

To be construed with Ord 13 of 1932, Ord 5 of 1935. 349 1936

CHAPTER 149.

DECEASED PERSONS ESTATES' ADMINISTRATION.

[No. X of 1917.]

[1st January, 1920.]

PRELIMINARY.

1. This Ordinance may be cited as the Deceased Persons Estates' Administration Ordinance. Short title.

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

“the registrar” means the registrar of Deeds;

“the Court” means the Supreme Court and includes any judge thereof;

“will” includes any codicil or other testamentary instrument or writing whatsoever;

“deposit,” when used in connection with any instrument or document, means the formal lodgement of the instrument or document with an act of deposit, accompanied by an affidavit of the due execution of the instrument or document;

“the accountant” means the accountant appointed under the provisions of the Deeds Registry Ordinance, or any amendment thereof. Chapter 177.

NOTICE OF DEATH.

3.—(1) When anyone dies leaving property in possession, reversion, or expectancy, or leaving a will, the nearest relative or connection of the deceased who is in or near the house or place of death, or, in default of the nearest relative or connection, the person who at or immediately after the death has the chief charge of that house or place, shall within thirty days of the death cause a notice thereof to be given in the form contained in the schedule hereto and shall himself sign the notice. Notice of death.

(2) The notice shall be forthwith transmitted or delivered to the registrar and be filed in his office.

4.—(1) If it appears that the person signing the notice of death was not present at the death the registrar may call upon him for proof of the death. Registrar may call for further information.

(2) When the information in a notice of death is defective or insufficient, the registrar may call upon the person who signed it, or any executor or administrator of the deceased after appointment, to furnish any further information required, and everyone so called upon shall without delay return his written answer to the questions put to him by the registrar for that purpose.

(3) Anyone who fails to comply with the provisions of this or the preceding section, or who gives information which is to his knowledge false, shall be liable on summary conviction (at the instance of the registrar or any interested party) to a penalty not exceeding fifty dollars for each default.

Penalty.

Death of American citizen without known representative.

5.—(1) In the case of the death in the colony of a citizen of the United States of America having movable or immovable property situate in the colony, but no known heirs or testamentary executors therein by him appointed, it shall be the duty of the registrar as soon as he becomes aware of the fact to bring it to the notice of the United States Consul, in order that the necessary information may be immediately transmitted to persons interested.

Appearance of United States Consul.

(2) The United States Consul shall have the right to appear, either in person or by delegate, in all legal or other proceedings in respect of the property aforesaid, on behalf of any absent heirs or creditors of the deceased until they are otherwise duly represented.

WILLS.

Lodgement of wills with the registrar for safe custody.

6.—(1) Anyone may lodge for safe custody with the registrar, either open or enclosed under a sealed cover, any will made by him; and the registrar shall keep a register of the names and descriptions of every person so lodging a will and the date of the lodgement; and the will shall be kept by the registrar until the death of the maker unless re-delivery of it is demanded by the maker or in his lifetime by his agent specially authorised in writing for that purpose, when the registrar shall re-deliver it accordingly.

(2) On production of proof to the registrar's satisfaction of the death of the maker of a will which is still in his custody he shall take the necessary action to have the will duly deposited by any party interested in accordance with the provisions of section ten of this Ordinance.

7.—(1) Everyone other than the registrar who, at the time of the death of the maker thereof, has in his possession any document purporting to be the last will of any other person, or into whose possession that document comes after the death of the maker thereof, shall within fourteen days from the date of the death—

Duty of persons in possession of will on testator's death.

- (a) either deposit the document in the registry; or
- (b) deliver the document to the executor and at the same time notify the registrar in writing that he has done so; or,
- (c) if he claims no interest under the will, or if there is no executor, or the executor is unknown to him, lodge the document with the registrar for safe custody.

(2) Anyone failing to comply with the provisions of this section shall, on summary conviction thereof at the instance of the registrar or any interested party, be liable to a penalty not exceeding twenty-four dollars, and, if he continues in default after conviction, to a further penalty of five dollars for each and every day that he is in that default.

Penalty.

8.—(1) Everyone who deposits a will as aforesaid, or any person claiming any interest under it, may apply to the registrar in writing for a summons addressed to anyone who has witnessed the execution of the will requiring him to attend at the time stated therein before a sworn clerk and notary public and swear an affidavit of the due execution of the will, and the person attending upon the summons shall be entitled to be paid by the person making the application the sum to which he would be entitled if he had been summoned to attend and give evidence in a civil cause before the Supreme Court.

Compelling attendance of witness to prove due execution of will.

(2) The rules of the Supreme Court for the time being in force relating to the summoning and payment of witnesses shall apply to witnesses summoned under this section.

(3) Everyone so summoned who refuses or neglects to attend, or who refuses to swear the affidavit aforesaid, shall on summary conviction thereof be liable to a penalty not exceeding one hundred dollars.

Penalty.

9. The deposit of a will under section seven of this Ordinance coupled with the grant of probate thereof or letters of administration as hereinafter provided, shall have within the colony the same effect as probate in common form has by the law of England.

Probate.

Applications to the Court or a judge for an order on persons refusing to give up wills.

10. Where the registrar or any interested party has reasonable grounds for believing that any person is in possession of a will which he refuses or fails to deposit, he may, in addition to any proceedings taken under section seven of this Ordinance, apply forthwith by summons or motion *ex parte* to the Court for a rule calling on that person to show cause why he should not forthwith deposit the will, and at the hearing of the matter the Court may make any order (including an order as to costs) it deems proper.

INVENTORIES.

Inventory of estate in community by surviving spouse.

Chapter 44.

11. When one of two spouses married in community of property dies, the survivor shall, within thirty days thereafter, cause an inventory of all property, goods and effects, movable and immovable, of what kind soever which at the time of the death formed part of or belonged to the estate possessed in community between the predeceasing and surviving spouses (hereinafter called the joint estate) to be made in the manner prescribed by section thirteen of the Estate Duty Ordinance, in the presence of two impartial witnesses, being persons of good credit and repute, and of those persons having an interest in the distribution of the joint estate as heirs or legatees of the predeceased spouse who choose to attend, unless in the opinion of the registrar a sufficient inventory and valuation in terms of section thirty-two of this Ordinance have already been furnished; and the inventory shall be subscribed by the surviving spouse, the witnesses aforesaid, and the heirs or legatees present when it is made. In the event of the default or absence of the survivor the provisions of section thirteen of this Ordinance shall *mutatis mutandis* be deemed to apply.

