

ADMINISTRATION AND PROBATE ORDINANCE 1937-1940. ⁽¹⁾

An Ordinance Relating to the Administration of the Estates of Deceased Persons.

BE it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1935*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Administration and Probate Ordinance 1937-1940*.⁽¹⁾ Short title.
Amended by
No. 3 of 1934,
s. 50.
2. This Ordinance shall commence on a date to be fixed by the Administrator by notice in the *New Guinea Gazette*.⁽¹⁾ Commencement.
3. This Ordinance is divided into Parts, as follows:— Parts.
 - Part I.—Preliminary.
 - Part II.—Administration.
 - Part III.—Grant of Representation.
 - Division 1.—Jurisdiction of Supreme Court.
 - Division 2.—Caveats.
 - Division 3.—Effect of Grant of Representation.
 - Division 4.—Rights, Powers, Duties, and Liabilities of
Executors and Administrators.
 - Division 5.—Commission, Charges, and Costs.

(1) The *Administration and Probate Ordinance 1937-1940* comprises the *Administration and Probate Ordinance 1937*, as amended by the other Ordinances referred to in the following Table:—

ORDINANCES OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
<i>Administration and Probate Ordinance 1937</i> (No. 8 of 1937)	3.3.1937	22.6.1937	1.1.1938 (<i>N.G. Gaz.</i> of 30.10.1937)
<i>Administration and Probate Ordinance</i> (No. 2) 1937 (No. 26 of 1937)	25.8.1937	31.12.1937	1.1.1938 (Sec. 2, <i>Administration and Probate Ordinance</i> (No. 2) 1937)
<i>Administration and Probate Ordinance 1940</i> (No. 2 of 1940)	2.4.1940	15.6.1940	1.1.1938 (Sec. 2, <i>Administration and Probate Ordinance 1940</i>)

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Part IV.—Small Estates.

Part V.—Recognition of Foreign Grants.

Part VI.—Curator of Intestate Estates.

Part VII.—Procedure.

Part VIII.—Miscellaneous.

Repeal and
saving.

4.—(1.) The *Probate and Administration Ordinance* 1936 is repealed.

(2.) Notwithstanding the provisions of this Ordinance and the repeal of the *Probate and Administration Ordinance* 1913-1915^(1A) of the Territory of Papua in its application to the Territory of New Guinea, the *Probate and Administration Ordinance* 1913-1915 of the Territory of Papua in its application to the Territory of New Guinea as amended by the *Probate and Administration Ordinance* 1936 shall continue to apply to the real and personal estate of persons who have died before the commencement of this Ordinance.

(3.) All rules⁽²⁾ made under the *Probate and Administration Ordinance* 1913-1915 of the Territory of Papua in its application to the Territory of New Guinea as amended by the *Probate and Administration Ordinance* 1936 in force at the commencement of this Ordinance shall, unless inconsistent with this Ordinance, be deemed to be made under this Ordinance.

(4.) All persons appointed under the *Probate and Administration Ordinance* 1913-1915 of the Territory of Papua in its application to the Territory of New Guinea as amended by the *Probate and Administration Ordinance* 1936 and holding office at the commencement of this Ordinance shall be deemed to be appointed under this Ordinance.

(5.) Nothing in this Ordinance shall repeal, alter, or affect any of the provisions of the *Native Administration Ordinance* 1921-1934⁽³⁾ or the Regulations made under that Ordinance.

Definitions.

5. In this Ordinance, unless the contrary intention appears—
“administration” includes all letters of administration of the real and personal estate of deceased persons whether with or without the will annexed, and whether granted for general, special, or limited purposes, exemplification of letters of administration and such other formal

(1A) The *Probate and Administration Ordinance* 1913-1915 of the Territory of Papua was repealed in its application to the Territory of New Guinea by the *Laws Repeal and Adopting Ordinance* 1937.

(2) See *The Rules of the Central Court regulating the investment of moneys held by the Curator of Intestate Estates*, printed on p. 4681. The *Rules of the Central Court* (Papua, adopted) dated 5.5.1914 and published in *Papua Govt. Gaz.* of 4.6.1914, and the *Rules of the Central Court* (undated) published in *N.G. Gaz.* of 16.10.1922 are, *semble*, inconsistent with and superseded by the *Administration and Probate Ordinance* 1937-1940, and accordingly have not been reprinted.

(3) Now the *Native Administration Ordinance* 1921-1938.

evidence of the letters of administration purporting to be under the seal of a court of competent jurisdiction as is, in the opinion of the Supreme Court, deemed sufficient, and orders to the Curator to administer or to collect;

“administrator” includes the Curator and any other person to whom administration is granted;

“Curator” means the Curator of Intestate Estates appointed or deemed to be appointed under this Ordinance;

“deceased person” or “the deceased” means a person who dies after the commencement of this Ordinance;

“portion of His Majesty’s Dominions” includes any territory which is under His Majesty’s protection or in respect of which a mandate under the League of Nations has been accepted by His Majesty;

“prescribed” means prescribed by Rules;

“probate” includes exemplification of probate or any other formal document, purporting to be under the seal of a court of competent jurisdiction, which, in the opinion of the Supreme Court, is deemed sufficient;

“purposes of administration” includes the payment in due course of administration of the debts, funeral and testamentary expenses, duties, and commission, and the costs, charges, and expenses of the executor or administrator, and any costs which may be ordered to be paid out of the estate;

“real estate” includes any lease for twenty-one years and upwards;

“Registrar” means Registrar of the Supreme Court;

“Registrar of Titles” means the Registrar of Titles appointed under the *Lands Registration Ordinance 1924-1936*;⁽⁴⁾

“representation” means the probate of a will and administration;

“Rules” means rules made or deemed to be made under this Ordinance, or under any Ordinance, applicable to matters arising under this Ordinance.

PART II.—ADMINISTRATION.

6.—(1.) Subject to the *Public Service Ordinance 1922-1936*,⁽⁵⁾ Curator, the Administrator may, by notice, appoint any officer of the Public Service of the Territory to be the Curator of Intestate Estates.

(4) Now the *Lands Registration Ordinance 1924-1939*.

(5) Now the *Public Service Ordinance 1922-1940*.

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(2.) The Administrator may appoint any officer of the Public Service of the Territory to be the Acting Curator of Intestate Estates during any temporary vacancy in the office of Curator or during the illness, absence from his office or from the Territory, or suspension from duty of the Curator, and the Acting Curator shall have all the powers and functions and perform all the duties of the Curator.

PART III.—GRANT OF REPRESENTATION.

Division 1.—Jurisdiction of Supreme Court.

Property of deceased to vest in Chief Judge.

7. Where a person dies, his real and personal estate, until probate or administration is granted in respect thereof, shall vest in the Chief Judge of the Territory, or, if there is no Chief Judge of the Territory, then in the senior Judge for the time being, in the same manner and to the same extent as formerly in the case of personal estate in England it vested in the Ordinary.

Power to grant probate or administration where any person leaves property in the Territory.

8. The Supreme Court shall have jurisdiction to grant probate of the will or administration of the estate of any deceased person leaving property, whether real or personal, within the Territory.

Probate to one or more executors, reserving leave to apply.

9. The Supreme Court may, if it thinks fit, grant probate to one or more of the executors named in any will, reserving leave to the other or others who have not renounced to come in and apply for probate at some future date.

When probate &c. may be issued by Registrar.

10.—(1.) Subject to the provisions of this section, probate or administration may, upon application to the Registrar, supported by affidavits upon which for the time being the Supreme Court would, in the opinion of the Registrar, grant the probate or administration, be issued by the Registrar as of course in the name and under the seal of the Supreme Court, and every such probate or administration shall be deemed to have been granted by the Supreme Court.

(2.) The Registrar shall not, without an order of the Supreme Court, issue probate or administration—

(a) in any case where a caveat has been lodged; or

(b) in any case in which it appears to him to be doubtful whether the probate or administration ought to be granted.

(3.) Whenever the Supreme Court makes an order for the grant of probate or administration, the probate or administration shall be issued by the Registrar in the name and under the seal of the Supreme Court.

Administration and Probate Ordinance 1937-1940.

11. The seal of the Supreme Court shall not be affixed to any probate or letters of administration except upon an affidavit—

Sealing of probate and letters of administration.

- (a) that notice of the intention to apply in that behalf has been published, in the *New Guinea Gazette* and in a newspaper published in the Territory, at least fourteen days before the making of the affidavit;
- (b) that no caveat has been lodged; and
- (c) that a search has been made in the office of the Registrar for a will of the deceased.

12. Subject to this Ordinance and the Rules, the practice and procedure with reference to the granting of administration of the personal estate of an intestate shall be applicable, so far as may be, to administration of real estate, and administration of both real and personal estate may be granted in and by the same letters.

Practice as to granting administration of real and personal estate.

13. The Supreme Court may grant administration of the estate of an intestate to any of the following persons, being of the full age of twenty-one years:—

To whom administration may be granted.

- (a) The husband or wife of the deceased;
- (b) One or more of the next of kin;
- (c) The husband or wife conjointly with one or more of the next of kin; or
- (d) If there is no such person as is referred to in either of the last three preceding paragraphs, or if there is no such person as is referred to in either of the last three preceding paragraphs within the jurisdiction who—
 - (i) is, in the opinion of the Supreme Court, fit to be trusted; or
 - (ii) when duly cited, appears and prays for administration,

such person, whether a creditor or not of the deceased, as the Supreme Court thinks fit.

14.—(1.) Any person named expressly or by implication as executor, either alone or jointly with any other persons may, any law or custom to the contrary notwithstanding, instead of himself applying for probate, authorize any trustee company to apply to the Supreme Court for probate, either alone, or jointly with any other persons entitled to apply for probate, in the same manner as if the trustee company had been originally named in the will in the place of the person authorizing the application.

Probate to trustee company.

(2.) The application may be granted unless the testator has by his will expressed his desire that the office of executor is not to be

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delegated, or that the trustee company so applying is not to act in the trusts of his will.

