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**COURT PROCEDURE
AND PRACTICE IN
TESTAMENTARY
ACTIONS**

By
Dudley Gunawardena
(of the Ministry of Justice, Colombo)

JPL



C4753

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முக்கிய அறிவித்தல்

உடனுதவும் பகுதி

பொதுசன நூலகம் யாழ்ப்பாணம்

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K. SIVANANTHAN
50, PALALY RD:
JAFFNA.

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Dudley Gunawardena

(of the Ministry of Justice, Colombo)

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No. 80 Masandaram Street,
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DEDICATED
TO
THE
MEMORY
OF
MY MOTHER

FOREWORD

It gives me great pleasure to accede to Mr. Gunawardena's request and write a foreword to his little brochure on the practice and procedure obtaining in our Courts in regard to Testamentary actions. This, I believe is the first instance in which a member of the Clerical Staff of a Court has contributed to the legal literature of the Island and I trust it will not be the last. Mr. Gunawardena is well qualified for the task he undertook: he was in charge of this particular branch in the District Court of Colombo and had acquired an extensive and thorough knowledge of the subject. I have had the advantage of perusing in draft form his notes and I feel confident that his contribution will be well received by law student and practitioner alike.

As a law student I always found it difficult to appreciate and understand the law and procedure governing the administration of estates in Ceylon: one has to look for it in the judicial decisions, in the Civil Procedure Code, in the Stamp Ordinance, and in other legal enactments. Mr. Gunawardena's effort will be particularly helpful to those who find it difficult to follow and understand the reasons for the various steps that have now to be taken in prosecuting an administration action to a final conclusion—a matter which is always baffling to a young lawyer embarking for the first time on the practice of his profession. The book, in my opinion sets out correctly and succinctly the various steps that have to be taken in a Testamentary case and should find a place in every lawyer's book-shelf. I trust it will be well received and readily purchased.

N. SINNATAMBY,
District Judge, Colombo.

District Judge's Chambers,
Colombo, 6th January, 1951.

PREFACE

This little book is intended to set forth concisely the procedure in our Courts relating to the administration of testate and intestate estates.

An excursion into the legal sphere by a member of the General Clerical Service looks so apparently presumptuous. But, I make no claim to originality in this work. If I claim anything at all it is a little credit for arranging the material collected in the course of my duties in the Testamentary Branch of the District Court of Colombo during a period of over 8 years. The notes were not first designed for publication but were for my own use and guidance, and I only thought of publishing them on the suggestion of a few friends in both branches of the legal profession. The experience gained in the District Court enabled me to understand and appreciate the difficulties of both clerk and practitioner.

I take this opportunity of expressing my deepest thanks to Mr. N. Sinnatamby, District Judge of Colombo for the lively interest, encouragement and very valuable advice he gave me at all times from the moment he became aware of my undertaking. His kindness in the midst of his onerous judicial duties was indeed a source of inspiration to me.

My thanks are also due to Mr. E. R. S. R. Coomaraswamy LL.B (London) Advocate, who gladly corrected my manuscript in spite of his heavy professional engagements. I was singularly fortunate in obtaining his assistance.

I must also thank Messrs. C. B. E. Wickremasinghe, Bar-at-law of the Department of the Commissioner of Income Tax, Estate Duty and Stamps, Mahinda de Silva, Bar-at-law and Bertrand Abraham, Proctor for their advice and suggestions which were useful to me.

And finally I thank Messrs. J. H. Forbes, c.c.s., Administrative Secretary, District Court, Colombo and S. K. Sathasivam, Chief Clerk, District Court, Colombo for kindly helping me to revise my manuscript.

DUDLEY GUNAWARDENA.

Ministry of Justice, Colombo.

5th January, 1951.

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CHAPTER I

Introduction

1. When any person dies in Ceylon leaving property of the value of Rs. 2,500/- or more in Ceylon the next-of-kin of the deceased or any person interested in the Estate of the deceased must take steps to administer the Estate.

Financial
Regulation
No. 1010

2. If no steps are taken within 3 months of the death of the deceased, the Divisional Revenue Officer of the District must report the matter to the Government Agent or the Assistant Government Agent of the District forwarding the necessary particulars in respect of the death of the deceased on Form L23 to be reported to the Commissioner of Estate Duty.

Financial
Regulation
No. 1012

3. When, after the steps prescribed by the Estate Duty Ordinance have been taken, it appears to the Commissioner of Estate Duty that the administrable estate left by the deceased is of the value of Rs. 2,500/- or more and that no steps have been taken by any one interested for the purpose of administering the estate, he will report the case to the Government Agent or the Assistant Government Agent of the District.

4. The Government Agent or the Assistant Government Agent must thereupon take steps to prosecute the next-of-kin of the deceased under Section 543 of the Civil Procedure Code (Chapter 86). But, where the Estate of the deceased is valued at less than Rs. 20,000/- he may, in his discretion, waive the prosecution.

Financial
Regulation
No. 1013 &
Section 543 of
the Civil
Procedure
Code.

Kantaiyar v.
Ramoe
8 N. L. R. page
207

7 S.C.C. page
50.

5. Any person who wishes to obtain Letters of Administration to the Estate of a deceased person or Probate of the Last Will and Testament of a deceased person may take steps to apply for same, even if the value of the estate left by the deceased is below Rs. 2,500/-. The smallness of the Estate is no ground for refusing an application for Letters of Administration.

6. Application to administer the Estate of a deceased person must be made to the District Court within whose jurisdiction the deceased is reported to have died.

CHAPTER II

Application of Executor to have a Will proved and Probate issued

1. Under the Laws of Ceylon the Executor is a person appointed by a Last Will or Codicil to administer the property of a testator and to carry into effect the provisions of the Will or Codicil.

2. A Last Will or Testament is the declaration in a prescribed manner of the intentions of the person making it with regard to matters relating to his estate which he wishes to take effect upon or after his death.

Last Will

3. A Codicil is an addition to a Will or a supplementary Will, but as it requires the same formalities as a Will there is no real legal distinction between a Will and Codicil. A Codicil is generally an addition or amendment to a Will and is usually annexed to or endorsed upon a Will. To be effective the same formalities and the same rules apply with regard to capacity and execution.

Codicil

4. No Will, Testament or Codicil containing any bequests of immovable and movable property or for any other purpose whatsoever shall be valid unless it shall be in writing and executed according to the manner prescribed. The Will shall be signed by the Testator at the foot or end thereof and such signature shall be acknowledged by the Testator in the presence of a licensed Notary Public and two or more witnesses who shall be present at the same time and duly attest such execution.

Prevention of
Frauds
Ordinance
Chapter 57,
Section 4

5 Witnesses
Will.

5. If no Notary shall be present then such signature must be made or acknowledged by the Testator in the presence of five or more witnesses present at the same time and such witnesses must subscribe the Will in the presence of the Testator.

6. When any person dies in Ceylon leaving a Last Will and Testament under or by virtue of which any property in Ceylon is in any way affected, the person appointed Executor therein may apply to the competent Court to have Probate thereof issued to him.

Section 524
of the Civil
Procedure Code

7. Every such application must be made to the District Court by way of Summary Procedure. The petition must state the following particulars :—

- (a) The place and date of death of the Testator.
- (b) That the Will was duly made and the relevant particulars thereof.
- (c) That the Testator died without having revoked the Will.
- (d) The names and addresses of the testate and intestate heirs of the deceased to the best of the petitioner's knowledge.
- (e) The details and situation of the property.
- (f) The grounds on which the petitioner is entitled to have the Will proved—*i.e.* it must state the character in which the petitioner claims, whether as Executor, Administrator, Creditor, Legatee or in any other character.

The prayer of the petition must ask for an order :—

- (a) Declaring the Will proved.
- (b) Declaring the petitioner Executor.
- (c) Granting Probate to him.

8. The following documents must be annexed to every petition applying for Probate :—

Section 530
of the Civil
Procedure
Code.

