

PROBATE AND ADMINISTRATION ORDINANCE, 1913-1940. ⁽¹⁾

An Ordinance to amend and consolidate the Enactments relating to Probate and Letters of Administration and to the Succession to Real Estate in Cases of Intestacy and for the Preservation and Management of the Estates of Deceased Persons.

BE it enacted by the Lieutenant-Governor of the Territory of Papua with the advice and consent of the Legislative Council thereof as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Probate and Administration Ordinance, 1913-1940.* ⁽¹⁾

It shall come into operation on a day to be fixed by the Lieutenant-Governor by Proclamation ⁽¹⁾ published in the *Gazette* and is divided into parts as follows:—

(1) The *Probate and Administration Ordinance, 1913-1940*, comprises the *Probate and Administration Ordinance, 1913*, as amended by the other Ordinances referred to in the following Table:—

ORDINANCES OF THE LEGISLATIVE COUNCIL FOR THE TERRITORY OF PAPUA.

Short title, number and year.	Date of assent by Lieut.-Gov. or Administrator.	Date of reservation by Lieut.-Gov.	Date on which assent of Gov.-Gen. in Council published in Papua Govt. Gaz.	Date on which came into operation.
<i>Probate and Administration Ordinance, 1913</i> (No. 11 of 1913)	14.8.1913 ^(a)	—	—	1.5.1914 (Papua Govt. Gaz. of 16.3.1914)
<i>Probate and Administration Ordinance, 1915</i> (No. 11 of 1915)	20.12.1915 ^(b)	—	—	20.12.1915 (<i>Statute Law of Papua, 1888 to 1916, Vol. III, p. 866</i>)
<i>Probate and Administration Ordinance, 1926</i> (No. 1 of 1926)	8.1.1926 ^(c)	—	—	8.1.1926 (<i>Ordinances etc. of Papua, 1926, p. 1</i>)
<i>Probate and Administration Ordinance, 1936</i> (No. 16 of 1936)	—	20.7.1936	2.12.1936	2.12.1936 (Papua Govt. Gaz. of 2.12.1936)
<i>Probate and Administration Ordinance, 1940</i> (No. 14 of 1940)	2.10.1940 ^(d)	—	—	2.10.1940 (<i>Ordinances etc. of Papua, 1940, p. 41</i>)

(a) Notice of non-disallowance by Gov.-Gen. in Council was published in Papua Govt. Gaz. of 4.3.1914.

(b) Notice of non-disallowance by Gov.-Gen. in Council was published in Papua Govt. Gaz. of 6.9.1916.

(c) Notice of non-disallowance by Gov.-Gen. in Council was published in Papua Govt. Gaz. of 7.7.1926.

(d) Notice of non-disallowance by Gov.-Gen. in Council was published in Papua Govt. Gaz. of 4.12.1940.

Short title.
Amended by No. 2 of 1930, s. 2.
Commencement Division.
Amended by No. 1 of 1926, s. 2.

WILLS AND INTESTACY—

- Part I.—Preliminary.
- Part II.—Jurisdiction and Appointment of Officers.
- Part III.—Vesting and Administration of Estates.
- Part IV.—British Probates and Letters of Administration.
- Part V.—Public Curator.
- Part VI.—Procedure.
- Part VII.—General Matters.

Repeal.
First
schedule.

2.—(1.) The enactments mentioned in the First Schedule to this Ordinance to the extent therein expressed are hereby repealed.

Officers under
Ordinance
hereby
repealed.

(2.) All persons appointed by virtue of the provisions of any enactment hereby repealed and holding office at the passing of this Ordinance shall be deemed to have been appointed hereunder.

Rules of
court.

(3.) All rules of court⁽²⁾ made under the authority of any enactment hereby repealed and being in force at the passing of this Ordinance shall be deemed to have been made under the authority of this Ordinance.

Ordinance not
to apply to
estates of
persons
dying before its
commencement.

3.—(1.) This Ordinance shall not apply to the estates of persons dying before the commencement of this Ordinance and the enactments hereby repealed shall notwithstanding such repeal continue to apply to such estates and to all necessary matters in relation thereto.

Not to affect
*The Native
Regulation
Ordinance of
1908.*

(2.) Nothing in this Ordinance shall repeal alter or affect any of the provisions of *The Native Regulation Ordinance of 1908*⁽³⁾ or the regulations now or hereafter to be made thereunder.

Interpretation.

4. In this Ordinance unless the context or subject-matter otherwise indicates or requires:—

“Administrator.”
N.S.W. No. 18
of 1898, s. 3.
Q. 41 Vic,
No. 24, s. 1.
Amended by
No. 1 of 1926,
s. 3.

“Administrator” includes the Public Curator and any other person to whom administration as hereinafter defined is granted;

“Administration.”
N.S.W.
Ib. s. 3.
Cf. Q. 31 Vic.
No. 9, s. 1.

“Administration” includes all letters of administration of the real and personal estate and effects of deceased persons whether with or without the will annexed and whether granted for general special or limited purposes also exemplification of letters of administration or such other formal evidence of the letters of administration

(2) For rules of court now in force under the present Ordinance, see footnote (15) printed on p. 4320.

(3) Now the *Native Regulation Ordinance, 1908-1930.*

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purporting to be under the seal of a court of competent jurisdiction as is in the opinion of the court deemed sufficient and orders to the Curator to administer;

“The Court” means the Supreme Court or a judge;

“Court.”
Amended by
No. 14 of 1940,
s. 3 and
Schedule.

“Judge” means a judge of the Supreme Court;

“Judge.”
Amended by
No. 14 of 1940,
s. 3 and
Schedule.

“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 court is deemed sufficient;

“Probate.”
N.S.W. No. 13
of 1898, s. 3.

“Will” extends to a testament and to a codicil and all testamentary instruments of which probate may now be granted;

“Will.”
Q. 31 Vic.
No. 9, s. 1.

“Real Estate” extends to messuages lands rents and hereditaments of freehold or any other tenure and whether corporeal incorporeal or personal and to any undivided share thereof and to any estate right or interest (other than a chattel interest) therein and includes lands held under any lease for twenty-one years and upwards;

“Real estate.”
N.S.W.
Ib. s. 3.
Cf. Q. 41 Vic.
No. 24, s. 1.

“Personal Estate” except as hereinbefore mentioned extends to leasehold estates and other chattels real and also to moneys shares of Government and other funds securities for money (not being real estates) debts choses in action rights credits goods and all other property whatsoever not being real estate as above, defined which would heretofore have passed or gone to an executor or administrator and to any share or interest therein;

“Personal estate.”
Cf. N.S.W.
Ib. s. 3.
Q. Ib. s. 1.

“Matters and Causes Testamentary” include all matters and causes relating to the grant and revocation of probate of wills or of administration;

“Matters and causes testamentary.”
Q. 31 Vic.
No. 9, s. 1.

“Estate” comprises both real estate and personal estate;

“Estate.”
Q. 41 Vic.
No. 24, s. 1.

“Curator” means the Public Curator;

“Curator.”
Q. Ib. s. 1.
Amended by
No. 1 of 1926,
s. 3.

“Public Curator” means the Public Curator of the Territory of Papua constituted by this Ordinance;

“Public Curator.”
Inserted by
No. 1 of 1926,
s. 3.

WILLS AND INTESTACY—

"Registrar."
Amended by
No. 14 of 1940,
s. 3 and
Schedule.

"Registrar" means the Registrar of the Supreme Court and includes any deputy registrar and any acting registrar or acting deputy registrar.

PART II.—JURISDICTION AND APPOINTMENT OF OFFICERS.

Jurisdiction of
Supreme Court
in causes
testamentary.
Amended by
No. 14 of 1940,
s. 3 and
Schedule.

5. The jurisdiction and authority prior to the commencement of this Ordinance vested in or exercised by the Supreme Court in respect of the estates of deceased persons and of matters and causes testamentary shall continue to be vested in and exercised by the Supreme Court.

Judge may sit
in chambers.
N.S.W. No. 13 of
1898, s. 35.
Q. 31 Vic.
No. 9, ss. 9, 10.

6.—(1.) A judge may hear in chambers such part of the business under this Ordinance as can in his opinion be so heard with advantage to the parties and shall when so sitting have and exercise the same powers and jurisdiction as if in court.

(2.) A judge while sitting in chambers may adjourn for hearing in court or when sitting in court may adjourn for hearing in chambers any case before him which he may think would be better heard in court or chambers as the case may be.

Probate or
administration
may be granted
of real or
personal estate.
N.S.W.
Ib. s. 40.
Q. 41 Vic.
No. 24, s. 12.

7. The 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 or both real and personal in the Territory.

Probate to
one or more
executors
reserving leave
to others to
prove
subsequently.
N.S.W.
Ib. s. 41.

