# THE STATUTE LAWS OF CYPRUS

## No. 25 of 1945.

A Law to amend and consolidate the Law relating to Wills and to Testamentary and Intestate Succession.

R. E. Turnbull,] [*7th December*, 1945.

*Officer Administering the Government.*

BE it enacted by His Excellency the Officer Administering the Government and Commander-in-Chief of the Colony of Cyprus as follows:—

### Part I.—General Provisions.

**1.** This Law may be cited as the Wills and Succession Law, 1945. Short title.

Interpretation.

**2.** In this Law, unless the context otherwise requires—

"administrator" means a person to whom a Court or Tribunal has granted letters of administration or letters of administration with will annexed;

"codicil" means an instrument in writing made in relation to a will explaining, adding to, altering or revoking, in whole or in part, its disposition, and it shall be considered as forming an amending or additional part of the will;

The Cyprus Criminal Code Order in Council, 1928. 9 of 1931 to 19 of 1944

"coercion" means the committing or threatening to commit any act forbidden by the Cyprus Criminal Code, 1928 to 1944, or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever with the intention of causing any person to do any act against his will, and it is immaterial whether the Cyprus Criminal Code, 1928 to 1944, is or is not in force in the place where the coercion is employed;

"Court" means the District Court of the district in which the deceased had his ordinary or last place of residence in the Colony;

"disposable portion" means that part of the movable property and immovable property of a person which he can dispose of by will;

"estate" means the movable property and immovable property of which a person dies possessed;

"executor" means a person to whom the execution of the last will of a deceased person is confided by the appointment of the testator;

"fraud" includes any of the following acts committed by a person or with his connivance or by his agent, with intent to deceive another person or his agent or to induce him to do any act, that is to say—

(*a*) the suggestion, as to a fact, of that which is not true by one who does not believe it to be true,

(*b*) the active concealment of a fact by one having knowledge or belief of the fact,

(*c*) a promise made without any intention of performing it,

(*d*) any other act fitted to deceive;

"heir" means a person who by operation of law succeeds to an estate;

"immovable property" includes—

(*a*) land,

(*b*) buildings and other erections, structures or fixtures affixed to any land or to any building or other erection or structure,

(*c*) trees, vines and any other thing whatsoever planted or growing upon any land and any produce thereof before severance,

(*d*) springs, wells, water and water rights whether held together with, or independently of, any land,

(*e*) privileges, liberties, easements and any other rights and advantages whatsoever appertaining or reputed to appertain to any land or to any building or other erection or structure,

(*f*) an undivided share in any property hereinbefore set out;

"incapable person" means any person not under disability but who is certified by two duly qualified medical practitioners to be incapable from infirmity of mind due to a disease or old age of managing his own affairs;

"infant" means every person who has not completed eighteen years of age;

"legacy" means a gift by will of movable property or immovable property;

"legatee" means a person to whom a legacy has been left;

"letters of administration" means the written authority given to an administrator by a Court or Tribunal to administer the estate of a person who has died intestate or to administer an estate in which a person under disability or an incapable person is interested;

"letters of administration with will annexed" means the written authority given to an administrator by a Court or Tribunal to administer the estate of a person who has left a will without having appointed an executor or has appointed an executor who has renounced probate or become incapable of acting;

"mental patient" means any person adjudged to be a mental patient under the provisions of the Mental Patients Law, 1931; 14 of 1931.

"movable property" means all property of every description which is not immovable property;

"person under disability" means every person who is an infant or a mental patient or is prohibited by a Court from the management of his affairs or is absent from the Colony;

"probate" means an instrument in writing issuing out of the Court or Tribunal declaring that the will of a deceased person has been duly proved and that administration of his estate has been granted to an executor named therein;

"religious corporation" includes any religious establishment or religious institution belonging to any denomina-

tion and any throne, church, chapel, monastery, mosque, tekyé, shrine or synagogue ;

" signature " and " to sign " and their cognate expressions shall, in the case of an illiterate person, include his mark or seal ;

" statutory portion " means that part of the movable property and immovable property of a person which he cannot dispose of by will ;

" Tribunal " means a Mussulman Religious Tribunal of competent jurisdiction ;

" undisposed portion " means the whole or the part, as the case may be, of the disposable portion which has not been disposed of by will ;

" undue influence " means the exercise by a person of influence to dominate the will of another person where the relations subsisting between them are such that one of them is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other ;

" will " means the legal declaration in writing of the intentions of a testator with respect to the disposal of his movable property or immovable property after his death, and includes codicil.

Succession.

**3.** On the death of a person his estate shall pass as a whole to one or several other persons.

Mode of succession.

**4.** Succession to an estate may be either by will or by the operation of law or by will and by the operation of law.

Succession to estate how regulated.

**5.** This Law shall regulate—

(*a*) the succession to the estate of all persons domiciled in the Colony ;

(*b*) the succession to immovable property of all persons not domiciled in the Colony.

Kinds of domicil.

**6.** Every person has at any given time either—

(*a*) the domicil received by him at his birth (which domicil is in this Part called " the domicil of origin "), or

(*b*) a domicil (not being the same as the domicil of origin) acquired or retained by him by his own act (which domicil is in this Part called " the domicil of choice ").

Domicil of origin of legitimate child.

**7.** In the case of a legitimate child born during his father's lifetime, the domicil of origin of the child is the domicil of his father at the time of the child's birth.

Domicil of origin of illegitimate or posthumous child

**8.** In the case of an illegitimate or a posthumous child, the domicil of origin of the child is the domicil of his mother at the time of the child's birth.

**9.** A person acquires a domicil of choice by establishing his home at any place in the Colony with the intention of permanent or indefinite residence therein, but not otherwise: Domicil of choice how acquired.

Provided that no person shall be held to have acquired a domicil of choice in the Colony by reason only of his residing there in His Majesty's naval, military, air or civil service.

**10.** The domicil of origin prevails and is retained until a domicil of choice is in fact acquired. Domicil of origin prevails.

**11.** A domicil of choice is retained until it is abandoned, whereupon either— Domicil of choice retained.

(*a*) a new domicil of choice is acquired, or

(*b*) the domicil of origin is resumed.

**12.** Succession to movable property of persons dying in the Colony but not domiciled there shall be regulated by the law of the country in which they had their domicil at the time of their decease. Succession to movable property of persons not domiciled in the Colony.

**13.** No person can for the purpose of succession to movable property have more than one domicil. One domicil only for succession to movable property.

**14.**—(1) A person who has disappeared or is missing may, subject to the provisions of this section, be declared dead by an order of a Court or Tribunal. Declaration of death in certain cases.