- (a) An Affidavit on the same lines as the petition with a jurat instead of a prayer.
- (b) An Affidavit by the Attesting Notary Public that the Will was duly executed by him.
- (c) An Affidavit by the attesting witnesses to the same effect.
- (d) The Last Will and/or Codicil sufficiently identified as an exhibit to the affidavit.
- (e) The Estate Duty Declaration Form (225) duly perfected (in duplicate) in terms of Section 29 (1) of the Estate Duty Ordinance (Chapter 187).

9. The Affidavit of the petitioner must show *inter alia* :—

- (a) That the Will was duly executed according to law, and
- (b) That the petitioner possesses the character in which he claims.

Section 525 of
the Civil Procedure
Code

10. The heirs testate and intestate, must be disclosed in the petition. If the petitioner is satisfied that there will be no opposition to his application for Probate he must state that he apprehends no opposition and may omit to name any respondents: in all other cases the heirs should be made respondents.

Section 493
of the Civil
Procedure
Code.

11. If one or more of the heirs named as Respondents in the petition are minors, the petitioner must state that fact in the petition and affidavit disclosing the age or respective ages of the minors. He must also name a suitable person to be appointed as Guardian-ad-litem of the minor or minors. The relationship between the minor or minors and the proposed Guardian-ad-litem must always be stated.

12. If the petitioner apprehends that there will be no opposition to the Will and has so stated in his affidavit, he may ask for and be granted an Order Absolute in the first instance. As the effect of granting an Order Absolute in the first instance is to shift the burden of proof upon any party who may oppose the granting of Probate—the normal rule of law being to cast the burden upon the proponent, the Court, in practice, will not grant an Order Absolute in the first instance unless affidavits are submitted from all the witnesses and the attesting Notary.

13. In the case of Wills attested by 5 witnesses Order Absolute is generally never entered in the first instance.

Section 526—
527 of the
Civil Procedure
Code.

14. In all other applications for Probate the Court must make an Order Nisi declaring the Will proved and directing the issue of Probate of the Will to the petitioner.

15. The Court will also order the petitioner to publish the Order Absolute in the first instance or Order Nisi as the case may be, once in the Government Gazette and twice in a daily newspaper to be named by Court and will fix a date for him to file in Court copies of the respective Gazette and the papers in proof of publication of the order.

Section 532 of
the Civil Procedure
Code.

16. In accordance with the Order of Court, the Court Officer must enter the formal Order Absolute in the first instance or Order Nisi, as the case may be on the required stamps being supplied by the petitioner or his Proctor.

17. The Proctor for the petitioner must thereafter obtain a copy of the order as entered of record and take steps to publish the same once in the Government Gazette and twice in the newspaper as ordered by Court.

18. In the case of Order Nisi, the Proctor must issue through the Court, notice of Order Nisi on the respondents, requiring them to show cause, if any, why the application of the petitioner should not be granted. In the alternative, he must file their minutes of consent.

Section 531
of the Civil
Procedure
Code.

19. The proposed Guardian-ad-litem of the minors, if there are any, will be required to produce the minors in Court and he will also be required to show cause, if any, why he should not be appointed as such to represent the minors for all the purposes of the action. He will also be required to show cause, if any, against the grant of the Probate to the petitioner on behalf of the minors.

20. In all cases the minors must appear before Court and signify their consent to the appointment of the proposed respondent as Guardian-ad-litem over them.

Section 493
of the Civil
Procedure Code.

21. The Court may, on being so informed, dispense with the presence of the minors, if they are too young to signify consent or for any other valid reason.

22. A minute of consent from the respondents to the application of the petitioner duly attested by a qualified person consenting to the grant of Probate to the petitioner is sufficient for the purpose.

Section 533
of the Civil
Procedure
Code.

23. When there is opposition to the grant of Probate to the applicant, on the date appointed for the final hearing, any respondent or any party opposing the grant will be heard in opposition to the grant. The procedure prescribed by the Code is summary. The Respondent must satisfy the Court by affidavit or with the permission of Court by viva voce evidence that there are grounds of objection such as ought to be tried upon issues to be duly framed—*Vide* Sections 533 and 384 to 386 of the Civil Procedure Code. In practice, when the Respondents appear and oppose the grant, they are directed to file an affidavit and not a mere statement setting out their objections. Thereafter the matter is set down for trial on which date issues are framed and tried.

24. On the date on which the petitioner is allowed to file in Court the copies of the Government Gazette and the papers in proof of publication of the Order Absolute in the first instance, the Court will order

the petitioner to file the Oath of Office by a certain date provided the Certificate of the Commissioner of Estate Duty certifying the payment of Estate Duty, if any, is filed of record and deficiency of Stamp Duty, if any, is paid by the petitioner.

25. In the case of a Last Will which has been admitted to Probate and the Executor named therein is the petitioner he is normally not required to enter into any security unless the Court otherwise orders.

Section 541
the Civil Procedure Code.

26. In every other case of a Last Will where the heirs and devisees have been named respondents to the petition, the applicant for Probate will normally be required to give such security as the Court may think necessary before the Probate of the Will is granted to the applicant.

27. Any person or persons interested in the Estate of the deceased person may, for any valid reason or reasons, apply to Court for the recall of the Probate granted to the Executor. The application must be made by way of Summary Procedure naming the Executor as the Respondent to the petition.

Section 537
of the Civil Procedure Code.

28. If the Court is satisfied with the averments contained in the affidavit, it will enter an Interlocutory Order under section 377 (1) of the Civil Procedure Code and cause notice of the Order to be served on the Respondent. On service of the notice of the Interlocutory Order on the respondent, he will be called upon to file an affidavit of objections, and, if good grounds of objections are shown the Court will fix the matter for trial on issues to be duly framed.

Adoria et al
v. Perera 17
N.L.R. page
212

29. The Supreme Court has held that Section 537 should be read with Section 536 of the Civil Procedure Code and merely sets out the procedure to be adopted in cases where Section 536 applies. Where therefore Order Nisi for grant of Probate has been made absolute after publication, Section 537 does not apply, and, any party impugning the Will, must bring a separate action.

Section 52 of
Chapter 187
(Estate Duty
Ordinance).

30. No Probate can be issued before the receipt of the Certificate of the Commissioner of Estate Duty. The Certificate of the Commissioner is not required as a condition precedent to the issue of Probate or Letters of Administration to the Estates of deceased persons who died between the period 1st October, 1935 and 31st March, 1937.

31. Upon filing the Oath of Office and tendering the Security Bond, if necessary, the Court will order the issue of Probate to the petitioner provided all deficiency of stamp duty, if any, has been paid by the petitioner.

CHAPTER III

Letters of Administration

1. Every application to the District Court for the grant of Letters of Administration to the Estate of a deceased person must be made by petition and affidavit by way of summary procedure.

Section 530 of
Civil Procedure
Code.

The following facts must be set out in the petition:

- (a) The place and date of death of the deceased.
- (b) Absence of a last will
- (c) The heirs of the deceased to the best of the petitioner's knowledge and belief
- (d) The value and particulars of the property left by the deceased
- (e) The character in which the petitioner claims Letters of Administration and
- (f) The facts which justify the claim.

2. The petition must be supported by an affidavit which should be on the same lines as the petition.

3. The next-of-kin must be made respondents to the petition. If there are minors among the respondents, the petitioner must disclose that fact in his petition in a separate paragraph setting out the ages of the minors and proposing

Section 530
of Civil Procedure
Code.

the name of a suitable adult person whose interests should not be adverse to those of the minors to be appointed as guardian-ad-litem. The Guardian-ad-litem, whether he is an heir to the estate or not, must be made a respondent to the petition.

Section 493
of the Civil
Procedure
Code.

4. The prayer of the petition must ask for an Order Nisi declaring the status of the petitioner and his right to take out Letters of Administration to the estate of the deceased. If there are minors who are made respondents, in a further prayer, the petitioner must ask that the proposed respondent be appointed Guardian-ad-litem of the minor respondents to represent them for the purpose of the action.