8. The 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.

Application
for probate or
administration
may be made
by petition.
N.S.W.
Ib. s. 42.
Q.S.C. Rules
O. 71, r. 1.

9.—(1.) All applications for probate or letters of administration may be made by petition without the necessity of application being made in open court.

(2.) Notice of such intended application shall unless otherwise ordered by a judge be published in the *Gazette* and (if any such) in one Port Moresby newspaper at least fourteen days before such application is made.

(3.) No probate of any will not deposited as in Section 110 hereof provided and no administration in any case shall be granted unless the application be supported by an affidavit that a search has been made in the proper office for a will of the deceased and stating whether any such will remains deposited with the officer for the

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time being authorized to have the custody of deposited wills or by a certificate from the Registrar to the like effect.

10. The Registrar shall subject to the provisions of this Ordinance and to the rules of court perform such duties as were prior to the coming into operation of this Ordinance performed by the Registrar of the Supreme Court in reference to proceedings in the said court in matters and causes testamentary and such other duties as may be prescribed by the rules of court or directed by a judge.

Appointment of Registrar.
Cf. Q. 31 Vic. No. 9, ss. 11, 12.
Amended by No. 14 of 1940, s. 3 and Schedule.

11. A Judge of the Supreme Court may by rules of court in that behalf made delegate to the Registrar the powers of the court in and about—

Delegation of certain powers of the court.
N.S.W. No. 14 of 1906, s. 2.
Section 11 amended by No. 14 of 1940, s. 3 and Schedule.

- (a) the granting of probates and administration of estates where no contention has arisen;
- (b) the passing of the accounts of executors and administrators save in respect of the award of commission thereon;
- (c) the granting to executors and administrators of further time to file accounts;
- (d) the authorizing the sale lease or mortgage of any of the real estate as to which any person dies intestate where the gross value of such real estate does not exceed Two hundred pounds and no objection is raised to such sale lease or mortgage:

Provided that the Registrar shall where any party interested so desires and in cases of doubt or difficulty refer the matter to a judge.

12. The Administrator may from time to time appoint an officer to be called the "Public Curator."

Public Curator.
Substituted by No. 1 of 1926, s. 4.
Amended by No. 14 of 1940, s. 3 and Schedule.

12A.—(1.) The Public Curator is hereby constituted a corporation sole under the name of "The Public Curator of Papua" with perpetual succession and a seal of office.

Public Curator a corporation sole.
Cf. Q. 6 Geo. V, No. 14, s. 9.
Section 12A inserted by No. 1 of 1926, s. 4.

(2.) Subject to this Ordinance the Public Curator shall be capable in law of suing and being sued and of doing and suffering all such other acts and things as bodies corporate may by law do or suffer.

WILLS AND INTESTACY—

Contracts.

Cf. Q. 6 Geo. V,
No. 14, s. 10.
Inserted by
No. 1 of 1926,
s. 4.

12B. Where the Public Curator is authorized to enter into any contract or exercise any power such authority may be exercised as follows:—

Any contract which if made between private persons or any power which if exercised by private persons—
firstly must be by deed or in writing under seal;
secondly must be in writing signed by the parties thereto or the persons executing the power;
thirdly may be made or exercised verbally without writing:

When entered into or exercised by the Public Curator—
in the first case shall be in writing under his seal and signed by or on behalf of the Public Curator;
in the second case shall be in writing signed by or on behalf of the Public Curator;
in the third case may be made or exercised verbally without writing by or on behalf of the Public Curator.

Abolition of office of Curator of Intestate Estates.

Cf. Q. 1b,
s. 7 (1).

Section 12C
inserted by
No. 1 of 1926,
s. 4.

12c. On the coming into operation of this section—

- (a) the office of Curator of Intestate Estates in⁽⁴⁾ abolished;
- (b) subject to this Ordinance the former powers immunities and duties of the Curator of Intestate Estates shall be exercised possessed and performed by the Public Curator;
- (c) all orders or grants made by the Court empowering the Curator of Intestate Estates to administer estates shall on the commencement of this section take effect as orders or grants empowering the Public Curator to administer such estates;
- (d) all property vested in or held by or on behalf of the Curator of Intestate Estates shall pass to and become vested in the Public Curator;
- (e) whenever in any Ordinance rule regulation deed will document or instrument any reference is made to the Curator of Intestate Estates such reference shall be construed as a reference to the Public Curator.

Deputy Public Curator.

Section 12D
inserted by
No. 1 of 1926,
s. 4.

12d.—(1.) If at any time the Public Curator is absent from the Territory or is absent from duty on leave or is unable by reason of illness or other cause to perform his duty or if a vacancy exists

(4) The words "in abolished" appeared in the original Ordinance. They have now been omitted and the words "is abolished" inserted in their stead by the Second Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

in the office of the Public Curator the Administrator may appoint a Deputy Public Curator.

Sub-section (1) amended by No. 14 of 1940, s. 3 and Schedule.

(2.) A Deputy Public Curator while acting as such shall have the same powers duties and liabilities and be entitled to the same immunities as the Public Curator.

12E. When any person has before the commencement of this section been appointed and has acted or purported to act as Acting Curator of Intestate Estates he shall be deemed to have been appointed and to have acted as Deputy Curator of Intestate Estates.

Acting Curator. Inserted by No. 1 of 1926, s. 4.

PART III.—VESTING AND ADMINISTRATION OF ESTATES.

13. From and after the decease of any person dying testate or intestate and until probate or administration or an order to administer is granted in respect of his estate the real and personal estate of such deceased person shall be deemed to be vested in a Judge of the Supreme Court in the same manner and to the same extent as aforetime the personal estate and effects vested in the Ordinary in England.

Property of deceased to vest in Judge of the Supreme Court. N.S.W. No. 13 of 1898, s. 61. Q. 31 Vic. No. 9, s. 2. Cf. Q. 41 Vic. No. 24, s. 11. Amended by No. 14 of 1940, s. 3 and Schedule.

14. Upon the grant of probate of the will or administration of the estate of any person dying after the passing of this Ordinance all real and personal estate which any such person dies seised or possessed of or entitled to in the Territory shall as from the death of such person pass to and become vested in the executor to whom probate has been granted or administrator for all his estate and interest therein in the manner following that is to say:—

Real and personal estate to vest in executor or administrator. N.S.W. *Ib.* s. 44. Cf. Q. *Ib.* s. 12.

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

15. All real estate held by any person in trust or by way of mortgage and vesting as aforesaid under this Ordinance shall as from the death of such person vest in his executor or administrator subject to the trusts and equities affecting the same.

Real estate held by testator or intestate to vest in executor or administrator subject to equities. N.S.W. *Ib.* s. 45.

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

Property of deceased to be assets. N.S.W. *Ib.* s. 46.

WILLS AND INTESTACY—

Power to sell
or mortgage.

(2.) Such executor or administrator for purposes of administration may subject to the provisions of Section 24 hereof sell such real estate or mortgage the same with or without a power of sale and convey the same to a purchaser or mortgagee in as full and effectual a manner in law as the deceased could have done in his lifetime.

Real estate to
be held upon
trusts of will.
N.S.W.
No. 13 of 1898,
s. 47.

17. Subject to the provisions of this Ordinance the real estate of every such deceased person devising such 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 such will.

Executor to
have same
rights &c. as
to real estate
as personal
estate.
N.S.W.
Ib. s. 48.

18. 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 that executors heretofore have had or been subject to with reference to personal assets.

Administrator
to hold
subject to
payment of
debts in trust
for persons
entitled.
N.S.W.
Ib. s. 49.
Cf. Q. 41 Vic.
No. 24, s. 13.

19.—(1.) Subject as aforesaid and subject to the provisions of the next four succeeding sections 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 as aforesaid 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*" 31 Vic. No. 24⁽⁵⁾ (Queensland adopted) Sections 29, 30 and 31, and "*The Succession Act Declaratory Act of 1884*"⁽⁶⁾ (Queensland adopted) and as to the real estate in trust for and as if the same had been devised to such persons as tenants in common.

Beneficial
interest of
executor in
residue.
N.S.W. *Ib.* s. 49.
Q. 31 Vic.
No. 24, s. 34.

(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 appear by such will that he is intended so to take.

Not to affect
rights of
executor
where no
person entitled
to residue.
N.S.W. *Ib.*
s. 49.
Q. *Ib.* s. 35.

(3.) Nothing herein contained shall affect or prejudice any right to which any executor if this Ordinance had not been passed 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*.
N.S.W. *Ib.* s. 50.
Cf. Q. *Ib.*
ss. 29, 30.
Q. 41 Vic.
No. 24, s. 13.

20. Any husband or wife shall be entitled on the death of the other as to the estate as to which he or she dies intestate after the commencement of this Ordinance to the following shares only:—

(5) Printed on p. 4329.

(6) Printed on p. 4353.