(2)—(*a*) The declaration of death may be made if for ten years no news has been received that the person who has disappeared is alive:

Provided that no such declaration shall be made before the close of the year in which the person who has disappeared would have completed his twenty-eighth year of age:

Provided further that in the case of a person who has disappeared and who would have completed his seventieth year of age such declaration may be made if for five years no news has been received that he is alive.

(*b*) The periods of ten and five years, respectively, in this sub-section mentioned, will commence to run from the close of the last year in which the person who has disappeared was reported to be still alive.

(3)—(*a*) A person, who as a member of an armed force has taken part in a war, has been missed during the war and has not since been heard of, may be declared dead if three years have elapsed since the conclusion of peace. If no conclusion of peace has taken place, the three years in this section mentioned will commence to run from the close of the year in which the war was brought to an end.

(*b*) For the purposes of this sub-section a person who accompanies an armed force in the capacity of official or servant or volunteer or muleteer is deemed to be a member of an armed force.

(4)—(*a*) If any ship or aircraft shall have been lost during a sea or air passage, any person who was on board at the time and who has been missing since the loss of the ship or aircraft may be declared dead if one year has elapsed since the loss.

(*b*) The loss of the ship or aircraft shall be presumed if such ship or aircraft has not arrived at the place of destination or, having no fixed destination, has not returned within three years since the beginning of the sea or air passage, as the case may be.

(5) If a person has been in peril of his life in circumstances other than those specified in sub-sections (3) and (4), and has never thereafter been reported alive, he may be declared dead if three years have elapsed since the occurrence whereby the peril of life arose.

(6)—(*a*) The declaration of death establishes the rebuttable presumption that the person who has disappeared or is missing died at the date fixed in the order for the declaration of death and, unless the ascertained facts indicate some other date, death is presumed to have occurred—

(i) in the cases provided for by sub-section (2), at the date at which the declaration of death could first be lawfully made;

(ii) in the cases provided for by sub-section (3), at the date at which peace was concluded or at the close of the year in which the war was brought to an end;

(iii) in the cases provided for by sub-section (4), at the date at which the ship or aircraft was lost or is presumed to have been lost;

(iv) in the cases provided for by sub-section (5), at the date at which the occurrence took place.

(*b*) If the time of death is fixed only as a certain day, death is deemed to have taken place at the end of that day.

(7) If several persons have perished in a common peril, it is a rebuttable presumption that they have all perished simultaneously.

(8) In cases of dispute as to which of two or more persons deceased died first, the party asserting the priority of the death of one of them must give proof of his assertion. In the absence of proof, it shall be presumed that they died simultaneously.

(9) An order for declaration of death may be made only by a Court or Tribunal within the jurisdiction of which the person who has disappeared or is missing had his last known place of residence and only on the application of the Attorney-General or a person who deduces rights from the death of the person concerned.

Right of succession of posthumous child.

**15.** A posthumous child born alive shall have the same right of succession as if he had been born before the death of the person from whom the succession is derived :

Provided that it is established that such child was *en ventre sa mere* at the time of the death of the person from whom the succession is derived.

Nationality no bar to succession.

**16.** No person shall be incapable of succeeding to an estate by reason of his being of a different nationality from that of the person from whom the succession is derived.

Incapacity to succeed in certain cases.

**17.** No person shall be capable of succeeding to an estate who—

(*a*) has been convicted of wilfully and unlawfully causing the death, or of wilfully and unlawfully attempting to cause the death of the person to whose estate he would otherwise have succeeded ; or

(*b*) has been convicted of the murder, or attempted murder, of the child, parent, husband or wife of the person to whose estate he would otherwise have succeeded ; or

(*c*) has by coercion, fraud or undue influence caused the person to whose estate he would otherwise have succeeded to make a will or to revoke a will already made ; or

(*d*) has prevented the person to whose estate he would otherwise have succeeded from making, altering or revoking a will already made by him ; or

(*e*) has submitted to the person to whose estate he would otherwise have succeeded a supposititious will ; or

(*f*) has wrongfully altered or destroyed a will already made by the person to whose estate he would otherwise have succeeded ; or

(*g*) has aided or abetted any person in the commission of any of the above acts.

Incapacity how annulled.

**18.** The incapacity to succeed to an estate in section 17 of this Law mentioned, shall be annulled and removed if the deceased has voluntarily and in express terms pardoned the otherwise incapacitated person by a declaration in writing made and signed before, and witnessed by, a Commissioner, or by provision made in his will therefor.

Incapacity no bar to descendant of person incapacitated to succeed.

**19.** The descendants of an incapacitated person, who but for his incapacity would be entitled to succeed by operation of law to an estate, shall be entitled to succeed to the estate in the same manner as if the incapacitated person had died in the lifetime of the intestate; but the person incapacitated upon whose descendants the estate devolves shall be debarred from any subsequent right of enjoyment thereof accorded to him by law.

Limitation of actions to establish incapacity.

**20.** All actions where any estate is claimed on the ground of the incapacity of a person to succeed thereto shall be commenced before the lapse of three years from the date of the death of the person to whose estate he would otherwise have succeeded.

## Part II.—Wills.

Power of disposition by will.

**21.** It shall be lawful for every person to dispose of by his will, executed in manner in section 23 of this Law provided, the whole or any part of the disposable portion.

Capacity to make a will.

**22.** No will made by any person who is not of sound mind or has not completed the age of eighteen years, shall be valid.

Requisites of a will.

**23.** No will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned, that is to say—

(*a*) it shall be signed at the foot or end thereof by the testator, or by some other person on his behalf, in his presence and by his direction; and

(*b*) such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and

(*c*) such witnesses shall attest and shall subscribe the will in the presence of the testator and in the presence of each other, but no form of attestation shall be necessary; and

(*d*) if the will consists of more than one sheet of paper, each sheet shall be signed or initialled by or on behalf of the testator and the witnesses.

Competency of attesting witnesses.

**24.** The witnesses to a will shall be persons who—

(*a*) have completed the age of eighteen years; and

(*b*) are of sound mind; and

(*c*) are able to sign their names.

Legacy to attesting witnesses, etc., null and void.

**25.** If any person shall attest the execution of any will to whom or to whose wife, husband or child any beneficial legacy (other than and except charges and directions for the payment of any debt), shall be thereby given or made, such legacy shall, so far only as concerns such person attesting the execution of such will, or the wife, husband

or child of such person, or any person claiming under such person or wife or husband or child, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution of such will or to prove the validity or invalidity thereof notwithstanding such legacy mentioned in such will.