5. Along with the petition and affidavit the petitioner must file in Court a duly perfected statement of declaration in duplicate in Form 225 to be forwarded to the Commissioner of Estate Duty.

Section 531
of the Civil
Procedure
Code.

6. The Court will, on accepting the petition and affidavit, make an Order Nisi declaring the status of the petitioner and his right to take our Letters of Administration to the estate of the deceased. The Court will make a further order appointing the proposed respondent as Guardian-ad-litem of the minors, if any.

Section 532 of
the Civil Procedure
Code.

7. It will further direct that the Order Nisi be published once in the Government Gazette and twice in a local daily newspaper to be named by Court and will fix a date for the petitioner to file copies of the Government Gazette and of the papers in proof of publication.

8. On the order being made by Court, the office must prepare the Order Nisi and get the same signed by the Judge on stamps being supplied by the petitioner or his Proctor.

9. If the value of the estate is below Rs. 5,000/- the office will forthwith enter the Order Nisi in blank.

10. The petitioner or his proctor must obtain a copy of the Order Nisi as entered of record and take steps immediately to have the same published in the Government Gazette and twice in the local newspaper as directed by Court.

11. The petitioner must issue through the Court, notice of Order Nisi for service on any or on all the respondents in the case to show cause, if any, on or before the date named in the Order Nisi, why the application of the petitioner should not be granted: in the alternative he must obtain consent of the respondents to his application.

Section 531 of the Civil Procedure Code.

12. In the case of an appointment of a Guardian-ad-litem of the minor respondents, the same notice must require the respondents to show cause, if any, why the proposed appointment of the Guardian-ad-litem should not be made.

13. On the returnable date of the Order Nisi the Proctor for the petitioner must file in Court the Gazette and the 2 copies of the papers in proof of publication of the order together with a minute of consent of the respondents to the appointment of the petitioner as Administrator.

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Section 534 of
Civil Procedure
Code.

14. If the respondents appear in Court on receipt of notice of the Order Nisi, the Court will record their consent. If they consent to the application of the petitioner the Court will make the Order Nisi absolute.

15. In case of minor respondents, the proposed Guardian-ad-litem and the minors must be required to express their consent to the proposed appointment and the Court will make Order Nisi absolute, provided the consent of the Guardian-ad-litem to the issue of Letters of Administration to the petitioner is obtained.

Section 534 of
the Civil Procedure
Code.

16. Any person interested in the Estate of the deceased or any respondent may appear in Court on or before the returnable date of the Order Nisi and oppose the application of the petitioner.

Section 533
of the Civil
Procedure
Code.

17. When there is opposition to the grant of Letters of Administration, on the date appointed for the final hearing, the respondent, respondents, or any party opposing the grant must file his or their objections in the form of an affidavit and not in the form of a mere statement of objections. The same procedure as detailed in paragraph 23 of Chapter 2 hereof with regard to the grant of Probate will be followed.

18. On the Order Nisi being made absolute the Court Officer will enter the formal Order Absolute on stamps being supplied by the petitioner or his Proctor. After the Certificate of the Commissioner of Estate Duty is received (for which purpose the case may have to be postponed from time to time) the Court will direct

the petitioner to tender to Court the Security Bond and Oath of Office on payment of deficiency of stamp duty, if any. In every case the Proctor or the petitioner must move the Court to fix the amount of security immediately the order to file the Oath and Bond is made. The Letters of Administration will be issued after the Oath and bond are filed.

19. No Letters of Administration will be issued before the receipt of the Certificate of the Commissioner of Estate Duty certifying payment of Estate Duty. Certificate of the Commissioner of Estate Duty is not required as a condition precedent to the issue of Letters of Administration to the estates of deceased persons who died between the period 1st October 1935 and 31st March, 1937.

Section 52 of
Chapter 187.

20. Any person or persons interested in the estate of a deceased person may, for any valid reason or reasons, apply to Court for the recall of the Letters of Administration. The application must be made by way of summary procedure naming the Administrator as a respondent.

21. If the Court is satisfied with the grounds of objections, it will enter an Interlocutory Order under section 377 (1) of the Civil Procedure Code and direct the notice of the Interlocutory Order to be served on the respondent. On the service of the notice on the respondent, the Court will fix the matter for inquiry.

Section 523 of
Civil Procedure
Code

&
Sethukavalar v.
Alvapillai in 36,
N.L.R. page
281.

22. In case of a conflict of claims to have the Will proved and Probate granted, the claim of an Executor or his Attorney shall be preferred to that of all others, and the claims of a residuary legatee or devisee under the Will shall be preferred to that of a creditor. In the case of a conflict of claim for grant of Letters of Administration, the claim of a widow or a widower to Letters of Administration is to be preferred, but the Court has power to pass over the claim in favour of another for good reasons. In other cases of dispute over the grant of Letters of Administration, the Court will grant order in favour of that person amongst those of the same degree of kindred for whom the majority of the parties interested in the estate have expressed preference. An heir is preferred to a creditor.

Vyraven
Chettiar v.
Segappai
Achchy 41
N.L.R. page
398.

23. An Attorney of a widow who is a resident in India should not be appointed Administrator of the Estate of a deceased person when the Attorney resides for the most part in India or when his interests conflict with his duty.

24. The Executor of an Executor is not entitled to administer the Estate of the original Testator without a fresh grant of administration, but when the Secretary of the District Court has been appointed to act in the office of the Administrator, no fresh grant is needed on the vacation of office by one Secretary and the assumption of the same office by another.

CHAPTER IV

**Distinction between an Executor
and Administrator**

1. An Executor is appointed by the Testator to deal with his properties according to the terms of his Will. The Executor can transfer a land to the heirs or the legatees in terms of the Will. He has also a right to sell the lands of the deceased for the purpose of administration under the terms of the Will, *i.e.* for payment of debts etc.

2. The Administrator's rights are limited and he should apply every time to Court before he deals with any land. The property vests in him for the purposes of administration only from the time of the grant. His right to deal with immovable property should be and usually is restricted in the grant and he is prohibited from alienating movable property for any purpose except with the authority of Court.

Krause v. Pathumma 5 N.L.R. page 162.

CHAPTER V

Oath of Office

Section 538 of
Civil Procedure
Code.

1. On receipt of the certificate of the Commissioner of Estate duty certifying payment of Estate Duty, the Secretary of the Court must check and report upon the stamp duty payable and if there is any deficiency to be paid the Court must grant a date to the Proctor for the petitioner to file the Oath of Office and the security bond and pay deficiency of stamps, if any.

2. Every applicant for Probate or Letters of Administration is required to file in Court the Oath of Office before the issue of Probate or Letters of Administration to him.

3. The Public Trustee applying for grant of Probate or Letters of Administration under Chapter 73 and an applicant for re-sealing of Probate and Confirmation of Letters of Administration under Chapter 84 are not required to file in Court Oath of Office before the grant is made to any one of them.

CHAPTER VI

Security

1. No security shall be furnished by an Applicant for Probate of a Last Will when such applicant is the executor and the sole heir under the last Will. The Court, however, has the discretionary power to order the executor to tender such security if the particular circumstances of the case or situation of the parties should render such precaution necessary. Security is required not merely to conserve the estate but also to see that the Executor or Administrator duly administers the estate.

Section 541 of
Civil Procedure
Code.

1839 Marsh
Judgment 5.

2. In case of intestacy the applicant for Letters of Administration must be required to tender security in any sum or form determined by the Court for the due administration and protection of the Estate unless the Court dispenses with such security on an application made to Court for the purpose by the applicant or his Proctor. Applications to dispense with security must be accompanied by a minute of consent from the respondents and creditors, if any, consenting to dispense with security.

Section 538 of
Civil Procedure
Code.

3. Security is classified into three groups

(a) Cash security

(b) Security by hypothecation of immovable property and

(c) Personal security.