- (a) Where there is issue surviving to one-third share of such 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 Five hundred pounds to the whole of such property;
 - (ii) where the net value of such property exceeds the sum of Five hundred pounds to the sum of Five hundred 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 such property; and in addition thereto to one-half share of the residue of such property after the payment of such sum of Five hundred pounds and interest if any;
- (c) where there is no issue surviving and in case of partial intestacy to one-half share of such property.

Q. 59 Vic.
No. 10.
Q. 6 Edw.
VII, No. 24.

21. Subject as aforesaid the property of such deceased husband or wife shall be divisible among the next-of-kin.

Next-of-kin.
N.S.W. No. 13
of 1898, s. 51.

22. 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.
N.S.W.
Ib. s. 52.
Q. 41 Vic.
No. 24, s. 28.

23. 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.
N.S.W.
Ib. s. 53.

24.—(1.) No real estate of which administration has been granted under this Ordinance shall be leased for a longer term than three years or sold or mortgaged by the administrator without the consent of all persons beneficially interested or the order of the court in that behalf which may impose such conditions as it shall think fit.

Lands not to
be sold without
consent or
order.
N.S.W.
Ib. s. 56.
Cf. Q. Ib. s. 24.

(2.) The court may by an order authorize the administrator or in case of partial intestacy the executor in such manner at such times and subject to such conditions as to the court may seem fit or without prescribing any such manner times or conditions to sell mortgage or lease all or any of the real estate of the deceased person.

Power to
authorize sale
mortgage or
lease.
N.S.W. No. 38
of 1900, s. 4.

WILLS AND INTESTACY—

Court may make special order.
N.S.W. No. 13 of 1898, s. 57.
Q. 41 Vic.
No. 24, s. 22.

25. The court may upon the application of the administrator or in case of partial intestacy the executor or administrator with the will annexed as the case may be or of any person beneficially interested and after such previous notice to other parties and inquiry as may seem 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;
- (d) the expediency and mode of effecting a partition if applied for;

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

Court may order partition in a summary way.
N.S.W. *Ib.* s. 58.
Q. *Ib.* s. 23.

26.—(1.) In any case wherein upon such inquiry the court is satisfied that a partition of such real estate or any part thereof will be advantageous to the parties interested therein the court may appoint one or more arbitrators to effect such partition.

(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 court and when also registered in the office of the Registrar of Titles be effectual without the necessity of any further transfer or other instrument to vest in each allottee the land so allotted to him.

(3.) In the case of land subject to the provisions of the "*Real Property Act of 1861*"⁽⁷⁾ and "*The Real Property Act of 1877*"⁽⁷⁾ (Queensland adopted) or any Ordinance amending or consolidating the same each such allottee shall be entitled to have issued to him a certificate of title for the land so allotted to him.

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

(5.) In the case of land subject to the provisions of the last-named Acts or Ordinance the certificate of title shall issue subject to such charge unless such charge be satisfied.

Personal representative not required to continue to act against his own consent.
N.S.W.
Ib. s. 59.

27. No personal representative shall be required against his own consent to continue the duty of a trustee by managing the property

(7) Repealed and replaced in the Territory of Papua by the *Real Property Ordinance*, 1913-1941.

during an enforced suspension of sale but shall be entitled upon such suspension being ordered to relinquish his trust to such person as the court may appoint.

28. In all actions 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 actions concerning personal estate the executor or administrator represents such estate and the persons interested therein.

In actions executor or administrator to represent real estate. N.S.W. No. 13 of 1898, s. 60.

29. After any grant of administration no person shall have power to sue or prosecute any action or otherwise act as executor of the deceased as to the estate comprised in or affected by such grant until such administration shall have been recalled or revoked or shall otherwise cease under the provisions of this Ordinance.

After grant of administration no person to act as executor. Q. 31 Vic. No. 9, s. 35.

30.—(1.) In all Ordinances and adopted Ordinances in force after the day on which "*The Intestacy Act of 1877*"⁽⁸⁾ (Queensland adopted) came into operation in the Territory and in which the word "heir" is used that word shall as to any land as defined by and passing under the last-mentioned act be deemed if necessary to signify the person in whom such land is vested under that Act for the time being.

Acceptation of the term "heir." Q. 41 Vic. No. 24, s. 27.

(2.) In all Ordinances and adopted Ordinances hereafter in force in which the word "heir" is used such word shall as to any real estate passing under Section 14 of this Ordinance be deemed if necessary to signify the executor or administrator in whom such real estate is vested under that section for the time being.

31. No real estate or interest therein shall be deemed forfeited or escheated to the Crown by reason only of the death of any person who shall die intestate and without heirs or next-of-kin except as to the residue remaining after payment of the debts of such person.

No escheat for want of heirs. Q. *Ib.* s. 29.

32. The practice and proceedings hitherto in force with reference to granting administration of the personal estate of an intestate shall save as hereby altered and subject to the rules of court be applicable to administration granted hereunder and 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. N.S.W. *Ib.* s. 62. Q. *Ib.* s. 15.

(8) *The Intestacy Act of 1877* of Queensland was adopted in the Possession of British New Guinea by *The Courts and Laws Adopting Ordinance (Amended)* of 1889 as from 23.11.1889, and is printed on p. 4355.

WILLS AND INTESTACY—

To whom
administration
may be granted.
N.S.W. No. 13
of 1898, s. 63.

33. The court may grant administration of the estate of an intestate person to the following persons being of the full age of twenty-one years that is to say to—

- (a) the husband or wife of the deceased; or
- (b) one or more of the next-of-kin; or
- (c) the husband or wife conjointly with one or more of the next-of-kin;

or if there be no such person or no such person within the jurisdiction—

- (i) who is in the opinion of the court fit to be so trusted; or
- (ii) who when duly cited appears and prays for administration; then to—
- (d) any person whether a creditor or not of the deceased that the court thinks fit.

Administration
bond to be
executed.
N.S.W. *Ib.* s. 64.
Q. 31 Vic.
No. 9, s. 36.

34.—(1.) Every person to whom a grant of administration is made shall previous to the issue of such administration execute a bond to His Majesty and his successors with one or more sureties conditioned for duly collecting getting in and administering the personal estate or real and personal estate of the deceased which bond shall be in the form directed by the rules of court.

(2.) It shall not be necessary for the Curator or for any person obtaining administration to the use or for the benefit of His Majesty to execute any such bond.

Amount of
penalty in
administration
bond.
N.S.W. *Ib.* s. 65.
Q. *Ib.* s. 37.

35. Such bond shall be in a penalty equal to the amount under which the property of the deceased is sworn but the court may in any case dispense with the bond or with one or both of the sureties or direct that such penalty be reduced in amount and may also direct that more bonds than one be given so as to limit the liability of any surety to such amount as the court thinks reasonable and may in place of such bond accept the security of any incorporated company or guarantee society approved of by the court in the form and as directed by the rules of court.

Administration
may be revoked
or further bond
required.
N.S.W. *Ib.* s. 66.

36. The court may at any time upon the motion of any person interested in the estate—

- (a) revoke the administration already granted; or
- (b) order the administrator to execute a further bond in such sum and within such time as may seem right with or without sureties as aforesaid; and
- (c) upon default remove the administrator and appoint an administrator in his place with power to sue or be

sued upon any contract made by the removed administrator.

37.—(1.) The court may on application made on motion in a summary way and on being satisfied that the condition of any bond given hereunder has been broken order the Registrar for and on behalf of His Majesty to assign the same to some person to be named in such order.

Order may be made to assign the bond.

N.S.W. No. 13 of 1898, s. 67.
Q. 31 Vic. No. 9, s. 38.

(2.) Such person his executors or administrators shall thereupon be entitled to sue upon the said bond in his or their own name or names as if the same had been originally given to him and shall be entitled to recover thereon as trustees for all persons interested the full amount recoverable in respect of any breach of the condition of the said bond.

38. If upon motion by a surety to an administration bond it appear to the court that—

Surety may apply to the court for relief.
N.S.W. *Ib.* s. 68.

- (a) the estate is being wasted; or
- (b) is in danger of being wasted; or
- (c) 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 court may grant such relief as it may think fit.

39. Where after the passing of this Ordinance—

- (a) any person renounces probate of the will of which he is appointed executor or one of the executors; or
- (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 cited to take probate and does not appear to such citation

Executor renouncing probate or not acting or not appearing to a citation to be treated as if he had renounced.

N.S.W. *Ib.* s. 69.
Q. *Ib.* ss. 17, 18.

the right of such 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 such person had not been appointed executor.

40. Where an infant is sole executor administration with the will annexed may be granted to—

- (a) the guardian of such infant; or
- (b) such other person as the court thinks fit

Where an infant is sole executor administration to be granted to the guardian &c.

N.S.W. *Ib.* s. 70.
Q. *Ib.* s. 28.

until such 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 said executor or administration to some other person.