Creditor attesting will charging estate with debt admitted a witness.

**26.** In case by any will any estate shall be charged with any debt, and any creditor or the wife, husband or child of any creditor whose debt is so charged shall attest the execution of such will, such creditor notwithstanding such charge shall be admitted a witness to prove the execution of such will or to prove the validity or invalidity thereof.

Executor admitted a witness.

**27.** No person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will or to prove the validity or invalidity thereof.

Obliteration, interlineation or other alteration in will.

**28.** No obliteration, interlineation or other alteration made in any will after the execution thereof shall be valid or have any effect, except so far as the words or effect of the will before such alteration shall not be apparent, unless such alteration be executed in like manner as in section 23 of this Law is required for the execution of the will, but the will, with such alteration as part thereof, shall be deemed to be duly executed if the signature of the testator and the subscription of the witnesses be made in the margin or some other part of the will opposite or near to such alteration or at the foot or end of or opposite to a memorandum referring to such alteration and written at the end or some other part of the will.

Will made under coercion, etc.

**29.** A will, or any part of a will, the making of which has been caused by coercion, fraud or by the exercise of undue influence upon the testator, shall be null and void.

Substitution of legatee.

**30.** A testator may make provision in his will for the substitution of any legatee for any other legatee mentioned therein.

What legacy invalid.

**31.** No legacy shall be valid—

(*a*) if made to a person who is not in existence at the time of the death of the testator:

Provided that a legacy to a posthumous child of the testator shall be valid:

Provided further that where any person being a child or other issue of the testator to whom a legacy shall be left shall die in the lifetime of the testator leaving issue, and any such issue of such person shall be living at the time of the death of the testator,

such legacy shall not lapse, but shall take effect as if the death of such person had happened immediately after the death of the testator, unless a contrary intention shall appear by the will;

(*b*) if it does not express a definite intention.

Legacy dependent on certain conditions.

**32.** Where a legacy is dependent upon an impossible, illegal or immoral condition, such condition shall be void but the legacy shall be valid.

Legacy to religious corporations.

**33.**—(1) No person having any relation within the third degree of kindred shall have power to bequeath a legacy to any religious corporation, save by a will executed at least three months before his death:

Provided that no such legacy shall be valid if it relates to any land situate outside the limits of the areas specified, for the purposes of this section, on the survey maps signed by the Director of Land Registration and Surveys and deposited in the Land Registry Office before the coming into operation of this Law.

(2) Where the testator is a Moslem a legacy under sub-section (1) shall be deemed to be a valid dedication and shall be governed by the law in force for the time being relating to valid deeds of dedication.

Appointment of guardian by will.

**34.** A father or mother may by will appoint a guardian for his or her child during the time that such child is a person under disability or an incapable person:

Provided that a Court or Tribunal may for good reason at its discretion remove such guardian and appoint another guardian in his stead.

Change of domicil does not invalidate will.

**35.** No will shall be held to have become invalid nor shall the construction thereof be altered by reason of any subsequent change of domicil of the person making the same.

Will to be construed to speak from death of testator.

**36.** Every will shall be construed, with reference to the estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

Revocation of will.

**37.** A will may be revoked—

(*a*) by a subsequent will expressly revoking the former one;

(*b*) by a subsequent will inconsistent with the provisions of the former one, but so far only as the provisions of the two wills are inconsistent; or

(*c*) by burning, tearing or otherwise destroying the same by the testator or by some person in his presence and by his direction, with the intention of revoking it.

When will deemed to be revoked.

**38.** A will shall be deemed to be revoked—

(*a*) by the marriage of the testator after the execution of the will;

(*b*) by the birth of a child to the testator after the execution of the will, if at the time of the making of the will the testator had no children:

Provided that such marriage or birth shall not be deemed to revoke a will if it appears upon the face of the will that the will was made in contemplation of such marriage or birth.

Revival of revoked will.

**39.** No will or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof in manner in section 23 of this Law provided and showing an intention to revive the same; and when any will which shall be partly revoked and afterwards wholly revoked shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary shall be shown.

Gift in contemplation of death.

**40.**—(1) Any person who is of sound mind and has completed the age of eighteen years may dispose of any movable property by a gift made in contemplation of death if made in the presence of at least two witnesses who have completed the age of eighteen years and are of sound mind.

(2) A gift made in contemplation of death may be resumed at any time by the giver and shall not take effect if—

(*a*) the giver recovers from the illness during which it was made; or

(*b*) the giver survives the person to whom it was made.

(3) Any gift made in contemplation of death shall be treated upon the administration of an estate exactly in the same way as if it were a specific legacy.

(4) A gift shall be deemed to be made in contemplation of death where a person who is ill and expects to die shortly of his illness delivers to another person the possession of any of his movable property to keep as a gift in case the giver shall die of that illness.

Disposable portion.

**41.**—(1) Save as in section 42 of this Law provided, where a person dies leaving—

(*a*) a spouse and child, or a spouse and a descendant of a child, or no spouse but a child or a descendant of a child, the disposable portion shall not exceed one-third of the net value of his estate;

(*b*) a spouse or a father or a mother, but no child nor descendant thereof, the disposable portion shall not exceed one-half of the net value of his estate ;

(*c*) neither spouse, nor child nor descendant of a child, nor a father, nor a mother, the disposable portion shall be the whole of his estate.

(2) Where a person has purported to dispose by will of a part of his estate in excess of the disposable portion, such disposition shall be reduced and abated proportionally so as to be limited to the disposable portion.

Complete freedom of disposition in certain cases.

**42.** Any person who was born or whose father was born in the United Kingdom or any of the self-governing Dominions may, whether domiciled in the Colony or not, dispose of the whole of his movable property and immovable property by will.

Disposals by soldiers, etc.

**43.**—(1) Notwithstanding anything in this Law contained, any declaration made by any person with respect to the disposal of his property after his death which would have been valid and effective under the English Law shall be valid and effective as a will under and for the purposes of this Law.

(2) For the purposes of this section, "English Law" means—

7 Will. 4 and 1 Vict. c. 26.

(*a*) section 11 of the Wills Act, 1837 ; and

7 and 8 Geo. 5 c. 58.

(*b*) the Wills (Soldiers and Sailors) Act, 1918,

and shall include any act amending or substituted for the same :

Provided that section 3 of the Wills (Soldiers and Sailors) Act, 1918, shall be deemed to apply also to testamentary dispositions of immovable property in Cyprus.

## Part III.—Rights of Surviving Spouse and Succession.

### Chapter I.—*Surviving Spouse.*

Share of wife or husband in statutory portion and undisposed portion.