(3.) Where under any law in force in the Territory the next of kin, entitled to obtain administration of the estate of any intestate, is empowered to authorize a trustee company to apply for administration of the estate, the words "next of kin" shall be deemed to include, and to have included, the husband or wife of the intestate when entitled to administration.

(4.) In this section "trustee company" means any company authorized by or under any law in force in the Territory to act as executor, administrator, or trustee.

On grant of administration, bond to be executed.

15. Every person to whom a grant of administration is made shall, previous to the issue of that administration, execute a bond to the Registrar to enure for the benefit of the Registrar for the time being, with two sureties, conditioned for duly collecting, getting in, and administering the real and personal estate of the deceased, which bond shall be in accordance with the prescribed form:

Provided that it shall not be necessary for the Curator or for any person obtaining administration to the use or for the benefit of His Majesty, or for any person or persons or body corporate specially exempted by law from the obligation to give or to execute the bond, to execute any such bond.

Amount of penalty on administration bond.

16. Subject to the provisions of the next succeeding section, the bond shall be in a penalty equal to the amount under which the property of the deceased is sworn, if that amount does not exceed Five thousand pounds, and shall be in a penalty of Five thousand pounds, where the amount exceeds that sum; but the Supreme Court or a Judge may, in any case, dispense with one or both of the sureties or direct that the penalty shall be reduced in amount, and may also, if it or he thinks fit, direct that more bonds than one shall be given so as to limit the liability of any surety to such amount as the Supreme Court or a Judge thinks reasonable, and may, in place of the bond, accept the security of any incorporated company or guarantee society approved by the Administrator, in accordance with such form and under such conditions as are prescribed.

Powers of Registrar as to sureties, penalty, &c.

17.—(1.) Notwithstanding anything contained in the last three preceding sections, but subject to the next succeeding sub-section, the Registrar, without any direction from the Supreme Court, may—

- (a) where the real and personal property of the testator or intestate is shown not to exceed Five hundred pounds, dispense with one or both of the sureties, or direct that the penalty of any bond required to be executed

shall be reduced in amount, or direct that more bonds than one shall be given so as to limit the liability of any surety to such amount as the Registrar thinks reasonable; and

- (b) in any case, in place of the usual administration bond with two sureties, accept the bond of any incorporated company or guarantee society, approved by the Administrator, in accordance with such form and in such manner as is prescribed.

(2.) The Registrar shall not, without an order of the Supreme Court or a Judge, take any action under the last preceding subsection, in any case in which it appears to him to be doubtful whether he ought to do so, or in any case in which any person interested in the estate or any creditor of the deceased lodges with the Registrar notice in writing objecting thereto.

18. The Supreme Court or a Judge may, on being satisfied that the conditions of any administration bond have been broken, order the Registrar to assign the bond to some person to be named in the order, and that person, his executors, or administrators shall thereupon be entitled to sue upon the bond in his or their own name or names as if it had been originally given to him, and shall be entitled to recover thereon as trustee for all persons interested the full amount recoverable in respect of any breach of the conditions of the bond.

Order may be made to assign bond.

19.—(1.) On being satisfied that there has been negligence or maladministration of the estate of which any person has obtained administration in the capacity of creditor, or that the condition of any administration bond executed by any person who has obtained administration in that capacity has been broken in any substantial particular, the Supreme Court or a Judge may, if the Supreme Court or Judge thinks fit, order the Registrar to assign the administration bond to the Curator or to some person to be named in the order.

Supreme Court may in creditor's administration order assignment of administration bond to Curator or some other person.

(2.) The Curator, or the person named in the order, shall thereupon be entitled to sue upon the bond as if it had been originally given to him, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach of the conditions of the bond.

(3.) The Supreme Court or a Judge may, if the Supreme Court or Judge thinks fit, upon making the order, remove the creditor from the position of administrator, and may grant administration to the Curator, or some person named in that order, to administer the estate.

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Application by
surety for
relief.

20. If, upon motion by a surety to an administration bond, it appears to the Supreme Court that—

- (a) the estate is being wasted, or is in danger of being wasted; or
- (b) the surety is being in any way prejudiced, or in danger of being prejudiced, by the act or default of the person administering the estate,

the Supreme Court may grant such relief as it thinks fit.

Renunciation or
non-appearance
by executor
renouncing
probate or
not acting or
not appearing
to a citation to
be treated as if
he had
renounced.

21. Where—

- (a) any person renounces probate of the will of which he is appointed an executor;
- (b) an executor appointed in a will survives the testator but dies without having taken probate; or
- (c) an executor named in a will is personally cited to take probate and does not appear to the citation,

the right of that person in respect of the executorship shall wholly cease, and the representation to the testator and the administration of his estate shall, without any further renunciation, go, devolve, and be committed in like manner as if that person had not been appointed executor.

Renunciation &c.
by person
appointed both
executor and
trustee of will.

22.—(1.) If a person who is appointed by will both executor and trustee thereof renounces probate or after being duly cited fails to apply for probate, the renunciation or failure shall be deemed to be a disclaimer of the trust contained in the will.

(2.) Where there is any such renunciation or failure or any such person dies before probate is granted to him or instead of applying for probate authorizes a trustee company to apply for administration with the will annexed and where administration with the will annexed is granted to a trustee company, the trustee company shall by virtue of the grant and without any further appointment be deemed to be appointed trustee of the will in the place of the person, thereby appointed.

(3.) In this section "trustee company" means any company authorized by or under any law in force in the Territory to act as executor, administrator, or trustee.

Administration
to guardian of
infant sole
executor.

23.—(1.) Where an infant is sole executor, administration with the will annexed may be granted to—

- (a) the guardian of that infant; or
- (b) such other person as the Supreme Court thinks fit,

until the infant has attained the full age of twenty-one years, with

full or limited powers to act in the premises until probate has been granted to the executor or administration has been granted to some other person.

(2.) The person to whom that administration is granted shall have the same powers vested in him as an administrator by virtue of an administration granted to him *durante minore aetate* of the next of kin.

24. When any person named as executor, or any husband or wife or the next of kin entitled to probate or administration is out of the jurisdiction, but has some person within the jurisdiction appointed under power of attorney to act for him or her respectively, administration may be granted to that attorney, but on behalf of the person entitled thereto, and on such terms and conditions as the Supreme Court thinks fit.

Administration to be granted to attorney in certain cases.

25.—(1.) The Supreme Court may—

(a) pending any suit touching the validity of the will of any deceased person, or for obtaining, recalling, or revoking any probate or any grant of administration; or

(b) during a contested right of administration,

appoint an administrator of the personal estate and the same or any other person to be receiver of the real estate of any deceased person, with such full or limited powers, and with or without a bond or sureties, as the Supreme Court thinks fit.

(2.) The Supreme Court may make such orders for the remuneration of the administrator or receiver out of the personal and real estate of the deceased as it thinks fit.

Administration *pendente lite* and receiver.

26. The Supreme Court may, in any case where a person dies—

(a) intestate;

(b) leaving a will but without having appointed an executor thereof; or

(c) leaving a will and having appointed an executor thereof who—

(i) is not willing and competent to take probate; or

(ii) is resident out of the Territory,

if it thinks it necessary or convenient, appoint some person to be the administrator of the estate of the deceased or of any part thereof, upon his giving such security (if any) as the Supreme Court directs, and every such administration may be limited as the Supreme Court thinks fit.

Power as to appointment of administrator.

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Proceeding where executor neglects to prove will.

27.—(1.) In any case where the executor named in a will—

(a) neglects or refuses to prove the will or to renounce probate thereof within three months from the death of the testator or from the time of the executor attaining the age of twenty-one years; or

(b) is unknown or cannot be found,

the Supreme Court may, upon the application of—

(c) any person interested in the estate;

(d) the Curator; or

(e) any creditor of the testator,

grant an order *nisi* calling upon the executor to show cause why probate of the will should not be granted to the executor, or, in the alternative, why administration with the will annexed should not be granted to the applicant.

(2.) Upon affidavit of service or of sufficient reasons for non-service of the order if the executor does not appear, or upon cause being shown, the Supreme Court may make such order thereon for the administration of the estate and as to costs as appears just.

Issue of special letters of administration.

28. If, at the expiration of six months from the death of any person, the executor to whom probate has been granted or the administrator is then residing out of the jurisdiction, the Supreme Court may, upon the application of any creditor, legatee, or next of kin, grant to the creditor, legatee, or next of kin so applying special letters of administration of the estate of the deceased person, nevertheless to cease upon an order being made for the rescission thereof as mentioned in section thirty of this Ordinance.

Special administrator to make certain affidavits.

29. The person applying for any such special grant shall, in addition to the oath usually taken by administrators, satisfy the Supreme Court by affidavit that the executor or administrator of the estate of the deceased person is resident out of the jurisdiction and that—

(a) the applicant is thereby delayed in recovering or obtaining payment of moneys or the possession of goods and chattels, or real estate, to which he is by law entitled; or

(b) the estate is liable to loss or waste.

On return of original executor or administrator special administration to be rescinded.

30.—(1.) On the return within the jurisdiction of the executor to whom probate has originally been granted, or the administrator, the executor or administrator may apply to the Supreme Court or a Judge to rescind the special grant of administration.

(2.) The Supreme Court or Judge, on the hearing of the application, may make an order to rescind the special grant of administration upon such terms and conditions as to security, costs, or otherwise as to the Supreme Court or Judge appear reasonable, and thereafter the original probate or administration shall be and remain as valid and effectual as if the special grant of administration had not been made.

31. Upon any order being made by the Supreme Court or a Judge for the rescission of any grant of special administration the special administrator shall be bound duly to account to the original executor or administrator, and to pay over all moneys received by him as such special administrator, and then remaining in his hands undisposed of, as the Supreme Court or a Judge may order.

Accounting by special administrator.

32. If the executor or administrator neglects to apply for an order for the rescission of the special administration, he shall, notwithstanding that the special administration remains unrescinded, be liable to answer and make good all claims and demands against the estate of the deceased to the extent of the assets which have come to his hands or which might have come to his hands but for his wilful neglect or default, including the neglect mentioned in this section.

Liability of executor or administrator neglecting to apply for rescission of special administration.