WILLS AND INTESTACY—

Powers of guardian thereunder. N.S.W. No. 13 of 1898, s. 71. Cf. Q. 31 Vic. No. 9, s. 29.

41. The person to whom such administration is granted shall have the same powers vested in him as an administrator by virtue of an administration granted to him *durante minore etate* of the next-of-kin.

Administration to be granted to attorney in certain cases. N.S.W. *Ib.* s. 72.

42. 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 such attorney but on behalf of the person entitled thereto and on such terms and conditions as the court thinks fit.

Administration *pendente lite* and receiver. N.S.W. *Ib.* s. 73. Q. *Ib.* ss. 30, 31, 33, 34.

43.—(1.) The 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 to 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 court may think right.

(2.) The court may make such orders for the remuneration of such administrator or receiver out of the personal and real estate of the deceased as it may think right.

Power as to appointment of administrator. N.S.W. *Ib.* s. 74. Cf. Q. *Ib.* s. 32.

44. The court may in any case where a person dies—

(a) intestate; or

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

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

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

(ii) is resident out of the Territory

if it thinks it necessary or convenient in any such case by reason of the insolvency of the estate of the deceased or other special circumstances 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 court directs and every such administration may be limited as the court thinks fit.

45. 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 court may upon the application of any creditor legatee or next-of-kin grant to such creditor legatee or next-of-kin so applying special letters of administration of such deceased person nevertheless to cease upon an order being made for the rescission thereof as hereinafter mentioned.

If executor or administrator out of jurisdiction special administrator may be appointed. N.S.W. No. 13 of 1898, s. 76. Q. 31 Vic. No. 9, s. 22.

46. The person applying for any such special grant as aforesaid shall in addition to the oath usually taken by administrators satisfy the court by affidavit that—

Special administrator to make certain affidavits. N.S.W. *Ib.* s. 77. Q. *Ib.* s. 23.

- (a) the executor or administrator of such deceased person is resident out of the jurisdiction; and
- (b) 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
- (c) the estate is liable to loss or waste.

47.—(1.) On the return within the jurisdiction of the executor to whom probate has originally been granted or the administrator such executor or administrator may apply to the court by petition to rescind such special grant of administration.

On return of original executor or administrator special administration to be rescinded. N.S.W. *Ib.* s. 78.

(2.) The court on the hearing of such petition may make an order to rescind such special grant of administration upon such terms and conditions as to security costs or otherwise as to the court may seem reasonable and thereafter the original probate or administration shall be and remain as valid and effectual as if such special grant of administration had never been made.

48. Upon any order being made by the court for the rescission of any grant of special administration as aforesaid 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 court may order.

On order being made for rescission special administrator to account and pay over moneys. N.S.W. *Ib.* s. 79.

49. If such executor or administrator neglects to apply for an order for the rescission of such special administration he shall notwithstanding that such 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 herein mentioned.

Original executor or administrator liable although special administration not rescinded. N.S.W. *Ib.* s. 80.

WILLS AND INTESTACY—

Revocation of grants not to prejudice actions or suits. N.S.W. No. 13 of 1898, s. 81. Q. S.C.R. O. 16, r. 3.

50. Where any proceedings in a cause or matter have been commenced by or against any executor or administrator lawfully acting as such and the grant of probate or administration is pending such proceedings revoked or rescinded the court in which such proceedings are pending may order that the proceedings shall be continued in the name of the executor or administrator authorized to act as such by any grant or restoration of probate or administration made consequent upon such revocation or rescission as if the proceedings had been originally commenced by or against such last-mentioned executor or administrator but subject to such conditions and variations (if any) as such court may direct.

All debts to stand in equal degree. N.S.W. *ib.* s. 82. Q. 34 Vic. No. 27, s. 1.

51.—(1.) In the administration of the estate of every person dying after the commencement of this Ordinance all the creditors of every description of such person shall be treated as standing in equal degree and be paid accordingly out of the assets of such deceased person whether such assets are legal or equitable any statute or law to the contrary notwithstanding.

No right of retainer. N.S.W. No. 14 of 1906, s. 4.

(2.) In the administration of the estate of any deceased person in respect of which probate or letters of administration is or are granted no debt or liability of such person shall be entitled to any priority or preference by reason only that it is due to an executor or administrator of such 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 herein contained shall affect the provisions of any Ordinances protecting life assurance or other policies against creditors.

Devisee of real estate not to claim payment of mortgage out of personality. Q. 31 Vic. No. 18, s. 78.

52.—(1.) When any person shall die after the commencement of this Ordinance seized of or entitled to any estate or interest in any land or hereditaments in the Territory which shall at the time of his death be charged with the payment of money by way of mortgage or other legal or equitable charge and such person shall not by his will or deed or other document have signified any contrary or other intention the devisee to whom such land or hereditaments shall be devised shall not be entitled to have the mortgage debt satisfied out of the personal estate or any other real estate of the deceased; but the land and hereditaments so charged shall as between the different persons claiming through or under the deceased person be primarily liable to the payment of all money with which the same shall be charged every part thereof according

to its value bearing a proportionate part of the money charged on the whole.

(2.) Nothing herein contained shall affect any right of the mortgagee of such lands or hereditaments to obtain full payments ^(8A) of his mortgage debt either out of the personal estate of the person so dying or otherwise.

(3.) The contrary or other intention mentioned in Subsection (1.) of this section shall not be deemed to be signified by a direction for payment of debts out of or a charge of debts upon personal estate or residuary real and personal estate but such intention must be signified expressly and by distinct reference to the money charged.

S.A. 537 of 1891, s. 75 (2).

52A. In any administration by the Supreme Court or under this Ordinance by the Curator of the assets of any deceased person whose estate may prove to be insufficient for the payment in full of his debts and liabilities and in any administration by an executor or administrator under Section 52B of this Ordinance 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 or contingent liabilities respectively as may be in force for the time being under the law of insolvency with respect to the estates of persons adjudged insolvent and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of the deceased person may come in under the administration of such estate or the decree or order therefor and make such claims against the same as they may respectively be entitled to by virtue of this Ordinance.

Rules of insolvency to prevail in the administration of the assets of certain estates.

S.A. *ib.* s. 77.

Cf. S.A. No. 116 of 1878, s. 6.
Cf. Q. Jud. Act 1876, s. 5(1).

Inserted by No. 11 of 1915, s. 2; amended by No. 14 of 1940, s. 3 and Schedule.

52B.—(1.) Any executor administrator or creditor of any deceased person may file with the Registrar a statutory declaration that he believes the estate of the deceased to be insufficient for the payment of its liabilities.

Declaration as to insufficiency of an estate to pay its liabilities.

Cf. S.A. No. 537 of 1891, s. 76.

Section 52B inserted by No. 11 of 1915, s. 2.

(2.) On such a declaration being filed by a creditor he shall if probate or administration has been granted serve a copy of the declaration with a memorandum of the date of filing on the executor or administrator.

(3.) If probate or administration be granted after the filing of the declaration by a creditor the Registrar shall on issuing the probate or administration issue therewith to the executor or administrator a copy of the declaration with a memorandum of the date of filing.

(8A) The word "payments" appeared in the original Ordinance. *Semble*, "payment" was intended.

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Sub-section (4)
amended by
No. 14 of 1940,
s. 3 and
Schedule.

(4.) After the service on or issue to the executor or administrator of the copy and memorandum where the declaration has been filed by a creditor or after the filing of the declaration by an executor or administrator the executor or administrator shall administer the estate so far as concerns the liabilities in the same manner so far as practicable as it would have been administered for the benefit of creditors under a decree of the Supreme Court and the court may on the application *ex parte* or otherwise of the executor or administrator or of a creditor order that any action against the executor or administrator shall not proceed beyond judgment without the leave of the court.

(5.) Any person entitled to make a claim against the estate under the last preceding section shall be deemed a creditor for the purposes of this section.

Summary
application for
legacy &c.
N.S.W. No. 13
of 1898, s. 84.

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

- (a) execute a transfer of land devised to the devisee; or
- (b) pay or hand over to the person entitled any legacy or residuary bequest

such devisee or person may apply by summons to a judge calling upon such executor or administrator to show cause why he should not comply with such request and such judge may make such order in the matter as he may think right.

Executor or
administrator
to pass accounts.
N.S.W. *Ib.* s. 85.

54. Every person to whom probate or administration has been or is granted shall file an inventory of the estate of the deceased and pass his accounts relating thereto within such time and from time to time and in such manner as may be fixed by the rules of court or as the court may specially order.

Executors &c.
may be allowed
commission.
N.S.W. *Ib.* s. 86.
Q. 31 Vic.
No. 9, s. 6.

55.—(1.) The court may 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 for his pains and trouble as is just and reasonable and subject to such notices (if any) as the court may direct.