**44.** Where a person dies leaving a wife or husband, such wife or husband shall, after the debts and liabilities of the estate have been discharged, be entitled to a share in the statutory portion, and in the undisposed portion if any, as follows, that is to say—

If the deceased has left besides such wife or husband—

(*a*) any child or descendant thereof, such share shall be the one-sixth of the statutory portion and of the undisposed portion, but if there be more children than five (whether they be living or represented by descendants) then it shall be a share equal to the share of one of such children ;

(*b*) no child nor descendant thereof, but any ancestor or descendant thereof within the third degree of kindred to the deceased, such share shall be the one-half of the statutory portion and of the undisposed portion ;

(*c*) no child nor descendant thereof, nor any ancestor or descendant thereof within the third degree of kindred to the deceased, but any ancestor or descendant thereof of the fourth degree of kindred to the deceased, such share shall be the three-fourths of the statutory portion and of the undisposed portion ;

(*d*) no child nor descendant thereof nor any ancestor or descendant thereof within the fourth degree of kindred to the deceased, such share shall be the whole statutory portion and the whole undisposed portion :

Provided that where the deceased has left more than one lawful wife, the share given to the wife under the provisions of this section shall be divided equally between such wives.

Property received under marriage contract.

**45.** A wife or husband who becomes entitled to a share in the statutory portion or in the undisposed portion, shall not bring into account in reckoning such share any movable property or immovable property received from the deceased by virtue of a marriage contract.

## Chapter II.—*Succession.*

Succession of the kindred

**46.** Subject to the provisions of this Law as to the incapacity of persons to succeed to an estate and subject to the share of a surviving wife or husband of the deceased, the class of person or persons who on the death of the deceased shall become entitled to the statutory portion, and the undisposed portion if any, and the shares in which they shall be so entitled, if more than one, shall be as set out in the several columns of the First Schedule to this Law : First Schedule.

Provided that persons of one class shall exclude persons of a subsequent class.

When deceased is taken to have died without heirs.

**47.**—(1) If there is no person of kin to the deceased within the sixth degree of kindred living at his death he shall be taken to have died without heirs, and no one of his kin beyond the sixth degree of kindred shall on his death become in any manner entitled to the statutory portion, and to the undisposed portion if any.

(2) On failure of heirs as in sub-section (1) provided, and subject to the share of a surviving wife or husband, if any, the statutory portion and the undisposed portion shall become the property of the Government.

Degree of kindred, how ascertained.

**48.**—(1) The degree of kindred between any two persons shall be ascertained as follows, that is to say, when the two persons are in the direct line of descent the one from the other, by reckoning the number of generations from either of them to the other, each generation constituting a degree; and where they are not in the direct line of descent the one from the other, by reckoning the number of generations from either of them up to their common ancestor and from the common ancestor downwards to the other of them, each generation constituting a degree.

Second Schedule.

(2) The degrees of kindred down to the sixth degree are shown in the Table set out in the Second Schedule.

*Per stirpes*, meaning of.

**49.** Where in this Law it is provided that any class of persons shall become entitled to the statutory portion and the undisposed portion *per stirpes*, it means that the child of any person of the defined class who shall have died in the lifetime of the deceased and who, if he had survived the deceased, would have become entitled on the death of the deceased to a share in the statutory portion, and the undisposed portion if any, shall become entitled only to the share which the parent would have taken if he had survived the deceased.

Succession by will no bar to succession by law.

**50.** Any person who, by virtue of the will of the deceased, becomes entitled to succeed to any part of the disposable portion, shall be in no way debarred from succeeding to any part of the statutory portion, and of the undisposed portion if any, should he be so entitled.

Property brought into account in reckoning share of child or other descendant of deceased.

**51.** Any child or other descendant of the deceased who becomes entitled to succeed to the statutory portion, and to the undisposed portion if any, shall in reckoning his share bring into account all movable property and immovable property that he has at any time received from the deceased—

(*a*) by way of advancement; or

(*b*) under a marriage contract; or

(*c*) as dower; or

(*d*) by way of gift made in contemplation of death:

Provided that no such movable property or immovable property shall be brought into account if the deceased has left a will and has made therein specific provision that such movable property or immovable property shall not be brought into account.

## Part IV.—Illegitimate Children.

Legal status of illegitimate child in respect of his mother.

**52.** An illegitimate child shall have the legal status of a legitimate child in respect of his mother and her relatives by blood.

Legitimation by subsequent marriage.

**53.**—(1) Where the parents of an illegitimate child marry one another such child shall acquire, as from the date of his birth, the legal status of a legitimate child in respect of both his father and mother and their relatives by blood.

(2) The husband of the mother shall be deemed to be the father of the child if he has co-habited with her, to the exclusion of all other male persons, at any time during the period of possible conception specified in sub-section (3), unless it is made to appear that it is impossible that the mother has conceived the child in consequence of such co-habitation.

(3) The period of possible conception mentioned in sub-section (2) is the period between the one hundred and eighty-first day and the three hundred and second day, both inclusive, before the birth of the child.

Legitimation by order of Court or Tribunal.

**54.**—(1) An illegitimate child may be declared legitimate by an order of a Court or Tribunal under the provisions of this section.

(2) An order under sub-section (1) may be made on application to the Court or Tribunal within the jurisdiction of which the person who claims or is alleged to be the father of such child resides—

(*a*) at any time, by the father, with the consent of the mother of the child (unless the mother is dead or is a person under disability or an incapable person), and of the child himself (unless the child is under eighteen years of age or a person under disability or an incapable person) ; or

(*b*) within twelve months of the birth of the child, by the mother of the child or by the guardian of the mother if she is a person under disability or an incapable person.

(3) No order shall be made under this section—

(*a*) if at the time of the conception of the child a marriage between the parents would be forbidden, on account of relationship by blood or by marriage, by the family law of the religious community to which the person who claims or is alleged to be the father belongs ; or

(*b*) if the child is dead ; or

(*c*) if the alleged father of the child is dead.

(4) An illegitimate child who has been declared legitimate under this section shall, as from the date of his birth, have the legal status of a legitimate child in respect of both his father and mother and their relatives by blood.

(5) Nothing in this section contained shall affect—

(*a*) any right to succession, under the provisions of the Moslem Sacred Law, of an illegitimate child born before the date of the coming into operation of this Law; or

(*b*) the jurisdiction and powers of a Tribunal in respect of any such right of such child, as in paragraph (*a*) hereof mentioned.

## Part V.—Acceptance and Renunciation of Inheritance.

Acceptance or renunciation of inheritance.

