

ORDINANCE No. 10 OF 1917.

A.D. 1917. AN ORDINANCE to declare and amend the Law relating to the Administration of Estates of Deceased Persons.

[4th August, 1917.]

BE it enacted by the Governor of British Guiana, with the advice and consent of the Court of Policy thereof, as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Ordinance may be cited as the Deceased Persons Estates Ordinance, 1917.

Interpretation
of Terms.

2. In this Ordinance, unless the context otherwise requires:—
- “ Registrar ” means the Registrar of British Guiana appointed under the provisions of the Deeds Registry Ordinance, 1919, or any amendment thereof.
 - “ Court ” means the Supreme Court of British Guiana or 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 lodgment of such instrument or document with an act of deposit accompanied by an affidavit of the due execution of such instrument or document.
 - “ Person ” shall include any body of persons corporate or unincorporate.

“ Accountant ” means the Accountant appointed under the provisions of the Deeds Registry Ordinance, 1919, or any amendment thereof. ⁽¹⁾

PART II.

DEATH NOTICE.

3. Whenever any person shall die leaving any property in possession, reversion or expectancy, or leaving a will, the nearest relative or connection of the deceased who shall be in or near the house or place of death, and in default of any such nearest relative or connection the person who at or immediately after the death shall have the chief charge of the house or place in which the death occurs, shall within thirty days of such death cause a notice of death to be framed in the form set out in the first Schedule to this Ordinance and shall himself sign such notice.

Death Notice.

Such notice shall forthwith be transmitted or delivered to the Registrar, and shall be filed in his office.

4. In case it shall appear that the person signing the death notice was not present at the death the Registrar may call upon such person for proof of death.

Registrar may call for further information.

When the information in any death notice is defective or insufficient the Registrar may call upon the person who signed such death notice or any executor or administrator after his appointment to furnish such further information as may be required and every person so called upon shall without delay return his written answer to such questions as the Registrar may put to him for that purpose.

Any person who shall fail to comply with the provisions or requirements of this or the last preceding section, or who shall give information which is to his knowledge false shall be guilty of an offence and be liable on summary conviction (at the instance of the Registrar or any interested party) to a penalty not exceeding fifty dollars for every such default.

PART III.

WILLS.

5.—(1) It shall be competent for any person to lodge for safe custody with the Registrar either open or enclosed under a sealed cover any will executed by him; and the Registrar shall keep a register of the names and descriptions of the persons lodging every such will and the date of lodgment of the same; and every such will shall be kept by the Registrar until the death of the maker thereof unless re-delivery of the same be demanded by the said maker or in his lifetime by his agent specially authorised in writing for that purpose, when the Registrar shall re-deliver such will accordingly.

Lodgment of wills, with the Registrar for safe custody.

(2) On production of proof to his satisfaction of the death of the maker of any such will which shall still be in his custody the

¹ Sec. 2 of Ordinance No. 17 of 1919, see under “ Deeds.”

Registrar shall take such action as may be necessary to have such will duly deposited by any party interested in accordance with the provisions of section six of this ordinance.

Persons in possession of wills on testator's death bound to one of following alternate courses.

6. Every person (other than the Registrar who shall at the time of the death of the maker thereof have in his possession any document purporting to be the last will of any other person or into whose possession any such document shall come after the death of the maker thereof shall within fourteen days from the date of such death:—

- (1) Either deposit every such document in the office of the Registrar; or
- (2) Deliver the document to the executor and at the same time notify the Registrar in writing that he has so done; or
- (3) 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.

Any person failing to comply with the provisions of this section shall, on being summarily convicted of such failure at the instance of the Registrar or any interested party, be guilty of an offence and be liable to a penalty not exceeding twenty-four dollars for such failure.

In the event of any such person continuing in default after being convicted under this section he shall be liable to a further penalty of five dollars for each and every day that he may be in such default.

Compelling attendance of witness to prove due execution of will.

7.—(1) Every person depositing any will as aforesaid, or any person claiming any interest under the will may apply to the Registrar in writing for a summons addressed to any person who has witnessed the execution of such will requiring such person to attend at the time stated therein before a Sworn Clerk and Notary Public of the Registrar's Office and to make and swear an affidavit of the due execution of such will. Every such person attending upon such summons shall be entitled to be paid by the person making such application such sum as he would be entitled to had he been summoned to attend and give evidence in a civil case before the Supreme Court.

(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) Every person so summoned who refuses or neglects to attend or who refuses to make or swear the affidavit aforesaid shall be guilty of an offence and on summary conviction thereof shall be liable to a penalty not exceeding one hundred dollars.

Probate.

8. The deposit of a will under section six of this Ordinance coupled with the grant of probate or letters of administration as provided in Part VII. hereof, shall have within this Colony the same effect as probate in common form has by the law of England.

Applications to the Court or a Judge for an Order on persons refusing to give up wills.