Penalties on omission from inventory :

12.—(1) Every surviving spouse who wilfully neglects to cause an inventory of the joint estate to be made in manner and within the period hereinbefore provided, or knowingly omits to enter therein any property of whatsoever kind, shall in the distribution of that estate forfeit all right to and share in anything accruing to the joint estate after the death of the predeceasing spouse and in and to the property so omitted from the inventory.

(2) Every loss caused by the destruction or deterioration of any property so omitted from the inventory, or accrued to the joint estate after the death of the predeceasing spouse by the loss or deterioration of any part thereof, shall in the distribution of the estate fall upon and be borne by the surviving spouse solely and exclusively :

Provided that nothing herein contained shall free or exempt anyone who wilfully or for any fraudulent purpose makes or causes to be made a false inventory of the joint estate aforesaid from any penalty or punishment herein-after or by any other law prescribed with respect to the offence of making false inventories. Proviso.

13. On the death of any person, not being one of two spouses married in community of property, the wife or husband (if any) of the deceased, or in the event of the default, absence, or death of the wife or husband, the child or children (if any) of the deceased, or in the event of the default, absence, death, or infancy, of the child or children, the next of kin (if any) of the deceased, or in the event of the default, absence, death, or infancy of the next of kin, the person who, at or immediately after the death, has the chief charge of the house or the place where the death occurs, shall, within thirty days after the death, make or cause to be made in the presence of two impartial witnesses, being persons of good credit and repute, an inventory, in the manner prescribed by section thirteen of the Estate Duty Ordinance, of all property, goods and effects, movable and immovable, of what kind soever, Inventory on the death of persons not married in community.

- (a) belonging to the deceased and in the house or upon the premises at the time of the death;
- (b) known by the person making or causing the inventory to be made to have belonged to the deceased at the time of his death,

Chapter 44.

unless in the opinion of the registrar a sufficient inventory and valuation in terms of section thirty-two of this Ordinance have already been furnished, and the inventory shall be subscribed by the person making it or causing it to be made and by the witnesses aforesaid.

14. Everyone hereinbefore required or directed to make or cause to be made the inventory aforesaid shall as soon as it has been made forthwith file it in the registry : Transmission of inventory to registrar :

Provided that—

- (a) every inventory of the estate of a deceased person made or delivered after the commencement of this Ordinance under the Estate Duty Ordinance, or any amendment thereof, shall, if and so far as it is complete, be deemed a sufficient inventory for the purpose of this Ordinance, and
- (b) any copy of an inventory of the estate of a deceased person filed in the registry before the commencement of this Ordinance under the

Proviso.

Chapter 44.

(No. IX
of 1909.)

(repealed) Deceased Persons Estates' Ordinance, 1909, shall, if and so far as it is complete, be deemed a sufficient inventory for the purpose of this Ordinance.

Inventory
by order of
court.

15. Notwithstanding anything hereinbefore contained, the Court may, on application and on sufficient cause appearing, at any time order that an inventory of property belonging to anyone, or to the joint estate of any deceased person and the surviving spouse, shall be taken by anyone named in the order.

Particulars
required as to
immovable
property.

16. Everyone required by sections eleven, thirteen and fifteen of this Ordinance to make an inventory shall include therein a specific list of all immovable property wherein to his knowledge the deceased had an interest at the date of his death, and if possible a reference to the title under which the deceased held that interest and the date of the title and full particulars concerning the interest.

ADMINISTRATION.

Power of the
Court to
appoint
administra-
tor.

17. Where it appears expedient to the Court to do so, it may on the application of any interested party appoint any person or persons to be an administrator to administer the estate of a deceased person in any of the following cases, namely, where—

- (a) the person dies intestate;
- (b) the person dies leaving a will but appoints no executor;
- (c) the person dies leaving a will appointing an executor or executors, but the executor or executors are or become insolvent, or have died, or are absent from and unrepresented in the colony, or renounce, or are unwilling to act;
- (d) an executor or administrator is for just cause removed from his office; and
- (e) it appears to the Court to be expedient to do so for the better realisation or protection of the estate or for the benefit or protection of anyone interested therein.

Power to
limit
appointment
of adminis-
trators.

18. Where it appears expedient to the Court to do so, the Court may limit the appointment of an administrator or administrators,—

- (a) to part only of the estate or property of the deceased person; or

- (b) to a particular object; or
- (c) for a specified time; or
- (d) till the happening of a specified event; or
- (e) dispensing with the duty of rendering accounts; or
- (f) in any other respect which to the Court seems proper.

19.—(1) The appointment of an administrator or of administrators shall be in the form given in the schedule hereto.

Letters of administration and powers thereunder. Schedule.

(2) The administrator or administrators shall have the same powers as if he or they had been appointed executor or executors by the last will of the deceased person.

(3) Where there is a last will the administrator or administrators shall, subject to the terms and conditions of his or their appointment, administer the estate in accordance with the terms and provisions of the will.

20. Whenever it appears, from the notice of death or the inventory filed in respect of the estate of a deceased person, or from other information for which the registrar calls, that the value of the assets of the estate does not exceed two hundred and fifty dollars, the registrar, in the case of an intestate estate, or in the case of a testate estate in which no executor has been appointed or the executor is unable or unwilling to act, may, summarily and without reference to the Court but subject to an appeal to the Court, at the instance of any party claiming to be interested, or of the Attorney General or anybody authorised by him, appoint the Public Trustee or anyone else to administer the estate.

Where registrar may summarily appoint administrator.

Sec 2.
Ord. 5 of 1935. 20 A

CUSTODY OF ESTATE PENDING PROBATE OR LETTERS OF ADMINISTRATION.

21.—(1) When one of the two spouses married in community of property dies, the joint estate shall remain under the charge of the survivor until the executor of the deceased or other person interested takes proceedings for the administration, distribution, or final settlement of the joint estate; but nothing in this section contained shall prevent a joint estate from being declared insolvent.

Possession of joint estate until administration.

(2) In the event of the default, death, or absence of the survivor the provisions of the next ensuing section shall mutatis mutandis be deemed to apply.

Custody of estate of person not married in community.