**55.**—(1) Any person upon whom an inheritance devolves by law may either accept the inheritance or renounce it.

(2) Every heir is presumed to have accepted an inheritance who, not having renounced it within the period prescribed in section 57 of this Law, shall have intermeddled with the estate except so far as may be reasonably necessary for the preservation thereof.

Liability of heirs accepting inheritance.

**56.**—(1) The heirs who have accepted an inheritance are liable to pay the debts of the deceased so far as the estate of the deceased that has come into their hands is sufficient for the payment thereof.

(2) Debts due from the deceased to an heir are not extinguished by the acceptance of the inheritance.

Period within which renunciation may be made.

**57.**—(1) An inheritance may be renounced by any heir at any time within three months from the time when he first became aware of the death of the deceased and of the fact of his being an heir to such deceased.

Third Schedule Form A.

(2) Renunciation is effected by filing in the Court or Tribunal a declaration in the Form A set out in the Third Schedule.

Right of renunciation passes to heirs.

**58.** The right of an heir to renounce an inheritance, who dies within the period prescribed in section 57 of this Law without making such renunciation, passes to his heirs, who may exercise such right within three months of the death of such heir.

How an heir who received any part of estate can renounce inheritance.

**59.** No heir may renounce an inheritance who has received any part of the estate, unless at the time of renunciation he shall pay into the Court or Tribunal the full value of the estate received by him.

Renunciation subject to condition, etc., not valid.

**60.** No renunciation which is made subject to any condition or limitation of time or which is limited to a part of an inheritance, shall be valid.

**61.** Any renunciation which is made by an heir with the object of defeating the rights of any of his creditors may be set aside by the Court or Tribunal on the application of any creditor and upon proof of such object. Renunciation made with the object of defeating creditors.

**62.** An heir who has renounced the inheritance incurs no liability in respect of the debts of the deceased and can receive no benefit from the estate of the deceased either by operation of law or under the will of the deceased. Effect of renunciation.

PART VI.—PROBATE AND LETTERS OF ADMINISTRATION.

**63.**—(1) No will shall have any effect until it has been proved. Will of no effect until proved.

(2) Probate of a will, or letters of administration with will annexed, or letters of administration, may be granted by a Court or Tribunal upon the application of any person, in accordance with the provisions contained in this Law.

(3) Probate of a will, or letters of administration with will annexed, shall only be so granted upon application, in those cases where the will appears to have been duly executed, and where there is no opposition to the grant, and where there is no suggestion or claim that the will is otherwise than genuine.

(4) Every application under this section for probate or for letters of administration with will annexed, shall be accompanied by an affidavit of one or more of the attesting witnesses, in proof of the due execution of the will, and stating the estimated value of the movable property and immovable property of the deceased. The affidavit may follow the Form B set out in the Third Schedule. Third Schedule Form B.

(5) If any of the attesting witnesses to a will are dead or absent from the Colony, the application shall be accompanied by an affidavit of some person or persons in proof of the death or absence of such attesting witnesses, and in proof of their handwriting and signatures, and of the handwriting and signature of the testator. The affidavit may follow the Form C set out in the Third Schedule. Third Schedule Form C.

(6) Every application under this section for letters of administration shall be accompanied by an affidavit of some person or persons, to the effect that to the best of his or their knowledge and belief the deceased died intestate, and that the proposed administrator is a fit and proper person to administer the estate, and stating the estimated value of the movable property and immovable property of the deceased, and, as far as possible, the names and places of residence of all the persons who are entitled to succeed to the estate.

Deposit of will.

**64.** Upon every application for probate, or for letters of administration with will annexed, or for letters of administration, every affidavit and any will shall be deposited with the Registrar of the Court or the clerk of the Tribunal, and the Registrar or clerk shall enter in a book to be kept for that purpose a memorandum of the deposit of the will and of the condition in which it was found at the time of the deposit.

Deposited will to be numbered and marked.

**65.** Every will so deposited shall be marked by the Registrar of the Court or the clerk of the Tribunal with a number and the date of the deposit, and shall be kept in the custody of the Registrar or clerk; and every person interested therein shall be entitled to a copy thereof on payment of a fee of three piastres per folio of one hundred words.

Depository for wills.

**66.** There shall be kept in the office of every Court or Tribunal a safe and convenient depository for the wills of deceased persons deposited under section 64 of this Law and for all such wills of living persons as may be deposited for safe custody; and persons may deposit their wills in the depository upon payment of such fees and under such regulations as shall from time to time be prescribed by Rules of Court.

Granting of probate or letters of administration with will annexed, etc.

**67.**—(1) Upon application for probate of a will or for letters of administration with will annexed, the Court or Tribunal shall inspect the will and read the affidavit or affidavits in connection therewith, and, if satisfied that the will is genuine and has been duly signed and attested, shall grant probate thereof or, in case no executor is appointed thereby, letters of administration with will annexed, in the Form D set out in the Third Schedule.

Third Schedule Form D.

(2) Upon application for letters of administration the Court or Tribunal shall read the affidavit or affidavits in connection therewith, and, if satisfied that the deceased died intestate, and that the proposed administrator is a fit and proper person to administer the estate, shall grant letters of administration to him.

(3) The Court or Tribunal may, of its own motion or on the application of any person, summon the persons who made the affidavit or affidavits in connection with the will or in connection with the application for letters of administration and further examine them, or take any further evidence that may be deemed necessary with a view to the granting or refusing of probate or of letters of administration whether with will annexed or otherwise.

Security bond.

**68.** Before granting letters of administration whether with will annexed or otherwise to any person, the Court or Tribunal shall require him to enter into a security bond, with or without a surety or sureties, to the effect that he will duly administer the estate according to law.

Notice to Principal Land Registry Officer.

**69.** If any immovable property is affected by the will, the person to whom probate or letters of administration with will annexed is granted shall, within ten days after the grant, give notice in writing to the Principal Land Registry Officer of the district in which such property is situated, setting out in the notice a list of the immovable property affected by the will.

Power to refuse grant.

**70.** If it appears to the Court or Tribunal upon an application for probate, or for letters of administration with will annexed, that the will was not duly executed, or that some person opposes the grant, or that there is a *bona fide* suggestion or claim that the will is not genuine or has been obtained by coercion, fraud or undue influence, or if upon an application for letters of administration the Court or Tribunal is not satisfied that the deceased died intestate or that the proposed administrator is a fit and proper person to administer the estate, the Court or Tribunal shall refuse to grant probate or letters of administration with will annexed or letters of administration, as the case may be, and shall inform the applicant that he is at liberty to take proceedings by action for the grant of probate or letters of administration with will annexed or letters of administration, as the case may be.