9. 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 6 of this Ordinance apply forthwith by summons or motion *ex parte* to the Court for a rule calling

on such person to show cause why he should not forthwith deposit such will, and at the hearing on the return to the rule the Court shall make such order, and such order as to costs, as it shall deem fit.

PART IV.

INVENTORIES.

10. When one of two spouses who have been married in community of property shall die the survivor shall within thirty days after the death of the deceased cause an inventory in the manner prescribed by section thirteen of Ordinance 4 of 1898 of all property, goods and effects movable and immovable of what kind soever which at the time of the death shall have formed part of or belonged to the estate possessed in community, hereinafter called the joint estate, between the predeceasing and surviving spouses to be made in presence of two impartial witnesses being persons of good credit and repute, and of such persons having an interest in the distribution of the joint estate as heirs or legatees of the predeceased spouse as may choose to attend, unless in the opinion of the Registrar a sufficient inventory and valuation in terms of section twenty-nine of this Ordinance have already been furnished; and every such inventory shall be subscribed by the surviving spouse, the witnesses aforesaid and such heirs or legatees as shall be present at the making thereof. In the event of the default or absence of the survivor the provisions of section twelve of this Ordinance shall *mutatis mutandis* be deemed to apply.

Inventory of Estate in community by surviving spouse within 30 days of the death.

11. Every surviving spouse who shall wilfully neglect to cause an inventory of the joint estate to be made in manner and within the period hereinbefore provided or shall knowingly omit to enter in such inventory any property of whatsoever kind shall in the distribution of such estate forfeit all right to and share in anything which may accrue to the joint estate after the death of the predeceasing spouse and in and to such property so omitted in the inventory; and every loss which shall have been caused by the destruction or deterioration of any such property so omitted in the inventory or which shall have 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 such surviving spouse solely and exclusively: Provided always that nothing herein contained shall free or exempt any person who shall wilfully or for any fraudulent purpose make or cause to be made any false inventory of any such joint estate from any penalty or punishment hereinafter or by any other Law provided with respect to the offence of making false inventories.

Penalties on omission from inventory.

12. 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 minority of the child or children, the next of kin, if any, of the deceased or in the event of the default, absence, death or minority of the next of

Inventory on the death of persons not married in community.

kin, the person who at or immediately after the death shall have the chief charge of the house or of the place in which the death shall occur 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 Ordinance 4 of 1898 of all property, goods and effects movable and immovable of what kind soever:—

(a) Belonging to the deceased and being in the house or upon the premises at the time of the death;

(b) Known by the person making or causing such inventory to be made to have belonged to the deceased at the time of his death;

unless in the opinion of the Registrar a sufficient inventory and valuation in terms of section twenty-nine of this Ordinance have already been furnished;

And every such inventory shall be subscribed by the person making or causing the same to be made and by the witnesses aforesaid.

Transmission
of inventory
to Registrar.

13. Every person hereinbefore required or directed to make or cause to be made any such inventory as aforesaid shall as soon as the same has been made forthwith file such inventory in the Registrar's Office: Provided, however, that every inventory of the estate of a deceased person made or delivered after the commencement of this Ordinance under the Estate Duty Ordinance, 1898, or any amendment thereof shall if and so far as the same is complete be deemed a sufficient inventory for the purpose of this Ordinance; and provided further that any copy of any inventory of the estate of a deceased person filed in the Registrar's Office before the commencement of this Ordinance under the Deceased Persons Estates Ordinance, 1909, shall if and so far as the same is complete be deemed a sufficient inventory for the purpose of this Ordinance.

Inventory
by Order of
Court.

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

Particulars
required as
to immovable
property.

15. Every person who is required by sections ten, twelve and fourteen of this Ordinance to make any inventory shall include therein a specified 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 such interest and the date of such title, and full particulars concerning such interest.

PART V.

ADMINISTRATORS.

Power of the
Court to ap-
point ad-
ministrators.

16. Where it appears expedient to the Court to do so the Court may on the application of any interested party appoint any person

or persons to be an administrator to administer the estate of any deceased person in any of the following cases:—

- (a) Where such person dies intestate.
- (b) Where such person dies leaving a will but appoints no executor.
- (c) Where such person dies leaving a will appointing an executor or executors, but such 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) Where an executor or administrator is for just cause removed from his office; and
- (e) Where it appears to the Court to be expedient to do so for the better realization or protection of the estate or for the benefit or protection of any person interested in such estate.

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

Power to limit appointment of 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.

18.—(1) The appointment of any administrator or administrators shall be in the form of Letters of Administration as set out in the Second Schedule to this Ordinance.

Form of appointment and powers.

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

(3) Where there is a last will such 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.

19. In all cases in which it shall appear from the death notice or inventory filed in respect of the estate of any deceased person or from such other information as the Registrar may call for that the value of the assets of such estate does not exceed two hundred and fifty dollars, it shall be lawful for 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 may be unable or unwilling to act, 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 at the instance of the Attorney General or of anybody authorized by him, to appoint the Public Trustee or any other person to administer the estate.