33. If, while any legal proceeding is pending in any court by or against any executor or administrator lawfully acting as such, the grant of probate or administration is revoked or rescinded, that court may order that the proceeding be continued by or against the new personal representative in like manner, as if the proceeding had been originally commenced by or against him, but subject to such conditions and variations (if any) as that court directs.

Revocation of grants not to prejudice actions or suits.

34.—(1.) Notwithstanding anything contained in any law in force in the Territory, where an executor or administrator to whom representation has been granted, or where an administrator who has been appointed under this section—

Discharge or removal of executor or administrator.

- (a) remains out of the Territory for more than two years;
- (b) desires to be discharged from his office of executor or administrator; or
- (c) after the grant or appointment, refuses, or is unfit, to act in the office, or is incapable of acting therein,

the Supreme Court or a Judge may order the discharge or removal of that executor or administrator, and the appointment of the Curator or some proper person or trustee company as administrator in place of the executor or administrator so discharged or removed, upon such terms and conditions as the Supreme Court or Judge

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thinks fit, and may make all necessary orders for vesting the estate in the new administrator, and as to accounts, and such order as to costs, as the Supreme Court or Judge thinks fit.

(2.) Notice of the application may be served, if the Supreme Court or a Judge thinks it necessary, upon such persons as the Supreme Court or Judge directs.

(3.) An executor or administrator so removed or discharged shall, from the date of the order, cease to be liable for acts and things done after that date.

(4.) Upon the appointment of the new administrator the property and rights vested in, and the liabilities properly incurred in the due administration of the estate by, the executor or administrator so discharged or removed, shall become and be vested in, and transferred to, the new administrator, who shall, as such, have the same privileges, rights, powers, duties, discretions, and liabilities, as if probate or administration had been granted to him originally.

Division 2.—Caveats.

35.—(1.) Any person may lodge with the Registrar a caveat against any application for representation at any time previous to the representation being granted.

(2.) Every such caveat shall set forth the name of the person lodging it, and an address within the town of Rabaul where notices may be served on him.

36. In every case in which a caveat is lodged, the Supreme Court may, upon motion on behalf of the person applying for representation supported by affidavits upon which, if there had been no caveat, representation would have been granted, make an order *nisi* for the grant of representation to the person applying, and every such order shall name a time for showing cause against it, and the Supreme Court may enlarge the order from time to time.

37. Every such order *nisi* and every order enlarging it shall be served on the caveator by delivering a copy thereof at the address mentioned in his caveat.

38. If, upon the day named in the order *nisi* or upon the day to which the order has been enlarged, the caveator does not appear, the order *nisi* may be made absolute upon an affidavit of service, but, if the caveator appears, the hearing shall be conducted in the same manner as nearly as may be as upon a trial, and the order *nisi* may be made absolute or discharged with or without costs as may be just, and, if the Supreme Court so directs, the costs may be paid out of the estate.

Caveat may be lodged.

When a caveat lodged, Supreme Court may grant order *nisi*.

Service of order *nisi*.

Proceeding where caveator does not appear.

39. Upon the hearing of any order *nisi*, the parties shall be at liberty, subject to the Rules, to verify their respective cases in whole or in part by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of the opposite party orally in open court, and after the cross-examination may be re-examined orally in open court by or on behalf of the party by whom the affidavit was filed.

Evidence on hearing of order *nisi*.

40. In any case in which a caveat is lodged by the Curator, the Supreme Court may, if it thinks fit, order costs to be paid to him out of the estate, whether the order *nisi* is discharged or not.

Costs where caveat lodged by Curator.

Division 3.—Effect of Grant of Representation.

41. Upon the grant of representation of the estate of any deceased person, all real and personal estate which any such person dies seised or possessed of, or entitled to, in the Territory, and which is unadministered at the date of the grant, shall, as from the death of that person, pass to and become vested in the executor to whom probate has been granted or the administrator (as the case may be) for all his estate and interest therein in the following manner:—

Real and personal estate to vest in executor or administrator.

- (a) On testacy, in the executor or administrator with the will annexed;
- (b) On intestacy, in the administrator; and
- (c) On partial intestacy, in the executor or administrator with the will annexed.

42. All real estate held by any person in trust or by way of mortgage, and vesting in pursuance of the last preceding section, shall, as from the death of that person, vest in his executor or administrator, subject to the trusts and equities affecting the estate.

Real estate held in trust.

43.—(1.) The real, as well as the personal, estate of every deceased person shall be assets in the hands of his executor to whom probate has been granted, or his administrator, for the payment of all duties and fees, and for the payment of his debts.

Property of deceased to be assets.

(2.) The executor or administrator for purposes of administration, may, subject to the provisions of sections fifty-three and fifty-four of this Ordinance, sell that real estate, or mortgage it with or without a power of sale, and convey it to a purchaser or mortgagee in as full and effectual a manner in law as the deceased person could have done in his lifetime.

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Real estate
to be held upon
trusts of will.

44. Subject to the provisions of this Part, the real estate of every such deceased person devising that estate by his will, shall be held by his executor to whom probate has been granted, or the administrator with the will annexed, according to the trusts and dispositions of the will.

Rights of
executor as
to real estate.

45. The executor to whom probate has been granted shall have the same rights, and be subject to the same duties, with respect to the real estate of his testator, as executors have, by the law in force in the Territory immediately prior to the commencement of this Ordinance, had or been subject to with reference to personal assets.

Administrator to
hold, on
intestacy, subject
to payment of
debts, in trust
for persons
entitled.

46.—(1.) Subject to the preceding provisions of this Part and to the provisions of the next four succeeding sections, and subject to the provisions of the *Legitimation Ordinance* 1934 and to the provisions of the *Adoption of Children Ordinance* 1936, the administrator on intestacy, or, in case of partial intestacy, the executor or administrator with the will annexed, as the case may be, shall hold the real and personal estate, vesting in him under this Ordinance, as to which any person dies intestate, in trust, as to the personal estate, for the persons who would be entitled thereto under the *Succession Act of 1867* of Queensland and the *Succession Act Declaratory Act 1884* of Queensland in their application to the Territory, and as to the real estate, in trust for and as if the real estate had been devised to those persons as tenants in common.

(2.) No executor as such shall be entitled to take beneficially any residue not expressly disposed of by the will of the testator, unless it appears by the will that he is intended so to take.

(3.) Nothing in this section shall affect or prejudice any right to which any executor, if this Ordinance had not been made, would have been entitled in cases where there is not any person who would be entitled to the testator's estate in respect of any residue not expressly disposed of.

Husband's
interest in
wife's estate
and vice versa.

47. Any husband or wife shall be entitled on the death of the other, as to the property as to which he or she dies intestate, to the following shares only:—

- (a) Where there is issue surviving, one-half share of the property;
- (b) Where there is no issue surviving, and in case of total intestacy—
 - (i) where the net value of the property of the deceased does not exceed the sum of One thousand pounds, the whole of the property;
 - or

- (ii) where the net value of the property exceeds the sum of One thousand pounds, the sum of One thousand pounds absolutely and exclusively, which sum with interest thereon from the date of the death until payment, at the rate of Four pounds per centum per annum, shall be a charge upon the whole of the property, and in addition thereto, one-half share of the residue of the property after the payment of the sum of One thousand pounds and interest (if any); and
- (c) Where there is no issue surviving and in case of partial intestacy, one-half share of the property.

48. Subject to the last preceding section, the property of a deceased husband or wife as to which he or she dies intestate shall be divisible among the next of kin of the deceased. Next of kin.

49. No estate by courtesy or right of dower or any equivalent estate shall arise out of the real estate as to which any person dies intestate. No dower or courtesy.

50. Any husband or wife so entitled to share in real estate shall be bound to accept the value thereof in lieu of partition if so desired by all the persons entitled jointly with him or her. Value to be accepted in lieu of partition.

51. Where any person dies intestate, and the net value of the share of his real and personal property descending to an infant issue of the intestate does not, at the time of the death, exceed One thousand pounds, the Supreme Court or a Judge may, on the application of the infant or of any such infants or of any person on his or their behalf, authorize the administrator to expend the whole or any portion of the share or shares of the infant or infants in his or their respective maintenance, advancement, or education. Expenditure of infant's share in maintenance.

52. The net value of the property referred to in the last preceding section and section forty-seven of this Ordinance shall be ascertained by deducting from the gross value thereof all debts, funeral and testamentary expenses of the intestate, and all other lawful liabilities and charges to which the property may be subject. Net value.

Division 4.—Rights, Powers, Duties, and Liabilities of Executors and Administrators.

53.—(1.) Subject to this section, executors and administrators may, without the consent of any person or the order of a court— Powers of executors and administrators as to sale, mortgage, or lease of real estate.

- (a) sell or mortgage the real estate of the deceased person for purposes of administration;

WILLS AND INTESTACY—

- (b) sell the real estate of the deceased person as to which he died intestate, for purposes of distribution or division amongst the persons entitled; or
- (c) lease the real estate of the deceased person in possession for any term not exceeding three years.

(2.) Any conditions may be imposed on the exercise of any such power of sale, mortgage, or lease by an administrator or executor, and either generally or in the case of a particular sale, mortgage, or lease, by rules of court, or by the Supreme Court in the grant of administration (if any), or by other order.

(3.) No purchaser, nor the Registrar of Titles or other person registering or certifying title under any sale, mortgage, or lease under this section, shall be bound to inquire whether the powers mentioned in sub-section (1.) of this section or any of them are being or have been exercised for the purposes specified in that sub-section, and the receipt of the executor or administrator shall be a sufficient discharge, and shall exonerate the persons paying the moneys from any responsibility for the application of the moneys expressed to have been so received.

(4.) Some or one only of several executors or administrators shall be entitled to exercise those powers with the leave of the Supreme Court, and not otherwise, and the Supreme Court may make such orders as it thinks fit for the purpose of carrying out any such sale, mortgage, or lease.

Supreme Court
or a Judge may
make special
order.