22.—(1) On the death of any person, not being one of two spouses married in community of property, the husband or wife (if any) of the deceased, or in the event of the default, absence, or death of the husband or wife, the child or children (if any) of the deceased, or in the event of the default, absence, death, or infancy of the child or children, the next of kin (if any) of the deceased, or in the event of the default, absence, death, or infancy of the next of kin, the person who at or immediately after the death has the chief charge of the house or place where the death occurs, shall secure and take charge of all goods and effects of whatever description belonging to the deceased in the house or upon the premises at the time of death and retain them in his possession and custody until delivery thereof is demanded by the executor or administrator lawfully appointed.

(2) The Court may order, on the application of any interested party and for good cause shown, any sum of money the property of the estate in the possession of any person and the payment of which is not sufficiently secured to be immediately paid by that person into the guardians' fund pending a grant of probate or letters of administration.

Appointment of receiver.

23. Whenever it is necessary or expedient to do so the Court may appoint a receiver to take the custody and charge of any estate until probate or letters of administration is or are granted, and the receiver may collect the debts and sell or dispose of perishable property belonging to the estate as the Court specially authorises. The appointment may be varied or revoked as to the Court seems proper.

PROBATE AND LETTERS OF ADMINISTRATION.

Probate and letters of administration :
schedule ;
forms 2 and 3:

24.—(1) From and after the commencement of this Ordinance the estates of all persons dying testate or intestate shall vest in the personal representative or representatives of the deceased and shall be administered and distributed according to law under a grant of probate or of letters of administration by the registrar upon an order of the Court, in the manner and the form prescribed by this Ordinance :

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Provided that whenever the estate or property of any person is being administered at the commencement of this Ordinance by any person or persons respectively duly appointed by the Court, he or they shall continue the administration under this Ordinance, and their appointment shall be deemed to have been made under it.

(2) Probate or letters of administration may be granted before the payment of estate duty if security is

given for the payment to the proper officer under the provisions of the Estate Duty Ordinance. Chapter 44.

25.—(1) Notwithstanding the provisions of this Ordinance, a grant of letters of administration shall not be required in the following cases, namely, where— When letters of administration not required.

(a) the Official Receiver administers the estate of any immigrant in pursuance of the provisions of the Immigration Ordinance; Chapter 208.

(b) the Public Trustee in pursuance of section six of the Public Trustee Ordinance has undertaken to administer the estate of a deceased person which in his opinion does not exceed in value the sum of five hundred dollars; Chapter 245.

(c) the Court in pursuance of sub-section (5) of section six of the Public Trustee Ordinance has made an order that an estate shall be administered by the Public Trustee;

(d) the registrar under section twenty of this Ordinance has appointed the Public Trustee to administer an estate and has certified to him in writing the fact of the appointment.

(2) The estate of a deceased person to which the preceding sub-section applies shall vest— Vesting of estate in Official Receiver or Public Trustee.

(a) in the Official Receiver when he enters into and takes possession of the estate of a deceased immigrant;

(b) in the Public Trustee—

(i) when he deposits an undertaking in the registry under sub-section (2) of section six of the Public Trustee Ordinance; Chapter 245.

(ii) when the Court makes an order under sub-section (5) of section six of the Public Trustee Ordinance;

(iii) when the registrar has delivered a certificate to the Public Trustee under paragraph (d) of the preceding sub-section;

and the Official Receiver or the Public Trustee shall thereupon be deemed to be the personal representative of the deceased person, and the Public Trustee shall, if required by the Registrar, make or cause to be made an inventory or inventories as required of an administrator by section thirty-two of this Ordinance and transmit or deliver it or them to the Registrar to be filed as of record. Inventory.

Exemption from requirements of this Ordinance.

(3) In the case of the estate of a deceased person to which the last preceding section applies, the Official Receiver or the Public Trustee shall administer and distribute the estate according to law, but shall not be required to conform with the requirements of this Ordinance other than as provided in this section.

Probate to executors appointed by will :

26. Whenever any deceased person has by will duly appointed any person to be executor, the registrar shall, upon his written application and on order of the Court, forthwith grant probate to him as soon as the will, as hereinbefore provided, has been deposited as required in the registry :

Proviso.

Provided that—

- (a) if it appears to the registrar, or if any person by writing filed with the registrar shall object, that any will, by virtue whereof anyone claims to be the testamentary executor of a deceased person, is not in law sufficient to warrant and support that claim, probate may be refused by the registrar until the validity and legal effect of that will have been determined by the judgment of some competent court, or until the objection aforesaid is withdrawn by the person taking it, or until he has failed within ten days of filing his objection to apply to the Court for an order restraining the issue of probate; and
- (b) probate shall not be granted to any executor aforesaid who, at the time of making his written application is or resides beyond the limits of the colony, or who the registrar has reason to believe will not remain within the colony until he has fully administered the estate to be administered by him, unless he finds security to the satisfaction of the registrar for the due administration of the estate and appoints an attorney within the colony.

See Ord 13 of 1932.

Assumption of executors under powers contained in will :

27.—(1) Nothing in this Ordinance contained shall prevent any executor who has obtained probate from assuming any other person or persons as executor or executors of the testator under and by virtue of any power for that purpose granted to him by the testator in the will :

Proviso.

Provided that no one shall be entitled or qualified to act as assumed executor unless probate is granted to him as assumed executor during the lifetime of the testamentary executor by the registrar, who shall do so as provided in

section twenty-four of this Ordinance, after reference to the deposited will by which that assumption is authorised and on the deposit in the registry of the instrument by which the testamentary executor has assumed that person as executor.

(2) Every provision of this Ordinance and of every other enactment applicable or relating to or affecting executors shall apply and relate to and affect every executor so assumed.

28. When, by reason of the death, or incapacitation to act, or removal from his office by the decree of a competent court, of any testamentary or assumed executor to whom probate has been granted, there remains for the administration of the estate no executor whatever nor as many executors, either testamentary or assumed, as, by the provisions of the will by which they were appointed or permitted to be assumed, are required to form a quorum of executors, and when any administrator appointed by the Court dies or becomes incapacitated or is removed in manner aforesaid after letters of administration have been granted to him, then proceedings for the appointment of an administrator in place of that executor or administrator shall be taken in like manner in all respects as hereinbefore provided by sections seventeen, eighteen, and nineteen of this Ordinance.

Death, incapacity, or removal of executors or administrators.