Where Registrar may summarily appoint administrator.

PART VI.

CUSTODY OF ESTATE PENDING GRANT OF PROBATE OR ISSUE OF LETTERS OF ADMINISTRATION TO EXECUTOR OR ADMINISTRATOR.

Possession by survivor of estate in community of property until institution of proceedings for settlement.

20. When one of the two spouses who have been married in community of property shall die the joint estate shall remain under the charge of the survivor until the executor of the deceased or other person interested shall take proceedings for the administration, distribution or final settlement of the said joint estate; provided always that nothing herein contained shall prevent any such joint estate from being declared insolvent. In the event of the default, death or absence of the survivor the provisions of section twenty-one of this Ordinance shall *mutatis mutandis* be deemed to apply.

Custody of estate of person not married in community.

21. 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 event of the default, absence, death or minority of the child or children the next of kin, if any, of the deceased or in the event of the default, absence, death or minority of the next of kin the person who at or immediately after the death shall have the chief charge of the house or of the place in which the death shall occur shall secure and take charge of all goods and effects of whatever description belonging to the deceased and being in the house or upon the premises at the time of death and shall retain the same in his custody and possession until delivery thereof shall be demanded by the executor or administrator lawfully appointed.

The Court shall have the right to order, on the application of any interested party and for good cause shown, that any sum of money the property of the estate which is in the possession of any person and the payment of which is not sufficiently secured be immediately paid by such person into the Guardians' Fund pending the grant of probate to the executor or executors or the appointment of an administrator.

Appointment of *Curator bonis*.

22. In all cases where it may be necessary or expedient to do so the Court may appoint a *curator bonis* to take the custody and charge of any estate until probate is granted to the executor or executors or until an administrator is appointed, and every such *curator bonis* may collect such debts and may sell or dispose of perishable property belonging to the estate as the Court shall specially authorize. Such appointment may be varied or revoked as to the Court shall seem fit.

PART VII.

PROBATE AND LETTERS OF ADMINISTRATION.

Probate and Letters of Administration.

23. From and after the date of 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;

Second
Schedule.

Provided however that whenever the estate or property of any person is being administered at the commencement of this Ordinance by any person or persons who has or have respectively been duly appointed by the Court, such person or persons as the case may be shall continue such administration under the provisions of this Ordinance, and such appointment shall be deemed to have been made under the provisions of this Ordinance.

24. In all cases in which any deceased person shall by will have duly appointed any person or persons to be his executor or executors the Registrar shall upon the written application of such executor or executors and on order of the Court forthwith grant probate to him as soon as such will, as hereinbefore provided, shall have been deposited as required in the Registrar's Office;

Probate to
executors
appointed by
will.

Provided always that if it shall appear to the Registrar or if any person by writing filed with the Registrar shall object that any will by virtue whereof any person shall claim to be the testamentary executor of any person deceased is not in law sufficient to warrant and support such claim probate may be refused by the Registrar until the validity and legal effect of such will shall have been determined by the judgment of some competent Court or until such objection as aforesaid shall have been withdrawn by the person by whom the same was made, or until such person shall have failed within ten days of filing his objection to apply to the Court for an order restraining the issue of probate;

Provided also that probate shall not be granted to any such executor as aforesaid who shall at the time of making such written application be or reside beyond the limits of the Colony or who the Registrar shall have reason to believe will not remain within the Colony until he has finally liquidated and settled the estate to be administered by him, unless he shall find security to the satisfaction of the Registrar for the due administration of the estate and shall appoint an attorney within the Colony.

25.—(1) Nothing in the 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 to him granted by such testator in his will; provided always that no person shall be entitled or qualified to act as assumed executor unless probate shall have been granted to him as such during the lifetime of the testamentary executor by the Registrar who shall grant the same as provided in section twenty-three of this Ordinance after reference to the deposited will by which the assumption of such executor is authorized and on the deposit in his office of the instrument by which such testamentary executor has assumed such person as executor.

Assumption
of executors
under powers
contained
in will.

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

26. When by reason of any testamentary or assumed executor to whom probate shall have been granted having died, or become incapacitated to act as such or having been removed from his office by the decree of any competent Court there shall not remain for the administration of the estate any executor whatever or so

Proceedings
in case of
death,
incapacity, or
removal of
executors or
administrators.

many executors either testamentary or assumed as by the provisions of the will by which such executors were appointed or permitted to be assumed shall be required to form a quorum of executors, and when it shall happen that any administrator appointed by the Court shall after letters of administration have been granted to him die or become incapacitated or be removed in manner aforesaid, then proceedings for the appointment or an administrator in place of such executor or administrator so dying or becoming incapacitated or removed shall be taken in like manner in all respects as hereinbefore provided by the provisions of sections sixteen, seventeen and eighteen of this Ordinance.

Revocation of Probate and Letters of Administration by decree of the Court.

