shall pay to the Treasurer the estate duty upon the scale laid down in Section 22 of this Ordinance.

(4) He shall pay the creditors of the estate in the order prescribed by law if sufficient money shall remain for the payment thereof in full.

(5) He shall pay the balance (if any) which shall remain after such payments into the Treasury in trust for the next of kin, heir at law, legatee or devisee of the deceased, as the case may be.

If sufficient money shall not remain, after the satisfaction of Sub-sections (1), (2) and (3), for the payment of all creditors in full, then the amount shall be divided rateably among the creditors.

41. The  $7\frac{1}{2}$  per centum to be paid by the Official Administrator into the Treasury under subsection (2) of the last preceding section shall be applied in manner following, that is to say :—

Remuneration  
of Official  
Administrator.

(1) 5 per centum shall be paid by the Treasurer to the Official Administrator on the production of the certificates required by Section 46 of this Ordinance as a remuneration for the services he is required to perform :

Provided that the Governor may at any time order that the remuneration by this section provided to be paid to the Official Administrator shall be commuted for a fixed salary without reference to the amount at any time produced by such remuneration.

(2)  $2\frac{1}{2}$  per centum shall be carried to a reserve fund for defraying the incidental expenses necessitated by this Ordinance.

Reserve fund.

42. When after winding up an estate any real property remains undisposed of, the Official Administrator shall forthwith, and before closing the accounts of such estate, apply to the Court for directions as to the disposal of such real property, and the Court may order the same to be sold, or may appoint a receiver or make such other order as to the Court shall seem just.

Disposal of  
real estate.

Expenses  
chargeable to  
reserve fund.

43. The expenses of every legal process and other matter which it shall be necessary for the Official Administrator to institute or perform on behalf of any estate, the assets of which shall be insufficient to defray such expenses, shall be paid out of the reserve fund.

By order of  
Governor.

44. Upon the application of the Official Administrator the Governor may make orders by warrant upon the Treasurer for the payment out of the said reserve fund to the Official Administrator of such moneys as shall from time to time be payable therefrom under the provisions of this Ordinance.

Chief Justice  
shall audit  
accounts.

45. The Official Administrator shall monthly exhibit a statement of his accounts to the Chief Justice, who shall satisfy himself as to their correctness, and also that the payments into the Government Savings Bank, prescribed by Section 39 to be made, have been duly and punctually carried out. The moneys prescribed by Section 40, to be paid into the Treasury, shall be so paid within forty-eight hours of the final winding up of the estate.

And give  
certificates.

46. As a condition precedent to the payment by the Treasurer to the Official Administrator of the remuneration provided by Section 41, or if the same shall have been commuted, of any salary arising from such commutation, the Official Administrator shall obtain from the Chief Justice and deliver to the Treasurer a certificate in the following form:—

“I hereby certify that the Official Administrator has duly exhibited to me the monthly statement of accounts required by Section 45, and that I have audited the same and found them correct, and that all the payments required to be made into the Government Savings Bank have been so made.

“A. B., Chief Justice.”

Accounts.

47. The Official Administrator shall keep a separate account of and for each estate that he shall

administer under this Ordinance, and shall keep the following books :—

A book for entry of claims against every estate. A book for entry of debts due to every estate. Cash book. Journal. Ledger.

Any person may inspect the books and accounts of the Official Administrator during his office hours on payment of a fee of one shilling.

May be inspected.

48. The balance of the estate of an intestate who is illegitimate and leaves no widow or lineal descendant, when paid into the Treasury as provided by Section 40, unless any claim or claims by the natural relations of the intestate be recognised by the Governor in Council, may be appropriated for such public purposes as shall be approved by the Secretary of State.

When Colony entitled to illegitimates' estate.

49. The balance of the estate of an intestate whose kindred are unknown, when paid into the Treasury as provided by Section 40, shall be invested under the head of "The Intestates Estates Fund" in securities to be approved by the Secretary of State, and shall be allowed to accumulate with interest for a period of ten years at the expiration of which period all claims thereto shall be barred, and the principal and accumulated interest shall lapse to the Government of the Falkland Islands and may be appropriated for such public purposes as shall be approved by the Secretary of State.

Estate when kin unknown accumulates for 10 years.

50. All moneys which at the time of the passing of this Ordinance are vested in the Official Administrator shall continue to vest in the Official Administrator for the time being and shall be dealt with by him as herein provided.

Moneys vested in Official Administrator.

51. The Official Administrator shall in every case of intestacy in which the kindred of an intestate are unknown, cause notice of the fact to be inserted as soon as practicable in the *London Gazette* and in the *London Times* newspaper once a quarter, for a period of one year. The notice of intestacy and of the fact that the kindred of the intestate are unknown shall also contain the name and nationality,

Kin unknown to be advertised for.

when known, of the intestate, the date of his death, and the value of the estate.

Claimants.

52. Any person who shall claim in any other character than that of a creditor thereof, any estate or balance which may be in the hands or under the control of the Official Administrator, or of the Treasurer, or which may be invested in the Intestates Estates Fund, may apply to the Court by petition to have the same delivered over to him; and the Court upon being satisfied of the validity of such claim shall make such order as may be just; and where two or more persons shall lay claim to any such estate or balance, the Court may dispose of their claims by determining the same in a summary manner, and may make such order therein with regard to costs and all other matters as the circumstances may require.

Short title.

53. This Ordinance may be cited as "The Probate and Unrepresented Estates Ordinance, 1901."

#### SCHEDULE.

(Section 28.)

##### PETITION TO COLLECT AN ESTATE.

To His Honour the Chief Justice of the Falkland Islands.

The petition of the Official Administrator humbly sheweth:

That your petitioner has been informed and believes that *A. B.*, late of \_\_\_\_\_ died on the \_\_\_\_\_ day of \_\_\_\_\_ [intestate and that he has left no widow or next of kin residing in the Falkland Islands or having an agent therein] or [leaving a will but without appointing any executor thereof, and that there is no person residing within the Falkland Islands or having an agent therein entitled to Letters of Administration *cum testamento annexo* of the said *A. B.*] or [that *C. D.*, the executor of the will of *A. B.*, deceased, died on the \_\_\_\_\_ day of \_\_\_\_\_ intestate, leaving a part of the estate of the said *A. B.*, deceased, unadministered, and that there is no person residing in the Falkland Islands or having an agent therein entitled to Letters of Administration *de bonis non* of the estate of the said *A. B.*, deceased] or [that *E. G.*, executor or administrator of the estate of *A. B.*, deceased, is absent from the Falkland Islands without having any agent therein].

And that the said *A. B.* died possessed of property in the Falkland Islands. Your petitioner therefore prays your Honourable Court will be pleased to grant him an order to get in and collect the estate of the said *A. B.*, deceased.