

CHAPTER 242**ADMINISTRATION OF ESTATES (JURISDICTION
AND PROCEDURE)**

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CHAPTER 242

ADMINISTRATION OF ESTATES (JURISDICTION
AND PROCEDURE)

An Act to consolidate the Acts of Barbados relating to the grant of probates and letters of administration, and to executors and administrators and matters connected therewith.

1891-15.
1891-23.
1944-7.
1956-5.
1958-19.
1965-38.
1975-46.
L.N.168/
1967.
1979-3.
1980-56.
1992-17.

[30th May, 1891 – Parts I, II, IV;
15th August, 1891 – Parts III, V and VI]

Commence-
ment.

PART I

Preliminary

1. This Act may be cited as the *Administration of Estates (Jurisdiction and Procedure) Act*.¹

Short title.

2. The High Court shall have the same powers, and its grants and orders shall have the same effect in Barbados in relation to the personal estate of deceased persons in Barbados and also in relation to all matters and causes testamentary and the effects of deceased persons which are within the jurisdiction of the High Court as the Probate Division of the High Court of Justice and its grants and orders respectively now have with regard to the same matters in England: but no suits for legacies or suits for the distribution of residues shall be entertained by the High Court.

High Court
to have same
powers as
Probate
Division has
in England.

3. The Judges of the High Court shall discharge the judicial functions of the Ordinary of Barbados.

Judges to
discharge
judicial
functions of
Ordinary.

¹ This Act incorporates the Court of Ordinary Act, 1891-15 and these provisions of the Guardians, Executors, Administrators and Trustees Act, 1891 concerning executors and administrators (section 4-15, 73-75 and 77 of 1891-23).

PART II

Proceedings for Grant of Administration

Power to
examine
witnesses.

4. (1) The High Court may

- (a) require the attendance of any party in person, or of any person whom it thinks fit to examine or cause to be examined in any action or other proceeding, in respect of matters or causes testamentary;
- (b) examine or cause to be examined upon oath parties and witnesses by word of mouth;
- (c) either before or after, or with or without such examination, cause them or any of them to be examined on interrogatories or receive their or any of their affidavits; and
- (d) by writ require such attendance, and order to be produced before itself or otherwise any deeds, evidences or writings in the same form, or as nearly as may be, as that in which a writ of *subpoena ad testificandum* or of *subpoena duces tecum* is now issued by the High Court.

(2) Every person who disobeys any such writ is guilty of contempt of the Court and is liable to forfeit a sum of \$480.

Order to
produce
any
instrument
purporting
to be
testamen-
tary.

5. (1) The High Court may, on motion or petition or otherwise in a summary way, whether any action or other proceeding is or is not pending in the High Court with respect to any probate or administration, order any person to produce and bring into court or into the Registration Office or otherwise as the High Court may direct, any paper or writing being or purporting to be testamentary which may be shown to be in possession, or under the control of, such person.

(2) Where 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 knowledge of any such paper or writing, the High 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 High Court and had made such default.

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

6. (1) The Registrar and all persons whom the Judges under the seal of the Supreme Court from time to time appoint for that purpose shall respectively have full power to administer oaths and perform such other duties in reference to matters and causes testamentary as may be assigned to him or them from time to time by the rules and orders of the Court.

Administra-
tion of
oaths.

(2) The persons so appointed shall be styled "Commissioners of the Supreme Court".

7. All probates, letters of administration, orders and other instruments and exemplifications, and copies thereof, respectively, sealed with the seal of the Supreme Court, shall on all occasions in Barbados be received in evidence without further proof thereof.

Sealed
probates,
etc.,
evidence.

8. Any person who

- (a) forges the signature of any Judge of the High Court or the Registrar or any Commissioner of the Supreme Court for taking oaths; or
- (b) forges or counterfeits any seal of the High Court; or
- (c) knowingly uses or concurs in using any such forged or counterfeit signature or seal; or
- (d) tenders in evidence any document with a false or counterfeit signature of such Judge, Registrar or Commissioner, or with a false or counterfeit seal, knowing the same signature or seal to be false or counterfeit,

Penalty on
forging or
counterfeit-
ing seals or
signatures of
officers.

1992-17. shall be guilty of an offence and shall be liable to imprisonment for life, or for any term not less than 7 years.

Mode of taking evidence in certain matters.

9. (1) Subject to any rules of court, the witnesses, and where necessary, the parties, in all contentious matters, where their attendance can be had, shall be examined orally by or before a Judge in open court.

(2) Notwithstanding subsection (1), and subject to any rules of court, the parties may verify their respective cases, in whole or in part, by affidavit, but so that the deponent in every such affidavit shall, on the application of the opposite party, be subject to be cross-examined by or on behalf of such opposite party orally in open court as aforesaid, and after such cross-examination may be re-examined orally in open court as aforesaid by or on behalf of the party by whom the affidavit was filed.

Court may issue commission for examination of witnesses abroad or unable to attend.