54. The Supreme Court or a Judge may, where administration has been granted, upon the application of the administrator, or in case of partial intestacy the executor or administrator with the will annexed, or of any person beneficially interested, and after such previous notice to the other parties and inquiry as the Supreme Court or Judge thinks fit, order and direct the course of proceedings which shall be taken in regard to—

- (a) the time and mode of sale of any real estate;
- (b) the letting and management thereof until sale;
- (c) the application for maintenance or advancement or otherwise of shares or income of shares of infants; and
- (d) the expediency and mode of effecting a partition if applied for,

and generally in regard to the administration of the real estate for the greatest advantage of all persons interested.

55.—(1.) The Supreme Court may, where it thinks it beneficial to do so and subject to such conditions as it thinks fit to impose, authorize an executor or administrator—

Supreme Court may authorize postponement of realization and carrying on of business.

- (a) to postpone for such period as the Supreme Court thinks fit, the realization of the real or personal estate of a deceased person, or any part of that estate; or
- (b) to carry on, for such period or periods as the Supreme Court from time to time thinks fit, the business, trade, or occupation of the deceased person, and for that purpose to use therein such estate or part thereof.

(2.) An order under this section may be made either *ex parte* or on such notice as the Supreme Court in any case thinks proper, and may be varied from time to time as the Supreme Court thinks fit.

56.—(1.) Where, upon any inquiry under section fifty-four of this Ordinance, the Supreme Court or Judge is satisfied that a partition of the real estate, or any part thereof, will be advantageous to the parties interested therein, the Supreme Court or Judge may appoint one or more arbitrators to effect the partition.

Supreme Court or Judge may order partition in a summary way.

(2.) The report and final award of the arbitrators setting forth particulars of the land allotted to each party interested shall, when signed by them and confirmed by the order of the Supreme Court or Judge, and registered in the office of the Registrar of Titles, be effectual without the necessity of any further conveyance to vest in each party the land so allotted to him, and an office copy of the award so signed, confirmed, and registered, shall for all purposes be equivalent to an indenture of conveyance to each party of the lands allotted to him.

(3.) In the case of land subject to the provisions of the *Lands Registration Ordinance 1924-1936*,⁽⁴⁾ each party shall be entitled to have issued to him a certificate of title for the land so allotted to him.

Sub-section (3) amended by No. 26 of 1937, s. 3.

(4.) If the allotment is made subject to the charge of any money payable to any other party interested for equalizing the partition, the charge shall take effect according to the terms and conditions in regard to time and mode and otherwise which are expressed in the award without the necessity of any further instrument being made or executed.

(5.) In the case of land subject to the provisions of the *Lands Registration Ordinance 1924-1936*,⁽⁴⁾ the certificate of title shall issue subject to the charge, unless the charge is satisfied.

(4) Now the *Lands Registration Ordinance 1924-1939*.

WILLS AND INTESTACY—

Personal representative not required to continue to act against own consent.

57. A personal representative shall not be required against his own consent to continue the duty of a trustee by managing the property during an enforced suspension of sale, but shall be entitled, upon that suspension being ordered, to relinquish his trust to such person as the Supreme Court or a Judge appoints.

In suits, executor or administrator to represent real estate.

58. In all suits concerning the real estate of a deceased person, his executor to whom probate has been granted or administrator shall represent his real estate so long as it remains vested in him, and the persons interested therein, in the same manner and to the same extent as, in suits concerning personal estate, the executor or administrator represents the estate and the persons interested therein.

All debts to stand in equal degree.

59.—(1.) In the administration of the estate of every person who dies after the commencement of this Ordinance, all the creditors of every description of that person shall, notwithstanding anything to the contrary contained in any law of the Territory, be treated as standing in equal degree and be paid accordingly out of the assets of the deceased person.

(2.) In the administration of the estate of any person in respect of which representation is granted under this Ordinance, no debt or liability of that person shall be entitled to any priority or preference by reason only that it is due to an executor or administrator of the estate.

(3.) This Ordinance shall not prejudice or affect any mortgage, lien, charge, or other security which any creditor may hold or be entitled to for payment of his debt.

(4.) Nothing in this Ordinance shall affect the provisions of any law of the Territory protecting life assurance or other policies against creditors.

Administration of assets.

60.—(1.) Where the estate of a deceased person is not solvent, his real and personal estate shall be administered in accordance with the rules set out in Part I. of the Schedule to this Ordinance.

(2.) Where the estate of a deceased person is solvent, his real and personal estate shall, subject to the Rules and to the provisions hereinafter contained as to charges on property of the deceased and to the provisions (if any) contained in his will, be applicable towards the discharge of the funeral, testamentary, and administration expenses, debts, and liabilities payable thereout in the order mentioned in Part II. of the Schedule to this Ordinance.

(3.) Nothing in this section shall affect or be construed as affecting the provisions of the *Succession Duties Ordinance 1922-1927*⁽⁶⁾ relating to the payment of duty.

(6) Now the *Succession Duties Ordinance 1922-1941*.

61.—(1.) Where a person dies possessed of, or entitled to, or under a general power of appointment by his will disposes of, an interest in property which at the time of his death is charged with the payment of money, whether by way of mortgage, charge, or otherwise (including a lien for unpaid purchase money), and the deceased has not by will, deed, or other document signified a contrary or other intention, the interest so charged shall as between the different persons claiming through the deceased be primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

Charges on property of deceased to be paid primarily out of the property charged.

(2.) Such contrary or other intention shall not be deemed to be signified—

(a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate or his residuary real and personal estate or his residuary real estate; or

(b) by a charge of debts upon any such estate,

unless such intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3.) Nothing in this section shall affect the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

62.—(1.) When any real estate not under the provisions of the *Lands Registration Ordinance 1924-1936*⁽⁴⁾ is devised to any person by a will duly proved under the provisions of this Ordinance, the executor of the will or the administrator with the will annexed may, as the executor or administrator, instead of executing a conveyance or transfer to that person, sign an acknowledgement, in accordance with the prescribed form, that the devisee is entitled to that real estate for the estate for which it is devised to him.

Executor may sign acknowledgement in lieu of conveyance.

(2.) The acknowledgement may be registered at the office of the Registrar of Titles, and upon registration the real estate shall vest in the devisee for the estate for which it is devised to him in the same way, and subject to the same trusts and liabilities, as if the executor or administrator had executed a conveyance or transfer thereof.

63. If the executor or administrator, after request in writing, neglects or refuses to—

Summary application for legacy, &c.

(a) sign that acknowledgement; or

(b) execute a conveyance or transfer of land devised to the devisee; or

(4) Now the *Lands Registration Ordinance 1924-1939*.

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- (c) pay or hand over to the person entitled any legacy or residuary bequest,

the devisee or person may apply to the Supreme Court or a Judge, calling upon the executor or administrator to show cause why he should not comply with the request, and the Supreme Court or Judge may make such order in the matter as it or he thinks fit.

Executor or administrator to pass accounts.

64.—(1.) Every person to whom representation is granted shall file an inventory of the estate of the deceased and pass his accounts relating thereto in such cases, within such time, and from time to time, and in such manner as is prescribed, or as the Supreme Court specially orders.

(2.) Every such person shall be subject to any special order that the Supreme Court, on the motion of any person interested, makes as to the production and verification of his accounts.

(3.) The order of the Supreme Court allowing any such account shall be *prima facie* evidence of its correctness, and shall, after the expiration of three years from the date of the order, operate as a release to the person filing it, excepting so far as it is shown by some person interested therein that an error or omission or fraudulent entry has been made in the account.

(4.) The provisions of this section shall not apply to the Curator.

Passing and allowance of accounts of executors and administrators.

65. The Registrar in the name and under the seal of the Supreme Court may make any order or grant any certificate which the Supreme Court may make or grant—

- (a) in and about the passing and allowance of the accounts of executors and administrators and the costs in connection therewith where the net value of the property of the deceased does not exceed Two thousand pounds and no commission is applied for;
- (b) in and about the granting of further time to executors and administrators to file and pass their accounts in any case where no objection is raised thereto by any person interested or no doubt or difficulty arises; and
- (c) in and about the investment of moneys by the Curator under section one hundred and sixteen of this Ordinance.

If accounts not exhibited, Registrar to summon administrator before Supreme Court, which may inflict penalty.

66.—(1.) In case any such executor or administrator neglects, for one month after the expiration of the period fixed, to file that inventory, or to pass those accounts, the Registrar shall cause the executor or administrator to be notified of the neglect.

(2.) In case of further neglect for a period of one month, the

Registrar shall cause the executor or administrator to be summoned before the Supreme Court to show cause why he should not be ordered to file the inventory or exhibit the account to the Supreme Court forthwith.

(3.) If the executor or administrator does not, within the prescribed time, or within such further time as is allowed him by the Supreme Court, file, pass, or exhibit the inventory or account in the prescribed manner, he shall be liable to attachment in accordance with the practice of the Supreme Court.

67. Proceedings being taken under the last preceding section shall not prejudice the right to proceed against the executor or administrator for an account and administration, or prevent the Supreme Court from ordering the assignment of any bond to any person with a view to enforcing the penalty thereof.

Proceedings under last section not to prejudice proceedings on bond.

68.—(1.) The Supreme Court or a Judge may make such order, as the Supreme Court or Judge thinks fit, with reference to the distribution or application of any moneys which the executor or administrator or Curator has in hand, or as to the residue of the estate.

Supreme Court may make order as to disposal of moneys in hands of executor &c.

(2.) No final order for distribution shall be made except upon notice to all parties entitled.

69.—(1.) Where any probate or administration is revoked or rescinded under this Ordinance, any payment *bona fide* made to any executor or administrator under the probate or administration, before the revocation or rescission thereof, shall be a legal discharge to the person making the payment.

Payments under revoked probates or administrations valid.

(2.) The executor or administrator who has acted under any such revoked or rescinded probate or administration may retain and reimburse himself, or shall be entitled to be reimbursed for, an amount equal to the amount of any payments made by him which the person to whom probate or administration is afterwards, or was originally, granted, might have lawfully made.