(2.) No such allowance shall be made to any executor administrator or trustee who neglects or omits without good reason or a special order of a judge to pass his accounts pursuant to any general or special rule or order of the court.

If accounts &c.
not filed
executor &c.
may be attached.
N.S.W. *Ib.*
s. 87(3).

56. If such executor or administrator does not within the prescribed time or within such further time as is allowed him by a judge file pass or exhibit such inventory or account in manner

aforesaid he shall be liable to attachment in accordance with the practice of the Supreme Court.

Amended by
No. 14 of 1940,
s. 3 and
Schedule.

57. 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 court from ordering the assignment of any bond to any person with a view of enforcing the penalty thereof as hereinbefore mentioned.

Proceedings
under last
section not to
prejudice
proceedings
on bond.
N.S.W. No. 13
of 1898, s. 88.

58. The court may make such order with reference to the distribution or application of any moneys which the executor or administrator or curator may have in hand or as to the residue of the estate as it may think fit.

Judge may
make order as
to disposal of
moneys in
hands of
executor &c.
N.S.W. *Ib.* s. 89.

59.—(1.) Where any probate or administration is revoked or rescinded under this part of this Ordinance all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation or rescission thereof shall be a legal discharge to the person making the same.

Payments
under revoked
probates or
administrations
valid.
N.S.W. *Ib.* s. 90.
Q. 31 Vic.
No. 9, s. 39.

(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 in respect of any payments made by him which the person to whom probate or administration is afterwards or was originally granted might have lawfully made.

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

Persons &c.
making
payments
upon probates
to be
indemnified.
N.S.W. *Ib.* s. 91.
Q. *Ib.* s. 40.

61.—(1.) Where an executor or administrator has given such or the like notices as in the opinion of the court in which such executor or administrator is sought to be charged would have been given by the Supreme Court in an administration action for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate such executor or administrator may at the expiration of the time named in the said notices or the last of the said notices for sending in such 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 such executor or administrator has then notice.

Distribution
of assets after
notice given
by executor or
administrator.
N.S.W. *Ib.* s. 92.
Q. *Ib.* s. 5.
Sub-section (1)
amended by
No. 14 of 1940,
s. 3 and
Schedule.

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(2.) Such 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 such distribution.

Claims barred against executor or administrator in certain cases.

N.S.W. No. 18 of 1898, s. 93.

62.—(1.) When an executor or administrator has given the notices in the last preceding section mentioned and a claim against the estate is sent in to him he may if he dispute 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 same.

(2.) If after the said period of six months has expired such person as aforesaid does not satisfy the court that he is duly prosecuting his claim the court may on application by the executor or administrator make an order barring the claim against the executor or administrator subject to such conditions as may seem just or make such other order as the court may think fit.

Distribution of estate by executors and administrators.

N.S.W. *Id.* s. 94.

Q. 31 Vic. No. 19, ss. 3, 4.

63.—(1.) Where an executor or administrator liable as such under any lease or agreement for a lease or any conveyance on chief rents or rent charges or agreement for such conveyance granted or assigned to or made and entered into with the testator or intestate whose estate is being administered to—

- (a) the rents covenants or agreements contained in any such lease or agreement for a lease; or
- (b) the rents covenants or agreements contained in any such conveyance or agreement for such conveyance whether any such rent be by limitation of use grant or reservation;

has—

- (i) satisfied all such liabilities under the said lease or conveyance or agreement for a lease or for a conveyance as may have accrued due and been claimed up to the time of the assignment or conveyance hereinafter mentioned; and
- (ii) 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 or grantee to be laid out on the property demised or conveyed or agreed to be demised or to be conveyed although the period for laying out the same may not have arrived; and
- (iii) assigned the lease or agreement for a lease or conveyed such property or assigned the agreement for such conveyance as aforesaid to a purchaser

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 conveyance or agreement for a lease or for a conveyance.

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

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

Right to follow assets. N.S.W. No. 13 of 1898, s. 95. Q. 31 Vic. No. 19, ss. 3, 4, 5.

65. Any executor may—

- (a) pay any debts or claims upon any evidence that he may think 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 aforesaid 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.

Executors may compound &c. N.S.W. *Ib.* s. 96.

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

- (a) named in any probate or letters of administration granted by a court of probate in any part of His Majesty's Dominions or a British court in a foreign country and making application under the provisions of Part IV. of this Ordinance for the sealing of such probate or administration; or
- (b) appointed under this part of this Ordinance

Every executor &c. to be deemed resident in the Territory. N.S.W. *Ib.* s. 97.

shall be deemed to be resident in the Territory.

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(2.) Where not actually so resident he shall before the issue or sealing of any probate or administration file with the Registrar an address within the town of Port Moresby at which notices and processes may be served upon him; and all services at such registered address shall be deemed personal service.

PART IV.—BRITISH PROBATES AND LETTERS OF ADMINISTRATION.

67. In this part of this Ordinance—

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

“Probate” and “Letters of Administration” include confirmation in Scotland and any instrument having in any part of His Majesty’s Dominions the same effect which under the law of this Territory is given to probate and letters of administration respectively;

“Part 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;

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

“British Court in a Foreign Country” means any British Court having jurisdiction out of His Majesty’s Dominions in pursuance of an Order in Council whether made under any Act or otherwise.

68.—(1.) When a court of probate in any part of His Majesty’s Dominions or a British court in a foreign country has granted probate or letters of administration in respect of the estate of a deceased person the probate or letters so granted may on being produced to and a copy thereof deposited with the Supreme Court be sealed with the seal of that court and thereupon shall be of the like force and effect and have the same operation in the Territory as if granted by that court.

(2.) Provided that no probate or letters of administration shall be sealed under this section until there has been filed in the Supreme Court a certificate under the hand of the Treasurer to the effect that adequate security has been given for payment of all probate and succession duty in respect of so much (if any) of the estate as is liable to duty in the Territory.⁽⁹⁾

(9) Sub-regulation (4) of Regulation 22A of the *National Security (External Territories) Regulations* of the Commonwealth provides that Sub-section (2) of Section 68 of the *Probate and Administration Ordinance, 1913-1940*, of the Territory of Papua shall not apply in connexion with the sealing of any probate or letters of administration in the Supreme Court of the Australian Capital Territory under Regulation 22; but the Registrar of that Supreme Court shall not seal the probate or letters of administration or any copy thereof unless all succession duty has been paid or security for payment of the duty has been furnished to his satisfaction.

Interpretation.
Pap. No. 2 of
1902, s. 1.

Inserted by
No. 16 of 1936,
s. 2.

Sealing of
British
probates and
letters of
administration.
Pap. *ib.* s. 3.
Sub-section (1)
amended by
No. 14 of 1940,
s. 3 and
Schedule.

Sub-section (2)
amended by
No. 14 of 1940,
s. 3 and
Schedule.

69. The Supreme Court may if it thinks fit upon the application of any creditor require before sealing that adequate security be given for the payment of debts due from the estate to creditors residing in the Territory and also if it thinks fit upon the application of any beneficiary or next-of-kin require that adequate security be given for the protection of the interests of such beneficiary or next-of-kin.

Security for payment of debts and beneficiaries.
Pap. No. 2 of 1902, s. 3(3).
Amended by No. 14 of 1940, s. 3 and Schedule.

70. For the purposes of the two last preceding sections a duplicate of any probate or letters of administration sealed with the seal of the court granting the same or a copy thereof certified as correct by or under the authority of the court granting the same shall have the same effect as the original.

Duplicates or certified copies.
Pap. *Ib.* s. 3(4).

PART V.—CURATOR OF INTESTATE ESTATES.⁽¹⁰⁾⁽¹¹⁾

71.—(1.) Every person appointed Curator shall if required by the Administrator before entering upon the duties of his office give security to His Majesty and his successors to the satisfaction of the Administrator for the collection and due payment of and accounting for all moneys which shall come to his hands by virtue of his office.

Curator to give security.
N.S.W. No. 13 of 1898, s. 111.
Q. 41 Vic. No. 24, s. 4.
Sub-section (1) amended by No. 14 of 1940, s. 3 and Schedule.

(2.) Any surety found by him may withdraw from any future liability by giving the Government Secretary three months' written notice of his desire so to do; but such withdrawal shall not affect his liability for any breach which may have occurred prior to the date of actual withdrawal.

* * * * *

Sections 72 and 73 repealed by No. 1 of 1926, s. 5.

74.—(1.) The Curator may appoint any persons to act as his agents in the managing collecting and getting in of the property of any estates in his hands for administration and the clerks of petty sessions and persons acting as such shall at his request act as such agents within their respective districts.

Curator's agents.
N.S.W. *Ib.* s. 114.
Q. *Ib.* s. 7.

(2.) Every such agent not being a clerk of petty sessions shall give security to the satisfaction of the Curator for the performance of his duties.