Actions with regard to probate, etc.

**71.** Nothing in the foregoing provisions with reference to the granting of probate or letters of administration with will annexed or letters of administration upon application, shall be taken to prevent any person from bringing an action in the Court or Tribunal claiming such a grant, or the revocation of any such grant. The Rules of Court relating to proceedings in actions shall, as far as possible, extend and apply to such action, and the Court or Tribunal shall have power to hear and determine such action, and to give judgment granting probate or letters of administration with will annexed or letters of administration, or revoking or varying any grant of the same which may have been made upon application.

Vesting of estate.

**72.** From and after the grant of probate or letters of administration with will annexed or letters of administration, the rights and liabilities attaching to the estate shall vest in and devolve upon the executor or administrator, as the case may be, until the estate is administered ; and

from and after the administration of the estate, or if no such grant is made, the estate shall vest in and devolve upon the persons legally entitled thereto.

Power to appoint temporary administrator.

**73.** The Court or Tribunal may, at any time before granting probate or letters of administration with will annexed or letters of administration, upon the application of any person who claims to be interested under the will of the deceased or in the estate, appoint any person to act temporarily as administrator of the estate, for such time as to the Court or Tribunal may seem necessary or desirable, and upon such appointment such administrator shall have all the rights, duties and powers by this Law conferred upon an executor or administrator.

## Part VII.—Administration.

Executor to obtain probate and administer estate.

**74.** Where the deceased has left a will it is the duty of the executor, after having obtained a grant of probate, to carry out the provisions of the will and generally to administer the estate according to law:

Provided that any executor may renounce the executorship before the grant of probate to him, but if he so renounces he can take no benefit under the will nor does he incur any liability in respect of the estate.

Executor may be called on to accept or renounce executorship.

**75.** Any person who claims to be interested under any will may give notice in writing to any person named as executor in the will, calling upon him to accept or renounce the executorship; and the executor shall, within one month from the receipt of the notice, signify his acceptance or renunciation of the executorship. Such acceptance or renunciation shall be effected by filing a declaration to that intent in the Court or Tribunal in which the will has been deposited and should he make default in filing a declaration of acceptance within the said period of one month, he shall be deemed to have renounced the executorship.

Administrator with will annexed to administer estate.

**76.** Where the deceased has left a will without having appointed an executor thereof, it is the duty of the administrator, after having obtained a grant of letters of administration with will annexed, to carry out the provisions of the will and generally to administer the estate according to law.

Duties of administrator in case of intestacy.

**77.** Where the deceased has died intestate, it is the duty of the administrator, after having obtained a grant of letters of administration, to administer the estate according to law.

**78.**—(1) An executor who has obtained probate or an administrator who has obtained letters of administration whether with will annexed or otherwise, shall, within such time as the Court or Tribunal shall direct, file in the Court or Tribunal an inventory of the estate. Inventory to be filed.

(2) The inventory shall be accompanied by a declaration upon oath in the Form E set out in the Third Schedule. Third Schedule Form E.

**79.**—(1) An executor, having obtained probate, or an administrator having obtained letters of administration with will annexed, shall in administering the estate, proceed as follows— Duties of executor or administrator with will annexed, etc.

(*a*) collect and get in the estate with all reasonable speed ;

(*b*) pay the funeral and testamentary expenses and pay all the just debts of the deceased in the order of priority set out in section 80 of this Law ;

(*c*) have the residue of the estate carefully valued, if it appears to be necessary so to do, and carry out the provisions of the will according to law, reducing the legacies proportionately, if it appears that the testator has disposed by will of more than the disposable portion ;

(*d*) distribute the statutory portion and the undisposed portion according to law ;

(*e*) file in the Court or Tribunal within three months of the winding up of the estate a true account of the movable property and immovable property that has come into his hands and of the manner in which such property has been disposed of. Every such account shall be open to inspection by any person interested in the estate, and such person may, subject to the payment of the prescribed fee, obtain a copy thereof.

(2) Where the deceased has died intestate, the administrator shall proceed to administer the estate in the same manner as is in this section prescribed for an executor, save with regard to the carrying out of the provisions of the will.

**80.** After payment of the funeral expenses and the expenses incidental to the acceptance and discharge of the executorship or administratorship, and the remuneration of the executor or administrator, the just debts of the deceased shall be liquidated by the executor or administrator in the following order of priority, that is to say— Order of payment of debts.

(*a*) the expenses of the medical treatment of the deceased during his last illness and the wages due

to the domestic servants of the deceased, not exceeding six months wages ;

(*b*) secured debts according to the order of their priority ;

(*c*) debts on bonds in customary form, on promissory notes and on bills of exchange ;

(*d*) any other debt.

Treatment of specific legacies.

**81.**—(1) Specific legacies shall take rank and be liquidated after the payment of the just debts, and, unless the will shows a contrary intention, shall be liquidated before the general legacies.

(2) If it appears that the value of the specific legacies, taken together, exceeds that of the disposable portion, the reduction and abatement of such legacies shall be effected in the following manner, that is to say, all the objects of the specific legacies shall be sold and from the proceeds of sale the moneys equivalent in value to that of the disposable portion shall be set apart and distributed amongst the specific legatees in proportion to the value of their respective legacies.

Publication of notice of distribution may be ordered.

**82.** It shall be open to the Court or Tribunal to order that an executor or administrator shall give notice of his intention to distribute the assets by such publication as may seem to the Court or Tribunal to be reasonable, and the distribution of the assets shall be postponed until such time after the publication as may seem to the Court or Tribunal to be desirable.

Power to remove or replace executor or administrator.

**83.**—(1) The Court or Tribunal may of its own motion or on the application of any person interested in the estate—

(*a*) remove any executor or administrator for wilful neglect or misconduct in the administration of the estate ;

(*b*) grant letters of administration to some person for the purpose of carrying out the due administration of the estate in the place of an executor or administrator who has been removed or has died or has become incapable to act.

(2) Where such letters of administration have been granted, all the rights, duties and powers of an executor or administrator shall devolve upon the new administrator.

Rights, duties and powers of remaining or surviving executor.

**84.** Where there are two or more executors and one of them is removed by the Court or Tribunal or dies or becomes incapable to act, the remaining or surviving executor or executors shall carry on the administration of the estate as if he or they had been the only executor or executors appointed.

In default of heirs, etc., letters of administration may be granted.