10. Where a witness in any such matter is out of the jurisdiction of the High Court, or where by reason of his illness or otherwise the High Court does not think fit to enforce the attendance of the witness in open court, it shall be lawful for the High Court to order a commission to issue for the examination of such witness on oath upon interrogatories or otherwise, or if the witness is within the jurisdiction of the High Court, to order the examination of such witness on oath upon interrogatories or otherwise before any officer of the Court or other person to be named in such order for the purpose.

Mode of taking affidavits. L.N. 167/1968.

11. (1) Affidavits, declarations and affirmations to be used in the High Court may be sworn in any part of the Commonwealth before any court, judge, notary public or person authorised by law to administer oaths in that part of the Commonwealth, and the Judges of the High Court shall take judicial notice of the seal or signature, as the case may be, of any such court, judge, notary public or person which shall be attached, suspended or subscribed to any such affidavit, declaration, or affirmation, or to any other document.

(2) In cases where it is necessary to obtain affidavits, declarations, or affirmations to be used in the High Court from persons residing outside the Commonwealth, the same may be sworn, declared, or affirmed before the persons empowered to administer oaths under the Commissioners of Oaths Act, 1889, of the United Kingdom Parliament.¹

¹ 52 & 53 Vict., c. 10.

(3) In places where there are no such persons as are mentioned in the said Acts, such affidavits, declarations, or affirmations may be made, declared and affirmed before any magistrate having jurisdiction in such place, or other person having authority to administer an oath.

12. Where proceedings are taken under this Act 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 Act the validity of a will is disputed, unless in the several cases aforesaid the will affects only personal estate, the heir-at-law, devisees and other persons having or pretending to have an interest in the real estate affected by the will shall, subject to this Act and to the rules and orders of the High Court, be cited to see proceedings or otherwise summoned in like manner as the next-of-kin or others having or pretending to have an interest in the personal estate affected by a will should be 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 orders and to the discretion of the High Court.

Where will affecting real estate is being proved or subject of contentious proceeding, heir and persons interested in real estate to be cited.

13. (1) Where probate of a will other than a will affecting only personal estate is granted after proof in solemn form, or where the validity of the will is otherwise declared by decree or order in a contentious cause or matter, the probate, decree or order respectively shall enure for the benefit of all persons interested in the real estate affected by the will, and the probate copy of the will, or the letters of administration with the will annexed, or a copy thereof, respectively, stamped with the seal of the High Court, shall in all courts and in all actions and proceedings affecting real estate of whatever tenure (save proceedings by way of appeal from the High Court or for the revocation of such probate or administration) be received as conclusive evidence of the validity and contents of the will, in like manner as a probate is received in evidence in matters relating to the personal estate.

Where will proved, order of Court to be binding on persons interested in real estate.

(2) 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 Act, such decree or order

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shall enure for the benefit of the heir-at-law or other 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.

Heir in certain cases not to be cited.

14. (1) Nothing herein contained shall make it necessary to cite the heir-at-law or other persons having or pretending to have an interest in the real estate of a deceased person, unless it is shown to the satisfaction of the High Court that the deceased was at the time of his death 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 in question, would not in the opinion of the High Court, though established as to personalty, affect real estate.

(2) In every such case, and in any other case in which the High Court may, with reference to the circumstances of the property of the deceased or otherwise, think fit, the High Court may proceed without citing the heir or other persons interested in real estate.

(3) The probate, decree or order of the High Court shall not in any case affect the heir or any person in respect of his interest in real estate, unless such heir or person has been cited or made a party to the proceedings or derived title under or through a person so cited or made a party.

Probate to be evidence of will in actions concerning real estate save where validity of will put in issue.

15. (1) In any action where, according to the existing law, it would be necessary to produce and prove an original will in order to establish a devise or other testamentary disposition of or affecting real estate, it shall be lawful for the party intending to establish in proof such devise or other testamentary disposition, to give to the opposite party ten days at least before the trial or other proceeding in which the proof is intended to be adduced notice that he intends at the trial or other proceeding to give in evidence as proof of the devise or other testamentary disposition the probate of the will or the letters of administration with the will annexed or a copy thereof, stamped with the seal of the Supreme Court.

(2) In every such case the probate or letters of administra-

tion, or copy thereof, respectively, so stamped shall be sufficient evidence of such will and of its validity and contents, notwithstanding the same may not have been proved in solemn form or otherwise have been declared valid in a contentious cause or matter, as provided in this Act, unless the party receiving such notice, within 4 days after such receipt, gives notice that he disputes the validity of such devise or other testamentary disposition.

16. 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 Registration Office where the will has been proved, or the administration granted, on the payment of the prescribed fees.

Official copy of whole or part of will may be obtained.

17. (1) It shall be lawful for a Judge to sit in chambers for the despatch of such part of the business of the High Court as can, in his opinion, with advantage to the parties, be heard in chambers, and the mode of proceeding, and the times at which such sittings shall be held, shall from time to time be determined by the Judge.

Sittings in chambers.

(2) The Judges when so sitting in chambers, shall have and exercise the same power and jurisdiction in respect of the business so brought before them as if sitting in open court.

(3) No question shall be heard in chambers which either party shall require to be heard in open court.

PART III

*Administration of Estates*¹

18.—21. (*Repealed by 1975—45*).