29. Probate granted to an executor may be revoked and annulled by the Court on proof to its satisfaction that the will in respect of which the grant was made is null, or has been revoked either wholly or in so far as it relates to the nomination of that executor, and letters of administration granted to an administrator may be revoked and annulled by the Court on proof of the deposit of a will whereby another person (then legally capable and qualified and consenting to act as executor) has been legally nominated executor of the estate which the administrator has been appointed to administer :

Revocation of probate and letters of administration :

Provided that if the non-deposit of the will prior to the grant of letters of administration has been due to the fault or negligence of the person therein nominated as executor, he shall be personally liable for, and may be compelled at the instance of any person interested to make good to the estate, all expenses incurred in respect of and with reference to the appointment of the administrator.

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30.—(1) The Court shall have power, on the application of any person interested, to require the executor or executors of any deceased person to whom probate has been

Security for due administration.

granted to give security for the due administration of, and the due accounting for, the estate, and the care and custody of any property, in the amount and with the sureties in the circumstances of each particular case the Court deems reasonable.

(2) The Court may require the administrator of the estate of any deceased person, before the issue of letters of administration, to give security, in the amount and with the sureties in the circumstances of each particular case the Court deems reasonable for the due administration of and due accounting for, the estate and the care and custody of the property, and may give any orders or directions with reference to the administration, accounting, and care and custody the circumstances seem to require.

RECOGNITION OF BRITISH AND COLONIAL PROBATES.

31.—(1) In this section, unless the context otherwise requires—

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

“ probate ” and “ letters of administration ” include confirmation in Scotland, and any instrument having in a British possession the same effect as that provided in section nine of this Ordinance;

“ testamentary duty ” includes any duty payable on the value of the estate and effects for which probate or letters of administration is or are granted;

“ British court in a foreign country ” means any British court having jurisdiction out of the King’s dominions in pursuance of an Order of his Majesty in Council, whether made under any Act or otherwise.

(2) The Governor, on being satisfied that the legislature of any British possession has made adequate provision for the recognition in that possession of probates and letters of administration granted by the courts of this colony, may direct, by order in council, that this section shall, subject to any exceptions and modifications specified in the order, apply to that possession, and thereupon, while the order is in force, this section shall apply accordingly.

(3) Where it appears to the Governor in Council that the legislature of part of a British possession has power to make the provision requisite for bringing this section into operation, the Governor may, by order in council, direct that this section shall apply to that part as if it

Interpretation of terms in this section.

See sec. 29
Ord. 349 1936
new 31.

See 3. Ord. 50 of 1935.

Application of the Ordinance by Order in Council to British possession.

were a separate British possession, and thereupon, while the order is in force, this section shall apply accordingly.

(4) Where a court of probate in the United Kingdom, or in a British possession to which this section applies, has granted probate or letters of administration in respect of the estate of a deceased person and the probate or letters so granted is or are produced at the deeds registry, that probate or those letters shall be recorded therein and a certificate of the recording delivered to the person producing the probate or letters; and thereupon the probate or letters shall be of the like force and effect, and have the same operation, in this colony as probate or letters of administration granted in this colony:

Depositing and authentication of British and colonial probates and letters of administration:

Provided that the proper officer in the registry shall, before dealing with a probate or with letters of administration under this section,—

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(a) be satisfied—

(i) that testamentary duty has been paid in this colony in respect of so much, if any, of the estate as is liable to that duty in this colony;

(ii) 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

(b) may require such evidence (if any) as he thinks fit as to the domicile of the deceased person.

(5) The registrar may, if he thinks fit, on the application of any creditor, require, before the probate or letters of administration is or are dealt with as aforesaid, that adequate security be given for the payment of debts due from the estate to creditors residing in this colony.

(6) For the purposes of the provisions of the two last preceding sub-sections, a duplicate of any probate or letters of administration sealed with the seal of the court granting it or them, or a copy thereof certified as correct by or under the authority of that court, shall have the same effect as the original.

(7) Rules of court for regulating in this colony the procedure and practice, including fees and costs, on and incidental to the recording in the deed registry of probates or letters of administration granted in the United Kingdom, or in a British possession to which this section applies, may be made under the Supreme Court of Judicature Ordinance.

Rules of court.

Chapter 10.

(8) Subject to any exceptions and modifications made by those rules, the enactments for the time being in force in relation to testamentary duties (including the penal provisions thereof) shall apply as if the person who applies to record a probate or letters of administration under this section were a person applying for probate or letters of administration.

Application of the section to British courts in foreign countries.

(9) This section shall extend to authorise the dealing as hereinbefore mentioned with any probate or letters of administration granted by a British court in a foreign country in like manner as it authorises the dealing with a probate or letters of administration granted in a British possession to which this section applies, and the provisions of this section shall apply accordingly, with the necessary modifications.

Publication and alteration of order in council.

(10) Every order in council made under this section shall be laid before the Legislative Council as soon as may be after it has been made, and shall also be published in the Gazette, and the Governor may, by order in council, alter or revoke any order in council previously made under this section.

Application of the Ordinance to probates already granted.

(11) This section, when applied by an order in council to any British possession shall, subject to the provisions of the order, apply to probates and letters of administration granted in that possession either before or after its coming into operation. ⁽¹⁾

DUTIES OF EXECUTORS AND ADMINISTRATORS.

Inventory by executors and administrators.
Chapter 44.

32.—(1) Every executor and administrator shall, as soon as probate or administration has been granted to him in manner aforesaid, make or cause to be made an inventory in the manner prescribed by section thirteen of the Estate Duty Ordinance, showing the value of all property, goods and effects, movable and immovable, of what kind soever, whether in possession, reversion, or expectancy, belonging to the estate he is to administer, unless in the opinion of the registrar a sufficient inventory and valuation in terms of either of the eleventh, thirteenth, or fourteenth section of this Ordinance have already been furnished, and shall in like manner, from time to time thereafter and so soon as he finds or knows of any other property, goods, or effects belonging to the estate and not contained in the first mentioned inventory, cause to be made an additional inventory, showing the value of all the last-mentioned property, goods,

⁽¹⁾ The provisions of the section (Ord. No. 3 of 1893) came into operation on the 22nd February, 1893.

and effects; and shall forthwith transmit or deliver the inventory to the registrar to be filed as of record.