**85.**—(1) Where all the heirs to a deceased person have renounced the inheritance, or if the deceased has died without heirs, or has left heirs who are all absent from the Colony, the Court or Tribunal may, on the application of the Attorney-General or of any person interested in the estate, grant letters of administration or letters of administration with will annexed, as the case may be, to any person to act as administrator.

(2) Every such administrator shall, under the direction of the Court or Tribunal,—

(*a*) administer the estate in the manner in section 79 of this Law prescribed;

(*b*) pay any balance of the assets of the estate remaining in his hand after payment of all the liabilities of the estate into the Public Treasury for disposal as may be directed by the Court or Tribunal.

## Part VIII.—Miscellaneous.

Rules of Court.

**86.** The Governor may, with the advice and assistance of the Chief Justice, make Rules of Court for any matter or proceeding had or taken before any Court or Tribunal under the provisions of this Law:

Provided that, until such rules are made, such matters and proceedings shall be regulated by the Rules of Court relating to Wills and Successions (including any Rules prescribing the fees payable in respect of such matters and proceedings) in force on the date of the coming into operation of this Law.

Rights of religious corporations.

**87.** This Law shall not affect any established rights of any religious corporation.

Treaty obligations reserved.

**88.** This Law shall not be applied in any case in which the application thereof shall appear to be inconsistent with any obligation imposed by treaty.

Saving of Vakfs.

**89.** Nothing in this Law contained shall apply to any immovable property made and held as Vakf under any Law relating to Vakfs and in force for the time being.

Date of coming into operation and repeal.

**90.** This Law shall come into operation on a date to be fixed by the Governor by notice in the *Gazette* and thereupon the Laws and enactments mentioned in the Fourth Schedule shall be repealed.

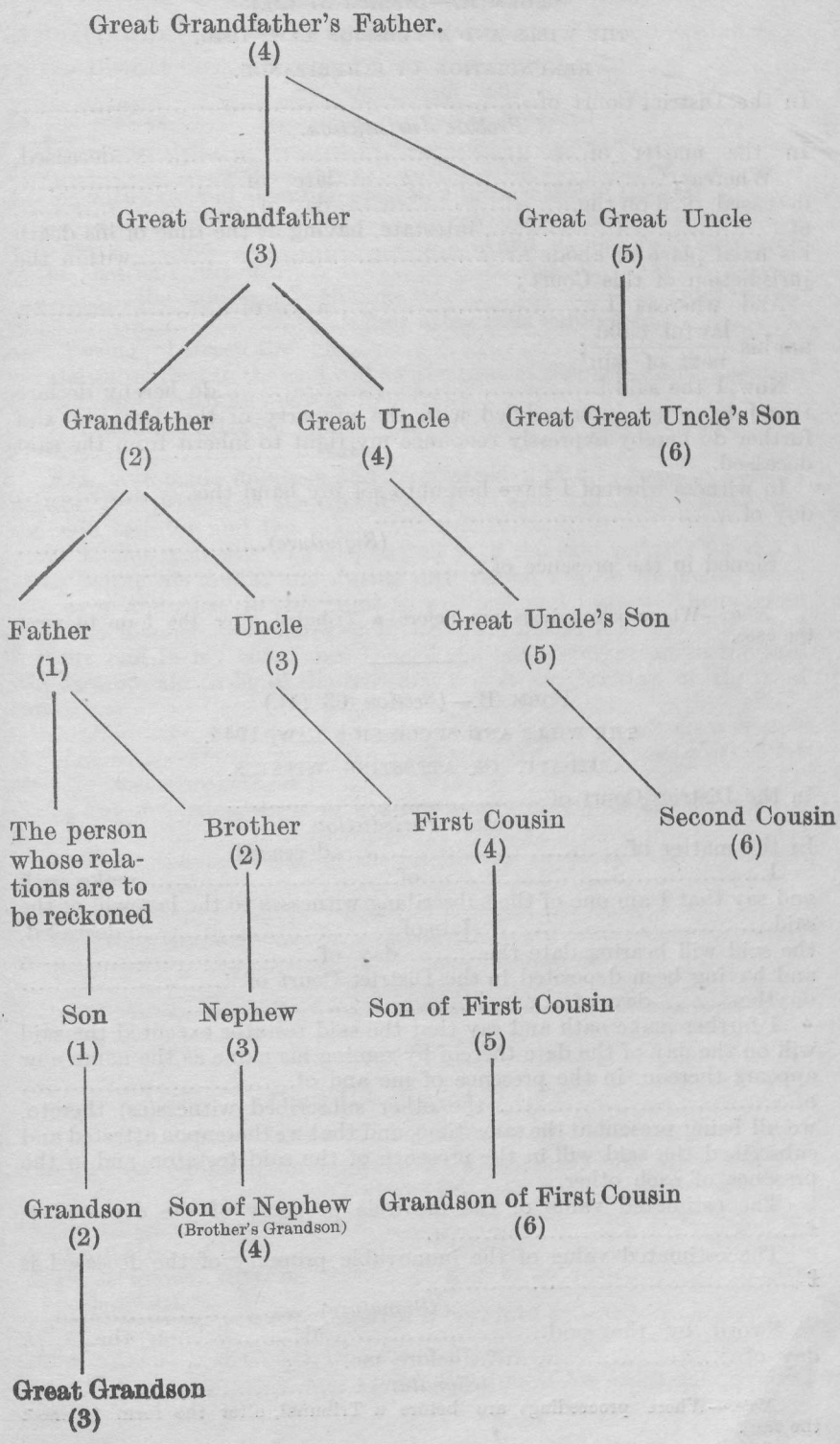
FIRST SCHEDULE.—(*Section* 46.)

SUCCESSION OF THE KINDRED.

| Class. | Persons entitled. | Shares. |
|---|---|---|
| 1. First Class. | 1.—(*a*) Legitimate children of the deceased living at his death ; and<br>(*b*) descendants, living at the death of the deceased, of any of the deceased's legitimate children who died in his lifetime. | 1.—(*a*) In equal shares ;<br>(*b*) in equal shares *per stirpes*. |
| 2. Second Class. | 2.—(*a*) Father, mother of the deceased living at his death (or if not living at his death, the nearest ancestor living at his death) and brothers and sisters of the full and half blood of the deceased living at his death ; and<br>(*b*) descendants, living at the death of the deceased, of any of the deceased's brothers or sisters who died in his lifetime. | 2.—(*a*) All in equal shares except that brothers and sisters of the half blood take half the share of a brother or sister of the full blood ;<br>(*b*) in equal shares *per stirpes*. |
| 3. Third Class. | 3. The ancestors of the deceased nearest in degree of kindred living at his death. | 3. If there are ancestors of equal degree of kindred on both the father's side and on the mother's side, the ancestors on each side shall take half of the statutory portion, and of the undisposed portion if any, and, if there are more than one of them on either side, in equal shares. |
| 4. Fourth Class. | 4. The nearest kin of the deceased living at the death within the sixth degree of kindred, the nearer degree excluding those more remote. | 4. In equal shares. |

SECOND SCHEDULE.—(*Section* 48 (2).)