70. All persons making or permitting to be made any payment or transfer, *bona fide*, upon any probate or administration or order granted in respect of the estate of any deceased person under the authority of this Ordinance shall be indemnified and protected in so doing, notwithstanding any defect or circumstance whatsoever affecting the validity of the probate or administration or order not then known to those persons.

Persons making payments upon probate &c. granted for estate of deceased person to be indemnified.

71.—(1.) Where an executor or administrator has given such or the like notices as, in the opinion of the court in which the executor or administrator is sought to be charged, would have been given by

Distribution of assets after notice given by executor or administrator.

WILLS AND INTESTACY—

the Supreme Court in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, the executor or administrator may, at the expiration of the time named in the notices, or the last of the notices, for sending in those claims, distribute the assets of the testator or intestate, or any part thereof, amongst the persons entitled thereto, having regard to the claims of which the executor or administrator has then notice.

(2.) The executor or administrator shall not be liable for the assets or any part thereof so distributed to any person of whose claim he has not had notice at the time of the distribution.

Claims barred
against executor
or administrator
in certain cases.

72.—(1.) When an executor or administrator has given the notices mentioned in the last preceding section, and a claim against the estate is sent in to him, he may, if he disputes the claim, serve upon the person by whom or on whose behalf the claim was sent in, a notice calling upon him to take proceedings to enforce his claim within a period of six months, and to duly prosecute the claim.

(2.) If, after that period of six months has expired, that person does not satisfy the Supreme Court or a Judge that he is duly prosecuting his claim, the Supreme Court or a Judge may, on application by the executor or administrator, make an order barring the claim against the executor or administrator, subject to such conditions as appear just, or make such other order as the Supreme Court or Judge thinks fit.

Distribution of
estate by
executors and
administrators.

73.—(1.) Where an executor or administrator liable as such, under any lease or agreement for a lease, granted or assigned to, or made and entered into with, the testator or intestate whose estate is being administered, to the rents, covenants, or agreements, contained in any such lease or agreement for a lease has—

- (a) satisfied all such liabilities under the lease, or agreement for a lease, as have accrued due and been claimed up to the assignment mentioned in paragraph (c) of this sub-section; and
- (b) set apart a sufficient sum to answer any future claim that may be made in respect of any fixed and ascertained sum, covenanted or agreed by the lessee, to be laid out on the property demised, or agreed to be demised, although the period for laying out the sum may not have arrived; and
- (c) assigned the lease, or agreement for a lease, to a purchaser, or to a legatee, devisee, or other person entitled to call for a conveyance thereof,

he may distribute the estate of the testator or intestate remaining in his hands amongst the parties entitled thereto respectively, without appropriating any part, or any further part thereof, as the case may be, to meet any future liability under any such lease, or agreement for a lease.

(2.) An executor or administrator so distributing the estate shall not, after having made or executed that assignment, and having, where necessary, set apart that sufficient fund, be personally liable in respect of any subsequent claim under any such lease, or agreement for a lease.

(3.) In this section "assignment" includes an acknowledgement within the meaning of section sixty-two of this Ordinance, and "lease" includes an underlease.

74. Nothing in the last three preceding sections contained shall prejudice the right of any creditor or claimant or lessor, or those claiming under any lessor, to follow the assets or estate, or any part thereof, into the hands of the persons, or any of them, amongst whom they may have been distributed, or who may have received them.

Right to follow assets.
Amended by No. 26 of 1937, s. 4.

75. Any executor or administrator may—

Power to compound, &c.

- (a) pay any debts or claims upon any evidence that he thinks sufficient; or
- (b) accept any composition, or any security, real or personal, for any debts due to the deceased; or
- (c) allow any time for the payment of any such debts as he thinks fit; or
- (d) compromise, compound, or submit to arbitration, all debts, accounts, claims, and things whatsoever relating to the estate of the deceased; and
- (e) for any of the purposes mentioned in this section, enter into, give, and execute such agreements, instruments of composition, releases, and other things as he thinks expedient, without being responsible for any loss occasioned thereby.

76.—(1.) Every executor or administrator—

Every executor &c. to be deemed to be resident in the Territory.

- (a) named in any probate or letters of administration granted by any court of competent jurisdiction in any portion of His Majesty's Dominions and making application under the provisions of this Ordinance for the sealing of the probate or administration; or
- (b) appointed under this Ordinance,

shall be deemed to be resident in the Territory.

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(2.) Where an executor or administrator is not actually resident in the Territory, he shall, before the issue or sealing of any probate or administration, file with the Registrar an address within the town of Rabaul at which notices and processes may be served upon him; and all services at that registered address shall be deemed personal service.

Division 5.—Commission, Charges, and Costs.

Executors &c.
may be allowed
commission.

77.—(1.) It shall be lawful for the Supreme Court or a Judge to allow out of the assets of any deceased person to his executor, administrator, or trustee for the time being, in passing his accounts, such commission or percentage, not exceeding Five pounds per centum, for his pains and trouble as is just and reasonable.

(2.) No such allowance shall be made to any executor, administrator, or trustee who neglects or omits, without a special order of the Supreme Court or a Judge, to pass his accounts pursuant to any general or special rule or order of the Supreme Court.

Limits of
professional
charges for
obtaining
probate or
letters of
administration.

78.—(1.) The charges which may be paid and allowed out of the estate of any deceased person for professional services rendered by any solicitor shall, where no contention has arisen, be, where the net value of the estate—

	£.	s.	d.
(a) does not exceed £1,000	10	10	0
(b) exceeds £1,000, but does not exceed £2,000 ..	15	15	0
(c) exceeds £2,000, but does not exceed £5,000 ..	18	18	0
(d) exceeds £5,000, but does not exceed £10,000	26	5	0
(e) exceeds £10,000	31	10	0

Provided that in all cases in which the net value of the estate exceeds One thousand pounds a solicitor may deliver a bill of costs to the executor or administrator and cause it to be submitted for taxation, and the amount of the bill when so taxed and not more, shall be a charge upon the estate of the deceased, but if, after taxation, the amount of the bill, exclusive of the cost of submitting it for taxation, does not exceed the respective sums set out in the scale in this sub-section, the cost of submitting the bill for taxation shall be paid by the solicitor.

(2.) Subject to the provisions of the next succeeding section, the scale set out in the last preceding sub-section shall include costs of any necessary briefs and all disbursements.

(3.) In cases in which the net value of the estate does not exceed One thousand pounds, the Supreme Court or a Judge may in any case where the work has been of exceptional length or difficulty, give leave to the solicitor to tax his bill of costs, and the terms of

the proviso to sub-section (1.) of this section shall in that case apply to the bill.

(4.) An application under the last preceding sub-section shall be accompanied by an affidavit showing the exceptional circumstances upon which the applicant relies.

79.—(1.) In addition to the charges mentioned in the last preceding section, a charge of Twenty shillings may, in any case where the property left does not exceed One thousand pounds, be paid and allowed out of the estate, if the probate or letters of administration are obtained by a solicitor who has no office in the town of Rabaul or within five miles thereof and employs a solicitor as his agent to obtain the probate or letters of administration.

Additional charge where necessary to employ agent.

(2.) The charges mentioned in the last preceding section and in this section do not include the cost of necessary advertising or fees necessarily paid or the cost of preparing and passing the statement for duty or the payment of duty, nor do they include the cost of engrossing or copying any will to an extent beyond five folios.

80.—(1.) Notwithstanding the provisions of the last two preceding sections, in any case where, in respect of special or unusual work in obtaining probate or letters of administration, the solicitor claims extra costs beyond the limits authorized by those sections, the bill of costs shall be taxed and settled by the taxing officer of the Supreme Court, and the taxing officer shall be the sole and final judge as to whether special or unusual work has been done.

Special or unusual work.

(2.) In taxing and settling the bill of costs, the taxing officer shall allow the sum provided in those sections for the work done, other than the special or unusual work, and shall tax and settle the extra costs pursuant to the provisions of this section.

81. Subject to the provisions of the last preceding section, the rules of the Supreme Court for the time being in force relating to the taxation of bills of costs shall, so far as practicable, apply to bills of costs taxed and settled by a taxing officer.

Taxing rules to apply.

PART IV.—SMALL ESTATES.

82. In all cases where a person dies leaving property not exceeding Five hundred pounds in value, application for representation may be made direct to the Registrar.

Application to Registrar for representation.

83.—(1.) The Registrar shall, upon being satisfied as to—

Duties of Registrar.

(a) the identity of the applicant;

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- (b) the right of the applicant to administer the estate of the deceased; and
- (c) the value of the estate,

furnish him with all necessary information for the purpose of enabling him to fill up advertisements, affidavits, and documents necessary for obtaining representation.

(2.) The Registrar may—

- (a) swear the applicant and every deponent; and
- (b) attest the execution of the administration bond.

Registrar to issue probate or administration in name of Supreme Court.

84.—(1.) The Registrar shall, upon being satisfied—

- (a) with the sufficiency of the evidence in support of the application;
- (b) that the estate does not exceed Five hundred pounds in value;
- (c) that no caveat has been entered against the application;
- (d) that no will has been deposited in the office of the Registrar (search for which it shall be the duty of the Registrar to make); and
- (e) that the fees have been duly paid,

cause probate or letters of administration (as the case may be) to be issued and delivered to the applicant on demand.

(2.) Probate or administration under this section shall be issued in the name and under the seal of the Supreme Court.

Matters as to which Registrar not satisfied.

85. In any case where the Registrar is not satisfied as to the matters mentioned in the last preceding section, he shall state, to the applicant, the matters in respect of which he is not satisfied.

Obligation of Registrar.

86. In no case shall the Registrar be under any obligation by reason of this Part to deal with any application which he may think proper to be dealt with by the Supreme Court, or to be placed in the hands of a solicitor.

PART V.—RECOGNITION OF FOREIGN GRANTS.

Probates and letters of administration granted in other colonies or the United Kingdom to be of like force as if granted in the Territory on being resealed.

87.—(1.) When any probate or letters of administration granted before or after the commencement of this Ordinance by any court of competent jurisdiction in any portion of His Majesty's Dominions is or are produced to, and a copy thereof deposited with, the Registrar, by any person being the executor or administrator therein named, or by any person duly authorized by power of attorney in

that behalf under the hand and seal of the executor or administrator, the probate or letters of administration may be sealed with the seal of the Supreme Court.