27. Probate granted to any person as executor may be revoked and annulled by the Court on proof to the satisfaction of such Court that the will in respect of which such grant has been made is null or has been revoked either wholly or in so far as it relates to the nomination of such executor, and letters of administration granted to any person as administrator may be revoked and annulled by the Court on proof of the deposit of any will by which any other person who shall then be legally capable and qualified and who shall consent to act as executor, has been legally nominated executor to the estate which such administrator has been appointed to administer;

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

Power to require security for due administration, and to issue directions.

28.—(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 shall have been granted to give security for the due administration of the estate, the due accounting in regard to the same, and the care and custody of any property, for such amount and with such securities as in the circumstances of each particular case shall be 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 for such amount and with such sureties as in the circumstances of each particular case shall be reasonable for the due administration of the estate, the due accounting in regard to the same and the care and custody of the property, and may give such orders or directions with reference to such administration accounting, care, and custody as the circumstances may seem to require.

PART VIII.

DUTIES OF EXECUTORS AND ADMINISTRATORS.

Inventory by executors and administrators.

29. Every executor and administrator shall as soon as probate or letters of administration have been granted to him in manner aforesaid make or cause to be made an inventory in the manner prescribed by section thirteen of Ordinance 4 of 1898 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 which he has been appointed to administer unless in the opinion of the Registrar a sufficient inventory and valuation in terms either of the tenth, twelfth or thirteenth sections of this Ordinance have already been furnished, and shall in like manner from time to time thereafter and so soon as he shall find or know of any other such property, goods and effects belonging to such estate and not contained in such first mentioned inventory cause to be made an additional inventory showing the value of all such last-mentioned property, goods and effects. And every executor or administrator shall forthwith transmit or deliver every such inventory to the Registrar to be filed as of record.

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 borne by the estate.

30. Any person who is required or authorised under the provisions of sections ten, twelve and twenty-nine to make or to cause to be made an inventory of any property, goods and effects shall wilfully make a false inventory thereof shall be guilty of an offence and be liable on summary conviction to a fine not exceeding five hundred dollars and shall 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.

Penalty for false inventory.

31. If previously to probate or letters of administration being granted to any executor or administrator for the administration of any estate any person shall take upon himself to administer, distribute or in any wise dispose of such estate or any part thereof except in so far as may be authorised by the provisions of this Ordinance or as may be 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 to whom probate or letters of administration have been granted shall administer, distribute or in any wise dispose of any property, goods and effects belonging to the estate of which he is the executor or administrator which shall not have been contained in the inventory or inventories of such estate furnished to the Registrar previously to the granting of the said probate or letters of administration or shall not be 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 his office in terms of Section twenty-nine of this Ordinance, every such person shall thereupon become personally liable to pay to the creditors and legatees respectively of the deceased all debts due by the deceased at the time of his death or which have thereafter become due by his estate and all legacies left by the deceased in so far as the proceeds and assets of such estate shall be insufficient for the full payment of such debts or legacies; provided always that when any person who shall be sued for the payment of any debt or legacy which he may have rendered himself personally liable to pay in manner aforesaid shall prove to the satisfaction of the Court before which he shall be sued that the true amount and value of

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.

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 the same was not fraudulent then such person shall be personally liable for only so much of such sum as he shall fail to prove has been administered, distributed or disposed of in such manner or for such purposes as by law the same ought to have been administered, distributed or disposed of and for the amount of the costs by him incurred in and concerning such action as well as for the amount of the costs incurred in and concerning such action by the plaintiff therein notwithstanding that by reason of such person's personal liability having been restricted in manner aforesaid such plaintiff shall not have recovered from such person any part of the debt or legacy sued for.

32.—(1) Every executor or administrator to whom probate or letters of administration have been granted shall so soon as he shall have entered on the administration of the estate within fourteen days after the date of such 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 the same with such executor or administrator within three months from the date of the first publication thereof.

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

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

33. No person who has obtained the judgment of any Court against any deceased person in his lifetime or against his executor or estate shall sue out or obtain any process in execution of that judgment before the expiration of the period notified in the *Gazette* in manner provided in Section thirty-two hereof 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.

34. On the expiration of the period notified in the *Gazette* in manner hereinbefore provided every such executor or administrator as aforesaid shall forthwith proceed to rank according to their legal order of preference all such claims of creditors against the deceased or his estate as have been lodged with him or of the existence of which he shall have knowledge and shall pay the same in such order of preference as soon as the funds necessary for that purpose shall have been realised out of the estate. And if the proceeds of such estate shall be found to be insufficient for the payment of all the valid claims of creditors to which it is liable, the executor or administrator thereof shall be liable to pay to any person having any such valid claim the amount which such person would have been entitled to receive in respect of such claim if ranked according to the legal order of preference in so far as such executor or administrator shall have, within the said period last mentioned or afterwards at any time when he knew of the existence of such claim, paid such amount to any person the payment of whose claim against the deceased or his estate according to the legal order of preference

Public notice by executors and administrators to creditors and others to lodge their claims.