4. **Cash Security.** When a petitioner for Probate of a Last Will or Letters of Administration is unable to furnish security by hypothecation of property, the Court will, on an application being made to Court for the purpose, direct him to tender security in cash in a sum fixed by Court.

The applicant must obtain a Pay-in-voucher for the amount from the Secretary of the Court and deposit the amount on the voucher at the nearest Kachcheri. He must then prepare a security bond hypothecating the said amount with the Secretary of the Court and file the same in Court with the Kachcheri receipt for the amount deposited. The security bond when perfected by the petitioner must be signed before the Judge, a Justice of the Peace or a Commissioner for Oaths.

5. **Security by hypothecation of Immovable property:** Before any such security is fixed by Court, it must direct the petitioner to submit to Court a statement giving the annual income derived from the immovable property of the estate. Generally the Court orders the petitioner to give security in a sum equivalent to the value of the movable property plus income from the immovable property calculated for 2 or 3 years. The value of movable property must be obtained from the Certificate of the Commissioner of Estate Duty. Such bonds will be accepted by Court after they have been duly registered in the proper Land Registry as instruments affecting land under the Registration of Documents Ordinance.

6. **Personal Security** : This is allowed if and when the Court thinks it proper, provided, the consent of all the parties is obtained. The amount of the bond is determined on the value of the estate. Generally, the full value of the immovable property is fixed as the amount of the bond. This bond must be perfected on form Judicial C-C22 and it must be stamped as a deed affecting movables in terms of Schedule A Part I Section 16 (2) of Stamp Ordinance. A bond in a case which is valued below Rs. 5,000/- is not liable to any stamp duty.

7. A petitioner will not be allowed to enter into a personal bond in a case where the minors' interests are affected notwithstanding the consent of the Guardian-ad-litem and the other respondents.

8. Where it appears that the applicant for Letters of Administration is unable to furnish security in cash or immovable property the Court shall direct him to enter into a personal bond provided he is the sole heir of the estate.

Morgan
Digest
239.

9. The Public Trustee of Ceylon cannot be required to give security in case he applies for Probate or Letters of Administration for himself under Sections 19 and 20 of Chapter 73.

Sections
19 and 20
of Chapter 73.

10. In case of application for Re-sealing under Chapter 84, an applicant for re-sealing a certified copy of Letters of Administration is normally required to furnish personal security. The amount of security so fixed usually corresponds to the value of the Ceylon Estate.

11. When the Court appoints the Secretary of the District Court as Administrator of an Estate under Section 520 of the Civil Procedure Code, he will be required to file in Court the Oath of Office and give security as any other applicant for Letters of Administration. In all such cases the Court will direct the Secretary to furnish security in a personal bond.

12. After the order to terminate proceedings has been made in a Testamentary case, the Court will, on an application by the Administrator or the Executor, cancel and discharge the security bond and allow it to be withdrawn for purpose of registration of its discharge. The bond must be returned to Court after the registration.

CHAPTER VII

Inventory

1. The Administrator or the Executor after Letters of Administration or Probate is issued to him must take immediate steps to prepare the Inventory of both the movable and immovable property of the estate of the deceased and file the same in Court on the date appointed for that purpose verified on oath.

Section 538 (1)
of the Civil
Procedure
Code.

2. If the Inventory needs amendment by the addition, alteration or deletion of an item mentioned therein, the Administrator or the Executor must file an amended Inventory on orders of Court. He must forward forthwith copy of the amended Inventory to the Commissioner of Estate Duty for his necessary action, if any.

The amended Inventory is free of stamp duty.

CHAPTER VIII

Final Account

Section 553 of
the Civil Procedure
Code.

1. When the Administrator or the Executor has collected all the assets and filed the Inventory of the property, the only other step required of him by established practice of our Courts is the filing of the Final Account. This is a relic of the practice obtaining in our Courts before the Civil Procedure Code came into existence. There is no provision in our Law for what is called a Final Account, but, if an Administrator or Executor desires to have his stewardship settled, once and for all, he should file papers for judicial settlement of his accounts as provided for in Chapter 55 of the Civil Procedure Code. These provisions have been taken over from America. In practice, unless the final account is disputed, it is accepted and estate closed, but the Executor or the Administrator may, at any time thereafter, be called upon to settle his account judicially by a dissatisfied heir or creditor.

The account filed must conform to the requirements of Section 553 of the Civil Procedure Code and should be filed within 12 months of the grant.

2. The Administrator or Executor must, along with the Final Account or immediately thereafter, file a minute of consent from the Respondents, if any, consenting to the acceptance of the Final Account.

3. On the orders of Court or for any other reason, the Administrator or Executor may file in Court an amended Final Account. This account is exempt from stamp duty.

CHAPTER IX

Intermediate Account

1. When the Administrator or Executor is unable to file in Court, on the due date, the Final Account, and if it is proved to the satisfaction of Court that for reasons beyond his control it will not be possible for him to file the account for some time more, the Court will grant him a date to file an Intermediate Account. A minute of consent from the Respondents, if any, accepting the correctness of that account must also be filed. The Intermediate Account is exempt from stamp duty.

2. The Administrator or Executor may, notwithstanding the above, file at any time an Intermediate Account voluntarily.

Section 723 of
Civil Procedure
Code.

123740

CHAPTER X

Acceptance of Final Account by Court and consent of the Respondents thereto

1. Before the Final Account is accepted by Court the Respondents, if any, will be required to signify their consent to the acceptance of the account by the Court or to file in Court a minute of consent. If the Administrator or Executor is unable to obtain their consent, he must move the Court and notice them to appear on a date and show cause why the Final Account should not be accepted and the proceedings terminated.

Perera v, Tissera
35 N.L.R. page
257

2. On a minute of consent being filed from the respondents the Court must declare the Estate closed provided deficiency of stamp duty is paid. An order of Court to terminate proceedings after the Final Account is accepted by the Respondents is not a Judicial Settlement of Accounts.

CHAPTER XI

Judicial Settlement of Accounts

1. A respondent or any party interested in the estate of a deceased may apply to Court for Judicial Settlement of Accounts if he or the party is dissatisfied with the Accounts prepared and filed by the Executor or the Administrator

2. The application must be made by petition supported by affidavit by way of summary procedure praying for a judicial settlement of account of the Executor or the Administrator.

Section 726 of
Civil Procedure
Code.

3. On presentation of the petition, the Court may order citation on the Executor or the Administrator who must be named as the Respondent to the application. The citation must direct the Respondent to appear before Court on a date named therein and show cause, if any, why an inquiry for judicial settlement of his accounts should not be made.

4. On the returnable date of the citation, the Executor or the Administrator, may, voluntarily or otherwise, file his own petition supported by affidavit praying for a judicial settlement of his own accounts. When there are two such applications, one from the Respondent and the other from the Executor or the Administrator, they will, on order of Court, be consolidated and thereafter the Court will inquire into the matter.

5. When a person other than an Executor or an Administrator applies for judicial settlement of accounts under Section 725 and 726 of the Civil Procedure Code, the citation that issues should, after

Sections 725
and 726 of the
Civil Procedure
Code.

reciting the preliminary matters, call on the Executor or the Administrator to "show cause, if any, why an order should not be made directing him to account within such time and in such manner as the Court directs and to attend before the Court for such purpose."

Section 729
of Civil Procedure
Code.

6. The Executor or the Administrator has the option of either presenting a petition for judicial settlement of accounts under Section 729 of the Civil Procedure Code or of submitting to the orders of Court.

7. The citation that issues under Section 726 is not the same as the citation that will be issued under Section 729 of the Code. After the Executor or the Administrator appears, if an order is made in terms of Section 727 of the Code, a formal order may be entered in Form No. 121 as shown in Schedule 11 of the Civil Procedure Code, but this is not absolutely necessary.

8. When the Executor or the Administrator has filed his account, the proper procedure to be followed is to call upon the opposing parties to file their objections to the Account. When this has been done the matters in dispute will be adjudicated upon by the Court.

Section 739 of
Civil Procedure
Code.