(2.) When so sealed the probate or letters of administration shall have the like force and effect and the same operation in the Territory, and every executor and administrator thereunder shall perform the same duties and be subject to the same liabilities as if the probate or administration had been originally granted by the Supreme Court.

(3.) The Supreme Court may require any such executor or administrator or person so authorized to give security for the due administration of the estate in respect of matters or claims in the Territory.

88. Any person may lodge with the Registrar a caveat against the sealing of any such probate or letters of administration, and any such caveat shall have the same effect, and shall be dealt with in the same manner, as if it were a caveat against the granting of probate or letters of administration. Caveat.

89.—(1.) The seal of the Supreme Court shall not be affixed to any such probate or letters of administration until all such succession, stamp, and other duties (if any) have been paid as would have been payable if the probate or administration had been originally granted by the Supreme Court. Seal not to be affixed till duty is paid, &c.

(2.) The letters of administration shall not be so sealed until such bond has been entered into as would have been required if the administration had been originally granted by the Supreme Court.

(3.) The seal of the Supreme Court shall not be affixed to any such probate or letters of administration except upon an affidavit that notice of the intention to apply in that behalf has been published, in the *New Guinea Gazette* and in a newspaper published in the Territory, at least fourteen days before the making of the affidavit, and that no caveat has been lodged in respect thereof.

90. Any reference in this Part to probate or letters of administration shall be deemed to include a confirmation of the executor or any person granted in any sheriff court in Scotland. Scotch confirmation.

PART VI.—CURATOR OF INTESTATE ESTATES.

91.—(1.) On the death, resignation, or removal of the Curator, his successor shall, immediately on his appointment, and by virtue thereof, become entitled to administer all the real and personal estate of every deceased person, whether that person died before or after the commencement of this Ordinance, left unadministered Successors to have power of administration de bonis non.

WILLS AND INTESTACY—

by any Curator of Intestate Estates appointed or deemed to be appointed under this Ordinance or any repealed Ordinance.

(2.) Every such successor shall, immediately upon his appointment and by virtue thereof, become entitled to the possession of all books, accounts, letters, papers, and documents of every description used by or in the possession or under the control of any predecessor relating to any estate administered by him or to the office of Curator.

Proceedings by
and against
Curator.

92.—(1.) In legal proceedings it shall not be necessary for the Curator or those suing him to prove his general authority to act as Curator, but only to prove the order to administer or the order to collect in the specific estate to which the proceedings relate.

(2.) Whenever the office of Curator becomes vacant by death, resignation, or removal from office or otherwise, and another person is appointed to the vacancy so created, any action or proceeding which has been taken against the Curator who has vacated office, shall not abate, but shall be continued by or against the person so appointed as such Curator, and no fresh order to collect shall be necessary.

Appointment
and duties of
agents.

93. The Curator may appoint any person to act as his agent for the purpose of administering any estate, and that person may, at the Curator's request, act as his agent for such purposes and with, under, and subject to such powers, conditions, and limitations as are contained in the appointment.

Curator's
commission &c.
Sub-section (1)
amended by
No. 2 of 1940,
s. 3.

94.—(1.) The Administrator in Council may make regulations⁽⁷⁾ fixing scales of commission, whether by way of percentage or otherwise, and other charges in respect of the duties of the Curator, and authorising the Administrator to reduce or dispense with commission or other charges as prescribed.

(2.) The Curator shall take, and pay into the Public Account of the Territory, the prescribed commission and charges.

Order to
Curator to
administer.

95.—(1.) The Supreme Court or a Judge may, on the application of the Curator, grant to the Curator an order to administer the estate of any deceased person leaving real or personal estate within the jurisdiction in any of the following cases:—

(a) Where the deceased leaves no executor, widow, or next of kin, resident within the jurisdiction, willing and capable of acting in execution of his will or administration of his estate;

(7) See the *Administration and Probate Regulations*, printed on p. 4683.

Administration and Probate Ordinance 1937-1940.

- (b) Where the executors named renounce probate of the will of the deceased, and all the persons primarily entitled to administration by writing filed with the Registrar decline to apply for administration;
- (c) Where probate or administration is not applied for within three months after the death of the deceased;
- (d) Where after the expiration of thirty days from the death, there is no reasonable probability of application being made within that period of three months;
- (e) Where the estate or any portion thereof is liable to waste, and the executor or widow or next of kin—
 - (i) is absent from the locality of the estate;
 - (ii) is not known;
 - (iii) has not been found; or
 - (iv) requests the Curator in writing to apply for the order;
- (f) Where the estate, or any portion thereof, is—
 - (i) of a perishable nature; or
 - (ii) in danger of being lost or destroyed;
- (g) Where great expense may be incurred by reason of delay; and
- (h) Where by the will of the deceased the Curator is appointed to act.

(2.) The Supreme Court or a Judge may in any case require the Curator to—

- (a) give such notices;
- (b) cite such persons; or
- (c) produce such evidence,

as the Supreme Court or Judge thinks fit before granting the order applied for, or may make a temporary order for collection and protection only or limited to a portion of the estate or otherwise.

96.—(1.) An order to administer the estate of any deceased person shall give to the Curator the same powers, rights, and obligations in respect of the estate, except as otherwise expressly provided, as he would have had if administration had been granted to him. Effect of order.

(2.) Except as otherwise expressly provided, all laws for the time being in force in the Territory with reference to the adminis-

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tration of the estates of deceased persons shall apply to the administration of estates by the Curator.

Probates and administrations may be granted notwithstanding appointment of Curator.

97.—(1.) Notwithstanding any order which has been made authorizing the Curator to administer under this Part, the Supreme Court may grant probate of the will or administration of the estate of any deceased person, to any person, in such manner, and subject to such limitations or conditions, as it thinks proper.

(2.) No application for any such grant shall be made until seven days after notice in writing of the intention to apply for the grant has been left at the office of the Curator.

On such grant Curator's duties and liabilities to cease.

98.—(1.) Immediately on the grant of any such probate or administration, all the interest, powers, rights, and duties of the Curator (except such rights as are conferred by this section) in regard to the estate of the deceased person whose estate is affected by the grant, and all liabilities of the Curator under any contract or agreement entered into by him in relation to the estate, or any part thereof, shall cease.

(2.) Such portion of the estate of the deceased as is left unadministered by the Curator, and all rights and obligations of the Curator in respect thereof, shall vest in the executor or administrator obtaining the probate or administration.

(3.) Nothing herein contained shall interfere with the allowance and payment of—

- (a) all money due for the commission of the Curator; and
- (b) the necessary outlay, disbursements, costs, charges, and expenses in relation to the estate, including all costs of and incidental to appearing on the application for the probate or administration.

(4.) Nothing in this section shall relieve the Curator from any liability in respect of his management of the estate up to the time of granting the probate or administration.

Where there is reasonable ground to believe that any person has died leaving property within the jurisdiction, Curator may obtain order to administer without strict legal proof of death.

99.—(1.) Whenever it is made to appear to the Supreme Court that there is reasonable ground to suppose that any person has died, either in or out of the jurisdiction of the Supreme Court, leaving property within the jurisdiction, the Supreme Court or a Judge may order and empower the Curator to administer the estate, both real and personal, of that person.

(2.) Every such order shall be valid until revoked, and shall empower the Curator to—

- (a) collect, manage, and administer the personal estate of the supposed deceased person;

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- (b) enter upon and receive the rents and profits and otherwise manage the real estate; and
- (c) pay and discharge the debts and liabilities of that person,

in like manner as if he were certainly dead and the Curator had obtained an order to administer the estate of the person under the preceding provisions of this Part.

(3.) The Curator shall not proceed to any distribution of the assets without an order of the Supreme Court or a Judge specially authorizing him to make the distribution.

100. Within twenty-one days after an order to administer or an order to collect has been granted, the Curator shall, unless the Supreme Court or a Judge otherwise orders, cause notice of the fact that the order has been granted to be published in the *New Guinea Gazette* and in some newspaper published in the Territory.

Notice of order to be published.

101. The Curator shall, in the case of foreigners, give notice to the Consul of the country where the next of kin are supposed to reside, if there is any such Consul resident in the Territory, or, if there is not, to such Consul resident in New South Wales, if there is one, unless the Supreme Court or a Judge in any case otherwise orders.

Like notices to Consul.

102. If a person dies and leaves real or personal estate within the Territory, the Curator or any agent of the Curator on his behalf may forthwith, and without any order to administer the estate of such person, take possession of such real and personal estate or of either of them when, in so far as the Curator or his agent can ascertain—

Power to Curator or agent to forthwith take possession of estate.

- (a) the deceased has left no will; or
- (b) the deceased has left a will, but no executor is appointed in such will; or
- (c) the deceased has left a will and an executor is appointed in such will, but the executor so appointed—
 - (i) is dead; or
 - (ii) is too far from the place where the estate or any part thereof is to be able to forthwith take care of it; or
 - (iii) does not intend, or neglects, to act as such executor.

103. When the Curator or an agent of his has, under the provisions of the last preceding section, taken possession of the real estate of a deceased person, he may—

Power conferred upon Curator or agent to partly administer real estate.

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- (a) take any steps and incur any expense which he deems necessary for preserving such real estate or anything in, on, or annexed thereto; and
- (b) collect and sell any product thereof which would decrease in value by being kept, and incur any necessary expenses in connection with such collection or sale.

Further power.

104.—(1.) When the Curator or an agent of his has, under this Part, taken possession of the personal estate of a deceased person, he may—

- (a) sell or dispose of it or any part of it if it appears to him that it will be for the benefit of the estate of the deceased that he should do so; and
- (b) pay out of the personal estate or the proceeds thereof—
 - (i) the funeral expenses of the deceased;
 - (ii) the expenses incurred in collecting, preserving, selling, or disposing of the personal estate; and
 - (iii) the expenses incurred under the provisions of the last preceding section.

(2.) When an agent of the Curator has taken any action under this section or under either of the last two preceding sections, he shall forthwith report such action with full particulars to the Curator.