(2) Every executor and administrator shall have the power, where the interests of an estate require it, to obtain a sworn appraisement, and the necessary costs occasioned thereby shall be paid out of the estate.

33. Anyone required or authorised under the provisions of sections eleven, thirteen, and thirty-two of this Ordinance to make or to cause to be made an inventory of any property, goods and effects, who wilfully makes a false inventory thereof shall be liable on summary conviction to a fine not exceeding five hundred dollars and be further liable personally to pay to His Majesty double the amount of duty chargeable, which shall be a debt due from him to the Crown without prejudice to the interest of the estate.

Making false inventory.

Penalty.

34. If, previous to a grant of probate or letters of administration to any executor or administrator for the administration of an estate, any person takes upon himself to administer, distribute, or in any wise dispose of, that estate or any part thereof except so far as authorised by the provisions of this Ordinance or as absolutely necessary for the safe custody or preservation thereof, or for providing a suitable funeral for the deceased, or for the subsistence of the family or live stock left by the deceased; or if any person after a grant to him of probate or letters of administration, administers, distributes, or in any wise disposes of, any property, goods, or effects belonging to the estate of which he is the executor or administrator not contained in the inventory or inventories thereof furnished to the registrar previous to that grant, or not contained in any inventory or additional inventory made or caused to be made by him and delivered or transmitted to the registrar and filed in the registry in terms of section thirty-two of this Ordinance, that person shall thereupon become personally liable to pay to the creditors and legatees respectively of the deceased all debts due by him at the time of his death or which have thereafter become due from his estate, and all legacies bequeathed by him so far as the proceeds and assets of the estate are insufficient for the full payment thereof :

Liability in certain cases by persons intermeddling with estates and by persons to whom probate or letters of administration have been granted in respect of property not contained in inventory :

Provided that when anyone sued for the payment of any debt or legacy he has rendered himself personally liable to pay in manner aforesaid proves to the satisfaction of the Court before which he is sued that the true amount and

Proviso.

value of the property which has actually been unduly administered, distributed, or disposed of, by him did not exceed a certain sum, and that his administration, distribution, or disposal of it was not fraudulent, then he shall be personally liable for only so much of that sum as he fails to prove has been administered, distributed, or disposed of according to law, and for the amount of the costs incurred in and concerning the action as well by him as by the plaintiff therein, notwithstanding that by reason of his personal liability having been restricted in manner aforesaid the plaintiff has not recovered from him any part of the debt or legacy sued for.

Notice by executors and administrators for lodgement of claims.

35.—(1) Every executor or administrator to whom probate or letters of administration is or are granted shall, so soon as he enters on the administration of the estate and within fourteen days after the date of the grant, cause a notice to be published in the Gazette and in some newspaper circulating in the district or county in which the deceased ordinarily resided, calling upon all persons having claims as creditors against the deceased or his estate to lodge them with the executor or administrator within three months from the date of the first publication of the notice.

(2) The notice shall be published at least twice, with an interval of a week between each publication.

(3) All claims which would be provable in case of the insolvency of the estate shall be deemed to be claims of creditors for the purposes of this Ordinance.

Suspension of execution of judgements against deceased.

36. No one who has obtained the judgement of a court against a deceased person in his lifetime, or against his executor or estate, shall sue out or obtain any process in execution thereon before the expiration of the period notified in the Gazette in manner provided in the preceding section, and no person shall thereafter within six months after the grant of probate or letters of administration obtain any process in execution without first obtaining an order of the Court.

Duties of executors after expiration of period for lodging claims :

37.—(1) On the expiration of the period notified in the Gazette in manner hereinbefore provided, every executor or administrator aforesaid shall forthwith proceed to rank, according to their legal order of preference, all claims of creditors against the deceased or his estate lodged with him, or of the existence of which he knows, and shall pay

them in that order of preference as soon as the funds necessary for that purpose have been realised out of the estate.

(2) If the proceeds of the estate are found to be insufficient for the payment of all the valid claims of creditors against it, the executor or administrator shall be liable to pay to anyone having a valid claim the amount which that person would have been entitled to receive in respect of his claim if ranked according to the legal order of preference, so far as the executor or administrator has, within the period last mentioned, or afterwards at any time when he knew of the existence of the claim, paid that amount to any person the payment of whose claim against the deceased or his estate according to the legal order of preference ought to have been postponed until the valid claim aforesaid had been satisfied; reserving always to the executor or administrator recourse against the person to whom payment of his claim was improperly made:

Provided that—

Proviso.

(a) when the notice to creditors aforesaid has been duly published, no creditor claiming against the estate of any deceased person who has not lodged his claim with the executor or administrator within the period aforesaid, or thereafter before the distribution of the estate has been completed, shall in respect of his claim be entitled to recover from any person having a valid claim as a creditor against the estate restitution of any portion of that estate paid to that person in satisfaction of his claim after the expiry of that period and before the claim of the person seeking restitution was lodged with the executor or administrator, although if lodged in due time the last-mentioned claim would, according to the legal order of preference, have been preferred to that of the person to whom payment was previously made; and

(b) that creditor shall have no claim against an executor or administrator duly appointed in respect of any distribution aforesaid of the funds of any estate made by him after the expiry of the period aforesaid and before the claim of the creditor was known to the executor or administrator.

38. In the distribution of any of the claims against the estates of deceased persons according to their rank or priority of preference after payment of the fees and

Priority of certain claims.

expenses properly incurred in complying with the provisions of this Ordinance and the payment of estate duty, the executor or administrator of the estate shall class as preferent, and in the order in which they are hereafter set down, the following claims, that is to say,—

- (a) funeral expenses in so far as suitable to the condition of the deceased person in life;
- (b) medical attendance and medicine for the four months preceding the decease;
- (c) taxes, imposts, dues, debts, and sums of money due to the Crown or to the colony;
- (d) local, municipal, village, and parochial rates, taxes and assessments;
- (e) wages due to clerks for six months and to salesmen in retail provision shops and menial and other servants for the month preceding the death and the month in which the death takes place;
- (f) arrears of rent due for a period of six months antecedent to the grant of probate or letters of administration;
- (g) tacit and conventional mortgages according to their nature and priority.

Affidavit may be required in support of claim.