9. A Judicial Settlement of Accounts is conclusive evidence against all parties interested who were duly cited or appeared of the matters stated in Section 739 of the Civil Procedure Code and a Decree must be entered accordingly in terms of the Judicial Settlement of Accounts.

CHAPTER XII

Payments to the Heirs and Legatees

1. Money deposited to the credit of a Testamentary Case may be paid to the respective parties entitled to the same on proper application being made to Court on that behalf. The application must be made by way of motion by the Administrator or the Executor with a Scheme of Distribution duly consented to by the other interested parties to the case at the proper time.

2. Any party entitled to the money may apply to Court for payment either in person or by Proctor. Before any amount is paid to a party, the consent of the Administrator or the Executor must be filed in Court.

3. Money deposited in a Testamentary case to the credit of the minors must not be paid to anybody applying for it on their behalf. In every such case, where the minors' share of money is deposited in a Testamentary case, the Administrator, the Executor or the party interested in the minors, must take early steps to get a suitable person appointed Curator of the estate of the minors under Chapter XL of the Civil Procedure Code. After the appointment of a Curator is made, the minors' share of the money may be transferred to the credit of the Curatorship case.

4. If no steps are taken to institute Curatorship proceedings, in respect of the minors' share of the money, that share of the money must be allowed to remain in Court to the credit of the Testamentary Case till the minors attain majority.

5. A transfer of property of the heirs of an Estate is subject to the payment of debts of the Estate.

Suriyagoda v. William Appuhamy 43 N.L.R. page 89.

CHAPTER XIII

**Power of Court to compel a Third
Party to give over any property
or an Estate to the Administrator
or Executor**

Section 712 of
the Civil Procedure
Code.

1. An Administrator or an Executor may at any time file in Court a petition supported by affidavit praying for an order on a party named in the petition as a respondent requiring that party to deliver to the petitioner any property belonging to the Estate of the deceased wrongfully retained by the party to enable the petitioner to proceed with the administration of the estate.

Section 714-717
of Civil Procedure
Code.

2. On presentation of the petition and affidavit, the Court will order the issue of citation for service on the respondent for his personal appearance before Court on a date named therein. On the returnable date of the citation, the Respondent will be examined by the Court and thereafter the proceedings will be taken in terms of sections 714-717 of the Civil Procedure Code.

3. The person cited may, on the returnable date, file an affidavit claiming the property as his own or claiming possession of it. In such a case, without further inquiry, the Court will dismiss the application.

CHAPTER XIV

Death of an Executor while in office

1. If there are several Executors and one of them dies leaving any of his Co-executors, the office, with all its incidents, duties and powers devolves upon the survivors. If the sole executor dies after the issue of Probate, leaving a part of the deceased's property unadministered, then a fresh grant of administration may be made in respect of the property left unadministered.

2. No executor of an executor is entitled to administer the estate of the original Testator without a fresh grant of administration.

Lebbe Marikar
v. Mohamed
Kalid. 38
N.L.R. page
249.

3. In order to obtain a fresh grant as referred to above the party applying for the fresh grant must file in Court a petition supported by affidavit praying for grant of letters of administration with the will annexed and the court will thereafter enter Order Nisi and proceed to take action in terms of sections 532 etc. of the Civil Procedure Code.

CHAPTER XV

Death of Administrator**while in office**

1. In the case of death of an Administrator at any time before filing of the Final Account and closing of the Estate, an heir or the next-of-kin of the original deceased may apply to Court on his own or on the order of Court to have Letters of Administration issued to him to enable him to complete the administration left unfinished by his predecessor in office.

2. Every such application must be by petition and affidavit by way of summary procedure and action must be taken in terms of the provisions contained in Chapter III above.

CHAPTER XVI

Administration Pendente Lite

1. An Administrator may be appointed pending an action concerning the validity of a Will or pending proceedings for obtaining Letters of Administration.
2. Application for Letters of Administration Pendente Lite must be made to Court by petition and affidavit. No one need be named as a Respondent to this application.
3. Before granting such administration, the Court must be satisfied that such grant is necessary and also as to the fitness of the proposed applicant for such a grant.
4. The applicant need not furnish any security before such Letters are issued to him. He also need not file an Oath of Office.
5. He cannot be required to file in Court an Inventory and Final Account.

CHAPTER XVII

Letters ad Colligenda

1. Where a person dies leaving property in Ceylon and the Court is satisfied on the facts that there is not resident within its jurisdiction a next-of-kin or other person entitled to administer the estate of the deceased, the District Court within whose jurisdiction the property is situated will issue Letters ad Colligenda to one or more responsible persons on proper application being made for same, to take charge of such property until that property is claimed by some person lawfully entitled to the same.

2. Such grants are made in cases where delay may prove detrimental to the estate. It may be made to a stranger or some person connected with the deceased's affairs preferably to the Public Trustee.

3. Before such grant is made the Court must be satisfied that such a grant is necessary and that the proposed applicant is a suitable person for the issue of such grant.

4. The application for such a grant must be made by Petition and Affidavit.

CHAPTER XVIII

Limited Grant of Probate or of Letters of Administration

1. An application may be made to a Court of competent jurisdiction by the Executor of a Last Will of a deceased Testator or an applicant for Letters of Administration in case of an Intestate Estate for a limited Probate or Limited Letters of Administration respectively.

Section 539 and
548 of Civil
Procedure
Code.

2. Such applications must be made when the applicant needs such a grant for a specific purpose before the full grant either of Probate or Letters of Administration is made.

3. The application must be made by petition and affidavit.

4. In making the grant the Court will limit it with respect either to its duration or to the property affected by it or to the power of dealing with the property conveyed by the grant.

CHAPTER XIX

Letters of Administration cum**Testamento Annexo**

1. Where a deceased Testator makes no appointment of an Executor in his Last Will or where the appointment of an Executor fails, the Court will grant Letters of Administration cum Testamento Annexo to the heir who has the greatest interest in the estate of the deceased. All such applications must be made by petition and affidavit as in the case of an application for issue of Probate or Letters of Administration.

Letchimanan v.
Murugappa
Chetty 39
N.L.R. Page
19.

2. When an application is made for Letters of Administration cum Testamento annexo under Section 539 of the Civil Procedure Code, the document produced must be proved in accordance with the terms of Section 63 of the Evidence Ordinance.

CHAPTER XX

Joint Administration

The law expressly discourages joint administration and it should never be granted except in case of utmost exigency.

2 C.L.R. page 9

CHAPTER XXI

**Appointment of the Public Trustee of
Ceylon as Executor or Administrator
under Chapter 73 of Legislative
Enactment**

1. Under Section 37 of the Public Trustee's Ordinance, Chapter 73, any person living may deposit with the Public Trustee his Last Will on payment of a prescribed fee.

Section 37
of Chapter 73.

2. Any competent Court may grant Probate or Letters of Administration in respect of an estate to the Public Trustee by that name.

Section 25 (1)
Chapter 73.

3. The application of the Public Trustee for the grant of Probate or Letters of Administration must be made with a Schedule of the deceased's property appended thereto. In the case of an application for Probate of a Last Will the original Will must be annexed to the application with the affidavits of the attesting Notary Public and the witnesses.

4. The application must contain :—

- (a) the place and date of death of the deceased.
- (b) the heirs of the deceased.
- (c) the nett value of the estate showing separately the Assets and Liabilities.

- (d) the particulars of the property left by the deceased, and
- (e) the grounds on which the Public Trustee claims to have the Will proved and Probate issued.

5. The Court will, on such application being made by the Public Trustee, enter Order Nisi or Order Absolute in its discretion for publication once in the Government Gazette and twice in any newspaper to be selected by the Public Trustee and will direct him to file in Court copies of the Government Gazette and the papers in proof of publication of the same.

6. After the publication has been made, and if there is no opposition to the application of the Public Trustee, the Court will make the Order Nisi Absolute.