22. In the administration of the estates of deceased persons, the wages due to any domestic servants or agricultural labourers from such deceased persons shall be paid out of the personal estate of such deceased persons, prior and preferably to all judgments, specialties or other debts whatsoever due from such deceased persons, not exceeding however the sum of \$200 to any one domestic servant or agricultural labourer.

Wages of domestic servants and agricultural labourers to have priority against personal estate of deceased up to \$200.

¹ Formerly Act 1891—23, ss. 6—10.

23. (Repealed by 1975—46).

PART IV

Administrators and Executors

24. (Repealed by 1975—46).

Oath to be taken by executor or administrator.

25. (1) Every executor or administrator before obtaining a grant of probate or letters of administration shall, before the Registrar or any person deputed by him to administer such oath, take the following oath, namely

“I, A.B., do swear that I will faithfully administer all the estate of C.D. which shall come into my hands as (executor or administrator *as the case may be*) and be accountable for the same and the profits thereof, when thereunto legally required; and that I will not, to the best of my skill and power, suffer any of the estate to be fraudulently levied upon and sold, or otherwise disposed of unlawfully, unnecessarily or at an under-value, so help me God.”

(2) An executor who is absent from Barbados may forward to the Registrar to be filed in his office an affidavit in the form or to the effect, or as near thereto as circumstances will admit, of the aforesaid oath.

Cap. 121.

(3) The affidavit shall be taken in the manner prescribed by the *Evidence Act*.

26.—38. (Repealed)

39. (Repealed by 1980—56).

PART V

Judicial Control of Administrators

High Court may call administrators to account, and order equal distribution, etc.

40. (1) The High Court shall and may call administrators to account for and touching the goods of any person dying intestate, and upon hearing and due consideration thereof, order and make just and equal distribution of what remains clear after all debts, funeral and just expenses of every sort have first been allowed and deducted, amongst the wife and children, or children’s children, if

any, or otherwise to the next-of-kin of the deceased person in equal degree, or legally representing their stock *pro suo cuique jure* according to the law in such cases and the rules hereinbefore laid down.

(2) The same distributions may decree and settle and compel such administrators to observe and pay the same by due course of law, saving to every one supposing himself aggrieved his right of appeal.

41. No administrator shall be cited to the High Court to render an account of the personal estate of his intestate or be compellable to account before the High Court otherwise than by inventory or inventories thereof, unless at the instance or prosecution of some person in behalf of a minor, or having a demand out of such personal estate as a creditor or next-of-kin.

No administrator obliged to account for estate of intestate otherwise than by inventory.

42. (1) It shall be lawful for any person claiming to be a creditor or a specific or pecuniary or residuary legatee or the next-of-kin or some or one of the next-of-kin of a deceased person, to apply for and obtain as of course, without any preliminary proceedings, a summons from a Judge requiring the executor or administrator, as the case may be, of such deceased person to attend before him, for the purpose of showing cause why an order for the administration of the personal estate of the deceased should not be granted.

Creditor, etc. may obtain order for administration of personal estate.

(2) Upon proof by affidavit of the due service of the summons or on the appearance by the executor or administrator in person or by his attorney-at-law, and upon proof by affidavit of such other matters, if any, as the Judge requires, the Judge may, in his discretion, make the usual order for the administration of the estate of the deceased with such variations, if any, as the circumstances of the case may require: but the Judge shall have full discretionary power to grant or refuse such order, or to give any special directions touching its execution.

(3) The order so made shall have the force and effect of an order to the like effect made on the hearing of a cause or claim between the parties.

(4) Where applications for an order are made by 2 or more different persons or classes of persons, the Judge may grant the same to such 1 or more of the claimants or of the class of claimants

as he thinks fit, and, if he thinks proper, may give carriage of the order to such interested party, and upon such terms, as he may direct.

Copy of summons to be filed in Registration Office.

43. A duplicate or copy of such summons shall, previously to the service thereof, be filed in the Registration Office, and no service thereof upon any executor or administrator shall be of any validity unless the copy so served is marked by the Registrar as filed, and the filing of such summons shall have the same effect with respect to *lis pendens* as the filing of a bill or claim.

Creditor, etc., may obtain order for administration of real estate.

44. (1) It shall be lawful for any person claiming to be a creditor of any deceased person, or interested under his will, to apply for and obtain in a summary way, in the manner hereinbefore provided with respect to the personal estate of a deceased person, an order for the administration of the real estate of a deceased person, where executors or trustees are by will empowered to sell real estate, or where such real estate is in the possession of any executor.

(2) All the provisions hereinbefore contained with respect to the application for such order in relation to the personal estate of a deceased person, and consequent thereon, shall extend and be applicable to an application for such order in relation to real estate.

PART VI

Limitation of Liability of Administrators and Executors

45.—47. *Repealed by 1979—3.*

48. *Repealed by 1975—46.*

No action against executor on promise not written, to answer damages out of own estate.

49. No action shall be brought whereby to charge any executor or administrator upon any special promise to answer damages out of his own estate, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing and signed by the party to be charged therewith, or some other person thereunto by him lawfully authorised.