Suspension of execution of judgments against deceased until expiration of period of notice.

Duties of Executors after expiration of period for lodging claims.

ought to have been postponed until such valid claim as aforesaid has been satisfied; reserving always to such executor or administrator recourse against the person to whom payment of his claim may have been improperly made;

Provided always that when such notice to creditors as aforesaid shall have been duly published as aforesaid, no creditor claiming on the estate of any deceased person who shall not have lodged his claim with the executor or administrator within such period as aforesaid or thereafter before the distribution of the funds 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 such estate restitution of any portion of such funds which may have been paid to such person in satisfaction of his claim after the expiry of such period and before the claim of the person seeking such restitution was lodged with the executor or administrator although if lodged in due time such last-mentioned claim would, according to the legal order of preference, have been preferred to that of the person to whom such payment had been previously made;

And provided further that such creditor shall have no claim against any executor or administrator duly appointed in respect of any such distribution as aforesaid of the funds of any such estate made by him after the expiry of such period as aforesaid and before the claim of such creditor shall have been known to such executor or administrator.

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

Priority of certain claims.

- (a) Funeral expenses in so far as the same were 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, 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.

36. Any executor or administrator may, if he think fit, require any person preferring any claim as a creditor against the estate which he is administering to substantiate such claim by an affidavit setting forth the details of such claim with such particularity as the executor or administrator may reasonably require and may refuse to recognise such claim until such affidavit has been delivered

Affidavit may be required in support of claim.

to him, and it shall be competent for any Court by which any such claim shall be adjudged in favour of any claimant to decline to grant such claimant his costs against the estate in case such Court shall deem that the information given by the claimant to the executor or administrator was insufficient and that the executor or administrator was insufficient and that the executor or administrator acted with prudence and discretion in contesting such claim.

If estate insolvent.

37. If an executor or administrator shall after enquiry find that the estate is insolvent he shall immediately take the necessary proceedings for having such estate administered in insolvency unless the creditors consent to receive a dividend in full satisfaction of their claims and proof of such consent is filed with the Registrar.

Sale and realisation of estate of deceased person.

38. If no provision be made in the will of the deceased to the contrary or if the terms of appointment of any administrator be not opposed thereto, every executor and administrator shall have full power to sell all the property, goods and effects of the deceased person and to transport any immovable property for the purpose of the realisation and distribution of the estate, provided however

(1) that every such sale shall be by public auction unless the Registrar at the request of any interested party after due enquiry shall be 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 and effects belonging to such estate and shall grant the necessary authority to the executor or administrator so to act; and

(2) Provided further 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 enquiry and on being satisfied that the proposed division is fair and equitable grant the necessary authority to the executor or administrator so to act.

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

39.—(1) If one of two spouses married in community of property shall die intestate or shall die testate and shall make 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 such deceased spouse at a valuation to be made by sworn appraisement of a competent and practising appraiser instead of being realised according to law unless in the opinion of the Court such a course will be to the prejudice of the minor children if any of the deceased spouse; provided also that no person having any lawful claim against the estate of such deceased spouse shall be delayed, prejudiced or defeated in obtaining payment of such claim by virtue of anything herein contained.

(2) Under the like conditions and on such further conditions as the Court may decide any of the heirs to or legatees in any estate may take over from 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.

Executor or administrator to transmit claims of certain minors, lunatics and absent persons to Registrar.

40. If any executor or administrator in administering and distributing any estate shall find that any minor not having a lawful guardian or any lunatic not having a lawful curator or any person

absent from the Colony and not having a lawful representative within the same has any valid right or claim to such estate or any portion thereof such executor or administrator shall forthwith transmit to the Registrar a statement in writing containing the name of such minor, lunatic or absent person and specifying the nature and value of the property to which such minor, lunatic or absent person has such right or claim.

41. If any executor or administrator shall in administering and distributing any estate find that any sum of money has devolved upon or become due from such estate to any minor, lunatic or person absent from the Colony not having a guardian, curator or lawful representative within the same respectively such executor or administrator shall unless it is directed by the will that such money is to be otherwise dealt with within fourteen days after such finding pay the same to the Registrar to be paid into a Fund hereinafter called the Guardians' Fund.

Executors or administrators to pay into Guardian Fund money devolving upon certain minor lunatics or absent persons.

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

42.—(1) Every executor and administrator shall administer and distribute the estate to which he is appointed executor or administrator according to law and the provisions of any valid will relating to such estate and 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 probate or letters of administration were issued to him (unless upon application to the Registrar upon sufficient cause shown to the satisfaction of the Registrar further time be given from time to time for that purpose) frame and file with the Registrar a full and true account verified by affidavit and supported by vouchers of the administration and distribution of the said estate, and should such account not be the final account it shall set forth all outstanding debts due to the estate and still outstanding and all property, goods and effects still unsold and unrealised and the reason why the same have not been collected, sold or realised as the case may be and the executor or administrator shall every twelve months after the filing of the first account render further accounts of his administration and distribution until the estate shall be finally liquidated and should the executor or administrator fail to do so he shall be liable to be dealt with in terms of the next succeeding section.