39. An executor or administrator may, if he thinks fit, require anyone preferring a claim as creditor against the estate which he is administering to substantiate it by an affidavit setting forth its details with the particularity reasonably required by him, and may refuse to recognise it until that affidavit has been furnished, and any court by which the claim is adjudged in favour of the claimant may decline to grant him his costs against the estate if the court deems the information given by the claimant to the executor or administrator to have been insufficient and the executor or administrator to have acted with prudence and discretion in contesting it.

If an estate is insolvent.

40. If an executor or administrator finds after inquiry that the estate is insolvent he shall immediately take the necessary proceedings for having it administered in insolvency unless the creditors consent to receive a dividend in full satisfaction of their claims and proof of that consent is filed with the registrar.

Sale and realisation of estate of deceased person :

41. If no provision be made in the will of the deceased to the contrary, or if the terms of appointment of an administrator be not opposed thereto, every executor and administrator shall have full power to sell all the property, goods,

and effects of the deceased and to transport any immovable property for the purpose of the realisation and distribution of the estate :

Provided that—

Proviso.

- (a) the sale shall be by public auction unless the registrar, at the request of any interested party after due inquiry, is of opinion that it will be to the advantage of persons interested in an estate to sell out of hand instead of by public auction any property, goods, or effects belonging to the estate and grants the necessary authority to the executor or administrator so to act; and,
- (b) if, at the request of any interested party it is expedient to subdivide or to make a division of any movable or immovable property belonging to the estate without proceeding to sale, the registrar may, after due inquiry and if he is satisfied that the proposed division is fair and equitable, grant the necessary authority to the executor or administrator so to act.

42.—(1) If one of two spouses married in community of property dies intestate, or dies testate and makes no provision to the contrary in the will, the survivor may take over, or in the case of immovable property receive by transport, from the executor or administrator the share of the joint estate belonging to the deceased spouse at a valuation made by the sworn appraisement of a competent and practising appraiser, instead of being realised according to law, unless in the opinion of the Court that course will be to the prejudice of any minor children of the deceased spouse; but no person having any lawful claim against the estate of the deceased spouse shall be delayed, prejudiced, or defeated in obtaining payment of that claim by virtue of anything in this section contained.

Surviving spouse or heirs and legatees may take over estate at appraisement.

(2) Under the like conditions and on any further conditions decided by the Court, any of the heirs or legatees of any estate may take over, or in the case of immovable property receive by transport, from the executor or administrator the whole or any portion of the estate, or any asset thereto belonging, at a valuation.

43. An executor or administrator who, in administering and distributing an estate finds that any infant who has no lawful guardian, or any lunatic who has no lawful committee, or any person absent from the colony who has no lawful representative therein, has any valid right or claim

Claims of unrepresented infants, lunatics, and absent persons.

Public Trustee. to that estate or any portion thereof, shall forthwith transmit to the registrar a statement in writing containing the name of the infant, lunatic, or absent person, and specifying the nature and value of the property to which he has that right or claim.

Moneys of infants, lunatics, or absent persons.

Public Trustee. 44.—(1) Any executor or administrator who, in administering and distributing any estate, discovers that any sum of money has devolved upon, or become due from the estate, to any infant, lunatic, or person absent from the colony who has no guardian, committee, or lawful representative therein; shall, unless the will directs that money to be otherwise dealt with, within fourteen days after the discovery, pay the money to the registrar to be paid into the guardians fund.

(2) Nothing in this section contained shall be taken to limit any power possessed by the Court to order the money to be paid by the executor or administrator to any person for any purpose.

Administrators' accounts:

probate or 45.—(1) Every executor and administrator shall administer and distribute the estate which he is appointed to administer according to law and the provisions of any valid will relating to that estate and ~~every administrator appointed by the Court~~ shall, as soon as may be after the expiration of the period notified in the Gazette in manner hereinbefore provided and not later than twelve months from the day on which letters of administration are issued to him, (unless upon application to the registrar upon sufficient cause shown to satisfaction of the registrar further time is given from time to time for that purpose), file with the registrar a full and true account, verified by affidavit and supported by vouchers, of the administration and distribution of the estate.

(2) If the account is not the final account it shall set forth all debts due to the estate still outstanding and all property, goods, and effects, still unsold and unrealised, and the reason why they have not been collected, sold, or realised, as the case may be.

executor or (3) The administrator shall, every twelve months after the filing of the first account, render further accounts of his administration and distribution until the estate is fully administered and if he fails to do so shall be liable to be dealt with in terms of the next succeeding section.

(4) The account shall be open at the registry for inspection during office hours for not less than three weeks after it is filed by any person interested in the estate.

(5) The registrar shall, immediately after the account is filed, give due notice on two successive Saturdays that it is so open to inspection, by publication in the Gazette and in some newspaper circulating in the district or county in which the deceased ordinarily resided, and shall state in the notice the period and place during and at which the account will be open for inspection.

(6) Anyone interested in the estate may, at any time before the expiration of the period allowed for inspection, file with the registrar objection in writing to the account with reasons therefor.

(7) If the registrar is of opinion that an objection ought to be sustained, he shall direct the administrator to amend the account or shall give any other directions he deems fit:

executor or

Provided that—

Proviso.

(a) any person aggrieved by the direction of the registrar may, within twenty-one days after the date of that direction, and after giving notice to the administrator and to any person affected thereby, apply to the Court for an order to set it aside, and the Court may make any order it thinks fit; and

executor

(b) when the direction affects the interests of a person who has not lodged an objection, the account so amended shall be again open for inspection in the manner and with the notices aforesaid, unless the person so affected consents in writing to the account being acted upon.

Ord 13 of 1932. (8)
(9)

executor or

46.—(1) Whenever an administrator fails to file the account with the registrar, or to comply with any direction or requirement as mentioned in the preceding section, the registrar or any person having an interest in the estate may apply to the Court for an order calling upon him to show cause why the account has not been so filed or the direction or requirement complied with:

If administrator fails to file accounts:

Provided that—

Proviso.

(a) the registrar or other person aforesaid shall, within one month before making that application, apply by letter to the administrator in default requiring him to file his account or to comply with the direction or requirement on pain of being called upon to show cause under this section; and

executor or

(b) an ^{executor or} administrator who receives the last mentioned application may file with the registrar any grounds and reasons he is able to state why he has not filed his account or complied with the direction or requirement, and the registrar, if those grounds and reasons seem to him sufficient, may grant to the ^{executor or} administrator any extension of time which in the circumstances he deems reasonable; reserving always the right of any person having an interest in the estate to bring under review before the Court the decision of the registrar granting the extension; and

^{executor or} (c) any administrator in default, if he fails to satisfy the registrar that he ought to receive an extension of time, may apply to the Court (of which application notice shall be given to the registrar and other person aforesaid) for an order granting to him an extension of time within which to file his account, or comply with the direction or requirement.