(3.) Such agents shall in all respects act in the management collection and getting in of such property under the direction of the

(10) The *Probate and Administration Ordinance, 1926*, amended Section 1 of the principal Ordinance by substituting "Public Curator" for "Curator of Intestate Estates" after "Part V.—". No consequential amendment was, however, made to the heading preceding Section 71. This has now been made by the Second Schedule of the *Ordinances Reprint and Revision Ordinance 1947* of the Territory of Papua-New Guinea.

(11) Regulation 23 of the *National Security (External Territories) Regulations* of the Commonwealth provides that all property vested on 11.2.1942 in the Public Curator of the Territory of Papua and not lawfully disposed of, shall, subject to the Regulations, be vested in the Minister in the same manner and upon the same trusts and conditions as those in and upon which it was vested in the Public Curator.

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Curator who shall not be answerable for any act or omission of any such agent not in conformity with any such direction or which has not happened by the said Curator's own default or neglect.

As to fees and commission.
Second Schedule.

N.S.W. No. 13 of 1898, s. 115.

Q. 41 Vic. No. 24, ss. 8, 9.

Sub-section (1) amended by No. 1 of 1926, s. 6.

75.—(1.) The Curator shall take and retain—

- (a) the fees set out in the Second Schedule hereto; and also
- (b) a commission of Five pounds per centum on all moneys collected by him or by his agents or such other commission not being more than Five pounds per centum on such moneys as may be prescribed either generally or in relation to any particular class of such collections.

(2.) The Curator shall pay such fees and commission into the Treasury for public uses after deducting therefrom all expenses which there shall appear to be no other available source for defraying and (in the case only of agents who are not otherwise in the public service of the Territory) an allowance not exceeding Three pounds per centum by way of commission to his agents in respect of all moneys collected by them or through or by reason of their agency.

Order to Curator to administer.

N.S.W. *Ib.* s. 116(1).

Cf. Q. Ib. ss. 32 to 36.

Pap. No. 1 of 1894, s. 5.

76.—(1.) The court 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 such person leaves no executor widow or next-of-kin willing and capable of acting in execution of his will or administration of his estate resident within the jurisdiction;
- (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 such person;
- (d) where after the expiration of thirty days from such death there is no reasonable probability of application being made within such period as aforesaid;
- (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; or
 - (ii) is not known; or
 - (iii) has not been found; or

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- (iv) requests the Curator in writing to apply for such 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;
- (h) where by the will of such person the Curator is appointed to act;
- (i) where the application of the Curator discloses any reason which the court deems a good reason for making the order.

(2.) The court may on the application of the Curator grant to the Curator an order to administer the estate of any deceased person when such person shall have died beyond the jurisdiction of the court but leaving estate within the jurisdiction thereof which would be held to be subject to the provisions of this Ordinance if such person had died within the jurisdiction of the court.

Persons dying beyond jurisdiction of the court.
Q. 41 Vic.
No. 24, s. 31.

(3.) The court may in any case require the Curator to—

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

Notices citations may be required.
N.S.W. No. 13
of 1898, s.
116(2).

as it may think 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.

(4) An application by the Curator under this section shall be made as soon as conveniently may be after he receives information on oath of the death of any person leaving any estate liable to be administered by him.

N.S.W. *Ib.*
s. 116(2).

77.—(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 such estate except as hereby enacted as he would have had if administration had been granted to him as next-of-kin to such person intestate.

Effect of order.
N.S.W. *Ib.* s. 117.
Of. Q. *Ib.* s. 31.

(2.) All laws now or hereafter in force in reference to the administration of the estates of deceased persons shall apply to the administration of estates by the Curator.

78.—(1.) Notwithstanding any order which has been made authorizing the Curator to administer under this Ordinance the court may grant probate of the will or administration of the estate

Probates and administrations may be granted notwithstanding appointment of Curator.

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N.S.W. No. 13
of 1898, s. 118.
Q. 41 Vic.
No. 24, s. 45.

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 same has been left at the office of the Curator.

On such grant
Curator's duties
and liabilities
to cease.
N.S.W.
Ib. s. 119.
Q. Ib. s. 46.

79.—(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 such grant and all liabilities of the Curator under any contract or agreement entered into by him in relation to such estate or any part thereof shall cease.

(2.) Such portion of the estate of such person 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 such 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 or his agents; and
- (b) the necessary outlay disbursements costs charges and expenses in relation to such estate; including
- (c) all costs of and incidental to appearing on the application for such probate or administration.

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

When there is
reasonable
ground to
believe that
any person has
died out of
jurisdiction of
the court the
Curator may
obtain order
to manage &c.
without strict
legal proof of
death.

N.S.W. Ib.
s. 120.

80.—(1.) Whenever it is made to appear to the court that there is reasonable ground to suppose that any person has died either in or out of the jurisdiction of the court intestate leaving property within such jurisdiction the court may grant an order to the Curator to administer the estate of such person both real and personal.

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

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

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

(3.) The Curator shall not proceed to any distribution of the assets without an order of the court specially authorizing him to make such distribution.

81. Within fourteen days after any order to administer has been granted the Curator shall if the court so orders cause notice of the fact that such order has been granted to be published—

Notice of order to be published.
N.S.W. No. 13 of 1898, s. 121.

(a) once in some newspaper published in the town of Port Moresby;

or if there is no newspaper published in such town then—

(b) once in some newspaper circulating in the Territory.

82. The Curator shall if the court so orders—

Like notices to next-of-kin.
N.S.W. 1b. s. 122.

(a) cause like notices to be published in newspapers published or circulating in the town or place where the next-of-kin (if resident out of the Territory) are known or supposed to reside;

and in the case of foreigners—

(b) 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.

83. 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.
Pap. No. 1 of 1894, s. 1.

(1) the deceased has left no will; or

(2) the deceased has left a will but no executor is appointed in such will; or

(3) the deceased has left a will and an executor is appointed in such will but the executor so appointed—

(a) is dead; or

(b) is too far from the place where the estate or any part thereof is to be able to forthwith take care of the same; or

(c) does not intend or neglects to act as such executor.

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Small estates.
Cf. *Public Curators Act of 1915*, 6 Geo. V, No. 14, Queensland.
Section 83A inserted by No. 14 of 1940, s. 2.

83A.—(1.) Any person who in the opinion of the Public Curator would be entitled to apply to the Court for the administration by the Court of an estate the gross capital value whereof is proved to the satisfaction of the Public Curator to be less than One hundred pounds may apply to the Public Curator to administer the estate and where any such application is made and it appears to the Public Curator that the persons beneficially entitled are persons of small means the Public Curator may administer the estate.

(2.) On the Public Curator undertaking by declaration in writing to administer any such estate the property of such estate shall by virtue of this Ordinance vest in him as if an Order to administer had been obtained.

(3.) Where proceedings have been instituted in any Court for the administration of an estate and by reason of the small value of the estate in the Territory it appears to the Court that the estate can be more economically administered by the Public Curator the Court may order that any such estate shall be administered by the Public Curator as an estate under this section.

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

Pap. No. 1 of 1894, s. 2.

84. 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—

- (1) take any steps and incur any expense which he may deem necessary for preserving such real estate or anything in on or annexed thereto;
- (2) collect and sell any produce thereof which would decrease in value by being kept and incur any necessary expenses in connection with such collection or sale.

Further power.
Pap. *ib.* s. 3.

85.—(1.) When the Curator or an agent of his has as aforesaid taken possession of the personal estate of a deceased person he may—

- (a) sell or dispose of the same or any part thereof if it appears to him that it will be for the benefit of the estate of the deceased that he should do so;
- (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;
 - (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 two last preceding sections he shall forthwith report such action with full particulars to the Curator.

86. When the Curator or an agent of his has as aforesaid taken possession of any estate of a deceased person the Curator shall in all cases apply as soon as possible to the court for an order to administer the estate of such person.

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

Pap. No. 1 of 1894, s. 4.

Amended by No. 1 of 1926, s. 7.

87. 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 as if an order to administer had been previously made; and that whether the Curator further administers such estate or not: Provided always that if an order to administer is not obtained the fee for an order to administer specified in the Second Schedule shall not be charged.

Estates liable to certain charges and fees.

Pap. *ib.* s. 6.

88.—(1.) Any person may by his will appoint the Curator to be sole executor or trustee thereof and the Curator shall apply for probate of the will or execute the office of trustee thereof as the case may be.

Curator may be appointed executor or trustee under a will.

Q. 41 Vic. No. 24, s. 53.

S.A. No. 537 of 1891, s. 74.

(2.) The Curator may by leave of a judge refuse to act in reference to any estate in cases where in the opinion of a judge the trusts and duties to be performed are of such a complicated uncertain or risky nature as to render it inadvisable that the Curator should act.