Application to be made by Curator to Supreme Court for order to administer.

105. When the Curator or an agent of his has, under this Part, taken possession of any estate of a deceased person, the Curator shall in all cases apply as soon as possible to the Supreme Court for an order to administer the estate of such person.

Estates liable to certain charges and fees.

106. When the Curator or an agent of his has taken possession of the estate of a deceased person, such estate shall be liable to pay the like commission and charges as would have been payable under this Ordinance if an order to administer had been previously made, and that whether the Curator further administers such estate or not:

Provided that if an order to administer is not obtained the fee for an order to administer shall not be charged.

Supreme Court or a Judge to have summary jurisdiction over Curator.

107.—(1.) Any person interested as creditor, next of kin, or otherwise in the real or personal estate of any deceased person, which the Curator has been ordered to administer or to collect, may—

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- (a) on the neglect or refusal of the Curator to do any act in relation to the administration of the estate; or
- (b) on his doing, or threatening to do, any act in breach of his duty with reference to the estate,

apply to the Supreme Court or a Judge upon affidavit—

- (c) for an order calling upon the Curator to show cause before the Supreme Court or a Judge, upon a day not less than two days after the service of the order upon him, why he should not do or abstain from doing the act; and
- (d) for an interim order in the nature of an injunction, if warranted by the facts of the case.

(2.) Any such order may be granted subject to such conditions as to giving security for costs as the Supreme Court or a Judge imposes.

108.—(1.) Upon the hearing of any such complaint the Supreme Court or a Judge may receive proof of the matters in relation thereto orally or by affidavit, and may make such order thereon as the circumstances of the case require, and as to payment of costs—

Applications,
how heard.

- (a) by the complainant;
- (b) by the Curator; or
- (c) from the estate administered by him,

as, in the discretion of the Supreme Court or Judge, seems just.

(2.) Any order made under the last preceding sub-section shall have the same effect and be enforceable by the same process as if made by the Supreme Court in a suit between the parties to the complaint.

109. In all cases where an order to administer or an order to collect is made under this Part, the Supreme Court or a Judge may, on the application of the Curator or any person interested in the estate, make such orders touching the collection, sale, investment, and disposal of the estate as the Supreme Court or Judge thinks fit.

Curator to act
as the Supreme
Court or a
Judge directs.

110.—(1.) In every case in which the estate of any deceased person is administered by the Curator under this Part—

Mode of
proceeding under
this Ordinance.

- (a) all disputes and matters touching the collection, management, or administration of the estate; and
- (b) all claims and demands thereon,

shall, subject to the next succeeding sub-section, be decided by the Supreme Court or a Judge.

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(2.) In any case in which it appears to be not desirable that the matter in question should be so decided, the Supreme Court or a Judge may direct such proceedings to be instituted as appear proper for the due decision thereof.

Payment of debts.

111.—(1.) The Curator shall, at such times as he thinks fit, cause advertisements to be published in the *New Guinea Gazette* and such public newspapers as he deems expedient, calling upon the creditors of the persons, whose estates he has been ordered to administer or to collect, to come in and prove their debts before him, on or before a time to be fixed in the notice.

(2.) The Curator may allow any claim which is made before him upon the affidavit or statutory declaration of the claimant alone, or, where he thinks fit, upon such further evidence as he requires.

(3.) The Curator shall, as soon, after the expiration of the time allowed for proof of debts, as he conveniently can do so—

- (a) pay the debts proved, if they can be paid in full; or
- (b) if they cannot be paid in full, declare and pay a dividend on the debts proved.

(4.) If he collects any further assets after making the payment, he shall pay any part of the proved debts remaining unpaid, and any debts subsequently proved before him, or a dividend thereon (as the case may be).

(5.) Such creditors as subsequently prove shall first be paid a dividend equal to the dividend paid to creditors having previously proved their debts.

Maintenance, &c of infant out of share not exceeding £200.

112. When the share of any infant entitled in the distribution of any intestate estate under administration by the Curator does not exceed Two hundred pounds, then, with respect to such infant, the Curator may from time to time pay such share to such person as the Curator thinks fit, to be applied by such person for the maintenance, education, and advancement of such infant or may himself so apply such share.

Accounts to be kept, &c.

113.—(1.) The Curator shall—

- (a) make or cause to be made an inventory or list of all the estates of the persons which he has been ordered to administer or to collect and retain it in his office;
- (b) keep an account of all his receipts, payments, and dealings in every such estate; and
- (c) retain all letters received, and copies of all letters written by him, and all deeds, papers, and writings of and relating to those estates.

(2.) Upon the application in writing by or with the authority of any person interested in any such estate the Curator shall—

- (a) permit the applicant, his solicitor, or other authorized agent to inspect and take copies of any entry in any register relating to the estate and (so far as the interest of the applicant is or may be affected thereby) of any account, notice, or other document in the custody of the Curator;
- (b) at the expense of such applicant, supply him or his solicitor or other authorized agent with a copy of any such entry, account, or document as aforesaid or of any extract therefrom; and
- (c) give to such applicant or his solicitor or other authorized agent such information respecting the estate and the trust property as is reasonably requested in the application and is within the power of the Curator.

(3.) Subject as aforesaid, the Curator, his officers, and agents shall observe strict secrecy in respect of every estate in course of administration by the Curator.

(4.) The Curator shall forthwith pay all moneys received by him as Curator into some bank approved of by the Treasurer, to the credit of an official account to be operated on by him as Curator.

(5.) All cheques drawn on the account referred to in the last preceding sub-section by the Curator shall be countersigned by an officer appointed from time to time by the Treasurer, who shall advise the bank accordingly.

114. The receipt in writing of the Curator for any moneys payable to him under this Part shall be a sufficient discharge for the moneys to the persons paying them, and those persons shall not afterwards be liable for any misapplication of the moneys.

Receipts of Curator sufficient discharge.

115. The Curator shall—

- (a) transmit, in the months of January and July in every year, to the Treasurer, a return of all moneys received and paid by him, during the six months immediately preceding in respect of the estate entrusted to him to administer or to collect, distinguishing the particular estates in which they have been so received or paid, and, within one month after transmitting such return, publish a like return in the *New Guinea Gazette*;
- (b) furnish at the same time a return of all balances or sums whatsoever then in his hands to the credit of each of those estates; and

Quarterly returns to Treasurer and accounts.

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- (c) keep proper books of account in reference thereto, which shall once in every six months, or oftener if necessary, be examined and passed by the Chief Auditor or an officer appointed by him in that behalf.

Curator to invest moneys after expiration of six months.

116. The Curator may, after the expiration of six months, and shall, after the expiration of twelve months, after the date of the order for administration or collection of any estate, invest all moneys then standing to the credit of that estate as the Supreme Court or a Judge by any special rule or order directs, and, subject to any such order or rule, in accordance with the Rules.⁽⁸⁾

Curator, &c., not liable for acts done in the performance of his duties.

117.—(1.) Neither the Curator nor any of his officers or agents shall be personally liable to any person in respect of goods or chattels in the possession of any testator or intestate at the time of his death which are sold by the Curator or any such officer or agent as the goods of the testator or intestate, unless the Curator or his officer or agent knows, or has actual notice before the sale, that the goods or chattels are not in fact the property of the testator or intestate.

(2.) Neither the Curator nor any of his officers or agents shall be personally liable to any person for any act done *bona fide* in the performance of his duties, unless it is shown that the act was done not only illegally, but wilfully, or with gross negligence.

Remedy against Curator.

118. Where any person, by act or thing done or omitted by the Curator or any of his officers or agents acting or *bona fide* assuming to act under this Ordinance, sustains any injury which would have entitled that person to a remedy in respect thereof if the act or thing had been done or omitted by a private person, then that person shall be entitled to have the same remedy against the Administration as he would be entitled to against a private person and shall be entitled to be indemnified out of such moneys as may be appropriated for such purpose.

Proceeds of property of third person to be handed over to him.

119. In case of any sale by the Curator or his officers or agents of goods or chattels belonging to any third person, the amount realised by the sale thereof shall be paid over by him to the owner upon proof of ownership, unless it has been applied in the payment of the debts of the deceased, or has been distributed according to any will of the deceased, or in the ordinary course of administration, while the Curator or any such officer or agent was in ignorance and without actual notice of the claim of the person to the goods or chattels so sold.

(8) See *The Rules of the Central Court regulating the investment of moneys held by the Curator of Intestate Estates*, printed on p. 4681.

120.—(1.) If it appears on office found that any real estate vested in the Curator has escheated to the Administrator, the net proceeds of sale of the estate shall be paid by the Curator into the Public Account of the Territory.

Conveyance of escheated lands and disposal of proceeds of sale.

(2.) The Curator's conveyance of the real estate to the purchaser thereof shall operate to pass the right, title, and interest of the deceased intestate to the purchaser as in any other case.

121.—(1.) The Curator shall, in January in each year, cause all sums of money, which shall, on the first day of that month, have been invested in pursuance of section one hundred and sixteen of this Ordinance, and lying to the credit of any estate under his control for the term of six years then next preceding, to be paid to the Administrator for the public service subject to the provisions of the next succeeding section:

Payment to Administrator after six years.

Provided that the Curator may retain at credit of any such estate any sums of money which he considers likely to be required to answer payments to be made out of the estate under any order of the Supreme Court in force on that day.

(2.) The Administrator shall pay all moneys received by him under this section to the credit of a fund to be called the "Intestate Estates Fund."

122.—(1.) The Supreme Court or a Judge may at any time—

Parties entitled may apply subsequently.

(a) upon the application of any person claiming to be entitled to any moneys so paid over to the Administrator; and

(b) upon being satisfied by affidavit, or other sufficient evidence, that that person is so entitled,

make an order for payment of those moneys, or any portion thereof, but—

(c) without interest thereon from the time of payment to the Administrator in pursuance of the last preceding section; and

(d) after deducting any costs and expenses which have been incurred by the Curator or otherwise in respect of the application.