Registrar's costs in certain cases.

(2) Although the Court may be of opinion ^{executor or} that the grounds and reasons filed with the registrar by an administrator would have warranted the registrar in granting an extension of time, the registrar, or other person at whose instance application is made, shall nevertheless be entitled to his costs if, before applying to the Court for an order on the ^{executor or} administrator whose grounds and reasons the registrar has overruled and declared insufficient, he has allowed the administrator sufficient time to apply to the Court for an order granting to the administrator an extension of time, or if the Court finds that the registrar acted in good faith.

Incidence of costs.

^{executor or} (3) The costs adjudged to the registrar or other person aforesaid upon any process sued out by him or on his behalf shall be payable by the administrator in default personally and shall not be chargeable to the estate under administration unless the administrator is authorised by the Court to do so.

Examination of accounts by the accountant.

Ord 13 of 1932

47.—(1) Every account filed with the registrar as hereinbefore provided, together with all vouchers, books, and other documents relating thereto, shall, at the expiration of three weeks as provided in section forty-five of this Ordinance, be laid before the accountant who shall thereupon examine and investigate the account and, if it is in order, pass it by certificate indorsed thereon.

(2) If the account, in the opinion of the accountant fails to carry out the terms of the will (if any), or is incomplete or out of order in any other way whatsoever, he shall report to that effect in writing to the registrar, who shall thereupon if he sees fit notify the administrator of the estate under administration with a request to complete or amend the account in accordance with the report.

(3) The provisions of section forty-six of this Ordinance shall mutatis mutandis apply to failure by an administrator to complete or amend any account filed by him and not passed by the accountant.

(4) The registrar may in his discretion at the request of the accountant, and before the account is passed, refer, or may request the administrator to refer, any question of principle or point of law, or the interpretation of any Ordinance, arising thereon to the Court under the provisions of section forty-five of the Supreme Court of Judicature Ordinance, to be argued in chambers.

Chapter 10.

(5) The Court may in its discretion decide the question without argument and direct the accountant to certify accordingly, or, if it thinks fit, refer the question by special case to the Full Court for decision.

48.—(1) Every executor and administrator shall, in respect of his administration, distribution, and final settlement, of any estate, be entitled to claim and receive out of the assets of the estate, or from anyone who, as heir, legatee, or creditor, is entitled on administration to the whole or any portion of the estate, to any remuneration fixed by the deceased by will, otherwise to an amount to be assessed by the registrar not exceeding the rates following:—

Remuneration of executors and administrators:

- (a) where the total value of the property does not exceed ten thousand dollars, ten per centum on the amount of all receipts; and,
- (b) where the total value of the property exceeds ten thousand dollars, ten per centum on ten thousand dollars and five per centum on the amount of all receipts over and above ten thousand dollars:

Provided that where any plantation, farm, business, or undertaking is carried on or is being administered, the remuneration shall not be payable on the gross receipts but shall be that determined

Proviso.

Repealed by
Ord 130 of 1932

and fixed by the registrar according to the circumstances of each particular case; subject to review by the Court upon the application of the executor or administrator or of any person having an interest in the estate.

(2) If any executor or administrator fails to administer any estate with due diligence or fidelity, or to file or render the account of his administration and distribution of the estate in due course of law, and has no lawful and sufficient excuse for his failure, the registrar may disallow the whole or any portion of the remuneration which he might otherwise have been entitled to receive in respect of his administration of the estate, subject, however, to review by the Court.

(3) For the purposes of this section the term "receipts" includes rent, interest, and book debts, but does not include money in the hands of the deceased at the time of his death, the proceeds of the sale of effects and realisation of investments, and the like, and the remuneration assessed on the amount of that money, those proceeds of sale, that realisation of investments, and the like shall not exceed one-half the rates allowed in paragraphs (a) and (b) of sub-section (1) of this section.

When property bequeathed with limited interest with eventual right to heir in remainder.

49.—(1) If the owner of any immovable property has at his death bequeathed a fiduciary, usufructuary, or other limited interest in the property to anyone and has directed by his will that the property shall devolve after the expiration of that limited interest upon any other person or persons certain or uncertain, then the executor or administrator of the estate of the deceased owner shall, upon or before drawing up any administration and distribution account of the estate, transport the property to the person immediately entitled to the limited interest therein, with an express reservation in the transport of the rights of the other person or persons.

(2) Nothing herein contained shall affect the right of any executor or administrator to sell and transport any immovable property for the purpose of paying the debts of the deceased owner thereof, but the sanction of the Court must be obtained for the sale and transport if there are infant children surviving.

(3) The passing of any transport under this section shall not be deemed to determine whether the interest bequeathed is usufructuary or fiduciary.

50. If a person to whom a fiduciary, usufructuary, or other limited interest has been bequeathed as in the preceding section mentioned does not renounce the bequest and yet refuses to accept transport thereof in terms of that section, or if it is impossible for the executor or administrator of the former owner of the property to pass transport of the limited interest to him for any reason whatsoever, the executor or administrator may apply to the Court for an order compelling him to do all things in his power necessary to enable a transport of the limited interest to be passed as required by the preceding section; and the Court may make any order in the circumstances it deems proper.

Holder of limited interest compelled to accept transport.

51. A surviving spouse shall have the right to receive from the executor or administrator the inheritance of his or her infant children and to retain it until their majority, and in the case of immovable property, to accept transport in the name of any of them:

Inheritances of infants:

Provided that,—

Proviso.

- (a) if the deceased spouse has by will directed that the inheritance shall be otherwise dealt with, nothing herein contained shall be taken to prevent the executor or administrator from carrying into effect the provisions of the will;
- (b) the right of a surviving parent may at any time be limited or revoked by the Court on application, subject to any conditions the Court imposes;
- (c) in the event of the death of an infant before reaching majority his or her inheritance shall become payable at once.