89. In all cases where an order to administer is made under this part of this Ordinance the court may on the petition of the Curator or any person interested in the estate make such orders touching the collection sale investment and disposal of the estate as to the court seems meet.

Curator to act as the court shall direct.

N.S.W. No. 13 of 1898, s. 125.

Q. *ib.* s. 50.

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

Mode of proceeding under this Ordinance.

N.S.W. *ib.* s. 126.

Q. *ib.* s. 51.

(a) all disputes and matters touching the collection management or administration of the same; and

(b) all claims and demands thereon

shall except as hereinafter provided be decided by the court on petition.

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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 court may direct such proceedings to be instituted as appear proper for the due decision thereof.

Payment of
debts.
N.S.W.
No. 13 of 1898,
s. 127.
Q. 41 Vic.
No. 24, s. 39.

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

(2.) The Curator may allow any claim which is made before him upon the affidavit of the claimant alone or call for further evidence 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—

(a) pay the debts proved if the whole thereof can be paid; and if not—

(b) declare and pay a dividend thereon.

(4.) If he collects any further assets after making such 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.

(6.) After payment of all debts fees commission and expenses incident to the collection management and administration of such estate the Curator shall pay over the residue to the personal representative if any of the intestate or testator (as the case may be) so soon as such representative is duly constituted.

Payment to
relatives &c.
in petty cases.
N.S.W. *Ib.*
s. 128.
Q. *Ib.* s. 40.

92. If at the expiration of three months from the time fixed by the advertisement for creditors to come in and prove their debts—

(a) no debt has been proved; or

(b) no creditor having proved his debt remains unpaid

the Curator with the approval of the court may pay any sum not exceeding One hundred pounds to any person claiming to be a party in distribution or to be a legatee under a will without administration, having been obtained or the will being proved and

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upon such evidence of the right or title of the party so claiming as the court may under the circumstances deem sufficient.

93.—(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 and retain the same in his office; and
- (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 such estates.

Accounts to be kept &c.
N.S.W. No. 13 of 1898, s. 129.
Q. 41 Vic. No. 24, s. 37.

Paragraph (c) amended by No. 1 of 1926, s. 8.

* * * * *

Paragraphs (d) and (e) omitted by No. 1 of 1926, s. 8.

(1A.) Upon the application in writing by or with the authority of any person interested in any such estate the Curator shall—

Sub-section (1A) inserted by No. 1 of 1926, s. 8.

- (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; and
- (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.

(1B.) Subject as aforesaid the Curator his deputy officers and agents shall observe strict secrecy in respect of every trust or estate in course of administration by him.

Sub-section (1B) inserted by No. 1 of 1926, s. 8.

(2.) The Curator shall with due diligence—

Realization of estates.

- (a) sell or mortgage such lands as he may be authorized to deal with; and
- (b) convert into money all such other estate as does not consist of money; unless otherwise ordered by the court; and
- (c) forthwith pay all moneys received by him as such Curator into some bank to be approved of by the Treasurer

WILLS AND INTESTACY—

to the credit of an official account to be operated on by him as such Curator. All cheques drawn upon such account by the Curator shall be countersigned by an officer appointed from time to time by the Treasurer who shall advise the bank accordingly.

94.—(1.) The receipt in writing of the Curator for any moneys payable to him under this Ordinance shall be sufficient discharge for the same to the persons paying the same who shall not afterwards be liable for any misapplication thereof.

Receipt of
Curator
sufficient
discharge.
N.S.W. No. 13
of 1898, s. 130.

(2.) When the Curator has obtained an order to administer the estate in the Territory of any person who at the time of his death was domiciled in a State of the Commonwealth of Australia and whose estate in such State is being administered by the Curator of such State or by an executor or administrator duly appointed by the Supreme Court of such State the Curator may pay over to the Curator of such State in which the deceased was so domiciled at the time of his death or to such executor or administrator the balance of the estate after payment of his debts in the Territory and the charges and duties provided for in this or any other Ordinance without seeing to the application of such money so paid and without incurring any liability in regard to such payment.

Curator may
pay over to
Curator of a
State.
S.A. No. 854 of
1904, s. 6.

(3.) When the Curator of any State has in the said State obtained administration to the estate of any deceased person whose estate in the Territory is being administered by the Curator and who at the time of his death was domiciled in the Territory the Curator may receive from the Curator of such State the balance of the deceased's estate therein after payment of creditors and all charges provided for under the law of that State.

Curator may
receive from
Curator of a
State.
S.A. *Ib.* s. 7.

(4.) 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 but no commission shall be paid to or deducted by the Curator unless the Curator has had to resort thereto for the payment of the debts due by the estate.

State.
S.A. *Ib.* s. 8.

(5.) For the purposes of this section the word "State" shall mean any State or Territory (other than the Territory of Papua) of the Commonwealth of Australia and shall include the Dominion of New Zealand.

95. 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 or any agent for him during the

Half-yearly
returns to
Treasurer and
accounts.
N.S.W. *Ib.* s. 131,
Q. 41 Vic.
No. 24, ss. 5
and 38.

half-year immediately preceding in respect of the estates entrusted to him to administer distinguishing the particular estate in which the same have been so received or paid and within one month after transmitting such return publish a like return in the *Gazette*;

- (b) furnish at the same time a separate and distinct return of all balances or sums whatsoever then in his hands to the credit of each of such estates; and
- (c) keep proper books of account in reference thereto which shall once in every three months or oftener if necessary be examined and passed by the Treasurer or some officer appointed by the Administrator in that behalf.

Paragraph (c) amended by No. 14 of 1940, s. 3 and Schedule.

For the purposes of such examination the Treasurer or the officer so appointed shall have access to all books vouchers and documents in the charge of the Curator.

96. The Curator shall after the expiration of twelve months from the date of the order for collection of any estate invest all moneys then standing to the credit of each such estate as the court may by any general or special rule or order direct and subject to any such order or rule in accordance with the rules of court with reference to the investment of suitors' moneys under the charge or control of the Supreme Court.

The Curator to invest moneys after expiration of twelve months.

N.S.W. No. 13 of 1898, s. 132.

Amended by No. 14 of 1940, s. 3 and Schedule.

97.—(1.) Neither the Curator nor any of his 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 agent as the goods of such testator or intestate unless the Curator or agent knows or has actual notice before the sale that such goods or chattels are not in fact the property of such testator or intestate.

Curator or his agents not liable for acts done in the performance of their duties.

N.S.W. *Ib.* s. 133.

Q. 41 Vic. No. 24, s. 10.

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

98. In case of any sale by the Curator or his agents of goods or chattels belonging to any third person the amount realized by the sale thereof shall be paid over by him to the owner upon proof of ownership unless the same 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

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

N.S.W. *Ib.* s. 134.

Q. *Ib.* s. 10.

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whilst the Curator or any such agent was in ignorance and without actual notice of the claim of such person to the goods or chattels so sold.

Payment to
Treasurer after
six years.

N.S.W. No. 13 of
of 1898, s. 136.
Q. 41 Vic. No.
24, s. 42.

99. The Curator shall in the month of January in each year cause all sums of money which shall on the first day of that month have been invested as aforesaid 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 Treasurer for the public revenue subject to the provisions hereinafter contained.

Parties entitled
may apply
subsequently.

Cf. N.S.W.
Ib. s. 137.
Q. *Ib.* s. 43.

Amended by
No. 14 of 1940,
s. 3 and
Schedule.

100. If at any time after any such sum shall have been paid to public revenue any person shall prove to the satisfaction of the Administrator in Council that he is entitled thereto the Administrator in Council may authorize the Treasurer to pay such sum to such person and the receipt of such person shall be a sufficient voucher for such payment.

PART VI.—PROCEDURE.

Practice until
otherwise
ordered to be
as at present
existing.

Cf. Q. 31
Vic. No. 9,
s. 8.

101. Subject to the rules of court and except where otherwise provided by this Ordinance the practice of the court shall be regulated so far as the circumstances of the case will admit by the practice of the Supreme Court in Queensland.⁽¹²⁾

Mode of taking
evidence.
Orally.

N.S.W.
Ib. s. 139.

Q. *Ib.* s. 7.
By affidavit.

102.—(1.) Subject to the rules of court the witnesses and where necessary the parties in all contentious matters where their attendance can be had shall be examined orally in open court.

(2.) By the permission of the 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 as aforesaid and upon such cross-examination may be re-examined orally in open court as aforesaid by or on behalf of the party using such affidavit.

Where a will
affecting real
estate is
proved in
solemn form
&c. the
persons
interested in
the real estate
to be cited.