7. In addition to the filing in Court of the copies of the publications, the Public Trustee must in every case, file in Court an Inventory of the property of the deceased. After the Inventory is filed of record, the Public Trustee cannot be required to take any further steps in the case unless he or any person or persons interested in the Estate move the Court for any special direction.

Inventory.

Sections 18 to
20 of Chapter
73.

8. Before the grant of Probate or Letters of Administration to the Public Trustee, he is not required to tender any security or file in Court the Oath of Office. He is also not required to file any account in respect of the Estate.

9. Probate or Letters of Administration is granted to the Public Trustee before any payment of Estate Duty is made as required by Section 52 of the Estates Duty Ordinance. The Estate Duty, if any, must however, be paid by the Public Trustee direct to the Commissioner of Estate Duty at any time after the grant of Probate or Letters of Administration.

Section 20 (2)
of Chapter 73.

10. The Public Trustee is allowed to file in Court papers applying for either Probate or Letters of Administration in blank in the first instance. He must however, pay the duty on documents due under the Stamp Ordinance to the Court on being called upon to do so by the Secretary of the Court.

CHAPTER XXII

Official Administrator-Appointment of Secretary of District Court

Section 520 of
Civil Procedure
Code.

1. Whenever any party or parties interested in the Estate of a deceased person desire that the Secretary of the District Court be appointed as the Official Administrator of the Estate for any reason or reasons, or if the original Administrator is incapacitated or he is unwilling to act in the office of Administrator, the Court will appoint the Secretary of the District Court to the post as Official Administrator.

Samarasekera v.
Secretary D.C.
Matara. 51
N.L.R. page
90.

2. Section 520 of the Civil Procedure Code contemplates the appointment of the Secretary as Administrator and not the individual holding the office. Letters of Administration should therefore be addressed to the "Secretary of the Court" and a change of individuals holding the office will not affect the appointment of the office.

Section 52 of
Chapter 187 of
Estate Duty
Ordinance.

3. After the Order Nisi is made absolute, the Secretary must file in Court a personal Security bond on a sum approved of by the Court together with the Oath of Office. Letters of Administration must be issued to him after the receipt of the Certificate from the Commissioner of Estate Duty certifying payment of Estate Duty.

4. Thereafter the Official Administrator must take steps to administer the Estate and he must on the due dates file in Court the Inventory and the Final Account.

5. The Official Administrator may be paid a commission of not more than 3% of the value of the immovable property of the Estate as assessed by the Commissioner of Estate Duty. If the property consists of only movables, the commission will be not more than $1\frac{1}{2}\%$ of the value of such movable property. In no case will the Court allow a larger sum than Rs. 5,000/- as commission.

Section 551 of
Civil Procedure
Code.

6. The Secretary of the District Court is allowed to file papers in blank in the first instance. Before the proceedings are terminated, the Chief Clerk of the Court must check the stamp duty and he must call upon the Official Administrator to pay the deficiency, if any.

CHAPTER XXIII

Sole Testamentary Jurisdiction

Section 70 of
Courts Ordinance Chapter 6.

1. When a person dies outside Ceylon leaving in Ceylon property which requires administration, application must be made to the Supreme Court of the Island of Ceylon by the Executor or the Applicant for Letters of Administration or the Attorney of either of them for an order conferring Sole Testamentary Jurisdiction in respect of the Estate of the deceased.

2. Similar application must be made to the Supreme Court to get a Testamentary Case transferred from one District Court to another within the Island of Ceylon.

3. On obtaining the Order of the Supreme Court the Applicant must apply in person or by Proctor to the competent Court for the grant of Probate or Letters of Administration in terms of Section 524 of the Civil Procedure Code.

4. The application must be made by petition and affidavit supported by other necessary documents as required by the Civil Procedure Code (*Vide* Section 2 of Chapter III above). The order of the Supreme Court conferring Sole Testamentary Jurisdiction must be attached to the application to the District Court.

5. On application being made, the District Court will make the appropriate order in the case and thereafter the petitioner must proceed to take steps as directed by Court from time to time and obtain the grant.

6. When an order is made by the Supreme Court on an application under Section 2 above, the original District Court will forward the Testamentary Case to the other District Court concerned in terms of the said transfer order of the Supreme Court.

7. Before an application is made to the Supreme Court for the transfer of a Testamentary case from one Court to another, the minor respondents, if any, named in the Testamentary papers must be represented by a duly appointed Guardian-ad-litem. This step must be taken in the original Court before the application for the transfer is made.

123740

CHAPTER XXIV

Re-sealing of Certified Copies of Foreign Probates and Letters of Administration

Chapter 84 and
Section 524 or
530 of Chapter
86.

1. If an Executor or the Administrator of a case in a Foreign Court has to administer that part of the deceased's estate left in Ceylon, he must file an application in the competent District Court either himself or through a duly appointed Attorney in Ceylon in terms of Section 524 or 530 of chapter 86.

2. The application must be filed in the District Court with the copy of the Power of Attorney (in case the application is filed by the Attorney), draft notice of the intended application and certified copy of the Probate or the Letters of Administration. A statement of Declaration of Property in Form No. 225 duly perfected must also be attached to the application to be forwarded to the Commissioner of Estate Duty.

3. The Court will then grant the applicant authority to publish the notice once in the Government Gazette and twice in a daily newspaper to be selected by the applicant.

4. Thereafter the Applicant must file in Court, on a certain date, the copies of the Gazette and the papers in proof of publication of the notice. The Applicant must also file in Court the petition and affidavit and move the Court to re-seal the required document.

5. If the Certificate of the Commissioner of Estate Duty is filed certifying payment of the Estate Duty, the Secretary of the Court must check the stamp duty payable on the documents filed of record and must call upon the Proctor or the Applicant to pay any deficiency due in the case.

6. An applicant for re-sealing certified copies of Letters of Administration must always be required to tender security in a personal bond for the due discharge of his duties. Security is ordinarily fixed in a sum equivalent to the nett value of the property left in Ceylon by the deceased.

7. The applicant for re-sealing certified copy of Probate is not required to tender security before the copy of the Probate is re-sealed.

8. No oath of office is required from an Applicant for re-sealing copies of either Probate or Letters of Administration.

9. On payment of any deficiency of stamp duty and on filing in Court the security bond, if any, the Court will re-seal the two certified copies of the Probate or of the Letters of Administration with the following:

“Under the British Courts Probate (Re-sealing) Ordinance Chapter 84, let this certified copy of Probate Letters of Administration be sealed with the Seal of the District Court of _____ in the Island of Ceylon.

Inventory on.....

Final Account on

Dated this day of 19

District Judge”

10. The Applicant must thereafter file in Court the Inventory and Final Account on the respective dates granted by the Court for that purpose and if the Final Account is in order the Court will order the proceedings to be terminated provided any deficiency due has been paid after the final check of the stamp duty.

CHAPTER XXV

Stamp Duty

Schedule A,
Part III of
Chapter 189,

1. Every Testamentary Case in which the value of the Estate is Rs. 5,000/- and over is liable to stamp duty. The Nett value of the estate (after deducting the debts and liabilities) is taken for the purpose of determining the value of the Estate for Stamp Duty.

2. A class stamp of Rs. 10/- is payable on every document described in Part III of the Schedule to the Stamp Ordinance (Chapter 189) on estates valued between Rs. 5,000/- and under Rs. 10,000/-. Thereafter an additional stamp of Re. 1/- is payable on every additional Rs. 5,000/- or part thereof.

3. An exhibit stamp of Rs. 4/- is payable on every summons and exhibit (*i.e.* Last Will and Codicil) on estates valued between Rs. 5,000/- and under Rs. 10,000/-. Thereafter an additional duty of -/25 cts. is payable on every additional Rs. 5,000/- or part thereof.

4. The following is the table showing the amount payable as Fiscal's Stamps; Fiscal's stamps are affixed on every Summons, Notice and Citation issued on the parties in addition to the Exhibit or Class Stamp due on each document.