Accounts to be filed within twelve months.

(2) Every such account shall lie open at the office of the Registrar for inspection during office hours for not less than three weeks after the filing thereof by any person interested in the estate.

(3) The Registrar shall forthwith on the filing of such account give due notice on two successive Saturdays that the account is so open to inspection by an advertisement in the *Gazette* and in some newspaper circulating in the district or county in which the deceased ordinarily resided and shall state in such notice the period during which and the place at which the account will lie open for inspection.

(4) Any person interested in the estate may at any time before the expiration of the period allowed for inspection file with the Registrar in writing any objection, with the reasons thereof, to that account.

(5) If the Registrar be of opinion that any such objection ought to be sustained, he shall direct the executor to amend the account or shall give such other directions as he may deem fit, provided that,

(a) Any person aggrieved by any such direction of the Registrar may within twenty-one days after the date of the Registrar's direction, and after giving notice to the executor or administrator and to any person affected by the direction apply by motion to the Court for an order to set aside the direction, and the Court may make such order as it may think fit; and

(b) When any such direction affects the interests of a person who has not lodged such an objection the account so amended shall again lie 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.

43. As often as any executor or administrator shall fail to file with the Registrar the account or shall fail to comply with any direction or requirement mentioned in the last preceding section the Registrar or any person having an interest in such estate may apply to the Court for an order on such executor or administrator to show cause why such account has not been so filed or such direction or requirement has not been so complied with as aforesaid;

Provided that the Registrar or such other person as aforesaid shall within one month before making such application apply by letter to the executor or administrator in default requiring him to file his account or to comply with such direction or requirement on pain of being called upon to show cause under this section; And provided further that any executor or administrator receiving any such application from the Registrar or such other person as aforesaid may file with the Registrar such grounds and reasons as he may be able to advance why he has not filed his account or complied with such direction or requirement and the Registrar, should such grounds and reasons seem to him sufficient, may grant to such executor or administrator such an extension of time as he shall in the circumstances deem reasonable; reserving always the right of any person having an interest in such estate to bring in review before the Court by motion the decision of the Registrar under which any such extension is granted; and provided also that any such executor or administrator in default if he shall fail to satisfy the Registrar that he ought to receive an extension of time may apply to the Court by motion of which application notice shall be given to the Registrar and such other person as aforesaid for an order granting to such executor or administrator an extension of time within which to file his account, or comply with such direction or requirement.

44. Although the Court shall be of opinion that the grounds and reasons filed with the Registrar by any executor or administrator as aforesaid were such as 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 in case he shall, before applying to the Court for an order on the executor or administrator whose grounds and reasons the Registrar shall have overruled and declared insufficient, have

Administra-
tion and
distribution
accounts.

Registrar
entitled to
costs in cer-
tain cases
where the
Court over-
rules his
decision.

allowed such executor or administrator sufficient time for enabling him to apply to the Court for such an order as aforesaid granting to such executor or administrator an extension of time, or in case the Court shall find that the Registrar acted *bonâ fide*.

45. The costs adjudged to the Registrar or such other person as aforesaid upon any process sued out by him or on his behalf shall be payable by the executor or administrator in default in his individual capacity and he shall not be at liberty to charge the same to the estate under his administration unless authorized by the Court to do so.

Costs unless otherwise ordered by the Court to be paid by executor in default.

46.—(1) Every account framed and 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-two of this Ordinance be laid before the Accountant who shall thereupon examine and investigate such account, and if it is in order shall pass the same by certificate endorsed thereon.

Accounts to be examined and passed by the Accountant.

(2) Should any such account in the opinion of the Accountant fail to carry out the terms of the will, if any, or be incomplete or be out of order in any other way whatsoever he shall report to such effect in writing to the Registrar who shall thereupon if he shall see fit notify the executor or administrator of the estate under administration with a request that the account be completed or amended in accordance with such report.

(3) The provisions of section forty-three of this Ordinance shall *mutatis mutandis* apply to any failure by any executor or administrator to complete or amend any account framed and filed by him and not passed by the Accountant.

(4) The Registrar may in his discretion at the request of the Accountant and before any such account be passed refer or may request the executor or administrator to refer any question of principle or any point of law or the interpretation of any Ordinance arising thereon to the Court under the provisions of the Administration Ordinance, 1887, to be argued in chambers. Or the Court may in its discretion decide the question without argument and direct the Accountant to certify accordingly; provided always that should the Court think fit any such matter referred to it may be referred for the decision of the Full Court on a special case.

47.—(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 such estate or from any person, who as heir, legatee or creditor shall be entitled on administration to the whole or any portion of such estate to such remuneration as may have been 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 such as shall be determined and fixed by the Registrar according to the circumstances of each particular case:

subject to the review of the Court upon the application of such executor or administrator or of any person having an interest in such estate.