(2.) The Administrator, on being served with the order, shall, within a reasonable time, pay the amount mentioned therein to the person therein named, and the receipt of that person shall be a sufficient voucher for the payment.

(3.) Notice of any application under this section shall be served on the Curator seven clear days before the application is heard.

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Disclosure of
property to
Curator.

123.—(1.) Where—

- (a) any corporation, association, or person is in possession of any property of a deceased person; or
- (b) there is to the credit of any deceased person in the books or accounts or otherwise of any corporation, association, or partnership any property or money; or
- (c) under any partnership or association any deceased person is entitled to a share in the assets thereof or his representatives are entitled to any payments as the share in such assets; or
- (d) any deceased person is the registered proprietor of any shares in any corporation or association; or
- (e) any person is indebted to any deceased person,

then if such property, money, shares, or debts are vested in or belong to the Curator, it shall be obligatory on such corporation, association, or person to forthwith give notice to the Curator or his agent of the extent, nature, and situation of such property, money, shares, or debts.

(2.) Any corporation, association, or person referred to in the last preceding sub-section who wilfully neglects to comply with the provisions of this section, shall be liable to a penalty of Two hundred pounds recoverable by civil action at the suit of the Crown Law Officer.

Power of Curator
to pay over
balance to proper
officer of
deceased's
domicile.

124.—(1.) When the Curator has obtained an order to administer the estate in the Territory of New Guinea of—

- (a) any person who was at the time of his death domiciled in a State or Territory of the Commonwealth other than the Territory of New Guinea and whose estate in such State or Territory is being administered by the proper officer of such State or Territory; or
- (b) any person who was at the time of his death domiciled in the Dominion of New Zealand and whose estate in that Dominion is being administered by the proper officer of that Dominion,

the Curator may pay over to such proper officer the balance of the estate after payment of creditors and the charges provided for in this Ordinance without seeing to the application of such balance and without incurring any liability in regard to such first-mentioned payment and shall certify to an account in favour of such proper officer accordingly.

(2.) In this and the next succeeding section—

“proper officer” includes the Curator of Estates of Deceased Persons, the Curator of Intestate Estates, the Public Trustee, and the officer discharging duties corresponding to those discharged in the Territory of New Guinea by the Curator;

“Territory of the Commonwealth” includes any Territory governed by the Commonwealth under a mandate.

125.—(1.) When the proper officer of any State or Territory of the Commonwealth other than the Territory of New Guinea has in such State or Territory obtained administration to the estate of any deceased person whose estate in the Territory of New Guinea is being administered by the Curator, if the deceased at the time of his death was domiciled in the Territory of New Guinea, the Curator may receive from such proper officer the balance of the estate of the deceased in such State or Territory after payment of creditors' and all charges provided for under the law of such State or Territory.

Where deceased domiciled in New Guinea, Curator may receive balance from proper officer of another State or Territory or of New Zealand.

(2.) When the proper officer of the Dominion of New Zealand has in that Dominion obtained administration to the estate of any deceased person whose estate in the Territory of New Guinea is being administered by the Curator, if the deceased at the time of his death was domiciled in the Territory of New Guinea, the Curator may receive from such proper officer the balance of the estate of the deceased in that Dominion after payment of creditors and all charges provided for under the law of that Dominion.

(3.) Such balance shall when so received form part of the estate of the deceased and shall be dealt with according to the law of the Territory of New Guinea, but no commission or percentage shall be paid to or deducted by the Curator in respect of such balance unless specially directed by the Administrator.

PART VII.—PROCEDURE.

126.—(1.) Subject to the Rules, the witnesses, and, where necessary, the parties in all matters where their attendance can be had, shall be examined orally in open court.

Mode of taking evidence.

(2.) By leave of the Supreme Court in every case the parties may verify their respective cases in whole or in part by affidavit.

(3.) The deponent in every such affidavit shall be subject to be cross-examined by or on behalf of the opposite party orally in open court, and upon that cross-examination may be re-examined orally in open court by or on behalf of the party using the affidavit.

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Question to be stated.

127. When the Supreme Court or a Judge directs any question to be tried, the question shall be reduced into the form of an issue, and shall be tried before the Supreme Court.

Order to produce an instrument purporting to be testamentary.

128.—(1.) The Supreme Court or a Judge may, whether any suit or other proceeding is or is not pending in the Supreme Court with respect to any probate or administration, order any person to produce and bring into the registry any paper or writing, being or purporting to be testamentary, or otherwise material to the matter before the Supreme Court, which is shown to be in the possession or under the control of that person.

(2.) If it is not shown that any such paper or writing is in the possession or under the control of that person, but it appears that there are reasonable grounds for believing that he has the knowledge of any such paper or writing, the Supreme Court or a Judge may direct him to attend for the purpose of being examined in open court or upon interrogatories respecting the paper or writing.

(3.) Any such person directed so to attend shall be bound to answer the questions or interrogatories, and (if so ordered) to produce and bring in the paper or writing, and shall be subject to the like process of contempt in case of default in not attending or in not answering those questions or interrogatories, or not bringing in that paper or writing, as he would have been subject to in case he had been a party to a suit in the Supreme Court and had made that default.

PART VIII.—MISCELLANEOUS.

Registrar to keep record of probates, &c.

129.—(1.) The Registrar shall cause entries to be made in a book to be kept for that purpose of—

- (a) all grants of probate and administration;
- (b) the filing, passing, and allowance of the accounts of all executors and administrators; and
- (c) any special order extending the time for passing those accounts.

(2.) The book referred to in the last preceding sub-section shall set forth—

- (a) the dates of the grants;
- (b) the names of the testators or intestates;
- (c) the place and time of death;
- (d) the names and description of the executors or administrators;
- (e) the sworn value of the estates; and
- (f) the dates of the filing, passing, allowance of, and special orders with reference to, the accounts.

130. In all suits or other proceedings under this Ordinance, the question of costs and how they shall be paid shall be at the discretion of the Supreme Court or a Judge. Costs.

131.—(1.) Any person residing in the Territory may deposit in the office of the Registrar his will enclosed in a sealed envelope or cover indorsed with his full name, description, and then address or other means of ready identification, and also the full names, descriptions, and addresses of the executors named therein. Will may be deposited in office of Registrar by testator in his lifetime.

(2.) Any will deposited under the last preceding sub-section shall, unless previously given up to the testator at his request, remain in the office of the Registrar in his custody until the death of the testator, and upon his death the Registrar shall deliver it after examination to either of the executors named in the will, or in case of doubt to such person as the Supreme Court or a Judge may direct.

(3.) The Registrar shall give to the person depositing a will under sub-section (1.) of this section a certificate of the deposit, and shall keep an index containing the particulars of the indorsements made on the envelope or cover of each will deposited.

132.—(1.) Any person who retains or conceals or endeavours to retain or conceal any will or codicil, or aids or abets any person in that retention or concealment, with intent to defraud any person interested under the will or codicil, shall be guilty of an offence. Concealment of will an offence.

Penalty: One hundred pounds or imprisonment for two years, or both.

(2.) No prosecution for any such offence shall be commenced without the sanction of the Crown Law Officer, and no such sanction shall be given unless such previous notice of the application for leave to prosecute as the Crown Law Officer directs has been given to the person for whose prosecution the sanction is sought.

(3.) In addition to any punishment under this section, the person punished shall also be liable to an action for damages at the suit of the persons defrauded or those claiming under them for any loss sustained by them or any of them in consequence of the retention or concealment.

133.—(1.) The Chief Judge may make rules⁽⁹⁾ prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Ordinance, and in particular for prescribing Rules.

(9) No rules have been published in *N.G. Gaz.* pursuant to Section 133; but see *The Rules of the Central Court regulating the investment of moneys held by the Curator of Intestate Estates* (made under the *Probate and Administration Ordinance 1913-1915* (Papua, adopted), and continued in force by Section 4 of the *Administration and Probate Ordinance 1937-1940*), printed on p. 4681.

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matters providing for and in relation to the regulation of the times and form and mode of procedure, and generally the practice of the Supreme Court, in respect of the several matters to which this Ordinance relates.

(2.) The Minister⁽¹⁰⁾ may, by notice in the *New Guinea Gazette*, disallow any rule, and thereupon the rule so disallowed shall cease to have effect.

(3.) Subject to Rules made under this Ordinance and so far as such Rules do not extend, the practice and procedure of the Supreme Court in so far as the jurisdiction conferred on it by this Ordinance is concerned shall be regulated as nearly as may be according to the Rules of Court regulating the practice and procedure of the Supreme Court.

Fees.

134. The prescribed fees shall be payable to the Registrar in connection with matters to which this Ordinance relates.

Section 60.

THE SCHEDULE.

PART I.—RULES AS TO PAYMENT OF DEBTS WHERE THE ESTATE IS NOT SOLVENT.

1. The funeral, testamentary, and administration expenses have priority.
2. Subject as aforesaid, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable and as to the valuation of annuities and future and contingent liabilities respectively, and as to the priorities of debts and liabilities as may be in force for the time being under any law of the Territory relating to insolvency with respect to the assets of persons adjudged insolvent.

PART II.—ORDER OF APPLICATION OF ASSETS WHERE THE ESTATE IS SOLVENT.

1. Property of the deceased undisposed of by will, subject to the retention thereof of a fund sufficient to meet any pecuniary legacies.
2. Property of the deceased not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.
3. Property of the deceased specifically appropriated or devised or bequeathed (either by a specific or general description), for the payment of debts.

(10) Section 4 of the *Ordinances Interpretation Ordinance 1934-1941* provides that in any Ordinance "unless the contrary intention appears—'Minister' means the Minister of State for the time being administering the *New Guinea Act 1920-1932*".

Administration and Probate Ordinance 1937-1940.

4. Property of the deceased charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.

5. The fund, if any, retained to meet pecuniary legacies.

6. Property specifically devised or bequeathed, rateably according to value.

7. Property appointed by will under a general power rateably according to value.

8. The following provisions shall also apply—

(a) The order of application may be varied by the will of the deceased.

(b) This Part of this Schedule does not affect the liability of any property to answer any duty by Ordinance imposed thereon in exoneration of other assets.

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