			Rs.	c.
(a)	In case of Rs.	300	and under	.42
(b)	do.	500	do.	.60
(c)	do.	1,000	do.	.90
(d)	do.	5,000	do.	1.20
(e)	do.	10,000	do.	1.80
(f)	over Rs.	10,000/-	and over	2.40

5. In a Testamentary case, the nett value of which is Rs. 5,000/- and over, the following documents must bear class stamps :—

- (a) Every appointment of Proctor.
- (b) Every pleading other than a petition or application.
- (c) Every notice, citation, or supplemental citation without reference to number.
- (d) Every decree nisi, order nisi, order absolute, interlocutory order and decree absolute.
- (e) Copy of decree nisi, order nisi, interlocutory order without reference to number.
- (f) Every copy of decree absolute or any other decree.
- (g) Every Bill of Costs.
- (h) Every affidavit.
- (i) Caveat.
- (j) Oath of Office of Executor or administrator.
- (k) Letters ad Colligenda.
- (l) Inventory.
- (m) Final Account.
- (n) Petition of Appeal.
- (o) Certificate in Appeal.

In addition to the class stamps every pleading in a Testamentary Case irrespective of the class must bear a stamp of -/50 cents being binding fees.

6. The Supreme Court Decree form and every petition in a Testamentary case will be free of stamp duty.

7. The checking of stamp duty must be made from time to time and it must be specially checked immediately on receipt of a certificate from the Commissioner of Estate Duty. Only the total value of the Ceylon Estate of the deceased is reckoned for the purpose of stamp duty. Monies payable to nominees by Insurance Companies, monies due from the P. S. M. P.A., G.O.BA. and R.B.A. are deducted from the total value of the Ceylon Estate and the difference is the amount on which stamp duty is finally payable.

8. No order to terminate the Testamentary proceedings will be made by Court before the final check of stamp duty by the Secretary of the Court. Order to close proceedings will be made after the recovery of stamp duty or deficiency due.

9. The Executor or Administrator is personally liable for the payment of stamp duty. The amount so paid may be recovered by him from the Estate.

10. Every Executor, administrator, or a party to a Testamentary proceeding must tender to Court any deficiency of stamp duty due on the documents filed by the respective party or Parties on being so ordered by Court. On his or their failure to do so the Court will issue writ against the property of the defaulting party or parties for the recovery of the amount due.

11. Every party to a Testamentary case on whom a notice is served, at the instance of Court, for appearance in default, must pay into Court Fiscal's stamps, according to the class of the case being cost of notice.

CHAPTER XXVI

Estate Duty

1. Estates of persons who died between the period of 1st October, 1935 and 31st March, 1937 are not liable to estate duty or stamp duty on Letters of Administration.

2. The new Estate Duty Ordinance No. 1 of 1938 came into force with effect from 1st April, 1937.

3. When a person dies leaving property which exceeds Rs. 20,000/- in value a tax called Estate Duty is levied according to the following scale (*Vide* Estate Duty Amendment Act No. 3 of 1948).

Class: Estate duty shall be payable
at the rate of per cent. of

Rs.

1. Exceeds Rs.	20,000 and does not exceed Rs. 50,000	3
2. " "	50,000 and does not exceed 100,000	4
3. " "	100,000 and does not exceed Rs. 150,000	5
4. " "	150,000 and does not exceed Rs. 200,000	7
5. " "	200,000 and does not exceed Rs. 300,000	8
6. " "	300,000 and does not exceed Rs. 500,000	10
7. " "	500,000 and does not exceed Rs. 750,000	11
8. " "	750,000 and does not exceed Rs. 1,000,000 •	12

9.	..	..	1,000,000 and does not exceed Rs. 1,500,000	14
10.	..	..	1,500,000 and does not exceed Rs. 2,000,000	16
11.	..	..	2,000,000 and does not exceed Rs. 3,000,000	18
12.	..	..	3,000,000 and does not exceed Rs. 4,000,000	20
13.	..	..	4,000,000 and does not exceed Rs. 6,000,000	25
14.	..	..	6,000,000 and does not exceed Rs. 10,000,000	30
15.	..	..	10,000,000 and does not exceed Rs. 15,000,000	35
16.	..	..	15,000,000	40

2. The Estate Duty as assessed by the Commissioner of Estate Duty is payable by the person to whom the Ceylon property has passed or is deemed to pass at the death of a person.

CHAPTER XXVII

Appeals re. Estate Duty

1. Any person aggrieved by the amount of the assessment made by an assessor of Estate Duty Department may first appeal to the Commissioner of Estate Duty. If he is still aggrieved at the decision of the Commissioner of Estate Duty, he may appeal to the appropriate District Court.

Sections 34-43.
Chapter 187.

2. The Appellant to the District Court must file petition of appeal naming the Attorney-General of Ceylon as the respondent to his Petition. The Court will then order issue of notice on the Attorney-General. A copy of Petition of Appeal must be served on the respondent along with notice.

3. On notice being served on the Attorney-General the Court will fix the matter for inquiry.

4. A further appeal lies to the Supreme Court from the order of the District Judge.

THE END.

123740

(A)

FORM OF ORDER NISI IN CASE OF INTESTACY**In the District Court of**

In the matter of the Intestate Estate
of

Deceased

Testamentary
Jurisdiction
No.

Petitioner

Respondents.

This matter coming on for disposal before
Esquire, District Judge of on the day of
in the presence of Mr. Proctor, on the part
of the petitioner abovenamed and the affidavit of the
petitioner dated the day of having been
read :

It is ordered that the petitioner be he/she is hereby
declared entitled as widower/widow/father/son/heir of
the abovenamed deceased to have letters of Adminis-
tration to the above estate issued to him/her accord-
ingly unless the Respondents abovenamed or any other
person or persons interested shall on or before the
 day of , show sufficient cause to the
satisfaction of the Court to the contrary.

It is further ordered that the Respondent be and
he/she is hereby appointed Guardian-ad-litem of the
minor the Respondent to represent him/her for
all the purposes of this action unless the Respondents
abovenamed or any other person or persons interested
shall on or before the day of , show suffi-
cient cause to the satisfaction of this Court to the
contrary.

day of

,

District Judge.

(B)

FORM OF ORDER NISI IN CASE OF LAST WILL**In the District Court of**

In the matter of the Last Will and Testament of

	Deceased
Testamentary	Petitioner
Jurisdiction	
No.	Respondents.

This matter coming on for disposal before Esquire, District Judge of _____ on the _____ day of _____, in the presence of Mr. _____, Proctor, on the part of the petitioner abovenamed and the Affidavit of (1) the petitioner dated _____ day of _____ (2) the Attesting Notary Public dated the _____ day of _____ and (3) the Witnesses dated the _____ day of _____ having been read :

It is ordered that the Last Will and Testament No. _____ made by _____ the deceased abovenamed and attested by _____, Notary Public on the _____ day of _____ the original of which has been produced and is now deposited in court be and the same is hereby declared proved and it is further ordered that the petitioner abovenamed is the Executor/Executrix named in the said Will and he/she is hereby declared entitled to have Probate thereof issued to him/her accordingly unless the Respondents abovenamed or any other person or persons interested shall on or before the _____ day of _____ show sufficient cause to the satisfaction of this Court to the contrary.

It is further ordered that the _____ Respondent be and he/she is hereby appointed Guardian-ad-litem of the minor the Respondent abovenamed to represent him/her for all the purposes of this action unless the respondents abovenamed or any other person or persons interested shall on or before the _____ day of _____ show sufficient cause to the satisfaction of this Court to the contrary.

District Judge.

day of _____,

(C)

**FORM OF ORDER ABSOLUTE IN THE
FIRST INSTANCE**

In the District Court of

In the matter of the Last Will and
Testament of

Testamentary
Jurisdiction
No.