TABLE OF DEGREES OF KINDRED.



## THIRD SCHEDULE.

FORM A.—(*Section* 57 (2).)

THE WILLS AND SUCCESSION LAW, 1945.

RENUNCIATION OF INHERITANCE.

In the District Court of.....

*Probate Jurisdiction.*

In the matter of.....deceased.

Whereas.....late of.....,
deceased, died on the.....day of....., .....,
at....., intestate, having at the time of his death
his fixed place of abode at.....within the
jurisdiction of this Court;

And whereas I..... of.....
am his $\frac{\text{lawful child}}{\text{next of kin}}$;

Now I the said.....do hereby declare that I have not intermeddled with the property of the deceased and further do hereby expressly renounce my right to inherit from the said deceased.

In witness whereof I have hereunto set my hand this.....
day of....., .....

(*Signature*).....

Signed in the presence of.....

.....

*Note.*—Where proceedings are before a Tribunal, alter the form to meet the case.

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FORM B.—(*Section* 63 (4).)

THE WILLS AND SUCCESSION LAW, 1945.

AFFIDAVIT OF ATTESTING WITNESS.

In the District Court of.....

*Probate Jurisdiction.*

In the matter of.....deceased.

I.....of..... make oath and say that I am one of the subscribing witnesses to the last will of the said..... late of..... deceased, the said will bearing date the..... day of....., .....,
and having been deposited in the District Court of.....
on the..... day of....., .....

I further make oath and say that the said testator executed the said will on the day of the date thereof by signing his name as the name now appears thereon, in the presence of me and of.....
of..... the other subscribed witness(es) thereto, we all being present at the same time, and that we thereupon attested and subscribed the said will in the presence of the said testator and in the presence of each other.

The estimated value of the movable property of the deceased is £.....

The estimated value of the immovable property of the deceased is £.....

(*Signature*).....

Sworn by the said.....at.....on the.....
day of....., ....., before me.

(*Signature*).....

*Note.*—Where proceedings are before a Tribunal, alter the form to meet the case.

FORM C.—(*Section* 63 (5).)

THE WILLS AND SUCCESSION LAW, 1945.

AFFIDAVIT WHERE ATTESTING WITNESS DEAD OR ABSENT FROM THE COLONY.

In the District Court of.....

*Probate Jurisdiction.*

In the matter of.....deceased.

I..... of..... (or we..... of..... and..... of.....) having with care and attention inspected the last will of the said..... .....late of..... deceased, the said will bearing date the..... day of....., ....., and having been deposited in the District Court of.....on the .....day of..... ....., ....., the said will beginning thus.....and ending thus..... and being thus subscribed..... and having observed the names..... set and subscribed to the said will as witnesses attesting the due execution thereof, make oath and say as follows—

1. I am the (lawful widow or executor, as the case may be), of....., testator.

2. I have made inquiries and ascertained that no person or persons was or were present at the execution of the said will, save and except the said testator and the said.....

3. I knew and was well acquainted with the said testator for many years before his death, and during such period I have frequently seen him write and subscribe his name to writings, and I am well acquainted with the manner and character of his handwriting and signature, and I verily and in my conscience believe the name subscribed to the said will as aforesaid to be of the true and proper handwriting of the said testator.

4. (*Here set out the dates of the deaths of the attesting witnesses or state that they are absent from the Colony, as the case may be, and state also whether their signatures are genuine.*)

5. The estimated value of the movable property of the deceased is £.....

6. The estimated value of the immovable property of the deceased is £.....

(*Signature*).....

Sworn by the said.....at..... on the.....day of....., ....., before me.

(*Signature*).....

*Note.*—Where proceedings are before a Tribunal, alter the form to meet the case.

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FORM D.—(*Section* 67 (1).)

THE WILLS AND SUCCESSION LAW, 1945.

GRANT OF PROBATE OR LETTERS OF ADMINISTRATION WITH WILL ANNEXED.

In the District Court of.....

In the matter of..... late of..... deceased.

Be it known that on the..... day of....., ....., the last will / will with the codicils a copy whereof is hereunto annexed of..... late of..... deceased, who died on the.....day of....., ....., at ..... and who at the time of his death had his fixed

place of abode at..... within the jurisdiction of this Court, was proved and deposited in this Court and probate of the said will and administration of the property of the deceased was granted by this Court to..... executor named in the said will (or letter of administration with the said will (and codicils) annexed of the property of the deceased were granted by this Court to..... he having been first duly sworn).

(*Signature*).....

[*Seal of Court*]

*Note.*—(1) Where proceedings are before a Tribunal, alter the form to meet the case.

(2) Where letters of administration are granted, alter the form to meet the case.

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FORM E.—(*Section* 78 (2).)

THE WILLS AND SUCCESSION LAW, 1945.

DECLARATION ON OATH.

In the District Court of.....

*Probate Jurisdiction.*

In the matter of..... deceased.

I..... of..... as executor / administrator of..... who died on the..... day of ....., ....., and who had at the time of his death his fixed place of abode at..... within the jurisdiction of this Court declare that—

(1) The said deceased at the time of his death was possessed or entitled to the properties mentioned in the Inventory attached hereto.

(2) No property of the said deceased has at any time come to my possession or knowledge save as is set forth in the said Inventory.

(*Signature*).....

Sworn by the said..... at..... on the..... day of....., ....., before me.

(*Signature*).....

*Note.*—Where proceedings are before a Tribunal, alter the form to meet the case.

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FOURTH SCHEDULE.—(*Section* 90.)

REPEALS.

1. The Wills and Succession Laws, 1895 to 1944 (20 of 1895, 2 of 1935 and 31 of 1944).

2. The Moslem Sacred Law relating to wills, succession and inheritance, referred to in item (39) in the Fourth Schedule to the Courts of Justice Laws, 1935 to 1943.

3. Articles 877 to 880 of the Mejellé (both inclusive).

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H. G. RICHARDS,

*7th December*, 1945. *Acting Colonial Secretary.*

# INDEX TO THE IMMOVABLE PROPERTY (TENURE, REGISTRATION AND VALUATION) LAW, 1945.

## ARRANGEMENT OF SECTIONS.

*Section :*