52. Anyone in possession of a grosse transport, mortgage, or title deed, required by an executor or administrator in order to comply with any of the provisions of this Ordinance, who refuses to deliver it or unreasonably delays its delivery to the executor or administrator shall be liable to pay all reasonable costs which the executor or administrator incurs in obtaining the order of a competent Court for its possession, or in obtaining a certified copy thereof, and shall be liable in addition to any penalty (not exceeding fifty dollars) the Court imposes, but the legal rights or position of that person shall not be affected by his delivery of the grosse or deed in terms of this section.

Delivery of grosse or deed.

THE GUARDIANS FUND.

Public Trustee.

The guardians fund.

53.—(1) All money paid to the registrar under the provisions of section forty-four of this Ordinance shall form and become part of the fund to be known as the guardians fund, and whenever that money is received by the registrar he shall open an account in his books with the person to whom, or who represents the estate to which, the money belongs, or, if in the case of infant heirs or beneficiaries it is more convenient, the account may be opened in the matter of the estate from which the money is derived.

Interest on minors' moneys.

(2) Interest may be allowed on any sum of money so received by the registrar from the date, at the rate, and from the public moneys determined by the Legislative Council.

The Public Trustee and the guardians fund.

54.—(1) All moneys paid to the registrar under the provisions of this or any other Ordinance to be placed to the credit of the guardians fund shall, unless the Court otherwise directs, be forthwith paid over to the Public Trustee who may invest them in government securities, or may deposit them in the Government savings bank, or make any other investment approved by the Court.

Ord 13 of 1932.

(2) The Public Trustee shall, at the request of the registrar or, when moneys are paid into the guardians fund under an order of court, on an order of court, pay out of the fund any sum of money placed to the credit of any person in the books aforesaid, to anyone by law or that order of Court respectively entitled to receive it.

(3) The Public Trustee shall in the month of January in each year draw up a list of all amounts standing in the books of the guardians fund to the credit of any person unknown, or not residing and not having any known legal representative, in the colony and shall cause the list to be published in the Gazette.

Claims to moneys paid over :

55. Anyone claiming a sum of money paid over to the Public Trustee to the credit of the guardians fund which the registrar for any reason is unable to certify to be due and payable to the claimant shall apply by petition to the Governor in Council, who may, if he sees fit, authorise the Public Trustee to pay out that sum of money or refer the party to establish the claim by due course of law, and in the latter case the Public Trustee shall make any defence in law he may be legally advised :

Public Trustee.

Proviso.

Provided that nothing herein contained shall be construed to hinder or prevent the Governor and Legislative Council from making provision on the annual estimates for

the payment of any sum of money paid into the guardians fund under the provisions of this or of any other Ordinance to anyone whom he considers to have an equitable claim thereto notwithstanding that the claim may be statute-barred.

GENERAL.

56. The registrar shall preserve of record in his office all original wills, notices of death, inventories, and liquidation, administration, and distribution accounts, deposited, lodged, or filed with him under the provisions of this Ordinance, and any person may at any time during office hours inspect any of those records and obtain a copy thereof or extract therefrom on payment of the prescribed fee or fees :

Records and searches :

Provided that any government officer shall be allowed and is hereby authorised without the payment of any fee to inspect any record aforesaid and to take a copy thereof or extract therefrom whenever it is necessary or expedient that that should be done by the officer in the discharge of the duties of his office.

Proviso.

57. When the registrar is plaintiff, applicant, defendant, or respondent in any action or matter instituted by or against him in his official capacity in terms of the provisions of this Ordinance, he shall not be made personally liable for any costs in and with respect to the action or matter that the Court orders to be paid.

Registrar not personally liable for costs.

58. Everyone to whom a grant of probate or letters of administration is made after the commencement of this Ordinance for the administration of the estate of any deceased person, whether that deceased person has died prior to that commencement or not, shall be subject to and conform with the provisions of this Ordinance and shall administer the estate in accordance therewith.

Application of this Ordinance.

59. The registrar shall and is hereby authorised and required to charge and demand, receive, retain, or recover, in respect of the acts, matters, and things done or caused to be done by him or in his office the fees prescribed by rules of court :

Fees :

Provided that—

(a) where any person dies from wounds inflicted, accident occurring, or disease contracted, within twelve months before death, while on active service against an enemy, whether on sea or land,

Proviso ;
remission in case of persons killed in war.

and he was, when the wounds were inflicted, the accident occurred, or the disease was contracted, either subject to the Naval Discipline Acts of the Imperial Parliament or subject to military law, whether as an officer, non-commissioned officer, or soldier under Part V. of the Army Act, or on actual military service under any Ordinance, the Governor may remit, or in the case of duty already paid repay, the whole or any part of the fees for deposit of will and probate, and may also remit or repay the whole or any part of the estate duty leviable in respect of any property passing upon the death of the deceased to his widow or lineal descendant or lineal ancestors.

Regulations.

60. The Governor and Legislative Council may from time to time frame regulations for—

- Ord 13 of 1932.*
- (a) the better carrying into effect of the provisions of this Ordinance;
 - (b) the custody and preservation of the records, securities and other effects of the registry under the provisions of this Ordinance;
 - (c) the payment of money into and out of the guardians fund;
 - (d) the efficient examination of liquidation, administration and distribution accounts;
 - (e) generally, the management and good conduct of the business of the registry under the provisions of this Ordinance; and
 - (f) prescribing the forms to be used in respect of any act, matter, or thing required to be done under the provisions of this Ordinance, but until those forms are prescribed the forms given in the Schedule hereto shall be used in respect of the acts, matters and things therein set forth.

SCHEDULE OF FORMS.

FORM 1.

(Section 3.)

NOTICE OF DEATH.

Pursuant to the provisions contained in the Deceased Persons Estates Ordinance.

1. Name of the deceased
2. Birthplace and nationality of the deceased
3. Names and addresses of the parents of deceased

father
mother

FORM 3.

(Section 24.)

LETTERS OF ADMINISTRATION.

IN THE SUPREME COURT OF BRITISH GUIANA.

Sworn at.

BE IT KNOWN that

of

died on the
at

of
intestate.

(a) or as the
case may be.

AND BE IT FURTHER KNOWN that on the day of
Letters of Administration of all the estate (a) which by law devolves to and
vests in the personal representative of the said intestate were granted by the
Court above-mentioned to of

Dated the day of , 19 .

Registrar.

(L.S.)