Q. *Ib.* s. 19.

103. Where proceedings are taken under this Ordinance for proving a will in solemn form or for revoking the probate of a will on the ground of the invalidity thereof or where in any other contentious cause or matter under this Ordinance the validity of a will is disputed except when the will affects only personal estate the devisees and other persons having or pretending interest in the real estate affected by the will shall subject to the provisions of this Ordinance and to the rules of court be cited to see proceedings or otherwise summoned in like manner as the next-of-kin or others

(12) See, also, the *Rules of the Central Court (Probate and Administration)* printed on p. 4324.

having or pretending interest in the personal estate affected by a will are cited or summoned and may be permitted to become parties or intervene for their respective interests in such real estate subject to such rules and to the discretion of the court.

104. Where probate of such will is granted after such proof in solemn form or where the validity of the will is otherwise declared by the decree or order in such contentious cause or matter as aforesaid the probate decree or order respectively shall enure for the benefit of all persons interested in the real estate affected by such will and the probate copy of such will or the letters of administration with such will annexed or a copy thereof respectively stamped with the seal of the court shall in all courts and in all actions and proceedings affecting real estate in the Territory (save proceedings by way of appeal or for the revocation of such probate or administration) be received as conclusive evidence of the validity and contents of such will in like manner as a probate is received in evidence in matters relating to the personal estate; and where probate is refused or revoked on the ground of the invalidity of the will or the invalidity of the will is otherwise declared by decree or order under this Ordinance such decree or order shall enure for the benefit of the persons against whose interest in real estate such will might operate and such will shall not be received in evidence in any action or proceeding in relation to real estate save in any proceeding by way of appeal from such decrees or orders.

Where the will is proved in solemn form or its validity otherwise decided on the decree of the court to be binding on the persons interested in the real estate.
Q. 31 Vic. No. 9, s. 20.

105.—(1.) Nothing herein contained shall make it necessary to cite any persons having or pretending interest in the real estate of a deceased person unless the court is satisfied that the deceased was at the time of his decease seised of or entitled to or had power to appoint by will some real estate beneficially or in any case where the will propounded or of which the validity is questioned would not in the opinion of the court though established as to personalty affect real estate; but in every such case and in any other case in which the court may with reference to the circumstances of the property of the deceased or otherwise think fit the court may proceed without citing the persons interested in the real estate: Provided that the probate decree or order of the court shall not in any case affect any person in respect of his interest in real estate unless such person has been cited or made party to the proceedings or derives title under or through a person so cited or made party.

Persons interested in certain cases not to be cited and where not cited not to be affected by probate.
Q. 1b. s. 21.

(2.) In this and the last two preceding sections the words "real estate" shall mean real estate as hereinbefore defined with the exception that they shall not include land held under any lease.

WILLS AND INTESTACY—

Powers of the court to enforce orders.

N.S.W. No. 13 of 1898, s. 149.

Q. 31 Vic.

No. 9, ss. 3, 4.

Section 106 amended by No. 14 of 1940, s. 3 and Schedule.

106. The court shall have the like powers jurisdiction and authority—

- (a) for requiring and enforcing the production of documents and the attendance of persons as witnesses and otherwise;
- (b) for punishing persons failing neglecting or refusing to produce such documents or to appear or to be sworn or make affirmation or declaration or to give evidence or guilty of contempt;
- (c) for the trial or determination of questions of fact;
- (d) for enforcing all orders decrees and judgments made or given by the court under this part of this Ordinance;
- (e) for the taxation of costs

and otherwise in relation to the matters to be inquired into and done under this Ordinance or by or under the orders of the court under this Ordinance as are by law vested in the Supreme Court in its civil jurisdiction for such purposes in relation to any action cause or matter depending therein.

Order to produce an instrument purporting to be testamentary.
N.S.W.
Ib. s. 150.
Q. *Ib.* s. 5.

107.—(1.) The court may on motion or petition or otherwise in a summary way whether or not any action or other proceeding is pending in the 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 court which may be shown to be in the possession or under the control of such person.

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

(3.) Such person shall be bound to answer such questions or interrogatories and (if so ordered) to produce and bring in such paper or writing and shall be subject to the like process of contempt in case of default in not attending or in not answering such questions or interrogatories or not bringing in such paper or writing as he would have been subject to in case he had been a party to an action in the court and had made such default.

(4.) The costs of any such motion petition or other proceeding shall be in the discretion of the court.

PART VII.—GENERAL MATTERS.

108. All original wills brought into the court or of which probate or administration with the will annexed is granted under this Ordinance and such other documents as a judge may direct shall be deposited and preserved at the Supreme Court-house or at such other one place in Port Moresby under the control of the court as the Lieutenant-Governor⁽¹³⁾ may by notice⁽¹⁴⁾ in the *Gazette* direct and may be inspected under the control of the court and subject to the rules of court.

Place of original wills.
N.S.W. No. 13 of 1898, s. 30.
Amended by No. 14 of 1940, s. 3 and Schedule.

109. An official copy of the whole or any part of a will or an official certificate of the grant of any letters of administration may be obtained from the Registrar or custodian on the payment of the fees fixed for the same by the rules of court.

Official copy of whole or part of will may be obtained.
N.S.W. *Ib.* s. 31.
Q. 31 Vic. No. 9, s. 14.

110.—(1.) Any person residing in the Territory may deposit in the office of the Supreme Court his will enclosed in a sealed envelope or cover endorsed with the full name description and the then address of the testator or other means of ready identification and also the names in full with descriptions and addresses of the executors named therein; and such will shall unless previously required to be given up by the testator remain in the said office in the custody of the Registrar until the death of the testator and upon his death the Registrar shall deliver the same after examination to either of the executors named in the said will or in case of doubt to such person as the court or a judge may direct.

Will may be deposited in the office of the Supreme Court by testator in his lifetime.
N.S.W. *Ib.* s. 32.
Sub-section (1) amended by No. 14 of 1940, s. 3 and Schedule.

(2.) The Registrar shall give to the depositor a certificate of the deposit and shall keep an index containing the particulars of the said endorsements made on the envelope or cover of each will so deposited.

111. The Registrar Commissioners of the Supreme Court and justices of the peace shall have power to administer oaths under this Ordinance.

Oaths.
N.S.W. *Ib.* s. 151.
Q. *Ib.* s. 16.
Amended by No. 14 of 1940, s. 3 and Schedule.
Registrar to keep record of probates &c.
N.S.W. *Ib.* s. 152.
Q. *Ib.* s. 13.

112.—(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 of

(13) See Section 19(2) of the *Ordinance Interpretation Ordinance*, 1911-1940.

(14) No notice has been published in *Papua Govt. Gaz.*

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- (c) any special order extending the time for passing such accounts.
- (2.) Such book shall set forth—
- (a) the dates of such 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;
 - (f) the dates of the filing passing allowance of and special orders with reference to the said accounts.

Costs.

N.S.W. No. 13
of 1898, s. 153.

113. In all matters under this Ordinance the question of costs and how they shall be paid shall be in the discretion of the court.

Rules.

N.S.W. *Ib.* s. 154.
Q. 31 Vic.
No. 9, s. 42.
Q. 41 Vic.
No. 24, s. 55.
Section 114
amended by
No. 14 of 1940,
s. 3 and
Schedule.

114. A Judge of the Supreme Court may make rules⁽¹⁵⁾—

- (a) for regulating the times and form and mode of procedure and generally the practice of the court in respect of the several matters to which this Ordinance relates; and
- (b) for fixing the amount of all fees and allowances to officers of the court and solicitors in reference to such matters

and otherwise for the effectual execution of this Ordinance and of the intention and object thereof.

SCHEDULES.

FIRST SCHEDULE.

Section 2.

Reference to Enactment.	Title or Short Title.	Extent of Repeal.
31 Vic. No. 9 (Queensland adopted)	<i>“The Probate Act of 1867”</i>	The whole.
34 Vic. No. 27 (Queensland adopted)	<i>“The Specialty and Simple Contract Debts Equalization Act”</i>	The whole.
41 Vic. No. 24 (Queensland adopted)	<i>“The Intestacy Act of 1877”</i>	The unrepealed portion except Sections 52 and 57 thereof.
49 Vic. No. 12 (Queensland adopted)	<i>An Act to amend “The Probate Act of 1867”</i>	The whole.
No. 1 of 1894	<i>“The Intestacy Ordinance of 1894”</i>	The whole.
No. 2 of 1902	<i>“The British Probates Ordinance of 1902”</i>	The whole.

(15) See the *Scale of Fees to be paid in Connection with Probate and Letters of Administration* (made under *The Courts and Laws Adopting Ordinance of 1888*), printed on p. 4323, and the *Rules of the Central Court (Probate and Administration)* printed on p. 4324.

Probate and Administration Ordinance, 1913-1940.

SECOND SCHEDULE.

Section 75.

	s.	d.	Amended by No. 1 of 1926, s. 9.
For every order to administer where estate shall appear to be above £50 and not above £200	7	6	
Where estate shall appear to be £200 or over	15	0	

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