Provided always that if any executor or administrator shall fail to administer any estate with due diligence or fidelity or shall fail to file the accounts of his administration and distribution of the estate within twelve months from the date on which probate or letters of administration were granted to him and shall have no lawful and sufficient excuse for such failure it shall be competent for the Registrar to disallow the whole or any portion of the remuneration which such executor or administrator might otherwise have been entitled to receive in respect of his administration of such estate subject to the review of the Court.

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

Duties of executor or administrator with regard to property bequeathed with limited interest with eventual right to heir in remainder.

48. In case the owner of any immovable property shall at his death have bequeathed a fiduciary, usufructuary or other limited interest in such property to any person and shall have directed by his will that such property should devolve after the expiration of such limited interest upon any other person or persons certain or uncertain, then the executor or administrator of the estate of such deceased owner shall upon or before framing any administration and distribution account of the estate transport the property to the person immediately entitled to such limited interest therein with an express reservation in such transport of the rights of such other person or persons.

Nothing herein contained shall affect the right of any executor administrator to sell and transport any immovable property for the purpose of paying the debts of the deceased owner thereof, provided however that the sanction of the Court be obtained for such sale and transport if there are minor children surviving. Nor shall the passing of any transport under this section be deemed to determine whether the interest bequeathed is a usufructuary or fiduciary interest.

Holder of limited interest compelled by motion to accept transport.

49. In case any person to whom a fiduciary, usufructuary or other limited interest has been bequeathed as in section forty-eight of this Ordinance mentioned shall not renounce such bequest and yet shall refuse to accept transport thereof in terms of the said section, or in case it shall be impossible for the executor or administrator of the former owner of the said property to pass transport of any such limited interest to any such person as aforesaid for any reason whatsoever the said executor or administrator may apply to the Court on motion for an order compelling the said person

to do all things therein in his power necessary to enable a transport of the said limited interest to be passed as required by the sections aforesaid; and the Court may make such order upon the motion as in the circumstances it may deem meet.

50. A surviving spouse shall have the right to receive from the executor or administrator and to retain the inheritance of his or her minor children until their majority, and in case of immovable property to accept transport in the name of any such minor, provided that

Powers of surviving spouse and duties of executor regarding inheritances of minor children.

- (1) If the deceased spouse shall by will have directed that the said inheritances shall be otherwise dealt with nothing herein contained shall be taken to prevent the executor or administrator from carrying into effect the provisions of such will;
- (2) Any such right of a surviving parent may at any time be limited or revoked by the Court on application, subject to such conditions as the Court may impose;
- (3) In the event of the death of any such minor child before reaching majority the inheritance of any child so dying shall at once become payable.

51. Any person 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 or unreasonably delays the delivery of such grosse or deed to such executor or administrator shall be liable to pay all reasonable costs to which the executor or administrator may be put in obtaining the order of a competent Court declaring him entitled to the possession of the said grosse or deed, or in obtaining a certified copy thereof, and shall be liable in addition to such penalty not exceeding fifty dollars as such Court may impose; but the legal rights or position of such person shall not be affected by his delivery of such grosse or deed in terms of this section.

Delivery of grosse or deed.

PART IX.

THE GUARDIANS' FUND.

52. All money paid to the Registrar under the provisions of section forty-one of this Ordinance shall form and become part of the fund to be known as "the Guardians' Fund" and whenever any such money shall be received by the Registrar he shall open an account in his books with the person to whom or the estate to which such money belongs or if in the case of minor heirs or beneficiaries it is more convenient the account may be opened in the name of the estate from which the money is derived.

The Guardians' Fund.

53. Interest may be allowed on any sum of money so received by the Registrar from such date at such rate and from such public moneys as the Combined Court may determine.

Interest on minors' moneys.

54.—(1) All moneys paid to the Registrar under the provisions of this or any other Ordinance for the purpose of being placed to the credit of the Guardians' Fund shall unless the Court shall otherwise direct be forthwith paid over to the Public Trustee who may invest them in Government securities or may deposit them

Moneys to be paid over to and out by the Public Trustee.

in the Government Savings Bank, or make such other investment as the Court shall approve.

(2) The Public Trustee shall at the request of the Registrar or, when moneys are paid into the Guardians' Fund under any order of Court, on an order of Court, pay out of the said Fund any sum of money which is placed to the credit of any person in the books aforesaid to any person by law or such order of Court respectively entitled to receive the same.

55. 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' Funds to the credit of any person unknown or not residing and not having any known legal representative in this Colony and shall cause the same to be published in the *Gazette*.

56. Any person claiming any 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 such claimant shall apply by petition to the Governor-in-Council whereupon the Governor-in-Council if he shall see fit may authorize the Public Trustee to pay out such sum of money or shall refer the party to establish his claim by due course of law in which latter case the Public Trustee shall make such defence in law as he may be legally advised; provided always that nothing herein contained shall be construed to hinder or prevent the Governor and Combined Court 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 any person whom he may consider to have an equitable claim thereto notwithstanding that the same may be prescribed and barred by law.