Deceased

Petitioner

This matter coming on for final disposal before
Esquire, District Judge of Colombo on the
day of in the presence of Mr. Proctor,
on the part of the petitioner abovenamed and the
Affidavit of (1) the petitioner dated the (2) the
Attesting Notary Public and (3) the Witnesses dated
the having been read :

It is ordered that the Last Will and Testa-
ment No. made by the deceased above-
named and attested by , Notary Public on
day of , the original of which has been
produced and is now deposited in Court be and the same
is hereby declared proved and it is further ordered that
the petitioner abovenamed is the Executor—Executrix
named in the said Will and he/she is hereby declared
entitled to have Probate thereof is issued to him/her
accordingly on his/her taking the usual Oath and
tendering security.

day of ,

District Judge.

(D)

**FORM OF ORDER MAKING THE ORDER NISI
ABSOLUTE**

Order Absolute

In the District Court of

In the matter of the Intestate
Estate/Last Will and Testament
of

Testamentary
Jurisdiction
No.

Deceased
Petitioner.

This matter coming on for final disposal before
Esquire, District Judge of on the
day of in the presence of , Proctor,
on the part of the petitioner abovenamed:

It is ordered that the order of this Court dated
day of be and the same is hereby made absolute
and that the Probate of the Last Will and Testament
No. made by the deceased abovenamed/Letters
of Administration to the Estate of the abovenamed
deceased be issued to the petitioner accordingly on
his/her taking the usual Oath of Office and tendering
the security.

day of ,

District Judge.

(E)

FORM OF NOTICE OF ORDER NISI
NOTICE

In the District Court of

In the matter of the Intestate
Estate/Last Will and Testament
of

Testamentary
Jurisdiction
No.

Deceased

Petitioner.

To :

You are hereby required to appear before this Court on the day of at o'clock in the forenoon and show cause, if any, why the Order Nisi, copy of which is annexed hereto, should not be made absolute.

By order of Court,

day of ,

Secretary.

(F)

**FORM OF NOTICE OF ORDER NISI TO BE
ISSUED ON THE PROPOSED
GUARDIAN-AD-LITEM
NOTICE**

In the District Court of

In the matter of the Intestate
Estate/Last Will and Testament—
of

Testamentary
Jurisdiction
No.

Deceased

To :

You are hereby required to appear before this Court on the _____ day of _____ at _____ o'clock in the forenoon and show cause, if any, why the Order Nisi, copy of which is annexed hereto, should not be made absolute.

You are also required to produce the abovenamed Minors in Court on that date and show cause, if any, why you should not be appointed as their Guardian-ad-litem to represent them for all the purposes of this action.

By Order of Court,

day of _____ ,

Secretary.

123740.

(G)

**FORM OF NOTICE TO ADMINISTRATOR/
EXECUTOR/PROCTOR**

NOTICE

In the District Court of

In the matter of the Intestate
Estate/Last Will and Testament
of

Testamentary
Jurisdiction
No.

Deceased.

To the Fiscal of the District of

Petitioner/Administrator/Executor/Proctor

You are hereby required to appear before this Court on the day of _____ and file in Court the Oath and Bond or the Inventory or the Final Account in the above case.

You are also required to pay the cost of this notice. Herein fail not.

By Order of Court,

This

day of

Secretary.

(H)

Nett Value of Estate, Rs.

Estate Duty, Rs.

FORM OF PROBATE
In the District Court of

Testamentary } No.
 Jurisdiction }

In the matter of the Estate of the late deceased, of

Be it known to all men that on the _____ day of _____, 19____, the last Will and

Testament of _____ deceased a copy of which is hereto annexed, was exhibited, read, and proved before this Court, and administration of all the property and estate, rights, and credits of the deceased was and is hereby committed to the Executor in the said last Will and Testament named ; the said

_____ being first sworn/affirmed faithfully to execute the said Will by paying the debts and a legacies of the deceased Testator as far as the property will extend and the law will bind, and also to exhibit into this Court a true, full, and perfect Inventory of the said property on or before the

_____ day of _____, 19____, and to file a true and just account of _____ executorship on or before the _____ day of _____, 19____

And it is hereby certified that the Declaration and Statement of Property under the Estate Duty Ordinance have been delivered, and that the value of the said estate on which estate duty is payable, as assessed by the Commissioner of Estate duty, amounts to Rs.

And it is further certified that it appears by a certificate granted by the Commissioner of Estate duty, and dated the _____ day of _____, 19____, that Rs. _____ on account of Estate Duty (and interest on such duty) has been paid.

Given under my hand and Seal of the Court this _____ day of _____, 19____

District Judge.

FORM OF LETTERS OF ADMINISTRATION
(with the will annexed or otherwise)
In the District Court of

Testamentary } No.
 Jurisdiction }
 To

WHEREAS

of
 deceased. lately departed this life
 you are therefore fully empowered and authorised by
 these Presents to administer and faithfully dispose of
 the property and estate, rights, and credits of the said
 deceased, and to demand and recover whatever debts
 may belong to estate, and to pay what-
 ever debts the said deceased did owe
 so far as such property and estate, rights, and credits
 shall extend, you having already sworn/affirmed well and
 faithfully to administer the same, and to render a true
 and perfect Inventory of all the said property and estate,
 rights and credits to this Court on or before the
 day of , 19 , next, and also a true and
 just account of your administration thereof on or before
 the day of , 19 . And
 you are therefore by these Presents deputed and cons-
 tituted Administrator of all the property
 and estate, rights, and credits of the said deceased.
 (You are, nevertheless, hereby prohibited from selling
 any immovable property of the estate unless you shall
 be specially authorised by the Court so to do).

And it is hereby certified that the Declaration and
 Statement of Property under the Estate Duty Ordin-
 ance have been delivered, and that the value of the
 estate on which estate duty is payable, as assessed by the
 Commissioner of Estate duty amounts to Rs.

And it is further certified that it appears by a Certi-
 ficate granted by the Commissioner of Estate duty and
 dated the day of , 19 ,
 that Rs. on account of Estate
 Duty (and interest on such duty) has been paid.

Given under my hand and the Seal of the Court
 this day of , 19 .
District Judge.

(J)

FORM OF CITATION**under Section 5 of Chapter XI page 27 hereof****In the District Court of****CITATION**

In the matter of the Last Will and
 Testament of/Intestate Estate of
 Deceased.
 Petitioner.

Executor/Administrator/Respondent.

To :

Executor/Administrator/Respondent abovenamed.

Whereas....., the.....Respondent in the above case has presented a petition and affidavit (copies of which are hereto annexed) to this Court praying that the accounts of your administration of the above estate be judicially settled and that you be cited to attend an inquiry into whether the accounts filed by you should be revised in the light of the petition filed by the abovenamed petitioner.

And Whereas the said....., the above-named petitioner has satisfied this Court that there are reasonable grounds for such an inquiry.

You are hereby cited and required personally to be and appear before this Court on the _____ day of _____, 19____ at 10 O'clock in the forenoon then and there.

You are also hereby required to show cause, if any, why an order should not be made directing you toand in such manner as the Court directs and to attend before the Court for such purpose.

Given under my hand at _____ this _____ day of _____, 19____ .

District Judge.

(K)

FORM OF CITATION

under Section 3 of Chapter XI page 27 hereof.

In The District Court of**CITATION**In the matter of Last Will and
Testament of/Intestate Estate of

Deceased.

Executor/Administrator/Petitioner.

Respondents.

To :

Respondents.

Whereas the Executor/Administrator has presented a petition and affidavit (copies of which are hereto annexed) to this Court praying that the accounts of his administration of the above estate may be judicially settled and you may be cited to attend an Inquiry for the judicial settlement of the above estate.

And Whereas the said Executor/Administrator has satisfied this Court that there are reasonable grounds for holding such inquiry.

You are hereby cited and required personally to appear before this Court on the _____ day of _____, 19____ at 10 in the forenoon at the inquiry to be held for the judicial settlement of the above estate.

Given under my hand at _____, this _____ day of _____ 19____.

District Judge.

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K. SIVANANTHAN
50, PALALY RD:
JAFFNA