PART X.

GENERAL.

57. The Registrar shall preserve for record in his office all original wills, death notices, 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 such record and obtain a copy thereof or extract therefrom on payment of the prescribed fee or fees: Provided always that any Government Officer shall be allowed and is hereby authorized without the payment of any fee to inspect any such record aforesaid and to take a copy thereof or extract therefrom whenever it shall be necessary or expedient that the same should be done by any such person in the discharge of the duties of his office.

58. When the Registrar shall be plaintiff, applicant, defendant or respondent in any action or matter instituted by him 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 any such action or matter that the Court may order to be paid.

List of moneys belonging to absent or unknown heirs to be published annually.

Claims to moneys paid over.

Records, and Searches.

Registrar not personally liable for costs.

59. Every person to whom probate or letters of administration shall be granted after the date of the taking effect of this Ordinance for the administration of the estate of any deceased person whether such deceased person shall have died prior to the said date or not shall be subject to and conform with the provisions of this Ordinance and shall administer the estate in accordance therewith: Provided, however, that where the Public Trustee undertakes the administration of the estate of deceased persons under the provisions of section five of the Immigration Ordinance, 1891, Amendment Ordinance, 1905, or under the provisions of section four of the Public Trustee Ordinance, 1910, or under any amendment of these Ordinances, he shall not be required to conform to the requirements of this Ordinance with the exception of taking out a grant of probate or letters of administration.

This Ordinance applicable to all executors and administrators with proviso as to Public Trustee.

60. The Registrar shall and is hereby authorized 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 all such fees as are prescribed under the provisions of any Rules of Court.

Fees.

61. The Governor and the Court of Policy may from time to time frame regulations:—

Rules and Regulations.

- (a) For the better carrying into effect of the provisions of this Ordinance;
- (b) For the custody and preservation of the records, securities and other effects of the Registrar's Office under the provisions of this Ordinance;
- (c) For the payment of money into and out of the Guardians' Fund;
- (d) For the efficient examination of liquidation, administration and distribution accounts;
- (e) Generally for the management and good conduct of the business of the Registrar's Office 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; provided, however, that until such forms are prescribed such forms as are specified in the First and Second Schedules hereto shall be used in respect of the acts, matters and things therein set out.

62. The Deceased persons Estates Ordinance, 1909, is hereby repealed.

Repeal.

(Section 63 repealed and new section substituted by section 2 of Ordinance No. 17 of 1917.)

FIRST SCHEDULE.

Section 3.

DEATH NOTICE.

Pursuant to the provisions contained in the Deceased Persons Estates Ordinance, 1917.

- 1. Name of the deceased
- 2. Birthplace and nationality of the deceased

- 8. Names and addresses of the parents of the deceased
 - Father
 - Mother
- 4. Age of the deceased years months.
- 5. Occupation in life of the deceased
- 6. Married or unmarried, widower or widow
- (a) Name of surviving spouse (if any), and whether married in community of property or not
- (b) Name or names and approximate date of death of pre-deceased spouse or spouses
- (c) Place of last marriage
- 7. The day of the decease on.....19...
 - House
- 8. Where the person died? Town or place
- County
- 9. Names of children of deceased, and whether majors or minors

State separately the children born of different marriages and give the date of birth of each minor. Names must be written out in full. If there are no children, and either or both parents be dead, then give the names and addresses of the brothers and sisters of deceased.

- 10. Has the deceased left any movable property?
- 11. Has the deceased left any immovable property?
- 12. Estimated value of the estate
- 13. Has the deceased left a will?

Dated at.....the.....day of.....19.....

(State in what capacity).

This notice must be filled up and signed by the nearest relative or connection of the deceased, who shall at the time be at, or near, the place of death—or, in the default of such near relative or connection, by the person who at, or immediately after, the death shall have the chief charge of the house or the premises in which the death shall occur, and must be sent to the Registrar at Georgetown and filed in his office within thirty days of the death.

(Section 23.)

SECOND SCHEDULE.

PROBATE.

IN THE SUPREME COURT OF BRITISH GUIANA.

BE IT KNOWN THAT.....

..... of
 died on the of at

AND BE IT FURTHER KNOWN that on the day of
the last will and testament (a copy whereof is hereunto annexed)
 of the said deceased was deposited with proof of due execution in the Registry of
 Court and that Administration of all the estate which by law devolves to and
 vests in the personal representative of the said deceased was granted by the
 above-mentioned Court to of

Dated the.....day of.....19

[L.S.]

Registrar.

LETTERS OF ADMINISTRATION.

(Section 23.)

IN THE SUPREME COURT OF BRITISH GUIANA.

BE IT KNOWN that

..... of
died on the of
at intestate.

Sworn at.

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

(a) or as the
case may be.

Dated the.....day of.....19

[L.S.]

Registrar.